

Title 316 - NEBRASKA DEPARTMENT OF REVENUE

Chapter 73 - FUELS TAX REGULATIONS

REG-73-001 NATURE OF THE NEBRASKA FUELS TAX

001.01 The Nebraska fuels tax is an excise tax imposed upon the ultimate consumer of fuels used, distributed, sold or delivered in Nebraska. The tax is precollected from licensed producers, suppliers, distributors, wholesalers, and importers of fuels as agents of the state based on the number of gallons of fuels purchased in Nebraska, imported, produced, refined, manufactured, compounded, or blended each month. Fuels can be sold exempt from tax only under the situations reflected in Reg-73-003 or as indicated in Reg-73-001.04 below.

001.01A When dealing with compressed fuels, the Nebraska fuels tax is an excise tax imposed upon the ultimate consumer of compressed fuel distributed, sold, delivered or used in motor vehicles registered or required to be registered. The tax is precollected from licensed compressed fuel retailers as agents of the state based on the number of gallons or gallon equivalents of compressed fuel sold each period depending upon the retailers' filing requirements.

001.02 In the case of a licensed producer of ethanol, there is an excise tax of two and one-half cents per gallon imposed upon the producer based on the purchase of natural gasoline used as a denaturant by the producer at an ethanol facility. This rate of tax is in effect through December 31, 2009. On January 1, 2010, the rate changes to one and one-quarter cents per gallon.

001.03 The Petroleum Release Remedial Action Fee is imposed upon the producer, refiner, importer, distributor, wholesaler or supplier who engages in the sale, distribution, delivery and use of petroleum in Nebraska and is administered in a manner similar to the motor fuels tax discussed in Reg-73-001.01.

001.04 A licensed producer or supplier may maintain tax-free storage of fuels in a Nebraska barge line or pipeline terminal storage facility or in an ethanol or biodiesel facility. The producer or supplier may sell fuels from these facilities tax free to a licensed fuels distributor or exporter. The first distributor or importer of fuels in Nebraska may transfer the tax liability to the first purchaser of such fuel if the purchaser is a licensed fuels distributor or wholesaler. The tax liability may only be transferred one time.

(Sections 3-148 through 3-152, R.R.S. 1997, 66-669, 66-6,109 and 66-6,113, R.R.S. 2003, 66-486, 66-496, 66-4,105, 66-4,140, 66-4,145, 66-4,146, 66-698, 66-6,100, 66-6,107 and 66-1521, R.S.Supp. 2004, 66-482, 66-6,103 and 66-1510, R.S.Supp. 2005, 66-489, Laws 2006, LB 1003. January 8, 2007.)

REG-73-002 DEFINITIONS

002.01 Agricultural ethyl alcohol shall mean ethyl alcohol manufactured to a finished product within the continental United States from agricultural

products produced wholly within the continental United States. Agricultural ethyl alcohol is commercially known as ethanol.

002.02 Gasohol shall mean gasoline which contains a minimum of ten percent blend of an agricultural ethyl alcohol whose purity shall be at least ninety-nine percent alcohol, excluding denaturant, produced from cereal grains or domestic agricultural commodities.

002.03 Motor vehicle fuels include all products commonly or commercially known as gasoline, including gasohol and casing head or natural gasoline. Agricultural ethyl alcohol produced for use as a motor vehicle fuel shall be considered motor vehicle fuel.

002.04 Supplier shall mean any person who owns fuels imported by barge, barge line, or pipeline and stored at a barge, barge line, or pipeline terminal in this state.

002.05 Distributor shall mean any person who acquires ownership of fuels directly from a producer or supplier at or from a barge, barge line, or pipeline terminal or ethanol or biodiesel facility in this state.

002.06 Importer shall mean any person who owns fuels at the time such fuels enter the State of Nebraska by any means other than barge, barge line, or pipeline. Importer shall not include a person who imports fuels in a tank directly connected to the engine of a motor vehicle, train, watercraft, or airplane for purposes of providing fuel to the engine to which the tank is connected.

002.07 Wholesaler shall mean any person, other than a producer, supplier, distributor, or importer, who acquires fuels for resale.

002.08 Exporter shall mean any person who acquires ownership of fuels from any licensed producer, supplier, distributor, wholesaler, or importer exclusively for use or resale in another state.

002.09 Retailer shall mean any person who acquires fuels from a producer, supplier, distributor, wholesaler, or importer for resale to consumers of such fuels.

002.09A Compressed fuels retailer shall mean any person engaged in the business of selling or otherwise providing compressed fuel to consumers of the fuel for use in motor vehicles. Compressed fuels retailer also includes any person, other than a consumer of compressed fuel, who has equipment capable of dispensing compressed fuel into a motor vehicle.

002.10 Security shall mean a surety bond executed by a surety company duly licensed and authorized to do business within this state in the amount specified by the department.

002.11 Department shall mean the Motor Fuel Tax Enforcement and Collection Division of the Nebraska Department of Revenue.

002.12 Gross gallons shall mean measured gallons without adjustment or correction for temperature or barometric pressure.

002.13 Net gallons shall mean measured gallons by proved meters, corrected to a temperature of sixty degrees Fahrenheit (fifteen degrees Celsius) and to a pressure of fourteen and seven tenths pounds per pressure (psi).

002.14 Person shall mean any individual, firm, partnership, limited liability company, company, agency, association, corporation, state, county, municipality, or other political subdivision. Whenever a fine or imprisonment is prescribed or imposed in sections 66-482 to 66-4,149, the word person as applied to a partnership, a limited liability company, or an association shall mean the partners or members thereof.

002.15 Aircraft fuels includes aviation gasoline (e.g., gasoline and gasohol) which meets the specifications established for motor vehicle fuel under section 66-482(2), aviation jet fuel (e.g., kerosene), and any other fuel used and consumed exclusively for the purpose of propelling aircraft.

002.16 Aircraft means any contrivance now known, or hereafter invented, used, or designed for navigation or flight in the air.

002.17 Diesel fuel shall mean all combustible liquids and biodiesel suitable for the generation of power for diesel-powered vehicles except that diesel fuel shall not include kerosene.

002.18 Kerosene shall mean kerosene meeting the specifications as found in the American Society for Testing and Materials publication D3699 entitled Standard Specifications for Kerosene.

002.19 Motor vehicle shall have the same definition as in section 60-301.

002.20 A motor vehicle supply tank means a tank which is connected to the fuel system of the engine of the motor vehicle.

002.21 Use means the purchase or consumption of fuels in this state.

002.22 Compressed fuel means compressed natural gas, liquified petroleum gas, liquified natural gas, butane, and any other type of compressed gas or compressed liquid suitable for fueling a motor vehicle. Compressed fuel does not include motor vehicle fuel or diesel fuel as defined in section 66-482.

002.23 Gallon equivalent means the amount of any nonliquid compressed fuel that is deemed to be the equivalent of a gallon of gasoline according to the National Institute of Standards and Technology Handbook 130 entitled Method of Sale of Commodities Regulation, Paragraph 2.27.1.3.

002.24 Fuels shall mean any or all of the following programs administered by the Department: the motor vehicle fuels program, the diesel fuel

program, the aircraft fuels program or the compressed fuel program.

002.25 Producer shall mean any person who manufactures agricultural ethyl alcohol or biodiesel at an ethanol or biodiesel facility in this state.

002.26 Highway shall mean every way or place generally open to the use of the public for the purpose of vehicular travel, even though such way or place may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair, or reconstruction.

002.27 Biodiesel shall mean mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats which conform to American Society for Testing and Materials D6751 specifications for use in diesel engines. Biodiesel refers to the pure fuel before blending with diesel fuel.

002.28 Ethanol facility shall mean a plant which produces agricultural ethyl alcohol.

002.29 Biodiesel facility shall mean a plant which produces biodiesel.

002.30 Petroleum shall mean (1) motor vehicle fuel as defined in this regulation except natural gasoline used as a denaturant by an ethanol facility as defined in section 66-1333 and (2) diesel fuel as defined in this regulation including kerosene which has been blended for use as a motor fuel.

(Sections 3-101(3) and 3-148, R.R.S. 1997, 66-6,102, 66-6,105 and 66-821, R.R.S. 2003, 66-483, 66-485 and 66-6,100, R.S.Supp. 2004, 66-482, 66-6,103 and 66-1510, R.S.Supp. 2005. January 8, 2007.)

REG-73-003 EXEMPTIONS

003.01 Fuels transported into Nebraska which meet the following requirements are exempt from the fuels tax:

003.01A Fuels sold to the United States Government, its agencies, and federal corporations wholly owned by the United States Government (i.e., Federal Land Banks, Federal Land Bank Association, the American National Red Cross and its local chapters). U.S. Tax Exemption Certificates, Federal Form 1094, received by the seller, or other evidence of sale to the federal government must be retained; or

003.01B Fuels sold to a metropolitan transit authority established under section 14-1810 of the Nebraska Revised Statutes. The metropolitan transit authority must provide at the time of payment for the fuel a statement to the seller that such fuel was purchased by and used in the operation of a metropolitan transit authority. The statement must be retained in the seller's records to support the tax exempt nature of the sale; or

003.01C Fuels delivered for use in a state other than Nebraska. Bills of lading or other documentation must be retained by suppliers,

distributors, importers, wholesalers, and exporters of fuels for substantiation; or

003.01D Methanol, benzine, benzol, naphtha, kerosene and any other volatile, flammable, or combustible liquid suitable for use as a fuel blending agent or fuel expander shall be exempt from the taxes imposed under the fuels statutes unless and until such methanol, benzine, benzol, naphtha, kerosene or other blending agent or fuel expander is blended with fuel or placed directly into the supply tank of a licensed motor vehicle. Methanol, benzine, benzol, naphtha, kerosene or other blending agent or fuel expander which is blended with fuel shall become subject to the fuels tax at the same time as the fuel with which it is blended becomes subject to tax or upon blending if tax has already been paid on the fuel. Fuel taxes shall not apply to fuel additives which are used to enhance engine performance or prevent fuel line freezing or clogging when placed directly into the supply tank of a motor vehicle in quantities of one quart or less; or

003.01E Natural gasoline purchased for use as a denaturant by a producer at an ethanol facility.

003.02 Unless otherwise provided by an agreement between the State of Nebraska and a federally recognized Indian tribe within the state, Native Americans may purchase fuels tax free if the purchaser is a resident of a Nebraska Indian Reservation and the purchase is made on the Nebraska Indian Reservation. This provision also applies to any purchase made on a Nebraska Indian Reservation by a business which is wholly owned by Native Americans. The purchaser must provide the seller documentation that the business is owned by Native Americans. The seller must keep records, which include the following information, to support each tax-free sale: a copy of the documentation that the business is owned by Native Americans or that the purchaser is a Native American; the name and address of the purchaser; the date of purchase; the type of fuel sold; the total gallons sold; the total sale price; and the signature of the purchaser.

003.03 Except as provided in Reg-73-003.03B, diesel fuel dyed in accordance with regulations issued by the Secretary of the Treasury of the United States under 26 U.S.C. 4082 shall be exempt from the diesel fuel tax and may not be placed into the supply tank of any motor vehicle registered or required to be registered for operation upon the highways of this state. Also, diesel fuel which contains a concentration of sulphur in excess of five-hundredths percent by weight or which fails to meet a cetane index minimum of forty and has been indelibly dyed in accordance with regulations promulgated by the Administrator of the Environmental Protection Agency pursuant to 42 U.S.C. 7545 shall be exempt from the tax. However, dyed diesel fuel shall not be exempt from the Petroleum Release Remedial Action Fee.

003.03A Any person who unlawfully uses dyed diesel fuel in the supply tank of a motor vehicle registered or required to be registered for operation upon the highways of this state shall be subject to an administrative penalty of \$250 for the first such violation. If the

person had another violation under this section within the last five years, the person shall be subject to an administrative penalty of \$1,000 for the current violation. If the person had two or more violations under this section within the last five years, the person shall be subject to an administrative penalty of \$2,500 for the current violation. These penalties are assessed against the owner of the vehicle as of the date of the violation.

003.03B Any motor vehicle owned or leased by any state, county, municipality, or other political subdivision may be operated on the highways of this state with dyed diesel fuel (except high sulphur diesel fuel dyed in accordance with regulations promulgated by the Administrator of the Environmental Protection Agency pursuant to 42 U.S.C. 7545) if the diesel fuel tax is paid. Such fuel tax shall be paid directly to the department on the Nebraska Motor Fuels Consumer's Use Tax Return, Form 74, as set forth in Reg-73-010.

003.03C Any person who unlawfully uses compressed fuel in the supply tank of a motor vehicle registered or required to be registered for operation upon the highways of this state without paying the compressed fuel taxes to the retailer at the time of purchase shall be subject to an administrative penalty of \$1,000 for each violation. This penalty is assessed against the owner of the vehicle as of the date of the violation.

003.04 Undyed diesel fuel used for agricultural, quarrying, industrial, or other nonhighway purposes is exempt from the diesel fuel tax. Except as provided in Reg-73-003.01A, Reg-73-003.02, and Reg-73-003.05, all undyed diesel fuel must be purchased tax paid and the purchaser must apply for a refund of the diesel fuel tax paid on fuel used for an exempt purpose.

003.04A Undyed diesel fuel used in clearing or flushing dyed diesel fuel from delivery lines is not considered to be a nonhighway use or purpose and is consequently subject to the diesel fuel tax and to the Petroleum Release Remedial Action Fee.

003.05 A purchaser of diesel fuel that has not been indelibly dyed may present an exemption certificate to the seller when not more than fifty gallons of such fuel is placed directly into the supply tank of a temperature control unit or power take-off unit. To qualify for this exemption, the supply tank of the temperature control unit or power take-off unit cannot be connected to the engine which provides motive power to a motor vehicle or connected to any fuel supply tank connected to the engine of a motor vehicle.

003.05A Temperature control units shall mean reefers.

003.05B Power take-off unit shall mean any piece of diesel-powered equipment used exclusively for operating another piece of equipment by means of a pulley or shaft-driven transfer of power, such as irrigation pump motors and certain agricultural equipment, but does not include any operation that is powered by the main engine of a motor vehicle.

003.05C Agricultural equipment which qualifies as power take-off units includes, but is not limited to, utility tractors that are used exclusively for operating feed grinders, augers, irrigation pumps or other predominantly stationary operations. Incidental use of the equipment, such as moving it from location to location, will not disqualify it from the exemption.

003.05D The exemption certificate presented by the purchaser to the seller must either be a Nebraska Tax Exempt Certificate for Purchase of Diesel Fuel, Form 91EX, or a substitute exemption certificate or invoice which contains the following information:

003.05D(1) Name and address of the seller;

003.05D(2) Name and address of the purchaser;

003.05D(3) Date of the sale;

003.05D(4) Name of the product;

003.05D(5) Number of gallons purchased;

003.05D(6) Price per gallon;

003.05D(7) Total sales price;

003.05D(8) A statement to the effect: "The undyed diesel fuel indicated on this invoice is being sold tax free for use in a temperature control unit or power take-off unit and was placed directly into the supply tank of the temperature control unit or power take-off unit. Placement of the tax-free, undyed diesel fuel into the supply tank of a motor vehicle will subject the purchaser to tax, interest, and a \$1,000 penalty"; and

003.05D(9) Signature of the purchaser.

003.05E Any person who unlawfully issues a Nebraska Tax Exempt Certificate for Purchase of Diesel Fuel, Form 91EX, or a substitute exemption certificate or invoice shall be liable for the tax on the diesel fuel and shall be subject to an administrative penalty of \$1,000.

003.06 If the seller of tax-free undyed diesel fuel is a licensed supplier, distributor, wholesaler, or importer, the seller may deduct the number of gallons sold without the tax from the return for the period during which the fuel was sold or for a subsequent period. If the seller is a licensed retailer, the seller may provide a Nebraska Retailer's Claim for Exempt Sales of Motor Fuels, Form RC73 to the distributor, wholesaler, importer or other supplier of the taxed diesel fuel for the total number of gallons of undyed diesel fuel sold without tax during the prior month.

003.07 Fuels transported into Nebraska which meet the following requirements are exempt from the Petroleum Release Remedial Action Fee:

003.07A Fuels sold to the United States Government, its agencies, and federal corporations wholly owned by the United States Government (i.e., Federal Land Banks, Federal Land Bank Association, the American National Red Cross and its local chapters). U.S. Tax Exemption Certificates, Federal Form 1094, received by the seller, or other evidence of sale to the federal government must be retained; or

003.07B Fuels delivered for use in a state other than Nebraska. Bills of lading or other documentation must be retained by suppliers, distributors, importers, wholesalers, and exporters of fuels for substantiation; or

003.07C Natural gasoline purchased for use as a denaturant by a producer at an ethanol facility.

(Sections 66-6,115 and 66-741, R.R.S. 2003, 14-1810, 66-489.01, 66-495, 66-495.01, 66-726 and 66-1521, R.S.Supp. 2004, 66-489, Laws 2006, LB 1003. January 8, 2007.)

REG-73-004 LICENSES

004.01 Every person engaged in the business of buying, selling or transporting fuels in the State of Nebraska must obtain a license. A license may be obtained by filing a Nebraska Motor Fuels License Application, Form 20MF, and the security required by Reg-73-005.

004.02 Upon approval of the application, the department shall issue a license in the name and address of the producer, supplier, distributor, wholesaler, importer or exporter of fuels. The license is not assignable and is valid only for the producer, supplier, distributor, wholesaler, importer, or exporter of fuels in whose name it is issued. The license shall take the form of a letter issued by the department which informs the licensee of its status.

004.02A Upon approval of the application, the department shall issue a license in the name and address of the retailer of fuels or the liquid fuel carrier. The license is not assignable and is valid only for the retailer of fuels or liquid fuel carrier in whose name it is issued. Once issued, the license must be conspicuously displayed. In the case of a retailer, it shall be displayed at their retail location. In the case of a liquid fuel carrier, a copy of the license shall be carried in each vehicle transporting fuels.

004.03 A fuels license is permanent and need not be renewed annually. The department must be notified by every licenseholder who desires to terminate its license. The department must also be notified of any change of address or change of type of ownership. If a change of type of ownership occurs, the licensee must file an application for a new license.

004.04 Any violation of the fuels statutes or regulations may result in the suspension or revocation of the license.

004.04A The licensee may, within thirty days after the mailing of the notice of suspension, petition the department in writing for a hearing and reconsideration of such suspension as provided under section 66-720.

004.04B All notices by the department shall be mailed by registered or certified mail, return receipt requested, to the address of the licensee as shown by the records of the department.

004.05 The department will not issue a new license to the same person for one year from the date of revocation. Any reissuance of a license to the same person within three years from the date of revocation shall require a reinstatement fee of one hundred dollars.

(Sections 3-149, R.R.S. 1997, 66-503 and 66-721, R.R.S. 2003, 66-483, 66-484, 66-502, 66-6,106, 66-713, 66-720 and 66-1521, R.S.Supp. 2004, 66-482, R.S.Supp. 2005. January 8, 2007.)

REG-73-005 SECURITY - CASH BOND TRUST FUND

005.01 An applicant for a fuels producer, supplier, distributor, wholesaler, exporter or importer or compressed fuel retailer license may be required to furnish and maintain security as defined in Reg-73-002.10 for the first year of the new license to assure the required reporting and payment of tax, interest, or penalties. Security may also be required from a licensed producer, supplier, distributor, wholesaler, exporter, importer or compressed fuel retailer when necessary to ensure compliance with Nebraska fuels tax laws.

005.02 For a producer, supplier, distributor, wholesaler, importer or compressed fuel retailer, security, when required, is computed in an amount approximating three times the monthly tax liability of the licensee rounded to the next higher multiple of \$1,000. In the case of an exporter, the amount and duration of the security shall be fixed by the department. The security requirement for all licensees cannot be less than the amounts shown below:

005.02A For licensees of motor vehicle fuels, diesel fuels or both – \$20,000;

005.02B For licensees of aircraft fuels – \$10,000;

005.02C For a compressed fuel retailer – \$1,000. Furthermore, security, when required, is computed in an amount approximating two times the estimated average quarterly tax liability payable by such retailer pursuant to the act.

005.02D There shall be no security requirement for licensees in the Petroleum Release Remedial Action Fee program, for licensees in the liquid fuel carriers program or for licensees participating in the tax program discussed in Reg-73-001.02.

005.02E For any producer who reasonably estimates its annual production of fuels to be less than 20,000 gallons, the amount and duration of the security shall be fixed by the department.

005.03 Security in the form of a surety bond may be executed by filing a properly completed Nebraska Motor Fuels Tax Bond, Form 70.

005.04 A license is not valid unless security in the proper amount is on file when required by the department.

005.05 In the event the department determines that the licensee is likely to default in the payment of taxes or fails to increase the amount of security as required, the license may be suspended or revoked.

005.06 A fuels licensee who holds additional licenses or permits for any other fuels program requiring security may make application to the department on a Form 70 for filing and maintaining a combined security. The amount of such security shall not be less than the cumulative total which would be required for the individual securities.

005.07 All licensed fuels producers, suppliers, distributors, wholesalers, importers and compressed fuel retailers shall jointly furnish a cash bond to the state to secure payment of all fuel taxes. The contributions for the cash bond shall be collected each tax period with the tax return. The contributions are deemed to be tax for the purpose of collection or refund.

005.08 The contribution for each tax period is that portion of the commission allowed which equals 1/4 of one percent of the total tax due. The contributions to the cash bond trust fund continue until the amount in the trust fund, including interest earned, is equal to one percent of the total fuels tax collected during the preceding year. Contributions resume whenever the amount in the trust fund is less than ½ of one percent of the total fuels taxes collected during the preceding year. The State Tax Commissioner shall notify the fuels producers, suppliers, distributors, wholesalers, importers and compressed fuel retailers whenever it is necessary for the contributions to the trust fund to resume. Contributions begin with the first tax return that is due at least thirty days after notice is provided by the State Tax Commissioner.

(Sections 3-148, R.R.S. 1997, 66-483, 66-485, 66-6,106, 66-733 and 66-734, R.S.Supp. 2004, 66-482, R.S.Supp. 2005. January 8, 2007.)

REG-73-006 NEBRASKA MOTOR FUELS TAX RETURNS

006.01 A return is required for each month or part of a month in which a motor fuels license is active. A return is required even if there is no activity

to report.

006.01A A licensed supplier, distributor, wholesaler, importer, or exporter must file a Nebraska Monthly Fuels Tax Return, Form 73. The return consists of: the Form 73; the Nebraska Multiple Schedule of Receipts, Form 73 MFR; and the Nebraska Multiple Schedule of Disbursements, Form 73 MFD.

006.01B A licensed producer must file a monthly Nebraska Ethanol and Biodiesel Producer's Return, Form 83. The return consists of: the Form 83; the Nebraska Producer's Schedule of Receipts, Form 83 MFR; and the Nebraska Producer's Schedule of Disbursements, Form 83 MFD.

006.01C A licensed compressed fuel retailer must file a Nebraska Compressed Fuel Retailer Return, Form 86, unless a Nebraska Monthly Fuels Tax Return, Form 73, is filed.

006.01C(1) If the retailer's compressed fuel tax liability for the calendar year is \$6,000 or more, the retailer must file monthly returns.

006.01C(2) If the calendar year tax liability is at least \$250, but less than \$6,000, returns must be filed at least quarterly or may be filed monthly.

006.01C(3) If the calendar year tax liability is less than \$250, returns must be filed at least annually or may be filed quarterly or monthly.

006.01D A licensed terminal operator must file a monthly Nebraska Motor Fuels Terminal Operator Report, Form 87. The return consists of: the Form 87; the Nebraska Motor Fuels Terminal Operator Schedule of Receipts, Form 87; and the Nebraska Motor Fuels Terminal Operator Schedule of Disbursements, Form 87.

006.01E The Department has the statutory authority to require licensed liquid fuel carriers to file a monthly Nebraska Motor Fuels Carrier Report, Form 80.

006.02 The total number of gross gallons of motor vehicle fuels, aircraft fuels, or diesel fuels purchased in Nebraska, imported, produced, blended, or exported must be reported. Motor vehicle fuels, aircraft fuels, or diesel fuel can be sold without motor fuels tax or the Petroleum Release Remedial Action Fee only under the situations described in Reg-73-003.

006.02A The total number of gallons or gallon equivalents, based on net gallons, of compressed fuel sold for use in registered motor vehicles must be reported. Exemptions are described in Reg-73-003.

006.02B The standard miles-per-gallon rating for compressed fuel transport and delivery vehicles, which are not equipped with a separate fuel supply tank, is 10 miles per gallon. This standard must be used to calculate the amount of Nebraska motor fuels tax on the fuel used from

the vehicle's cargo tank to power the vehicle.

006.03 A producer, supplier, distributor, wholesaler, or importer of motor fuels or a retailer of compressed fuels may deduct from the tax amount due a commission as reimbursement for the expenses of collecting and remitting the tax described in Reg-73-001.01 and providing the surety bond as required by Neb. Rev. Stat. §§ 66-485 and 66-6,106.

006.03A For motor vehicle fuels or aircraft fuels, the commission is 5% of the first \$5,000 tax and 2.5% of all amounts over \$5,000, unless adjusted by Neb. Rev. Stat. § 66-734.

006.03B For diesel fuels or compressed fuel, the commission is 2% of the first \$5,000 tax, and 0.5% of all amounts over \$5,000, unless adjusted by Neb. Rev. Stat. § 66-734.

006.03C The commissions described in this section will not be allowed on underreported tax assessed on an audit. If an audit determines that tax was overreported, the commission previously claimed on the overreported tax will be deducted from the audit credit.

006.04 All gallons, gallon equivalents, and dollars must be rounded to the nearest whole number on the returns and reports. Amounts ending in .49 or less must be rounded down to the closest whole gallon, gallon equivalent, or dollar. Amounts ending in .50 or more must be rounded up to the next whole gallon, gallon equivalent, or dollar.

006.05 Returns must be signed by the person required to file the return or by his or her duly authorized agent. An authorized signature on a Nebraska Motor Fuels License Application, Form 20MF, will satisfy the signature requirement for filing fuels tax returns electronically.

006.06 Returns, with schedules and payment, are considered timely filed if signed and submitted in the format required by the Department on or before the 20th day of the month following the end of the reporting period. When the 20th falls on a Saturday, Sunday, or legal holiday, the return is timely filed if submitted in the format required by the Department on or before the next business day following the 20th.

006.06A If payment is not made by the due date of the return, interest will be assessed at the rate provided in Neb. Rev. Stat. § 45-104.02, from the due date until the date payment is received.

006.06B If the return is not filed or payment is not made by the due date, penalties will be assessed as described in Neb. Rev. Stat. § 66-719.

006.07 Payment must be in the form of a check, draft, money order, or electronic funds transfer (EFT) made payable to the Department on or before the due date of the return. The Tax Commissioner may require EFT payments of motor fuels taxes by any taxpayer who made payments over \$5,000 for motor fuels tax programs in the prior year. Any taxpayer who is

required to make payments by EFT and who fails to make a payment by EFT is subject to a penalty of \$100 for each payment that was not made by EFT. This penalty is in addition to other penalties and applies even if timely payment is made by some other method.

006.08 The Tax Commissioner may require the reports, returns, and other filings from any motor fuels licensees to be filed electronically.

(Neb. Rev. Stat. §§ 3-148 and 3-149, 66-482, 66-486, 6-488, 66-496, 66-525, 66-6,110, 66-6,113, 66-6,115, 66-718, 66-719, 66-724, 66-733, 66-734, 66-1521, 77-3,117 and 77-1784. December 27, 2015.)

REG-73-007 RECORDS

007.01 Every producer, supplier, distributor, wholesaler, importer, and exporter of fuels or retailer of compressed fuel is required to maintain records. These records must include the normal books of account ordinarily maintained by the average business engaged in a similar activity together with all documents supporting entries in the books of account. For each separate act of importing, producing, refining, manufacturing, compounding, or blending of fuels into or within the State of Nebraska, and for each separate act of exporting fuels from Nebraska, a licensee must record and retain the following information:

007.01A Name and address from whom obtained;

007.01B Date of importing, refining, manufacturing, producing, compounding, blending, or exporting;

007.01C Point of origin of shipment of fuels;

007.01D Point of delivery of shipment of fuels;

007.01E Method of shipment of fuels;

007.01F Number of gallons of fuel based on gross gallons;

007.01G Federal exemption certificates, Federal Form 1094, or other evidence of sale to the federal government;

007.01H Properly completed Nebraska Tax Exempt Certificate for Purchase of Diesel Fuel, Form 91EX, and Nebraska Retailer's Claim for Exempt Sales of Motor Fuels, Form RC73; and

007.01I Work papers and taxpayer's copy of schedules used in the preparation of the tax return must be retained as provided in Reg-73-007.06.

007.02 Invoices, meter readings, pipeline terminal and refinery bills of lading, inventory records, including inventory control records maintained for the State Fire Marshal, and other memorandum must be retained in addition to the information required above. The maintenance of this information in a

provable computer format or on microfilm is acceptable in lieu of retention of the original documents.

007.03 Every retailer of fuels is required to maintain complete and accurate records. These records must include the normal books of account ordinarily maintained by the average business engaged in a similar activity together with all documents supporting entries in the books of account. The records shall be based on gross gallons and shall show for all those gallons received, purchased or obtained the following:

007.03A Name and address from whom obtained;

007.03B Point of origin of shipment of fuels;

007.03C Point of delivery of shipment of fuels;

007.03D Method of shipment of fuels;

007.03E Number of gallons of fuel delivered;

007.03F Total amount of motor fuels sold at retail during the month;

007.03G In the case of exempt sales of motor fuels: the date sold, the quantity sold and the identity of the purchaser;

007.03H Federal exemption certificates, Federal Form 1094, or other evidence of sale to the federal government;

007.03I Properly completed Nebraska Tax Exempt Certificate for Purchase of Diesel Fuel, Form 91EX, and Nebraska Retailer's Claim for Exempt Sales of Motor Fuels, Form RC73.

007.04 Any person making sales of fuels within the State of Nebraska to users of the fuels must give, upon the request of such users, an invoice covering the transaction. Invoices shall contain the following information:

007.04A Date of purchase;

007.04B Name and address of seller;

007.04C Name and address of purchaser;

007.04D Name of product;

007.04E Number of gallons;

007.04F Price per gallon;

007.04G Total sales price; and

007.04H If motor fuels are placed directly into the supply tank of a nonhighway use vehicle or equipment, a general description of the type of vehicle or equipment in which the motor fuels were placed.

007.05 Credit card invoices are accepted for bona fide credit sales. Credit card invoices are also accepted for cash sales of fuel purchases. Cash invoices must have the words "cash sale" and "paid" written visibly on the face.

007.06 The department may examine the books, schedules, work papers, and records required by these regulations of licensees to verify the accuracy of any report or return filed or, if no report or return is filed by the licensee, to determine the amount of tax, interest, and penalties required to be paid. Records must be retained for a period of not less than three years after the report or return is filed or for a period of five years if the required reports or returns are not filed.

007.06A In the case of motor vehicle fuels retailers, aircraft fuels retailers and diesel fuel retailers, records shall be retained for three years.

(Sections 66-6,114, 66-725 and 66-731, R.R.S. 2003, 66-483, 66-487, 66-495, 66-4,149, and 66-713, R.S.Supp. 2004, 66-482, R.S.Supp. 2005. January 8, 2007.)

REG-73-008 REFUNDS

008.01 A claim for refund of fuels taxes must be filed with the Department using a Nebraska Non-Ag Use Motor Fuels Tax Refund Claim, Form 84, or a Nebraska Ag Use Motor Fuels Tax Refund Claim, Form 84AG, within three years after the date of payment of the tax. The claim will be allowed upon sufficient showing that the tax was paid to Nebraska on:

008.01A Motor fuels that were destroyed. Claims filed under this subsection must be in writing and include sufficient documentation to substantiate the cause of loss and the number of gallons of motor fuels destroyed. Newspaper accounts, copies of original records, or insurance claims may be submitted for this purpose.;

008.01B Motor fuels purchased by someone other than a licensed producer, supplier, distributor, wholesaler, or importer, or exporter in this state and sold in a state other than Nebraska.;

008.01C Motor fuels purchased on a Nebraska Indian reservation if the purchaser is a Native American who resides on the Nebraska Indian reservation, unless otherwise an agreement between the State of Nebraska and a federally-recognized Indian tribe within the state applies;

008.01D Motor fuels, methanol, and all blending agents or fuel expanders if the motor fuels are used for buses equipped to carry more than seven persons for hire, which are engaged entirely in the transportation of passengers for hire within municipalities or within a radius of six miles of those municipalities. In lieu of the excise taxes, the owner or agent of the buses must pay an equalization fee equal to twice

the amount of the registration fee as required under Nebraska law. The equalization fee must be paid to the county treasurer of the county where the owner resides in the same manner as the registration fee;

008.01E Motor fuels used for agricultural, quarrying, industrial, or other nonhighway purposes. No part of any motor fuels for which a claim for refund of tax paid is filed under this subsection can be used for propelling licensed motor vehicles.; and

008.01E(1) A claim for refund under this subsection must include:

008.01E(1)(i) The name of the claimant;

008.01E(1)(ii) The make, horsepower, and other mechanical description of machinery in which the motor fuels were used;

008.01E(1)(iii) The source or place of business where the motor fuels used solely for agricultural, quarrying, industrial, or other nonhighway uses, were acquired;

008.01E(1)(iv) Statements that no part of the motor fuels were used in propelling licensed motor vehicles and that the motor fuels for which the refund of the tax is claimed were used solely for agricultural, quarrying, industrial, or other nonhighway purposes;

008.01E(1)(v) Legible copies of motor fuels purchase invoices, withdrawal logs, and fuel storage information; and

008.01E(1)(vi) Any other information deemed necessary by the Department.

008.01E(2) The Department will deduct from a claim for refund under this subsection:

008.01E(2)(i) Two and one-quarter cents per gallon of the tax paid for purchases of motor vehicle fuels; and

008.01E(2)(iii) One cent per gallon of the tax paid for purchases of diesel fuels.

008.01F Motor Fuels purchased for use by the U.S. government, its agencies, or instrumentalities.

008.02 A claim for refund of the Petroleum Release Remedial Action Fee must be filed using a Form 84 within three years after the date of payment of the fee. The claim will be allowed upon sufficient showing that the fee was paid to Nebraska on:

008.02A Motor fuels destroyed. Claims must be in writing and include sufficient documentation to substantiate the cause of loss and the number of gallons of motor fuels destroyed. Newspaper accounts, copies

of original records, or insurance claims may be submitted for this purpose;

008.02B Motor fuels purchased by someone other than a licensed producer, supplier, distributor, wholesaler, importer, or exporter in this state and sold in a state other than Nebraska; or

008.02C Motor fuels purchased for use by the U.S. governments, it agencies or instrumentalities.

008.03 A claim for refund of aircraft fuels tax for the full amount of tax paid will be approved if the aircraft fuels were purchased and consumed in connection with flying instruction conducted by an air school approved by the Federal Aviation Administration (FAA). Any claim must be filed using Form 84 within seven months after the date of purchase or invoice.

008.04 Any person purchasing motor vehicle fuels (for example, gasoline) for use in an aircraft converted to run on motor vehicle fuels may obtain a refund of any motor vehicle fuels tax paid which exceeds what the purchaser's aircraft fuels tax liability would have been. Any claim must be filed using Form 84. The purchaser must also submit a copy of the FAA certificate establishing that the purchaser's aircraft has been converted to run on motor vehicle fuels and any other documentation as the Department deems necessary to support the purchaser's claim for refund.

008.05 Credit for taxes paid on motor fuels which are exempt from tax under Reg-73-003 must be taken on the licensee's appropriate Nebraska motor fuels tax return.

008.06 No claim for refund of motor fuels tax paid under any one program may be made for less than \$25 in any calendar year, except that no claim for refund of the Petroleum Release Remedial Action fee may be made for less than \$10 in any calendar year.

008.07 Refund claims may only be filed once per month.

008.08 Interest does not accrue on refund claims or other overpayments of tax.

008.09 All refunds of motor fuels tax may be paid electronically.

(Neb. Rev. Stat. §§ 3-150, 3-151, 66-482, 66-483, 66-489, 66-6,109.01, 66-726, 66-741, 66-1521, and 77-2734.03. December 27, 2015.)

REG-73-009 LIQUID FUEL CARRIERS

009.01 Any person transporting motor vehicle fuels, aircraft fuels or diesel fuel in a transport vehicle (such as a tanker or tankwagon) into, within or out of Nebraska must obtain a liquid fuel carrier license as discussed more fully in Reg-73-004. In addition, a copy of the bill of lading, manifest, bill of sale, purchase order, sales invoice, delivery ticket or similar documentation must be carried in the transport vehicle whenever transporting motor vehicle

fuels, aircraft fuels or diesel fuel in Nebraska.

009.01A A liquid fuel carrier license is not required for persons transporting motor vehicle fuels, aircraft fuels or diesel fuel within the state for their own exempt use. It is also not required for the transportation of leaded racing fuels or for compressed fuels such as propane or compressed natural gas regardless of its ownership or use.

009.02 A diverted load occurs whenever the bill of lading or other transportation document for the fuel indicates a destination state other than the state to which the fuel is actually delivered.

009.02A Whenever the bill of lading or other transportation document indicates a destination state other than Nebraska and the fuel is subsequently delivered to Nebraska, the liquid fuel carrier must register the diverted load and obtain a delivery permit number for the resulting diverted load prior to delivering the fuel.

009.03 Any common or contract carrier transporting motor vehicle fuels, aircraft fuels or diesel fuel in a transport vehicle such as a tanker or tankwagon into, within or out of Nebraska must also file a Nebraska Motor Fuels Carrier Report, Form 80, as discussed more fully in Reg-73-006.

009.04 All vehicles used to transport motor vehicle fuels or diesel fuel are required to have the name and address of the owner of the vehicle displayed in the form and manner required by federal regulations.

009.05 In addition to other remedies available to the department, any person who fails to obtain from the department prior to delivering fuel a delivery permit number for a diverted load shall be subject to an administrative penalty of \$1,000 for each such violation. These penalties shall be assessed against the owner of the vehicle as of the date of the violation.

(Sections 66-501, 66-503, 66-505, 66-527 and 66-738, R.R.S. 2003, 66-502 and 66-525, R.S.Supp. 2004. January 8, 2007.)

REG-73-010 NEBRASKA FUELS CONSUMER'S USE TAX

010.01 Every person using diesel fuel subject to tax as provided in Reg-73-003.03B shall become licensed and shall make a report of such use on the Nebraska Motor Fuels Consumer's Use Tax Return, Form 74, unless such person is a licensed diesel fuel supplier, distributor, importer, or wholesaler.

010.02 Every person who incurs gains from sales of fuels resulting from an inventory/sales variance shall become licensed and shall make a report of such use on the Nebraska Motor Fuels Consumer's Use Tax Return, Form 74.

010.02A Gains resulting from an inventory/sales variance occur whenever the person's gallons of sales per sales records exceeds the

person's gallons of sales per change in inventory.

010.02B The gallons of sales per sales records is determined by examining the person's total fuels sales per sales records.

010.02C The gallons of sales per change in inventory is determined by adding the person's gallons of fuels purchased during the tax period to the gallons of fuels present at the beginning of the tax period and then subtracting the gallons of fuels present at the end of the tax period.

010.03 If kerosene or other blending agents or fuel expanders are blended with fuels and used in a licensed motor vehicle, a motor fuels consumer's use tax liability is incurred. This is reported and remitted on the Nebraska Motor Fuels Consumer's Use Tax Return, Form 74.

010.04 A Nebraska Motor Fuels Consumer's Use Tax Return, Form 74, shall be submitted in such format as prescribed by the department on or before the 25th day of the month following the close of the quarterly reporting period.

010.05 The Nebraska Motor Fuels Consumer's Use Tax Return shall be filed in conformity with and subject to the requirements of Reg-73-006.04, Reg-73-006.05 and Reg-73-006.06.

010.06 Except for licensed motor fuels retailers, all Nebraska Motor Fuels Consumer's Use Tax licensees must keep adequate records for a period of at least three years, or five years if the required returns are not filed. The records must substantiate the following:

010.06A Invoices indicating tax-free and tax-paid purchases;

010.06B Type of equipment in which the fuel was used; and

010.06C A list of each exempt use showing the date and number of gallons per use.

010.07 Licensed motor fuels retailers must keep adequate records for a period of three years. The records must comply with the requirements of Reg-73-007.03.

010.08 All reports, returns and other filings submitted by all licenseholders shall be made by rounding the amount of gallons or dollars to the closest whole gallon or dollar, respectively. For those amounts ending in .49 or lower, the amount shall be rounded down to the closest whole gallon or dollar. For those amounts ending in .50 or higher, the amount shall be rounded up to the closest whole gallon or dollar.

(Sections 77-3,117 and 77-1784, R.R.S. 2003, 66-488, 66-489.01, 66-4,105 and 66-713, R.S.Supp. 2004, 66-482,R.S.Supp. 2005, 66-489, Laws 2006, LB 1003. January 8, 2007.)

