

HOUSE BILL NO. 158

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE MUÑOZ

Introduced: 3/20/15

Referred: Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a refined fuel surcharge; relating to the motor fuel tax; relating to a
2 qualified dealer license; and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 43.05.230(g) is amended to read:

5 (g) The information contained in a license issued by the commissioner of
6 revenue or the commissioner of commerce, community, and economic development
7 under AS 43.40, AS 43.50, AS 43.60, AS 43.65, AS 43.70, and AS 43.75 is public
8 information.

9 * **Sec. 2.** AS 43.40 is amended by adding new sections to read:

10 **Sec. 43.40.005. Refined fuel surcharge levied.** (a) Every dealer or user of
11 refined fuels shall pay a surcharge of \$.01 a gallon on refined fuel sold, transferred, or
12 used in the state.

13 (b) The following refined fuels are exempt from the surcharge imposed under
14 this section:

- 1 (1) fuel sold to a federal government agency for official use;
- 2 (2) fuel refined and used outside the United States;
- 3 (3) bonded fuel;
- 4 (4) liquefied petroleum gas;
- 5 (5) fuel sold or transferred between qualified dealers.

6 **Sec. 43.40.007. Use of revenue derived from the refined fuel surcharge.**

7 The legislature may appropriate the annual estimated balance of the surcharge levied
8 under AS 43.40.005 to the oil and hazardous substance release prevention account of
9 the oil and hazardous substance release prevention and response fund established in
10 AS 46.08.010. Nothing in this section creates a dedicated fund.

11 * **Sec. 3.** AS 43.40.010(a) is amended to read:

12 (a) **In addition to the surcharge levied under AS 43.40.005, there** [THERE]
13 is levied a tax of eight cents a gallon on all motor fuel sold or otherwise transferred
14 within the state, except that

- 15 (1) the tax on aviation gasoline is four and seven-tenths cents a gallon;
- 16 (2) the tax on motor fuel used in and on watercraft of all descriptions is
17 five cents a gallon;
- 18 (3) the tax on all aviation fuel other than gasoline is three and two-
19 tenths cents a gallon; and
- 20 (4) the tax rate on motor fuel that is blended with alcohol is the same
21 tax rate a gallon as other motor fuel; however,

22 (A) in an area and during the months in which fuel containing
23 alcohol is required to be sold, transferred, or used in an effort to attain air
24 quality standards for carbon monoxide as required by federal or state law or
25 regulation, the tax rate on motor fuel that is blended with alcohol is six cents a
26 gallon less than the tax on other motor fuel not described in (1) - (3) of this
27 subsection;

28 (B) notwithstanding (A) of this paragraph, through June 30,
29 2004, the tax on motor fuel sold or otherwise transferred within the state is
30 eight cents a gallon less than the tax on other motor fuel not described in (1) -
31 (3) of this subsection if the motor fuel

1 (i) is at least 10 percent alcohol by volume, has been
 2 produced from the processing of lignocellulose derived from wood, and
 3 was produced in a facility that processes lignocellulose from wood, but
 4 this reduction in the rate of tax applies to motor fuel sold or transferred
 5 that contains alcohol that was produced only during the first five years
 6 of the facility's processing of lignocellulose from wood; or

7 (ii) is at least 10 percent alcohol by volume, has been
 8 produced from the processing of waste seafood, and was produced in a
 9 facility that processes alcohol from waste seafood, but this reduction in
 10 the rate of tax applies to motor fuel sold or transferred that contains
 11 alcohol that was produced only during the first five years of the
 12 facility's processing of alcohol from waste seafood.

13 * **Sec. 4.** AS 43.40.010(b) is amended to read:

14 (b) **In addition to the surcharge levied under AS 43.40.005, there** [THERE]
 15 is levied a tax of eight cents a gallon on all motor fuel consumed by a user, except that

16 (1) the tax on aviation gasoline consumed is four and seven-tenths cents
 17 a gallon;

18 (2) the tax on motor fuel used in and on watercraft of all descriptions is
 19 five cents a gallon;

20 (3) the tax on all aviation fuel other than gasoline is three and two-
 21 tenths cents a gallon; and

22 (4) the tax rate on motor fuel that is blended with alcohol is the same
 23 tax rate a gallon as other motor fuel; however,

24 (A) in an area and during the months in which fuel containing
 25 alcohol is required to be sold, transferred, or used in an effort to attain air
 26 quality standards for carbon monoxide as required by federal or state law or
 27 regulation, the tax rate on motor fuel that is blended with alcohol is six cents a
 28 gallon less than the tax on other motor fuel not described in (1) - (3) of this
 29 subsection;

30 (B) notwithstanding (A) of this paragraph, through June 30,
 31 2004, the tax on motor fuel consumed by a user within the state is eight cents a

1 gallon less than the tax on other motor fuel not described in (1) - (3) of this
2 subsection if the motor fuel

3 (i) is at least 10 percent alcohol by volume, has been
4 produced from the processing of lignocellulose derived from wood, and
5 was produced in a facility that processes lignocellulose from wood, but
6 this reduction in the rate of tax applies to motor fuel consumed by a
7 user that contains alcohol that was produced only during the first five
8 years of the facility's processing of lignocellulose from wood; or

9 (ii) is at least 10 percent alcohol by volume, has been
10 produced from the processing of waste seafood, and was produced in a
11 facility that processes alcohol from waste seafood, but this reduction in
12 the rate of tax applies to motor fuel consumed by a user that contains
13 alcohol that was produced only during the first five years of the
14 facility's processing of alcohol from waste seafood.

15 * **Sec. 5.** AS 43.40.010(e) is amended to read:

16 (e) Sixty percent of the proceeds of the revenue from the **motor fuel** taxes on
17 aviation fuel, excluding the amount determined to have been spent by the state in its
18 collection, shall be refunded to a municipality owning and operating or leasing and
19 operating an airport in the proportion that the revenue was collected at the municipal
20 airport. All other proceeds of the **motor fuel** taxes on aviation fuel shall be paid into a
21 special aviation fuel tax account in the state general fund. The legislature may
22 appropriate funds from this account for aviation facilities.

23 * **Sec. 6.** AS 43.40 is amended by adding a new section to read:

24 **Sec. 43.40.013. Collection of the refined fuel surcharge and the motor fuel**
25 **tax.** Every dealer who sells or otherwise transfers refined or motor fuel in the state
26 shall collect the tax at the time of sale, and remit the total tax collected during each
27 calendar month of each year to the department by the last day of each succeeding
28 month. Every user shall likewise remit the tax accrued on motor fuel actually used by
29 the user during each month. If the monthly tax return is timely filed, one percent of the
30 total monthly tax due, limited to a maximum of \$100, may be deducted and retained to
31 cover the expense of accounting and filing the monthly tax return. At the time the

1 remittance is made, each dealer or user shall submit a statement to the department
2 showing all fuel that the dealer or user has distributed or used during the month.

3 * **Sec. 7.** AS 43.40.015(c) is amended to read:

4 (c) A certificate of use **obtained under this section** must be renewed annually
5 for exemptions listed under AS 43.40.100(2).

6 * **Sec. 8.** AS 43.40.015(d) is amended to read:

7 (d) A certificate of use is not required **under this section**

8 (1) for fuel exempted under AS 43.40.100(2)(C) or (J); and

9 (2) for fuel exempted under AS 43.40.100(2)(I) other than fuel sold or
10 transferred under this exemption to a person who is engaged in construction or mining
11 activity.

12 * **Sec. 9.** AS 43.40.030 is amended to read:

13 **Sec. 43.40.030. Refund of the motor fuel tax for nonhighway use.** (a)

14 Except as specified in AS 43.40.010(j), a person who uses motor fuel to operate an
15 internal combustion engine is entitled to a **motor fuel tax** refund of six cents a gallon
16 if

17 (1) the tax on the motor fuel has been paid;

18 (2) the motor fuel is not aviation fuel, or motor fuel used in or on
19 watercraft; and

20 (3) the internal combustion engine is not used in or in conjunction with
21 a motor vehicle licensed to be operated on public ways.

22 (b) The entire **amount of the motor fuel** tax levied by this chapter shall be
23 refunded to the purchaser on that part of the motor fuel used in a foreign country on
24 which the tax has been paid when the fuel is sold and delivered in the state for non-
25 highway use in a foreign country.

26 (c) The department shall establish the necessary regulations and prescribe the
27 appropriate forms to prove that, **for purposes of the motor fuel tax**, the motor fuel is
28 taken to and used in foreign countries.

29 (d) If a person obtains motor fuel on which the **motor fuel** tax levied by this
30 chapter has been paid and the motor fuel is exempt from the **motor fuel** tax, the
31 person is entitled to a refund of the **motor fuel** tax paid.

1 * **Sec. 10.** AS 43.40.035(a) is amended to read:

2 (a) A person who resells fuel on which a surcharge under AS 43.40.005 or
 3 the tax under AS 43.40.010(a) or (b) was previously paid is entitled to a credit or
 4 refund of the (1) motor fuel tax if [(1)] the resold fuel is not motor fuel and the
 5 requirements of AS 43.40.015 have been fulfilled; or (2) the amount of surcharge or
 6 tax previously paid exceeds the surcharge or tax due on the resale. The amount of the
 7 credit or refund under this section is equal to the amount of the surcharge or tax
 8 previously paid on the resold fuel less the amount of the surcharge or tax prescribed
 9 by AS 43.40.005 or 43.40.010(a) or (b), respectively [AS 43.40.010(a) OR (b)].

10 * **Sec. 11.** AS 43.40.035(c) is amended to read:

11 (c) For motor fuel sold to federal, state, and local government agencies for
 12 official use and purchased with a government credit card, the credit card issuer may
 13 apply for a refund of any motor fuel tax assessed on the purchase if the tax is not
 14 billed by the credit card issuer to the government agency making the purchase. For
 15 refined fuel sold to federal agencies for official use and purchased with a
 16 government credit card, the credit card issuer may apply for a refund of any
 17 refined fuel surcharge assessed on the purchase if the surcharge is not billed by
 18 the credit card issuer to the government agency making the purchase.

19 * **Sec. 12.** AS 43.40.050(b) is amended to read:

20 (b) A claim for refund under AS 43.40.030 or 43.40.035 shall be filed within
 21 one year after [FROM] the date of the purchase of the refined or motor fuel as
 22 indicated on the invoice, and failure to file within the one-year period is a waiver of
 23 the right to the refund. A claim is considered to be filed when the claim is mailed or
 24 personally presented to an office of the department.

25 * **Sec. 13.** AS 43.40.060 is amended to read:

26 **Sec. 43.40.060. Separate invoices.** The department may require the issuance
 27 of separate invoices for refined or motor fuel sold, distributed, or transferred when
 28 the invoices will be the basis for a refund claim.

29 * **Sec. 14.** AS 43.40.070 is amended to read:

30 **Sec. 43.40.070. Refund warrants.** Upon approval of a refund claim of the
 31 motor fuel tax by the department, a disbursement shall be made from the highway

1 fuel tax account in the general fund in favor of the applicant in the amount of the
2 claim.

3 * **Sec. 15.** AS 43.40.070 is amended by adding a new subsection to read:

4 (b) Upon approval of a refund claim of the refined fuel surcharge by the
5 department, a disbursement shall be made from the oil and hazardous substance
6 release prevention account of the oil and hazardous substance release prevention and
7 response fund established in AS 46.08.010 in favor of the applicant in the amount of
8 the claim.

9 * **Sec. 16.** AS 43.40.080(a) is amended to read:

10 (a) To determine the validity of a claim for refund, the department may
11 examine the books and records of the claimant and the books and records of a
12 distributor of **the refined or** motor fuel. The department may cancel the refund
13 [PERMIT] of **a** [THE] claimant relying **on** [UPON] a fraudulent invoice [FOR A
14 PERIOD OF NOT MORE THAN ONE YEAR].

15 * **Sec. 17.** AS 43.40.085 is amended to read:

16 **Sec. 43.40.085. Preservation of books and records.** Dealers and users shall
17 preserve for three years all books and records pertaining to sales, transfers, and uses of
18 **refined or** motor fuel that are **subject to a surcharge or tax** [TAXED] under this
19 chapter.

20 * **Sec. 18.** AS 43.40.092(a) is amended to read:

21 (a) The provisions of this section apply to disallow the exemption **from the**
22 **motor fuel tax** for motor fuel sold for use by a dealer or used by a user in jet
23 propulsion aircraft operating in flights that continue from foreign countries if, for
24 motor fuel produced by a refiner,

25 (1) the refiner determines, on or after July 1, 1997, that the refiner will
26 expand capacity or expand the refinery to produce more residual fuel oil used in
27 watercraft;

28 (2) on or after the July 1, 1997, the refiner has voluntarily committed
29 by agreement entered into with the commissioner that, if the refiner expands its oil
30 refining capacity in order to produce additional supplies of fuel for use in jet
31 propulsion aircraft that qualify for the tax exemption, when the refiner expands

1 capacity, the refiner will

2 (A) use the refiner's best efforts to advertise for, recruit, and
 3 employ in the construction activities associated with expanding refinery
 4 capacity resident workers who have experience in the specific fields in which
 5 they are hired to work;

6 (B) contract with licensed Alaska firms to prepare materials that
 7 are used in construction activities and to provide services in conjunction with
 8 activities associated with expanded refinery capacity and, in contracting with
 9 those firms, to encourage the refiner's contractors to employ and, when
 10 necessary, train state residents; and

11 (C) enter into contracts with Alaska-licensed vendors,
 12 contractors, and suppliers for the provision of supplies and services used in
 13 conjunction with activities associated with expanding refinery capacity; and

14 (3) the commissioner determines that a dealer or user claiming the
 15 exemption for motor fuel acquired from a refiner who has entered into an agreement
 16 described in (2) of this subsection acquired the motor fuel for which the exemption is
 17 claimed from a refiner who has not complied with the requirements of the agreement
 18 in completing expansion of its oil refining capacity under the agreement described in
 19 (1) of this subsection.

20 * **Sec. 19.** AS 43.40 is amended by adding a new section to read:

21 **Sec. 43.40.094. Qualified dealer license.** (a) A dealer is eligible for a qualified
 22 dealer license if the dealer sells at least 50 percent of fuel acquired to unrelated
 23 persons for any combination of the following purposes:

- 24 (1) resale;
 25 (2) use in heating private or commercial buildings or facilities;
 26 (3) use in jet propulsion aircraft;
 27 (4) motor fuel.

28 (b) A person applying for a qualified dealer license must use a form or format
 29 prescribed by the department. At the time of application, the applicant must provide an
 30 estimate of the average number of gallons of fuel subject to surcharge or tax each
 31 month during a calendar year, and state the estimated amount of surcharge and tax on

1 those gallons. A license issued under this section is not transferable.

2 (c) The department may not issue or renew a qualified dealer license if

3 (1) the department finds that the applicant or qualified dealer has
4 withheld information required in the application or that the information submitted in
5 the application is false or misleading;

6 (2) the applicant, or a responsible person of a business organization that
7 is applying for the license, has been convicted within the last 10 years, in this state or
8 in any other taxing jurisdiction, of crimes involving a fuel surcharge or tax;

9 (3) the qualified dealer fails to comply with a requirement of this
10 chapter;

11 (4) the qualified dealer has failed to pay in full the surcharge, taxes,
12 interest, and penalties levied under AS 43.05 or this chapter.

13 (d) The department may

14 (1) issue only one qualified dealer license to each person;

15 (2) put additional limitations on the applicant or holder of a qualified
16 dealer license.

17 (e) A license issued under this section expires on June 30 following the date of
18 issue. Before a license issued under this section expires, the licensee may apply to
19 renew the license, on a form or in a format prescribed by the department, for one year
20 after the expiration date of the license.

21 (f) If the department determines a qualified dealer license may not be issued or
22 renewed under this section, the department shall mail or electronically deliver a notice
23 of license denial or nonrenewal to the person whose license was denied or not
24 renewed. The person may appeal a notice of license denial or nonrenewal not later
25 than 10 days after the date the notice was mailed or electronically delivered.

26 (g) The department may, at the time an applicant applies for a qualified dealer
27 license, require the applicant to file a bond or other security with the department in an
28 amount equal to twice the estimated surcharge and tax due to the department in one
29 month, or \$5,000, whichever is greater.

30 (h) The department may adopt regulations to implement this section, including
31 regulations relating to the revocation of a license.

1 * **Sec. 20.** AS 43.40.100(1) is amended to read:

2 (1) "dealer" means a person who sells or otherwise transfers in this
3 state **refined or** motor fuel upon which the **surcharge or tax** [TAXES] imposed by
4 this chapter **has** [HAVE] not been paid;

5 * **Sec. 21.** AS 43.40.100(3) is amended to read:

6 (3) "qualified dealer" means a person who (A) refines, (B) imports, (C)
7 manufactures, (D) produces, (E) compounds, or (F) wholesales **refined or** motor fuel
8 [, WHO SATISFIES CRITERIA FOR QUALIFIED DEALERS ESTABLISHED BY
9 THE DEPARTMENT BY REGULATION, AND WHO OBTAINS A QUALIFIED
10 DEALER'S LICENSE FROM THE DEPARTMENT];

11 * **Sec. 22.** AS 43.40.100(4) is amended to read:

12 (4) "user" means a person consuming or using **refined or** motor fuel,
13 who

14 (A) purchases the fuel out of the state and ships it into the state
15 for personal use in the state;

16 (B) manufactures the fuel in the state; or

17 (C) purchases or receives fuel in the state that is not **subject to**
18 **the surcharge or tax under this chapter** [TAXED] at the time of purchase or
19 receipt or is **subject to a surcharge or tax** [TAXED AT A RATE] that is less
20 than the rate prescribed by **AS 43.40.005 or 43.40.010** [AS 43.40.010].

21 * **Sec. 23.** AS 43.40.100 is amended by adding a new paragraph to read:

22 (5) "refined fuel" means fuel produced from oil that is used in an
23 engine, machine, or contrivance that creates heat, energy, or power.

24 * **Sec. 24.** AS 43.40.010(c) is repealed.

25 * **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 **QUALIFIED DEALER LICENSE; REGULATIONS.** To the extent current
28 regulations are consistent with this Act, the regulations previously adopted by the Department
29 of Revenue relating to qualified dealers and qualified dealer licenses under AS 43.40.100
30 shall apply to qualified dealers and qualified dealer licenses until the regulations are amended
31 to be consistent with this Act.

1 * **Sec. 26.** This Act takes effect July 1, 2015.