

## LEGISLATIVE BILL 836

Approved by the Governor April 6, 1988

Introduced by Warner, 25

AN ACT relating to motor carriers; to amend section 66-633, Reissue Revised Statutes of Nebraska, 1943; to adopt the Interstate Motor Carriers Base State Fuel Tax Compact Act; to provide for the use of information as prescribed; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 15 of this act shall be known and may be cited as the Interstate Motor Carriers Base State Fuel Tax Compact Act.

Sec. 2. It is the purpose of the Interstate Motor Carriers Base State Fuel Tax Compact Act to simplify the motor fuel tax licensing, bonding, reporting, and remittance requirements imposed on motor carriers involved in interstate commerce by authorizing the Tax Commissioner to participate in cooperative fuel tax agreements with another state or states to permit the administration, collection, and enforcement of each state's motor fuel taxes by the base state.

Sec. 3. As used in the Interstate Motor Carriers Base State Fuel Tax Compact Act, unless the context others requires:

(1) Agreement shall mean a cooperative fuel tax agreement entered into under section 4 of this act;

(2) Base state shall mean the state where (a) the motor vehicles are based for vehicle registration purposes, (b) the operational control and operational records of the licensee's motor vehicles are maintained or can be made available, and (c) some mileage is accrued by motor vehicles within the fleet; and

(3) Licensee shall mean a person licensed pursuant to the methods established in subdivision (2) of section 6 of this act.

Sec. 4. The Tax Commissioner may enter into a cooperative fuel tax agreement with another state or states which provides for the administration, collection, and enforcement by the base state of each state's motor fuel taxes on motor fuel used by interstate motor carriers. The agreement shall not contain any provision which exempts any motor vehicle, owner, or operator from complying with the laws, rules,

and regulations pertaining to vehicle licensing, size, weight, or load or the operation of motor vehicles upon the highways of this state.

Sec. 5. The amount of the tax imposed and collected on behalf of this state under an agreement shall be determined as provided in Chapter 66, articles 4 and 6.

Sec. 6. An agreement may provide for:

(1) Defining the classes of motor vehicles upon which the motor fuel taxes are to be collected under the agreement;

(2) Establishing methods for motor fuel tax licensing, license revocation, and tax collection for motor carriers by the base state on behalf of itself and all other states which are parties to the agreement;

(3) Establishing procedures for the granting of credits or refunds;

(4) Defining conditions and criteria relative to bonding requirements including criteria for exemption from bonding;

(5) Establishing tax reporting periods and tax report due dates not to exceed one calendar month after the close of the reporting period;

(6) Providing for a penalty at a rate of fifty dollars for each reporting period or ten percent of the delinquent tax whichever is greater for failure to file a report, for filing a late report, or for filing an underpayment of taxes due;

(7) Providing for interest on all delinquent taxes at a rate equal to the federal rate used for federal tax deficiencies;

(8) Establishing procedures for forwarding of motor fuel taxes, penalties, and interest collected on behalf of another state to that state;

(9) Record-keeping requirements for licensees;

and  
(10) Any additional provisions which will facilitate the administration of the agreement.

Sec. 7. Any licensee paying more tax than is required during the course of a reporting period shall be permitted a credit against future tax liability for the excess tax paid. Upon request, this credit may be refunded to the licensee by the Tax Commissioner in accordance with the agreement.

Sec. 8. An agreement may require the Tax Commissioner to perform audits of persons required to be licensed who are based in this state to determine if the motor fuel taxes to be collected under the agreement have been properly reported and paid to each state

participating in the agreement. The agreement may authorize other states to perform audits of persons required to be licensed who are based in such other state on behalf of the State of Nebraska and forward the findings to the Tax Commissioner. The Tax Commissioner may issue a notice of deficiency determination based on the findings from the other state.

The agreement shall not preclude the Tax Commissioner from auditing the records of any person who has used motor fuels in this state. Any person required to be licensed shall make his or her records available on request of the Tax Commissioner.

If the person is based in this state, the records shall be made available at the location designated by the Tax Commissioner or such person may request the Tax Commissioner to audit such records at the person's place of business. If the place of business is located outside this state, the Tax Commissioner may require the person to reimburse the Tax Commissioner for authorized per diem and travel expenses.

Sec. 9. The Tax Commissioner may forward to the representative of another state designated in the agreement any information in the Tax Commissioner's possession relative to the manufacture, receipt, sale, use, transportation, or shipment of motor fuels by any person required to be licensed. The Tax Commissioner may disclose information to the representative of the other state which relates to the location of officers, motor vehicles, and other real and personal property of persons required to be licensed under the agreement who use motor fuels. Any information covered by an agreement with the Internal Revenue Service may only be released in accordance with such agreement.

Sec. 10. The Tax Commissioner shall adopt and promulgate rules and regulations necessary to implement any agreement entered into under the Interstate Motor Carriers Base State Fuel Tax Compact Act.

Sec. 11. The legal remedies for any person served with an order or assessment under the Interstate Motor Carriers Base State Fuel Tax Compact Act shall be as prescribed in Chapter 66, articles 4 and 6, and the Administrative Procedure Act.

Sec. 12. If the Tax Commissioner enters into any agreement authorized by the Interstate Motor Carriers Base State Fuel Tax Compact Act and the provisions set forth in the agreement are in conflict with any rules or regulations adopted and promulgated by the Tax Commissioner, the agreement shall control to the

extent of any conflict.

Sec. 13. The Department of Revenue may contract with another state agency or an association organized under the laws of this state, not for profit, to administer for the department the parts of the Interstate Motor Carriers Base State Fuel Tax Compact Act as designated by the Tax Commissioner.

Sec. 14. (1) Any fuel tax collected pursuant to the agreement shall be remitted to the State Treasurer who shall place it in the Highway Trust Fund for allocation as other motor fuel taxes and special fuel taxes collected pursuant to sections 66-410.01 to 66-410.05 and 66-418.01, except that the State Treasurer shall first transfer such amounts to the Base State Fuels Tax Fund as the Tax Commissioner determines to be equal to the amounts required to be transferred to other states.

(2) There is hereby created a fund to be designated the Base State Fuels Tax Fund which shall be set apart and maintained by the State Treasurer for prompt payments of all money to be transferred to another state pursuant to a cooperative fuel tax agreement. Any money in the Base State Fuels Tax Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 15. (1) An additional fee may be collected by the issuing agency or association from a licensee for each annual decal issued pursuant to the agreement. The fee shall be in an amount determined by the Tax Commissioner to be sufficient to recover reasonable administrative costs of the agreement but not more than ten dollars per annual decal. The fee shall be remitted to the State Treasurer and credited to the Interstate Motor Carriers Base State Cash Fund, except that the Tax Commissioner may by contract with an association provide for the association to retain a portion of the fee as payment for services rendered under the contract.

(2) There is hereby created a fund to be designated the Interstate Motor Carriers Base State Cash Fund which shall be set apart and maintained by the State Treasurer to pay administrative costs of the Interstate Motor Carriers Base State Fuel Tax Compact Act. If any staff used for enforcing the agreement provided for in the act is used for any other state tax or program, the costs attributed to such other tax or program shall be borne by either the General Fund or the fund to which the money resulting from such other tax or

program is credited, however it is appropriated by the Legislature.

Sec. 16. That section 66-633, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-633. Returns required by the provisions of sections 66-601 to 66-649, 66-640 exclusive of schedules, itemized statements, and other supporting evidence annexed thereto, shall at all reasonable times be open to the public. Nothing in this section shall prohibit the use of information on such returns by a collection agency pursuant to sections 77-377.01 to 77-377.04 or prohibit the use of information on such returns, schedules, itemized statements, and other supporting evidence annexed thereto by a state or states participating in an agreement signed under the Interstate Motor Carriers Base State Fuel Tax Compact Act.

Sec. 17. That original section 66-633, Reissue Revised Statutes of Nebraska, 1943, is repealed.