

Rounds illegal tax increase: may 2008 .. keloland news...Governor's Response

Governor Mike Rounds says the controversy on taxing blended ethanol is the result of the South Dakota Legislature's failure to deal with the issue earlier this year. The republican Governor says there is no new tax, but merely a new tax form to help gas stations collect and pay the right amount of tax on the fuel form so they can pay all the tax due when blender pumps mix different grades of ethanol. Democratic Senate Leader Scott Heidepriem says the governor is trying to put an extra tax on ethanol blends after the Legislature rejected the idea.

### **Gov. Rounds set illegal double tax on ethanol**

Dear Editor: Capital Journal - March 2008

Our governor's bill to double tax E85 sold through blender pumps failed yet he "inappropriately" continues to collect this huge tax increase as though his legislation passed. Ironically makes gasoline a lower-taxed product than blends of E85 sold at the blender pump.

South Dakota is the nation's leader in creating new blender pump markets for E85. These new E85 markets are our only opportunity to break through the E10 blend wall and put back a billion dollars annually into the South Dakota economy. The math is easy because ethanol markets have plummeted a dollar/gallon vs gasoline price as the E10 blend wall approaches.

We have given the federal fifty cents/gallon blenders credit to gasoline marketers plus another fifty cents/gallon because the E10 blend wall has strangled marketing opportunities for our billion gallon South Dakota ethanol industry. Importantly blender pumps provide all consumers access to E85 at today's bargain prices.

Governor Round's legislation failed yet he continues to illegally double the taxes on E85: Governor Pawlenty has not followed by dreaming up a self-serving interpretation of the state gas tax law to raise taxes on E85 sold through blender pumps.

Reality clearly tells us that gasoline-only consumers live in the past and burden our environment and economy. Ironically, our governor illegally taxes and unwittingly raised E85 taxes to provide consumer tax incentives to use Opec's gasoline rather than South Dakota's ethanol.

Orrie Swayze

Wilmot

See picture below and Check Dan's story for how SD created E85 and flex fuel vehicles to put another stick in the eye of oil intimidation: How SD goes so goes the nation on small states building ethanol plants, creating E85 fuel, first E85 flex fuel vehicle and installing the nation's first blend pump. All this

created the pathway to bust petroleum's 90% gasoline mandate and enslavement of our nations economy.

Orrie

Governor: Form simply clarifies taxation rate for blended ethanol

BY TERRY WOSTER

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PIERRE - Gov. Mike Rounds stood firm Wednesday in the face of criticism over a new reporting form for ethanol blender pumps that he said gives sellers guidance in calculating the tax owed the state.

A state memo, assailed by some as imposing a new tax without legislative approval, simply is a way to make sure fuel marketers know how much tax money to send the state for mid-grade ethanol blends from blender pumps, Rounds said during an afternoon meeting with reporters in Pierre.

"I heard some of the spin out there that said I'm creating a new law. I'm not creating a new law," he said. "There's a lot of hyperbole and spin, interspersed with a lot of misinformation."

Two Sioux Falls Democrats said Monday that Rounds used the memo to accomplish something legislators killed last session. Sens. Scott Heidepriem and Sandy Jerstad said the memo creates a new tax and defies the Legislature.

Rounds said he tried to handle the problem during the session but got little cooperation.

Sen. Tom Hansen, R-Huron, said the governor's proposal during the session probably threw too much at people too quickly. Hansen was among Senate Tax Committee members who killed the late-session proposal.

"I think there was a consensus that his idea may have some merit, but it was being dumped on us late in the day," Hansen said.

He's sure the issue will return next session in one form or another.

At issue is the proper tax on mid-grade blends of ethanol, a product the state generally tries to promote.

State law has different tax rates for different blends of gasoline. Regular unleaded is taxed at 22 cents a gallon. E85, a blend of at least 75 percent ethanol, is taxed at 10 cents. Other ethanol blends are taxed at 20 cents.

Retailers pay the taxes when they take delivery of fuel, even though the consumer is the final payer of the tax. Blender pumps, which advocates say encourage the use of more ethanol in South Dakota, allow a consumer to dial in a mix of regular fuel and ethanol. Typical blends are 20 percent and 30 percent.

The blender mixes some fuel taxed at 10 cents and some at 20 cents, so logic would suggest the resulting blend - 30 percent blend or whatever - ought to be taxed at some rate between 10 cents and 20 cents. The law doesn't allow that, Rounds said. Any ethanol blend below E85 must be taxed at 20 cents a gallon. Retailers need to know how much additional tax to remit to meet that law with blender-pump transactions, he said.

For example, 65 gallons of unleaded taxed at 22 cents (\$14.30) and 35 gallons of E85 taxed at 10 cents (\$3.50) result in \$17.80 in taxes collected. However, the resulting 100 gallons of E30 blend by law must be taxed at 20 cents a gallon, or \$20. The revenue memo shows that the seller must collect an additional \$2.20.

Rounds said some intermediate rate or sliding rate scale might be a good solution, but it would require changes in state law and careful analysis of the effect on the state's highway trust fund, used for road and bridge work.

"I want it to be revenue neutral," he said.

A bill that died during the last session was aimed at sparking discussion of how the law might be crafted to encourage blender pump use and not reduce income to the highway trust fund, Rounds said.

Rounds said the recent memo will ensure that marketers don't face audits and penalties for remitting the wrong tax amount to the state. He also said he'll allow marketers to apply for a tax credit for businesses that blend ethanol. The law doesn't allow those blends to be remixed, though, as would be the case in a blender pump situation, so Rounds said he intends not to enforce that part of the law until legislators have another chance to look at long-range solutions.

A memo from Paul Kinsman of the state Revenue and Regulation Department said there are 70 E85 pumps and 17 blender pumps in the state.

While critics say the tax already has been paid on the regular and blended fuel delivered to the station, Kinsman's memo says that when a blender pump "takes E85 and blends it with unleaded gasoline or E10, an entirely new product is formed, upon which the correct amount of tax has not been assessed."

Reach reporter Terry Woster at 605-224-2760.

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## **RADIO INTERVIEW: GOVERNOR'S GAFFE?**

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### **Abstract:**

Legislators take umbrage at tone of ethanol remarks  
Condescending comments Gov. Mike Rounds made on two South Dakota radio stations made their way into the mailboxes of several current and former state legislators last week. "When the governor takes pot shots at the Legislature, it sure does not help bridge the communication gap between the legislative and executive branches," Apa said.

### **Full text:**

Legislators take umbrage at tone of ethanol remarks

Condescending comments Gov. Mike Rounds made on two South Dakota radio stations made their way into the mailboxes of several current and former state legislators last week.

Now some of the lawmakers at whom Rounds' comments were targeted aren't happy.

Rounds was discussing the controversy surrounding a proposed change in the way taxes on ethanol/gasoline mixes are calculated.

Lawmakers, he said, killed a related proposal during the legislative session "out of plain ignorance ... and I think most of them (are) now saying, 'Oops, now what do we do?'"

Rounds continued, "We went to the Legislature to fix it, and they turned around and said, 'Gee, you're trying to increase a tax.' We said, 'You've got to learn how to read legislation, folks.'"

Rounds' comments were broadcast on WNAX in Yankton and KCCR in Pierre.

State Sen. Jerry Apa, R-Lead, chairman of the Senate Appropriations Committee, said it bothered him to hear the governor make such remarks.

"When the governor takes pot shots at the Legislature, it sure does not help bridge the communication gap between the legislative and executive branches," Apa said.

Former state Sen. Pro-tem Lee Schoenbeck, R-Watertown, said he was provided with a copy of the governor's comments.

"From a former legislative leader's perspective, you don't like anyone speaking ill of the Legislature like that," Schoenbeck said. "If given another chance to speak about it, he probably wouldn't have used those kinds of demeaning words."

Indeed, Rounds said he could have found a better way to say things. When I spoke to him Tuesday, he said he knew some legislators found his comments controversial. Yet Rounds says differences of opinion are part of the legislative process.

"I have been quoted in the press saying I think they acted ignorantly of the law in some areas. I'm not sure of another way to say it. I don't think they intended to do something wrong. I think they were just ignorant of what the law read. You try to bring that into focus. Sometimes, maybe I could say it in a more appropriate fashion," Rounds said. "Sometimes you get carried away. You can find a better way to say it."

Disagreements are not relished but still are a part of state government, Rounds said.

"I don't think there has ever been a governor who has had a perfect working relationship with a select group of legislators. There are a lot of egos out there. And because these legislators are leaders, they are going to have their point of view, and there is going to be some friction," Rounds said.

Rounds said something else during the radio appearance that got state Sen. Gene Abdallah, R-Sioux Falls, riled up.

"We think we got a long-term solution in the works to fix it," of the blender pump tax mess, Rounds told the radio station. "But in the meantime, I am ignoring the part of the law that says I'm supposed to collect 22 cents a gallon on blender pumps, and we are going to collect 20 cents a gallon."

"My outrage is that he is ignoring the law by his own admission," Abdallah said. "The governor says, 'I'm ignoring that part of the law.' I'm not arguing the issue of laptops or ethanol blenders. I'm arguing the fact that the Legislature said, 'No money for laptops.' He had a bill in for \$2.9 million, and the Legislature, the committee, said 'No.' "

Abdallah was referring to another 'Rounds vs. Legislators' dispute over a laptop program Rounds paid for out of a supposedly empty state fund.

But Rounds says one of the responsibilities he has is to spend the money legislators appropriate as efficiently as he can.

"And I think most citizens understand that they don't expect me to spend every single penny just because the Legislature said I had permission to spend it," Rounds said.

Through all of this, Abdallah has never concealed the fact that he has a pet project, the money for which wandered into harm's way.

"My pet project, he cut \$2 million out of the public safety budget," Abdallah said. "I'm just saying you can't cut public safety \$2 million when it is 11 percent of the entire budget of public safety." For Abdallah, that conflict still is simmering.

The concerns reach across party lines.

State Sen. Sandy Jerstad, D-Sioux Falls, said this is not the first time Rounds thumbed his nose at the Legislature.

No matter the party, Jerstad said things the governor does often don't sit well with legislators.

"He seems to take control of everything, never mind what the Legislature thinks. 'No matter what the Legislature does, I'm going to do what I want to.' He is in control, and he wants people to know that," she said.

Rounds said some disagreements are healthy.

"The more cooperative spirit you can put together, the better you are. But you can't let good programs go, (and) every now and then you simply disagree with one another. And sometimes an open and honest disagreement is healthy," Round said. "Look, these people are good people. ... We all get frustrated once in a while. Sometimes you try to express frustration, and I am just as guilty of that as anyone else."

David Kranz's column appears Monday, Wednesday and Friday. Call him at 331-2302 or write to him at the Argus Leader, Box 5034, Sioux Falls, SD 57117-5034.

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