ASSEMBLY BILL NO. 396–COMMITTEE ON TAXATION

MARCH 4, 1999

Referred to Committee on Taxation

SUMMARY—Transfers responsibility for collection of taxes and fees imposed on certain fuels from department of taxation to department of motor vehicles and public safety. (BDR 32-502)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

AN ACT relating to taxation; transferring the responsibility for the collection of taxes and fees imposed on certain fuels from the department of taxation to the department of motor vehicles and public safety; providing the department of motor vehicles and public safety with administrative powers and duties for the collection of the tax; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 32 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 45, inclusive, of this act.

Sec. 2. ***As used in this chapter, "department" means the department of motor vehicles and public safety.***

Sec. 3. ***The department shall adopt such regulations as are necessary to carry out the provisions of this chapter.***

Sec. 4. ***1. If a person fails to file a return or the department is not satisfied with the return of any tax or fee required to be paid to the department pursuant to chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840, the department may determine the amount required to be paid upon the basis of:***

(a) The facts contained in the return;

(b) Any information that is in the possession of the department or may come into its possession; or

(c) Reasonable estimates of the amount.

2. One or more deficiency determinations may be made with respect to the amount due for one or more periods.

3. In making its determination of the amount required to be paid, the department shall impose interest on the amount of tax or fee determined to be due, calculated at the rate and in the manner set forth in section 22 of this act.

4. The department shall impose a penalty of 10 percent in addition to the amount of a determination that is made if a person fails to file a return with the department.

5. If a business is discontinued, a determination may be made at any time thereafter within the period prescribed in section 9 of this act concerning liability arising out of that business, irrespective of whether the determination is issued before the due date of the liability.

Sec. 5. *In making a determination, the department may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods or against penalties and the interest on underpayments.*

Sec. 6. *If any part of the deficiency for which a deficiency determination is made is because of negligence or intentional disregard of any applicable provision of chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840, or the regulations of the department adopted pursuant thereto, a penalty of 10 percent of the amount of the determination must be added thereto.*

Sec. 7. *If any part of the deficiency for which a deficiency determination is made is because of fraud or an intent to evade the payment of a tax or fee required by chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840, or the regulations of the department adopted pursuant thereto, a penalty of 25 percent of the amount of the determination must be added thereto.*

Sec. 8. *1. The department shall give a person against whom a determination has been made written notice of its determination.*

2. The notice may be served personally or by mail. If served by mail, the notice must be addressed to the person at his address as it appears in the records of the department.

3. If the notice is served by mail, service is complete at the time the notice is deposited with the United States Postal Service.

4. Service of notice tolls any limitation for the determination of a further deficiency.

Sec. 9. *1. Except as otherwise provided in subsections 2, 3 and 4, each notice of a deficiency determination issued by the department must be personally served or mailed within 3 years after the last day of the month following the period for which the amount is proposed to be* *determined or within 3 years after the return is filed, whichever period expires later.*

2. In the case of a failure to make a return or a claim for an additional amount, each notice of determination must be mailed or personally served within 8 years after the last day of the month following the period for which the amount is proposed to be determined.

3. If, before the expiration of the time prescribed in this section for the mailing of a notice of determination, the taxpayer has signed a waiver consenting to the mailing of the notice after that time, the notice may be mailed at any time before the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing if each agreement is made before the expiration of the period previously agreed upon.

4. This section does not apply to cases of fraud or the intentional evasion of a provision of chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840, or any regulation of the department adopted pursuant thereto.

Sec. 10. *1. Any person against whom a deficiency determination is made who believes that the determination is incorrect may petition the department for a redetermination within 45 days after being served with the notice of determination.*

2. If a petition for redetermination is not filed within the period prescribed in subsection 1, the person is deemed to have waived the right to contest the determination or recover a refund.

3. For good cause shown, the department may extend the time within which a petition for redetermination must be filed.

Sec. 11. *A petition for redetermination must:*

1. Set forth the amount of the determination that is contested and the grounds for requesting a redetermination; and

2. If an oral hearing is not requested, be accompanied by the books and records and other evidence which support the petition.

Sec. 12. *1. If a petition for redetermination is filed within the period prescribed in section 10 of this act, the department shall reconsider the determination and, if the person has so requested in the petition, grant the person an oral hearing and give him at least 10 days' notice of the time and place of the hearing.*

2. The department may continue the hearing from time to time as may be necessary.

Sec. 13. *The department may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the department before or during the hearing.*

Sec. 14. ***The order entered by an officer of the department upon a petition for redetermination becomes final 30 days after service upon the petitioner of notice thereof.***

Sec. 15. ***1. Before a person may request judicial review pursuant to NRS 233B.130 from a final order of the department upon a petition for redetermination, he must:***

(a) Pay the amount of the determination; or

(b) Enter into a written agreement with the department that establishes a later date by which he is required to pay the amount of the determination.

2. If a court determines that the amount of the final order should be reduced or that the person does not owe any taxes or fees, the department shall credit or refund any amount paid by the person that exceeds the amount owed.

Sec. 16. ***1. The amount specified as deficient in a determination made by the department pursuant to the provisions of sections 4 to 16, inclusive, of this act is due at the time the determination becomes final.***

2. If the amount specified as deficient in a determination is not paid when the determination becomes final and the person against whom the determination is made has not entered into a written agreement with the department for the payment of the amount specified as deficient in the determination, the department shall impose a penalty of 10 percent of the amount specified as deficient in the determination, exclusive of interest and penalties.

Sec. 17. ***Except as otherwise provided in NRS 365.340 and 366.397, if the department grants an extension of time for paying any amount required to be paid pursuant to chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840, a person who pays the amount within the period for which the extension is granted shall pay, in addition to the amount owing, interest at the rate of 1 percent per month from the date the amount would have been due without the extension until the date of payment.***

Sec. 18. ***If a check submitted to the department for payment of any tax or fee required by chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840 is dishonored upon presentment for payment, the department may require that any future payments be made by cashier's check, traveler's check, money order or cash.***

Sec. 19. ***If the department believes that the collection of any amount of taxes or fees due pursuant to chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840 will be jeopardized by delay, the department shall make a determination of the amount required to be collected and serve notice of the determination upon the person against whom it is made.***

Sec. 20. ***The amount specified in the determination must be paid within 10 days after the service of the notice of the determination unless a petition for redetermination is filed within that period. If the amount of the determination is not paid within that period and a petition for redetermination is not filed, the determination becomes final and any penalty for delinquency and interest provided for in this chapter attaches to the amount of the determination.***

Sec. 21. ***A person against whom a determination is made pursuant to section 19 of this act may petition for a redetermination. The petition is subject to the requirements of sections 10 to 16, inclusive, of this act, except that the petition must be made within 10 days after service of the notice of determination. A person who petitions for a redetermination must deposit with the department within 10 days after service of the notice of determination such security as the department determines is necessary.***

Sec. 22. ***Unless a different penalty or rate of interest is specifically provided by statute, any person who fails to pay any tax or fee required by chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840 to this state or a county within the time required, shall pay a penalty of not more than 10 percent of the amount of the tax or fee that is owed, as determined by the department, in addition to the tax or fee, plus interest at the rate of 1 percent per month, or fraction of a month, from the last day of the month following the period for which the amount or any portion of the amount should have been reported until the date of payment.***

Sec. 23. ***1. If the director or a hearing officer designated by him finds that the failure of a person to make a timely return or payment of a tax or fee required by chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840 is the result of circumstances beyond the control of the person and occurred despite the exercise of ordinary care and without willful neglect, the department may relieve him of all or part of any interest or penalty, or both.***

2. A person requesting relief must file with the department a statement signed, under penalty of perjury, that sets forth the facts upon which he bases his claim for relief.

3. The department shall disclose, upon the request of any person:

(a) The name of the person to whom relief was granted; and

(b) The amount of the relief.

Sec. 24. ***The department may:***

1. Enter into a written agreement with a person who is required to pay the taxes or fees required by chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840 for the payment of delinquent taxes or fees, interest or penalties imposed pursuant to those provisions.

2. Adopt regulations providing for:

(a) The payment of delinquent taxes or fees, interest or penalties upon the execution of a written agreement between the department and such a person; and

(b) The cancellation of such an agreement if the person becomes delinquent in his payment of the delinquent taxes or fees, interest or penalties owed to the department pursuant to the provisions of chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840.

Sec. 25. *1. If a person who is delinquent in the payment of any tax or fee required by chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840 has not paid the amount of a deficiency determination, the department may bring an action in a court of this state, a court of any other state or a court of the United States to collect the delinquent or deficient amount, penalties and interest. The action must be brought not later than 3 years after the payment became delinquent or the determination became final or within 5 years after the last recording of an abstract of judgment or of a certificate constituting a lien for the tax or fee owed.*

2. The attorney general shall prosecute the action. The provisions of NRS and the Nevada Rules of Civil Procedure and Nevada Rules of Appellate Procedure relating to service of summons, pleadings, proofs, trials and appeals are applicable to the proceedings. In the action, a writ of attachment may issue. A bond or affidavit is not required before an attachment may be issued.

3. In the action, a certificate by the department showing the delinquency is prima facie evidence of:

(a) The determination of the tax or fee or the amount of the tax or fee;

(b) The delinquency of the amounts; and

(c) The compliance by the department with the procedures required by law related to the computation and determination of the amounts.

Sec. 26. *1. If, with respect to any tax or fee required by chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840, a person:*

(a) Fails to pay the tax or fee when due according to his return filed with the department;

(b) Fails to pay a deficiency determination when due; or

(c) Defaults on a payment pursuant to a written agreement with the department,

the department may, within 3 years after the amount is due, file in the office of the clerk of any court of competent jurisdiction an application for the entry of a summary judgment for the amount due.

2. The application must be accompanied by a certificate that specifies:

(a) The amount required to be paid, including any interest and penalties due;

(b) The name and address of the person liable for the payment, as they appear on the records of the department;

(c) The basis for the determination of the department of the amount due; and

(d) That the department has complied with the applicable provisions of law relating to the determination of the amount required to be paid.

3. The application must include a request that judgment be entered against the person in the amount required to be paid, including any interest and penalties due, as set forth in the certificate.

Sec. 27. ***The county clerk shall, immediately upon the filing of the application and certificate pursuant to section 26 of this act, enter a judgment for the State of Nevada against the person liable for the payment in the amount required to be paid, together with any penalties and interest due as set forth in the certificate. The department shall serve a copy of the judgment, together with the application and the certificate, upon the person against whom the judgment is entered, by personal service or by mailing a copy to his last known address as it appears in the records of the department.***

Sec. 28. ***Execution must issue upon the judgment upon request of the department in the same manner as execution may issue upon other judgments, and sales must be held under the execution, as provided in chapter 21 of NRS.***

Sec. 29. ***1. An abstract of the judgment, or a copy thereof, may be recorded in the office of the county recorder of any county.***

2. From the time of its recordation, the abstract of the judgment becomes a lien upon all real and personal property in that county which the judgment debtor owns at the time, or which he may afterward acquire, until the lien expires. The lien has the force, effect and priority of a judgment lien and continues for 5 years after the date of the judgment so entered by the county clerk unless sooner released or otherwise discharged.

Sec. 30. ***The lien may, within 5 years after the date of the judgment or within 5 years after the last extension of the lien in the manner provided in this section, be extended by recording in the office of the county recorder an abstract or copy of the judgment, and from the time of that recording, the lien must be extended upon the property in that county for 5 years unless sooner released or otherwise discharged.***

Sec. 31. ***The remedies provided for in sections 26 to 31, inclusive, of this act are intended to supplement any other remedies provided for in this chapter or chapter 365, 366 or 373 of NRS. The provisions of sections 26 to 31, inclusive, of this act do not limit or repeal any***

additional requirements imposed upon the department by statute, or otherwise by law.

Sec. 32. ***1. If any tax or fee required by chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840 is not paid when due, the department may, within 3 years after the date that the tax or fee became due, file for record a certificate in the office of any county recorder which states:***

(a) The amount of the tax or fee and any interest or penalties due;

(b) The name and address of the person who is liable for the amount due as they appear on the records of the department; and

(c) That the department has complied with the procedures required by law for determining the amount due.

2. From the time of the filing of the certificate, the amount due, including interest and penalties, constitutes a lien upon all real and personal property in the county owned by the person or acquired by him afterwards and before the lien expires. The lien has the effect and priority of a judgment lien and continues for 5 years after the time of the filing of the certificate unless sooner released or otherwise discharged.

3. Within 5 years after the date of the filing of the certificate or within 5 years after the date of the last extension of the lien pursuant to this subsection, the lien may be extended by filing for record a new certificate in the office of the county recorder of any county. From the time of filing, the lien is extended to all real and personal property in the county owned by the person or acquired by him afterwards for 5 years, unless sooner released or otherwise discharged.

Sec. 33. ***1. The department may release all or any portion of the property subject to a lien imposed by the department or subordinate the lien to other liens and encumbrances if it determines that the amount, interest and penalties are secured sufficiently by a lien on other property or that the release or subordination of the lien will not jeopardize the collection of the amount, interest and penalties.***

2. A certificate by the department stating that any property has been released from the lien, or that the lien has been subordinated to other liens and encumbrances, is conclusive evidence that the property has been released or that the lien has been subordinated.

Sec. 34. ***1. The amounts, including interest and penalties, required to be paid by a person pursuant to chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840 must be satisfied first if:***

(a) The person is insolvent;

(b) The person makes a voluntary assignment of his assets;

(c) The estate of the person in the hands of executors, administrators or heirs, before distribution, is insufficient to pay all the debts due from the deceased; or

(d) The estate and effects of an absconding, concealed or absent person required to pay any amount by force of such a revenue act are levied upon by process of law.

2. This section does not give the State of Nevada a preference over:

(a) Any recorded lien that attached before the date when the amounts required to be paid became a lien; or

(b) Any costs of administration, funeral expenses, expenses of personal illness, family allowances or debts preferred pursuant to federal law or wages as provided in NRS 150.220.

Sec. 35. ***1. The department or its authorized representative may issue a warrant for the enforcement of a lien and for the collection of any delinquent taxes or fees required by chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840:***

(a) Within 3 years after the person is delinquent in the payment of the tax or fee; or

(b) Within 5 years after the last recording of an abstract of judgment or of a certificate constituting a lien for the tax or fee.

2. The warrant must be directed to a sheriff or constable and has the same effect as a writ of execution.

3. The warrant must be levied and sale made pursuant to the warrant in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

Sec. 36. ***1. If a person continues to engage in business in this state without a permit or license as required by chapter 365 or 366 of NRS, or after the license or permit has been suspended or revoked, the department may, after providing notice to that person, order any place of business of the person to be locked and sealed. If notice is served by mail, it must be addressed to the person at his address as it appears in the records of the department.***

2. The order to lock and seal a place of business must be delivered to the sheriff of the county in which the business is located. The sheriff shall assist in the enforcement of the order.

Sec. 37. ***1. The department may pay or advance to the sheriff or constable the same fees, commissions and expenses for acting upon the warrant as are provided by law for acting upon a writ of execution. The department shall approve the fees for publication in a newspaper. Approval from a court is not required for publication.***

2. The fees, commissions and expenses are the obligation of the person against whom the warrant is issued.

Sec. 38. ***1. If a person is delinquent in the payment of any tax or fee required by chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840, or if a determination has been made against him that remains unpaid, the department may:***

(a) Not later than 3 years after the payment became delinquent or the determination became final; or

(b) Not later than 5 years after the last recording of an abstract of judgment or of a certificate constituting a lien for the tax or fee owed, give a notice of the delinquency and a demand to transmit personally or by registered or certified mail to any person, including, without limitation, any officer or department of this state or any political subdivision or agency of this state, who has in his possession or under his control any credits or other personal property belonging to the delinquent taxpayer, or owing any debts to the delinquent taxpayer or person against whom a determination has been made which remains unpaid, or owing any debts to the delinquent taxpayer or that person. In the case of any state officer, department or agency, the notice must be given to the officer, department or agency before it presents the claim of the delinquent taxpayer to the state controller.

2. A state officer, department or agency which receives such a notice may satisfy any debt owed to it by that person before it honors the notice of the department.

3. After receiving the demand to transmit, the persons so notified may not transfer or otherwise dispose of the credits, other personal property, or debts in their possession or under their control at the time they received the notice until the department consents to a transfer or other disposition.

4. Each person so notified shall, within 10 days after receipt of the demand to transmit, inform the department of, and transmit to the department all such credits, other personal property, or debts in his possession, under his control or owing by him within the time and in the manner requested by the department. Except as otherwise provided in subsection 5, no further notice is required to be served upon that person.

5. If the property of the delinquent taxpayer consists of a series of payments owed to him, the person who owes or controls the payments shall transmit the payments to the department until otherwise notified by the department. If the debt of the delinquent taxpayer is not paid within 1 year after the department issued the original demand to transmit, the department shall issue another demand to transmit to the person responsible for making the payments informing him to continue to transmit payments to the department or that his duty to transmit the payments to the department has ceased.

6. If the notice of the delinquency seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank or other depository institution, the notice must be delivered or mailed to the

branch or office of the bank or other depository institution at which the deposit is carried or at which the credits or personal property is held.

7. If any person so notified makes any transfer or other disposition of the property or debts required to be withheld or transmitted, to the extent of the value of the property or the amount of the debts thus transferred or paid, he is liable to this state for any indebtedness due pursuant to chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840 from the person with respect to whose obligation the notice was given if solely by reason of the transfer or other disposition, this state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

Sec. 39. ***In carrying out the provisions of section 38 of this act, the department shall determine as early as possible whether there have been withheld or transmitted sufficient liquid assets to satisfy the claim of this state. As soon as the department determines that the assets have been withheld or transmitted, it shall consent to a transfer or other disposition of the assets in excess of that amount.***

Sec. 40. ***1. If a person who is liable for any tax or fee required by chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840 sells any portion of his business or stock of goods not in the ordinary course of business or quits the business, his successors or assignees shall:***

(a) If the business or stock of goods was purchased for money, withhold from the purchase price the amount due; or

(b) If the business or stock of goods was not purchased for money, withhold a sufficient portion of the assets of the business or stock of goods which, if sold, would equal the amount due,

until the former owner provides the successors or assignees with a receipt or certificate from the department indicating that he paid the amount due.

2. A successor or assignee who fails to withhold the amount required pursuant to subsection 1 becomes personally liable for the payment of the amount required to be withheld by him to the extent of the consideration paid for the business or stock of goods, valued in money.

3. The department shall issue a certificate of the amount due to the successor or assignee:

(a) Not later than 60 days after receiving a written request from the successor or assignee for such a certificate; or

(b) Not later than 60 days after the date the records of the former owner are made available for audit,

whichever period expires later, but not later than 90 days after receiving the request.

4. If the department fails to mail the certificate, the successor or assignee is released from any further obligation to withhold any portion of the purchase price, business or stock of goods.

5. The time within which the obligation of the successor or assignee may be enforced begins when the person who is liable for the tax or fee sells or assigns all or any portion of his business or stock of goods or when the determination against the person becomes final, whichever occurs later.

Sec. 41. ***1. At any time within 3 years after a person has become delinquent in the payment of any amount of taxes or fees due pursuant to chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840, the department may seize any property, real or personal, of the person and sell the property, or a sufficient part of it, at public auction to pay the amount due, together with any interest or penalties imposed for the delinquency and any costs incurred on account of the seizure and sale.***

2. Any seizure made to collect a tax or fee due may be only of the property of the person not exempt from execution under the provisions of law.

Sec. 42. ***The department may adopt regulations that prescribe the manner in which a person who does not owe any taxes or fees to the department may claim an ownership interest in property transmitted to or seized by the department. The regulations must set forth:***

1. The procedure for asserting such a claim; and

2. The circumstances under which the department will honor the claim.

Sec. 43. ***The notice of a sale and the time and place of the sale must be given to the delinquent person in writing at least 10 days before the date set for the sale. The notice must:***

1. Include:

(a) A description of the property to be sold;

(b) A statement of the amount due, including interest, penalties and costs;

(c) The name of the delinquent person; and

(d) A statement that unless the amount due, interest, penalties and costs are paid on or before the time fixed in the notice for the sale, the property, or as much of it as is necessary, will be sold in accordance with law and the notice;

2. Be enclosed in an envelope addressed to the person at his last known address or place of business in this state and deposited in the United States Postal Service, postage prepaid; and

3. Be published for at least 10 days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized will be sold. If there is no newspaper of general

circulation in the county, notice must be posted in three public places in the county 10 days before the date set for the sale.

Sec. 44. ***1. At a sale described in section 43 of this act, the department shall sell the property in accordance with law and the notice and deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests the interest or title of the person liable for the amount in the purchaser.***

2. The unsold portion of any property seized may be left at the place of sale at the risk of the person liable for the amount.

Sec. 45. ***1. If, upon the sale, the money received exceeds the total of all amounts, including interest, penalties and costs due this state, the department shall return the excess to the person liable for the amounts and obtain his receipt.***

2. If a person who has an interest in or lien upon the property files with the department a notice of his interest or lien before the sale, the department shall withhold any excess pending a determination of the rights of the respective parties to it by a court of competent jurisdiction.

3. If the receipt of the person liable for the amount is not available, the department shall deposit the excess money with the state treasurer, as trustee for the owner, subject to the order of the person liable for the amount, his heirs, successors or assigns.

Sec. 46. NRS 360.001 is hereby amended to read as follows:

360.001 As used in this Title, except as otherwise provided in chapters 364, ***365,*** 366 ***,*** ~~[and]~~ 371 ***and 373*** of NRS and unless the context requires otherwise:

1. "Department" means the department of taxation.

2. "Executive director" means the executive director of the department of taxation.

Sec. 47. NRS 360.300 is hereby amended to read as follows:

360.300 1. If a person fails to file a return or the department is not satisfied with the return ~~[or returns]~~ of any tax, contribution or premium or amount of tax, contribution or premium required to be paid to the state by any person, in accordance with the applicable provisions of ~~[NRS 482.313,]~~ this chapter ***,*** ~~[or]~~ chapter 362, 364A, ~~[365,]~~ 369, 370, 372, 372A, ~~[373,]~~ 374, 377, 377A ~~[, 444A, 585, 590]~~ ***or 444A of NRS, NRS 482.313,*** or ***chapter 585 or*** 680B of NRS as administered or audited by the department, it may compute and determine the amount required to be paid upon the basis of:

(a) The facts contained in the return;

(b) Any information within its possession or that may come into its possession; or

(c) Reasonable estimates of the amount.

2. One or more deficiency determinations may be made with respect to the amount due for one or for more than one period.

3. In making its determination of the amount required to be paid, the department shall impose interest on the amount of tax determined to be due, calculated at the rate and in the manner set forth in NRS 360.417, unless a different rate of interest is specifically provided by statute.

4. The department shall impose a penalty of 10 percent in addition to the amount of a determination that is made in the case of a person's failure to file a return with the department.

5. When a business is discontinued, a determination may be made at any time thereafter within the time prescribed in NRS 360.355 as to liability arising out of that business, irrespective of whether the determination is issued before the due date of the liability.

Sec. 48. NRS 360.417 is hereby amended to read as follows:

360.417 Unless a different penalty or rate of interest is specifically provided by statute, any person who fails to pay any tax provided for in chapter 362, 364A, ~~[365,]~~ 369, 370, 372, ~~[373,]~~ 374, 377, 377A, 444A or 585 of NRS, or ***the*** fee provided for in NRS 482.313 ~~[or 590.700 to 590.920, inclusive,]~~ to the state or a county within the time required, shall pay a penalty of not more than 10 percent of the amount of the tax or fee which is owed, as determined by the department, in addition to the tax or fee, plus interest at the rate of 1 percent per month, or fraction of a month, from the last day of the month following the period for which the amount or any portion of the amount should have been reported until the date of payment.

Sec. 49. NRS 360.419 is hereby amended to read as follows:

360.419 1. If the executive director or a designated hearing officer finds that a person's failure to make a timely return or payment of a tax imposed pursuant to NRS 361.320 or chapter 361A, 376A, 377 or 377A of NRS, or by chapter 362, 364A, ~~[365,]~~ 369, 370, 372, 372A, ~~[373,]~~ 374, 375A or 375B of NRS, is the result of circumstances beyond his control and occurred despite the exercise of ordinary care and without intent, the department may relieve him of all or part of any interest or penalty ***,*** or both.

2. A person seeking this relief must file with the department a statement under oath setting forth the facts upon which he bases his claim.

3. The department shall disclose, upon the request of any person:

(a) The name of the person to whom relief was granted; and

(b) The amount of the relief.

4. The executive director or a designated hearing officer shall act upon the request of a taxpayer seeking relief pursuant to NRS 361.4835 which is deferred by a county treasurer or county assessor.

Sec. 50. NRS 360.510 is hereby amended to read as follows:

360.510 1. If any person is delinquent in the payment of any tax or fee administered by the department or if a determination has been made against him which remains unpaid, the department may:

(a) Not later than 3 years after the payment became delinquent or the determination became final; or

(b) Not later than 5 years after the last recording of an abstract of judgment or of a certificate constituting a lien for tax owed,

give a notice of the delinquency and a demand to transmit personally or by registered or certified mail to any person, including, without limitation, any officer or department of ~~[the]~~ ***this*** state or any political subdivision or agency of ~~[the]~~ ***this*** state, who has in his possession or under his control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent or person against whom a determination has been made which remains unpaid, or owing any debts to the delinquent or that person. In the case of any state officer, department or agency, the notice must be given to the officer, department or agency before ~~[it]~~ ***the department*** presents the claim of the delinquent taxpayer to the state controller.

2. A state officer, department or agency which receives such a notice may satisfy any debt owed to it by that person before it honors the ~~[department's notice.]~~ ***notice of the department.***

3. After receiving the demand to transmit, the persons so notified may not transfer or otherwise dispose of the credits, other personal property, or debts in their possession or under their control at the time they received the notice until the department consents to a transfer or other disposition.

4. All persons so notified shall, within 10 days after receipt of the demand to transmit, inform the department of, and transmit to the department all such credits, other personal property, or debts in their possession, under their control or owing by them within the time and in the manner requested by the department. Except as otherwise provided in subsection 5, no further notice is required to be served to those persons.

5. If the property of the delinquent taxpayer consists of a series of payments owed to him, the person who owes or controls the payments shall transmit the payments to the department until otherwise notified by the department. If the debt of the delinquent taxpayer is not paid within 1 year after the department issued the original demand to transmit, ~~[it]~~ ***the department*** shall issue another demand to transmit to the person responsible for making the payments informing him to continue to transmit payments to the department or that his duty to transmit the payments to the department has ceased.

6. If the notice of the delinquency seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in

the possession or under the control of a bank or other depository institution, the notice must be delivered or mailed to the branch or office of the bank or other depository institution at which the deposit is carried or at which the credits or personal property is held.

7. If any person so notified makes any transfer or other disposition of the property or debts required to be withheld or transmitted, to the extent of the value of the property or the amount of the debts thus transferred or paid, he is liable to the state for any indebtedness due pursuant to ~~[NRS 482.313,]~~ this chapter ***,*** ~~[or]~~ chapter 362, 364A, ~~[365,]~~ 369, 370, 372, 372A, ~~[373,]~~ 374, 377, 377A ~~[, 444A, 585, 590]~~ ***or 444A of NRS, NRS 482.313,*** or ***chapter 585 or*** 680B of NRS from the person with respect to whose obligation the notice was given if solely by reason of the transfer or other disposition the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

Sec. 51. Chapter 365 of NRS is hereby amended by adding thereto a new section to read as follows:

"Department" means the department of motor vehicles and public safety.

Sec. 52. NRS 365.500 is hereby amended to read as follows:

365.500 1. Every dealer shall cause to be kept a true record, in such form as may be prescribed or approved by the department, of all stocks of motor vehicle fuel and fuel for jet or turbine-powered aircraft and of other inflammable or combustible liquids, and of all manufacture, refining, compounding, blending, purchases, receipts, transportations, use, sales and distribution thereof.

2. ~~[Such]~~ ***The*** records are subject to inspection at all times within business hours by the department or its authorized agents, and must remain available for inspection for a period of 3 years ~~[from]~~ ***after*** the date of any entry therein.

3. ~~[Should any dealer wish]~~ ***If a dealer wishes*** to keep proper books and records pertaining to business done in Nevada elsewhere than within the State of Nevada for inspection as provided in this section, he must pay a fee for the examination in an amount per day equal to the amount set by law for out-of-state travel for each day or fraction thereof during which the examiner is actually engaged in examining the dealer's books, plus the actual expenses of the examiner during the time that the examiner is absent from Carson City, Nevada, for the purpose of making the examination ***,*** ~~[;]~~ but the time must not exceed 1 day going to and 1 day coming from the place where the examination is to be made in addition to the number of days or fractions thereof the examiner is actually engaged in auditing the dealer's books. Not more than two such examinations may be charged against any dealer in any year.

4. Any money received must be deposited by the department to the credit of the fund or operating account from which the expenditures for the examination were paid.

5. Upon the demand of the department ~~[or at such times as the tax commission may prescribe by regulation, every]~~ ***, each*** dealer shall furnish a statement showing the contents of the records to such extent ~~[,]~~ ***and*** in such detail and ~~[in such]~~ form as the department may require.

Sec. 53. NRS 366.175 is hereby amended to read as follows:

366.175 1. To the extent permitted by federal law, the department may enter into cooperative agreements with other states and countries for the exchange of information regarding, and the auditing of, persons who use special fuel in motor vehicles operated or intended to operate interstate. Any agreement, arrangement or declaration, or any amendment thereto, is not effective until reduced to writing and signed by the parties thereto or their authorized representatives.

2. An agreement may include, with respect to persons who use special fuel, provisions:

(a) For determining the domicile of those persons;

(b) Specifying the records which are required to be kept by those persons;

(c) Relating to audit procedures, the exchange of information and persons eligible for licensing;

(d) Defining various words and terms;

(e) Setting forth the procedure for collecting special fuel taxes owing to another jurisdiction and forwarding those taxes to that jurisdiction; and

(f) Designed to facilitate the administration of the agreement.

3. The department may, pursuant to the terms of an agreement, forward to the designated representatives of another jurisdiction any information in its possession relating to the manufacture, transportation, shipment, sale or use of special fuel by any person, and the location within this state of any motor vehicles owned by a person who has been identified by another jurisdiction as a user of special fuel.

4. An agreement may provide that each jurisdiction shall audit the records of persons residing or doing business within that jurisdiction to determine if the special fuel taxes owing to each jurisdiction have been properly reported and paid, and requiring each jurisdiction to forward the findings of its audits to every other jurisdiction in which the person who is the subject of an audit has incurred tax liability as a result of his use of special fuel. The audit findings received from another jurisdiction may be used by the department as the basis for an estimated assessment of tax due from a person pursuant to the provisions of ~~[NRS 366.405.]~~ ***section 4 of this act.***

5. Any agreement entered into pursuant to the provisions of this section does not preclude the department from auditing the records of any person subject to the provisions of this chapter.

Sec. 54. Chapter 373 of NRS is hereby amended by adding thereto a new section to read as follows:

"Department" means the department of motor vehicles and public safety.

Sec. 55. NRS 373.020 is hereby amended to read as follows:

373.020 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 373.0205 to 373.029, inclusive, ***and section 54 of this act*** have the meanings ascribed to them in those sections.

Sec. 56. NRS 482.187 is hereby amended to read as follows:

482.187 The department may:

1. Enter into written agreements providing for the periodic payment of delinquent taxes or fees imposed pursuant to this chapter.

2. Adopt regulations:

(a) Setting forth the permissible terms of ~~[such]~~ ***those*** agreements; and

(b) Providing for the cancellation of such an agreement if the person with whom the department has contracted becomes delinquent in his payments pursuant to the agreement or in his payment of other taxes or fees owed to the department pursuant to the provisions of chapter ***365,*** 366, 371 or 482 of NRS.

Sec. 57. NRS 590.120 is hereby amended to read as follows:

590.120 1. Every person, or any officer, agent or employee thereof, shipping or transporting any gasoline or lubricating oil into this state for sale or consignment, or with intent to sell or consign the same, shall pay to the department of ~~[taxation]~~ ***motor vehicles and public safety*** an inspection fee of 0.055 of a cent per gallon for every gallon of gasoline or lubricating oil so shipped or transported into the state, or that is held for sale within this state. ~~[Nothing in this section requires]~~ ***This section does not require*** the payment of an inspection fee on any shipment or consignment of gasoline or lubricating oil when ~~[such]~~ ***the*** inspection fee has ~~[already]~~ been paid.

2. Of each inspection fee paid to the department ~~[of taxation]~~ ***of motor vehicles and public safety*** pursuant to this section, 0.005 of a cent per gallon must be transferred quarterly to an account in the state general fund for the state board of agriculture. The state board of agriculture shall use all money transferred pursuant to this subsection to pay the expenses incurred in enforcing the provisions of NRS 590.070.

3. On or before the 25th day of each calendar month, every person, or any officer, agent or employee thereof, required to pay the inspection fee ~~[mentioned]~~ ***described*** in subsection 1 shall send to the department ~~[of taxation]~~ ***of motor vehicles and public safety*** a correct report of the

gasoline or oil volumes for the preceding month. The report must include a list of distributors or retailers distributing or selling the products and must be accompanied by the required fees.

4. Failure to send the report and remittance as specified in subsections 1 and 3 is a violation of NRS 590.010 to 590.150, inclusive, ***and is*** punishable as provided in NRS 590.150.

5. The provisions of this section must be carried out in the manner prescribed in chapter 365 of NRS and sections 2 to 45, inclusive, of this act.

Sec. 58. NRS 590.130 is hereby amended to read as follows:

590.130 Except as otherwise provided in subsection 2 of NRS 590.120, all inspection fees received by the department of ~~[taxation]~~ ***motor vehicles and public safety*** must be deposited with the state treasurer for credit to the state general fund, and all expenses incurred in carrying out the provisions of NRS 590.010 to 590.150, inclusive, must be paid out of funds provided by direct legislative appropriation.

Sec. 59. NRS 590.720 is hereby amended to read as follows:

590.720 "Department" means the department of ~~[taxation.]~~ ***motor vehicles and public safety.***

Sec. 60. NRS 590.840 is hereby amended to read as follows:

590.840 1. Except as otherwise provided in subsection ~~[3,]~~ ***2,*** the department shall collect for deposit in the fund a fee of 0.75 cent for each gallon of motor vehicle fuel, diesel fuel of grade number 1, diesel fuel of grade number 2 and heating oil imported into this state in one of those forms or refined in this state. The fee imposed by this section is in addition to the taxes imposed by chapters 365 and 366 of NRS.

2. ~~[The department of motor vehicles and public safety shall cooperate with the department of taxation in ascertaining the amount of diesel fuel so imported and the identity of each person liable for payment of the fee upon it.~~

~~3.]~~ The fee imposed by subsection 1 does not apply to motor vehicle fuel, diesel fuel of grade number 1, diesel fuel of grade number 2 or heating oil that is:

(a) Imported or refined by the United States, its unincorporated agencies and instrumentalities, or any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States;

(b) Exported from ~~[the]~~ ***this*** state;

(c) Imported or refined by railroad companies for use in locomotive engines;

(d) Being transported through ~~[the]~~ ***this*** state in interstate commerce; or

(e) Used as fuel for jet or turbine-powered aircraft.

~~[4.]~~ ***3.*** The fee is payable on or before the 25th day of each calendar month for those products subject to the fee that are handled during the preceding calendar month. The department shall prescribe by regulation the manner of payment of the fee and for this purpose may reasonably classify the persons liable for payment. The department may, in collecting the fee, employ any administrative power conferred upon it by chapter 365 of NRS ~~[.~~

~~5.]~~ ***or sections 2 to 45, inclusive, of this act.***

4. The expenses incurred by the department in performing its duties under NRS 590.700 to 590.920, inclusive, are a charge against the fund.

Sec. 61. NRS 366.394, 366.395, 366.3955, 366.396, 366.405, 366.510, 366.560, 366.570, 366.580, 366.590, 366.600, 366.610, 366.620, 366.630 and 366.640 are hereby repealed.

Sec. 62. The regulations adopted by the department of taxation pursuant to NRS 365.110 are void. The legislative counsel shall remove those regulations from the Nevada Administrative Code as soon as practicable after July 1, 2001.

Sec. 63. The act becomes effective on July 1, 2001.

Sec. 64. In preparing the 1999 and 2001 reprints of Nevada Revised Statutes with respect to any section which is not amended by this act or is further amended by another act, and in the Nevada Administrative Code, the legislative counsel shall appropriately correct any references concerning the collection of the taxes imposed by chapters 365 and 366 of NRS from references to the department of taxation to references to the department of motor vehicles and public safety.

TEXT OF REPEALED SECTIONS

366.394 Dishonored checks. If a check submitted to the department for payment of the taxes imposed pursuant to this chapter is dishonored upon presentment for payment, the department may require that any future payments be made by cashier’s check, traveler’s check, money order or cash.

366.395 Interest and penalties on default; when return or statement deemed delinquent.

1. Any person who fails to pay any excise tax, except taxes assessed pursuant to the provisions of NRS 366.405, within the time prescribed by this chapter shall pay, in addition to the tax, a penalty of:

(a) If the amount of the tax owed is $50 or more, 10 percent of the amount owed or $50, whichever is greater; or

(b) If the amount of the tax owed is less than $50, 10 percent of the amount owed,

plus interest on the amount of the tax at the rate of 1 percent per month or fraction thereof, from the date the tax became finally due until the date of payment.

2. A tax return or statement is considered delinquent when it has not been received by the department by the date the tax return or statement is due, as prescribed by the provisions of this chapter.

366.3955 Waiver of penalties and interest for late return or payment; written claim required.

1. If the department determines that the failure of a special fuel supplier, special fuel dealer or special fuel user to file a timely return or pay a tax or fee imposed pursuant to this chapter is due to circumstances beyond his control and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the department may relieve the supplier, dealer or user of all or part of any penalty or interest due.

2. A special fuel supplier, special fuel dealer or special fuel user who requests relief from the payment of a penalty or interest must submit to the department a statement, signed under penalty of perjury, that sets forth the facts upon which he bases his claim for relief.

366.396 Agreement for payment of delinquent taxes, interest or penalties; regulations of department. The department may:

1. Enter into a written agreement with a special fuel supplier, special fuel dealer or special fuel user for the payment of delinquent taxes, interest or penalties imposed pursuant to this chapter.

2. Adopt regulations providing for:

(a) The payment of delinquent taxes, interest or penalties upon the execution of a written agreement between the department and a special fuel supplier, special fuel dealer or special fuel user; and

(b) The cancellation of such an agreement if the special fuel supplier, special fuel dealer or special fuel user becomes delinquent in his payment of the delinquent taxes, interest or penalties owed to the department pursuant to the provisions of this chapter.

366.405 Additional or estimated assessment of special fuel tax: Interest; penalties; notice; redeterminations.

1. If the department is not satisfied with the records or statements of, or with the amount of tax paid by, any person pursuant to the provisions of this chapter, or the department does not receive a return from a person who is required to file a return pursuant to this chapter, it may make an additional or estimated assessment of tax due from that person based upon any information available to it. Every additional or estimated assessment bears interest at the rate of 1 percent per month, or fraction thereof, from the date the tax became due until it is paid.

2. If an additional assessment is imposed, a penalty of 10 percent of the amount of the additional assessment must be added thereto. If any part of the deficiency is found to be caused by fraud or an intent to evade the provisions of this chapter or the regulations adopted pursuant to those provisions, a penalty of 25 percent of the amount of the additional assessment must be added thereto.

3. The department shall give the person written notice of the additional assessment. The notice may be served personally or by mail in the manner prescribed by Rule 5 of the Nevada Rules of Civil Procedure addressed to the person at his address as it appears in the records of the department. Every notice of additional assessment proposed to be assessed pursuant to the provisions of this chapter must be served within 4 years after the claimed erroneous report was filed.

4. If a special fuel user, special fuel dealer or special fuel supplier refuses or fails to make available to the department, upon request, such records, reports or other information as determined by the department to be necessary to enable it to determine that the amount of tax paid by the user or supplier is correct, the additional or estimated assessment made pursuant to the provisions of this section is presumed to be correct and the burden is upon the person challenging the assessment to establish that it is erroneous.

5. Any person against whom an assessment has been made pursuant to the provisions of this section may petition the department in writing for a redetermination within 30 days after service of the notice. If a petition is not filed with the department within that period, the assessment becomes final.

6. If a petition for redetermination is filed within 30 days, the department shall reconsider the assessment and send the petitioner, by certified mail, notice of its decision and the reasons therefor. A petitioner aggrieved by the department’s decision may appeal the decision by submitting a written request to the department for a hearing not later than 30 days after notice of the decision was mailed by the department. The department shall schedule an administrative hearing and provide to the petitioner, not less than 10 days before the hearing, notice of the time and place of the hearing. The department may continue the hearing as it deems necessary.

7. The order of the department upon a petition becomes final 30 days after service of notice thereof.

366.510 Remittances: Time for payment; addition of penalties.

1. Every remittance in payment of an assessment or reassessment shall be payable to the department.

2. If any assessment or reassessment is not paid on or before the date it becomes final, there shall be added thereto in addition to any other penalty provided for in this chapter a penalty of 10 percent of the amount of the tax.

366.560 Suit for tax: Duty of attorney general or district attorney. Whenever any special fuel user, special fuel dealer or special fuel supplier is delinquent in the payment of any obligation imposed pursuant to this chapter, the department may transmit notice of the delinquency to the attorney general or the district attorney of the proper county, who shall proceed at once, by appropriate legal action, to collect all money due the state from the special fuel user, special fuel dealer or special fuel supplier.

366.570 Suit for tax: Attachment. In such action a writ of attachment may issue, and no bond or affidavit previous to the issuing of the attachment shall be required.

366.580 Evidentiary effect of verified claim of department. In any suit brought to enforce the rights of the state under this chapter, a verified claim by the department showing the delinquency shall be prima facie evidence of the amount of such obligation, of such delinquency and of compliance by the department with all provisions of this chapter relating to such obligation.

366.590 Lien of tax: Nature and operation; time of attachment; department to give notice to interest holders before seizure of vehicle; hearing. Except as otherwise provided in NRS 366.610:

1. The excise tax, interest and penalties constitute a lien upon and have the effect of an execution duly levied against any motor vehicle in which special fuel taxable under this chapter is used. The lien attaches at the time the vehicle is operated in this state through the use of the fuel.

2. In accordance with the provisions of subsections 3 and 4, the department may seize and sell any vehicle subject to a lien pursuant to the provisions of subsection 1.

3. The department shall, not less than 10 days before the seizure of a vehicle, give to the registered owner of the vehicle, the legal owner of the vehicle and to every other person known to be claiming an interest in the vehicle, notice of the lien and of its intent to seize and sell the vehicle. The notice shall be deemed effective if sent by certified mail addressed to the person at his address as it appears on the records of the department.

4. Any person who receives notice of the lien may request a hearing to contest the existence or amount of the lien. If a hearing is not requested within 10 days after the effective date of the notice, the department may seize and sell the vehicle.

366.600 Duration of lien. The lien shall not be removed until the excise tax is paid or the motor vehicle subject to the lien is sold in payment of the excise tax.

366.610 Priority of lien. The lien shall be paramount to all private liens or encumbrances of whatever character upon the motor vehicle, and to the rights of any conditional vendor or any other holder of the legal title in or to such motor vehicle, with the following exceptions:

1. The lien shall not be enforceable against any motor vehicle which was transferred in good faith to a bona fide transferee before physical possession of the motor vehicle was taken by the State of Nevada pursuant to the lien.

2. The lien shall be subject to any lien of indebtedness secured by a security agreement which existed against a motor vehicle prior to the time when the lien provided for by NRS 366.590 attached to such motor vehicle if:

(a) Such indebtedness was incurred in good faith to secure a portion of the purchase price of such motor vehicle;

(b) Such indebtedness is secured by a security agreement perfected as required by law; and

(c) Such security agreement was not given, directly or indirectly, to any officer or stockholder of a corporation having the lawful use or control of such motor vehicle.

3. Notwithstanding the provisions of subsection 2, the lien provided for by NRS 366.590 shall be enforceable as to any equity which may remain in a motor vehicle subject to such lien after the encumbrance of any security interest has been removed by repossession and sale of such motor vehicle by the secured party, but no such sale, either public or private, may be had unless the secured party serves by registered or certified mail, at least 5 days prior to the date set for sale, notice upon the director of the department of the time and place of such sale. The department shall notify the secured party, if the name of the secured party is known to the department, at the time the lien attaches to any vehicle, or as soon thereafter as the department learns that the lien has attached.

366.620 Transfer of motor vehicle subject to lien: Issuance of certificate that lien has been removed.

1. If the ownership of a motor vehicle subject to the lien provided for by NRS 366.590 is transferred, whether by operation of law or otherwise, no certificate of registration or certificate of ownership with respect to the motor vehicle may be issued by the department to the transferee or person otherwise entitled thereto until the department has issued a certificate that the lien has been removed.

2. No license issued under chapter 706 of NRS with respect to a motor vehicle which becomes subject to the lien provided for by NRS 366.590 may be transferred until the department has issued a certificate that the lien has been removed.

366.630 Notice to persons controlling credits or other property of delinquent user; transfer or disposition prohibited; persons notified to advise department of such credits and property.

1. If any user is delinquent in the payment of any obligation imposed under this chapter, the department may give notice of the amount of such delinquency by registered or certified mail to all persons having in their possession or under their control any credits or other personal property belonging to such user, or owing any debts to such user at the time of the receipt by them of such notice. Thereafter any person so notified shall neither transfer nor make other disposition of such credits, personal property or debts until the department shall have consented to a transfer or disposition or until 20 days shall have elapsed from and after the receipt of such notice.

2. All persons so notified must, within 5 days after the receipt of such notice, advise the department of any and all such credits, personal property or debts in their possession, under their control or owing by them, as the case may be.

366.640 Remedies cumulative; election of remedies. The remedies of the state provided for in this chapter shall be cumulative, and no action taken by the department shall be construed to be an election on the part of the state or any of its officers to pursue any remedy under this chapter to the exclusion of any other remedy for which provision is made in this chapter.

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