

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 507

Introduced by Burling, 33

Read first time January 17, 2007

Committee: Revenue

A BILL

1 FOR AN ACT relating to ethanol; to amend section 66-1344,
2 Revised Statutes Cumulative Supplement, 2006; to change a
3 provision relating to use of tax credits; and to repeal
4 the original section.

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

1 Section 1. Section 66-1344, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 66-1344 (1) Beginning June 1, 2000, during such period
4 as funds remain in the Ethanol Production Incentive Cash Fund,
5 any ethanol facility shall receive a credit of seven and one-half
6 cents per gallon of ethanol, before denaturing, for new production
7 for a period not to exceed thirty-six consecutive months. For
8 purposes of this subsection, new production means production which
9 results from the expansion of an existing facility's capacity by
10 at least two million gallons first placed into service after June
11 1, 1999, as certified by the facility's design engineer to the
12 Department of Revenue. For expansion of an existing facility's
13 capacity, new production means production in excess of the average
14 of the highest three months of ethanol production at an ethanol
15 facility during the twenty-four-month period immediately preceding
16 certification of the facility by the design engineer. No credits
17 shall be allowed under this subsection for expansion of an existing
18 facility's capacity until production is in excess of twelve times
19 the three-month average amount determined under this subsection
20 during any twelve-consecutive-month period beginning no sooner than
21 June 1, 2000. New production shall be approved by the Department
22 of Revenue based on such ethanol production records as may be
23 necessary to reasonably determine new production. This credit must
24 be earned on or before December 31, 2003.

25 (2)(a) Beginning January 1, 2002, any new ethanol

1 facility which is in production at the minimum rate of one
2 hundred thousand gallons annually for the production of ethanol,
3 before denaturing, and which has provided to the Department of
4 Revenue written evidence substantiating that the ethanol facility
5 has received the requisite authority from the Department of
6 Environmental Quality and from the United States Department of
7 Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives,
8 on or before June 30, 2004, shall receive a credit of eighteen
9 cents per gallon of ethanol produced for ninety-six consecutive
10 months beginning with the first calendar month for which it is
11 eligible to receive such credit and ending not later than June 30,
12 2012, if the facility is defined by subdivision (b)(i) of this
13 subsection, and for forty-eight consecutive months beginning with
14 the first calendar month for which it is eligible to receive such
15 credit and ending not later than June 30, 2008, if the facility
16 is defined by subdivision (b)(ii) of this subsection. The new
17 ethanol facility shall provide an analysis to the Department of
18 Revenue of samples of the product collected according to procedures
19 specified by the department no later than July 30, 2004, and at
20 least annually thereafter. The analysis shall be prepared by an
21 independent laboratory meeting the International Organization for
22 Standardization standard ISO/IEC 17025:1999. Prior to collecting
23 the samples, the new ethanol facility shall notify the department
24 which may observe the sampling procedures utilized by the new
25 ethanol facility to obtain the samples to be submitted for

1 independent analysis. The minimum rate shall be established for a
2 period of at least thirty days. In this regard, the new ethanol
3 facility must produce at least eight thousand two hundred nineteen
4 gallons of ethanol within a thirty-day period. The ethanol must be
5 finished product which is ready for sale to customers.

6 (b) For purposes of this subsection, new ethanol facility
7 means a facility for the conversion of grain or other raw feedstock
8 into ethanol and other byproducts of ethanol production which (i)
9 is not in production on or before September 1, 2001, or (ii) has
10 not received credits prior to June 1, 1999. A new ethanol facility
11 does not mean an expansion of an existing ethanol plant that
12 does not result in the physical construction of an entire ethanol
13 processing facility or which shares or uses in a significant manner
14 any existing plant's systems or processes and does not include
15 the expansion of production capacity constructed after June 30,
16 2004, of a plant qualifying for credits under this subsection. This
17 definition applies to contracts entered into after April 16, 2004.

18 (c) Not more than fifteen million six hundred
19 twenty-five thousand gallons of ethanol produced annually
20 at an ethanol facility shall be eligible for credits under
21 this subsection. Not more than one hundred twenty-five
22 million gallons of ethanol produced at an ethanol facility
23 by the end of the ninety-six-consecutive-month period or
24 forty-eight-consecutive-month period set forth in this subsection
25 shall be eligible for credits under this subsection.

1 (3) The credits described in this section shall be given
2 only for ethanol produced at a plant in Nebraska at which all
3 fermentation, distillation, and dehydration takes place. No credit
4 shall be given on ethanol produced for or sold for use in the
5 production of beverage alcohol. Not more than ten million gallons
6 of ethanol produced during any twelve-consecutive-month period at
7 an ethanol facility shall be eligible for the credit described
8 in subsection (1) of this section. The credits described in this
9 section shall be in the form of a nonrefundable, transferable motor
10 vehicle fuel or diesel fuel tax credit certificate. No transfer
11 of credits will be allowed between the ethanol producer and motor
12 vehicle fuel or diesel fuel licensees who are related parties.

13 (4) Ethanol production eligible for credits under this
14 section shall be measured by a device approved by the Division of
15 Weights and Measures of the Department of Agriculture. Confirmation
16 of approval by the division shall be provided by the ethanol
17 facility at the time the initial claim for credits provided under
18 this section is submitted to the Department of Revenue and annually
19 thereafter. Claims submitted by the ethanol producer shall be
20 based on the total number of gallons of ethanol produced, before
21 denaturing, during the reporting period measured in gross gallons.

22 (5) The Department of Revenue shall prescribe an
23 application form and procedures for claiming credits under this
24 section. In order for a claim for credits to be accepted, it must
25 be filed by the ethanol producer within three years of the date

1 the ethanol was produced or by September 30, 2012, whichever occurs
2 first.

3 (6) Every producer of ethanol shall maintain records
4 similar to those required by section 66-487. The ethanol producer
5 must maintain invoices, meter readings, load-out sheets or
6 documents, inventory records, including work-in-progress, finished
7 goods, and denaturant, and other memoranda requested by the
8 Department of Revenue relevant to the production of ethanol. On
9 an annual basis, the ethanol producer shall also be required to
10 furnish the department with copies of the reports filed with the
11 United States Department of Justice, Bureau of Alcohol, Tobacco,
12 Firearms and Explosives. The maintenance of all of this information
13 in a provable computer format or on microfilm is acceptable in
14 lieu of retention of the original documents. The records must be
15 retained for a period of not less than three years after the claim
16 for ethanol credits is filed.

17 (7) For purposes of ascertaining the correctness of any
18 application for claiming a credit provided in this section, the
19 Tax Commissioner (a) may examine or cause to have examined, by
20 any agent or representative designated by him or her for that
21 purpose, any books, papers, records, or memoranda bearing upon such
22 matters, (b) may by summons require the attendance of the person
23 responsible for rendering the application or other document or
24 any officer or employee of such person or the attendance of any
25 other person having knowledge in the premises, and (c) may take

1 testimony and require proof material for his or her information,
2 with power to administer oaths or affirmations to such person
3 or persons. The time and place of examination pursuant to this
4 subsection shall be such time and place as may be fixed by the
5 Tax Commissioner and as are reasonable under the circumstances.
6 In the case of a summons, the date fixed for appearance before
7 the Tax Commissioner shall not be less than twenty days from the
8 time of service of the summons. No taxpayer shall be subjected
9 to unreasonable or unnecessary examinations or investigations. All
10 records obtained pursuant to this subsection shall be subject to
11 the confidentiality requirements and exceptions thereto as provided
12 in section 77-27,119.

13 (8) To qualify for credits under this section, an ethanol
14 producer shall provide public notice for bids before entering
15 into any contract for the construction of a new ethanol facility.
16 Preference shall be given to a bidder residing in Nebraska when
17 awarding any contract for construction of a new ethanol facility
18 if comparable bids are submitted. For purposes of this subsection,
19 bidder residing in Nebraska means any person, partnership, foreign
20 or domestic limited liability company, association, or corporation
21 authorized to engage in business in the state with employees
22 permanently located in Nebraska. If an ethanol producer enters into
23 a contract for the construction of a new ethanol facility with
24 a bidder who is not a bidder residing in Nebraska, such producer
25 shall demonstrate to the satisfaction of the Department of Revenue

1 in its application for credits that no comparable bid was submitted
2 by a responsible bidder residing in Nebraska. The department shall
3 deny an application for credits if it is determined that the
4 contract was denied to a responsible bidder residing in Nebraska
5 without cause.

6 (9) The pertinent provisions of Chapter 66, article 7,
7 relating to the administration and imposition of motor fuel taxes
8 shall apply to the administration and imposition of assessments
9 made by the Department of Revenue relating to excess credits
10 claimed by ethanol producers under the Ethanol Development Act.
11 These provisions include, but are not limited to, issuance of
12 a deficiency following an examination of records, an assessment
13 becoming final after thirty days absent a written protest,
14 presumptions regarding the burden of proof, issuance of deficiency
15 within three years of original filing, issuance of notice by
16 registered or certified mail, issuance of penalties and waiver
17 thereof, issuance of interest and waiver thereof, and issuance of
18 corporate officer or employee or limited liability company manager
19 or member assessments. For purposes of determining interest and
20 penalties, the due date will be considered to be the date on which
21 the credits were used by the licensees to whom the credits were
22 transferred.

23 (10) If a written protest is filed by the ethanol
24 producer with the department within the thirty-day period in
25 subsection (9) of this section, the protest shall: (a) Identify

1 the ethanol producer; (b) identify the proposed assessment which
2 is being protested; (c) set forth each ground under which a
3 redetermination of the department's position is requested together
4 with facts sufficient to acquaint the department with the exact
5 basis thereof; (d) demand the relief to which the ethanol producer
6 considers itself entitled; and (e) request that an evidentiary
7 hearing be held to determine any issues raised by the protest if
8 the ethanol producer desires such a hearing.

9 (11) For applications received after April 16, 2004, an
10 ethanol facility receiving benefits under the Ethanol Development
11 Act shall not be eligible for benefits under the Employment and
12 Investment Growth Act, the Invest Nebraska Act, or the Nebraska
13 Advantage Act.

14 Sec. 2. Original section 66-1344, Revised Statutes
15 Cumulative Supplement, 2006, is repealed.