

77.52 History: 1961 c. 620, 652; Stats. 1961 s. 77.52; 1963 c. 19, 141, 209, 223, 224, 250, 254, 352, 432; 1963 c. 459 ss. 27, 28; 1963 c. 477, 494, 556, 558; 1965 c. 147, 626, 634; 1969 c. 154, 286, 392, 454; 1969 c. 500 s. 31.

Editor's Note: The following decisions construed provisions of 77.52 in effect prior to the effective date of the amendatory legislation of 1969: *Telemark Co. v. Dept. of Taxation*, 28 W (2d) 637, 137 NW (2d) 407; and *National Amusement Co. v. Dept. of Revenue*, 41 W (2d) 261, 163 NW (2d) 625. See also 52 Atty. Gen. 432.

77.53 History: 1961 c. 620; 1961 c. 652 s. 14; Stats. 1961 s. 77.53; 1963 c. 19; 1965 c. 299, 634; 1969 c. 154.

77.54 History: 1961 c. 620, 652; 1963 c. 123, 224, 245, 447, 513; 1965 c. 147, 382; 1967 c. 49; 1969 c. 154; 1969 c. 158 s. 106; 1969 c. 257, 277, 477.

77.55 History: 1961 c. 620; Stats. 1961 s. 77.55; 1969 c. 154.

77.56 History: 1961 c. 620; Stats. 1961 s. 77.56; 1969 c. 154.

77.57 History: 1961 c. 620; Stats. 1961 s. 77.57; 1969 c. 154.

77.58 History: 1961 c. 620; Stats. 1961 s. 77.58; 1963 c. 224, 519, 562; 1967 c. 43; 1969 c. 55, 154.

77.59 History: 1961 c. 620; Stats. 1961 s. 77.59; 1965 c. 252; 1969 c. 84, 154.

77.60 History: 1961 c. 620; Stats. 1961 s. 77.60; 1963 c. 557; 1969 c. 154.

77.61 History: 1961 c. 620, 652; Stats. 1961 s. 77.61; 1963 c. 224, 519; 1969 c. 84, 154; 1969 c. 276 s. 590 (1), (2).

77.62 History: 1961 c. 652; Stats. 1961 s. 77.62; 1963 c. 275; 1969 c. 84, 154, 202; 1969 c. 276 s. 590 (1), (2).

77.621 History: 1969 c. 154; Stats. 1969 s. 77.621.

77.625 History: 1963 c. 73; Stats. 1963 s. 77.625.

77.63 History: 1961 c. 620, 652; Stats. 1961 s. 77.63; 1963 c. 173, 566; 1965 c. 433 s. 121; 1967 c. 43; 1967 c. 291 s. 14; 1969 c. 154 s. 377; 1969 c. 276 s. 590 (1).

77.64 History: 1961 c. 620, 652; Stats. 1961 s. 77.64; 1963 c. 12, 83; 1965 c. 163; 1965 c. 433 s. 121; 1967 c. 291 s. 14; 1969 c. 154 s. 377; 1969 c. 276 s. 590 (1).

On items constituting "merchants' stock in trade, manufacturers' materials and finished products, and livestock" for purposes of tax credit provisions of 77.64 see 52 Atty. Gen. 387.

77.67 History: 1963 c. 83; Stats. 1963 s. 77.67.

77.68 History: 1963 c. 83; Stats. 1963 s. 77.68; 1965 c. 433 s. 121; 1967 c. 291 s. 14; 1969 c. 154 s. 377; 1969 c. 276 s. 590 (1).

77.69 History: 1963 c. 83; Stats. 1963 s. 77.69.

77.70 History: 1969 c. 154; Stats. 1969 s. 77.70.

77.71 History: 1969 c. 154; Stats. 1969 s. 77.71.

77.72 History: 1969 c. 154; Stats. 1969 s. 77.72.

77.73 History: 1969 c. 154; Stats. 1969 s. 77.73.

77.74 History: 1969 c. 154; Stats. 1969 s. 77.74.

77.75 History: 1969 c. 154; Stats. 1969 s. 77.75.

77.76 History: 1969 c. 154; Stats. 1969 s. 77.76.

77.77 History: 1969 c. 154; Stats. 1969 s. 77.77.

CHAPTER 78.

Motor Vehicle Fuel Taxes.

Legislative Council Note, 1953: This bill proposes to repeal and recreate Chapter 78 of the Wisconsin statutes, better known as the Motor Fuel Tax Law, and was prepared by a representative committee of the petroleum industry and the department, with the assistance of John E. Conway, revisor of statutes.

The present motor fuel tax law was enacted in 1933. It has been amended from time to time since its enactment, but it has not been kept abreast of the changes in marketing methods of the petroleum industry and the development of motor fuels which have occurred over the past nineteen years.

The department and the industry have avoided, insofar as possible, any controversial matters of policy and other matters which are viewed as legislative prerogatives. The revisions are therefore primarily made from the standpoint of administration.

Under the present law "motor fuel" means and includes Class 1 and Class 2 motor fuels. Class 1 motor fuel includes the gasoline fractions of petroleum products which are subject to tax upon receipt in this state. Class 2 motor fuel includes any other liquid or gas which may be used in motor vehicles and is subject to tax only when used or sold for use in motor vehicles.

Under the proposed law "motor fuel" would mean only the gasoline fractions. Class 2 motor fuel would be known as "special fuel" in keeping with a more or less generally accepted use of the term.

The proposed revision would refer to Chapter 78 as the Motor Vehicle Fuel Tax Law and would divide it into three subchapters. Subchapter I refers to Motor Fuel Tax; Subchapter II refers to Special Fuel Tax; Subchapter III refers to Provisions Common to Motor Fuel Tax and Special Fuel Tax. It is thought that such arrangement would facilitate ready reference and make the chapter more understandable.

The purpose of this bill is substantially twofold.

First is an attempt to clarify language, to re-locate provisions to make the chapter more readable, and to modernize administrative

procedure of collecting the tax on motor fuel. There are no real basic changes in the law as it affects motor fuel tax.

Secondly, and of major importance, is the attempt to eliminate the loopholes for tax evasion on special fuels.

The present law places the primary responsibility for collection of the tax on special fuels upon the licensed wholesale distributor when he sells special fuel to be used in motor vehicles. Such procedure serves its purpose when the wholesale distributor has definite knowledge of this use. However, under present marketing practices the wholesale distributor resells to dealers, peddlers and large consumers having their own storage facilities, and thereby he has no definite knowledge of the ultimate use of the special fuel. Therein lies the opportunity for tax evasion inasmuch as few of such customers file reports with the department, and it is only through field audits and investigations that such tax evasion is discovered.

For the past four years a committee of the North American Gasoline Tax Conference has been drafting a uniform law covering the taxation of special fuel for consideration by all states. The laws of the various states have been a hodge-podge on this subject which has resulted in widespread tax evasion and tax avoidance by interstate operators.

The drafted bill which is presented follows in principle the uniform law proposed by the North American Gasoline Tax Conference for taxing special fuels. It places the liability for the payment of the tax to the state upon the person who delivers the special fuel into the fuel supply tank of a motor vehicle whether he be a wholesale distributor, a dealer, a peddler or a consumer. Such persons are required to be licensed and bonded.

It should be pointed out that the preponderant part of special fuel consumed is consumed for non-taxable purposes. Probably not more than 1 per cent of the total consumption is subject to tax. It holds, therefore, that the same procedure used in the collection of gasoline tax cannot be used in the collection of special fuel tax. If the same procedure were used the problem of making refunds would become an economic burden, and the administrative costs would be tremendous, and further it would be repugnant to the public. No doubt there will be some increase in administrative costs in administering the tax collection on special fuel, but the amount of additional tax collected will far outweigh the additional cost.

Approximately a dozen states have already passed, in principle, the uniform law on special fuel as recommended by the North American Gasoline Tax Conference. The State of Indiana reports that it is much easier to collect the tax under their new law and there has been a sharp increase in their tax collections on special fuels. The State of Michigan reports that their tax collections on special fuels have increased by two-thirds. The State of Minnesota reports that their tax increased by 13 per cent. Other states which have passed the law have had it in effect for too short a time to have figures available to indicate any trend. It would appear, therefore,

that the principles of this bill with respect to special fuel tax are sound.

Section 78.11 (6) pertaining to price posting is transferred by this bill to Chapter 100. It is felt that this subsection is a regulation of trade practices and more logically belongs in that chapter. It has no apparent relation to tax collection. (Bill 30-A)

78.01 History: 1953 c. 510; Stats. 1953 s. 78.01; 1955 c. 240, 287; 1965 c. 593; 1969 c. 9.

On equality and exercises of taxing power see notes to sec. 1, art. I; on delegation of power see notes to sec. 1, art. IV; and on the rule of taxation (privilege taxes) see notes to sec. 1, art. VIII.

A city is not authorized to maintain an action to restrain state officials from enforcing the gasoline-tax law, as it is no part of the business or of a city to censor or supervise the activities of its creator, the state; and the mere fact that it may be a purchaser of the taxed gasoline does not affect the question, because any burden in this regard is passed on to the citizens who furnish the revenues of the city. In re Application of Racine, 196 W 604, 220 NW 398, 221 NW 109.

The Federal Land Bank of St. Paul is exempt from the motor fuel tax, under a proper claim on the required form at the time of purchasing gas. 25 Atty. Gen. 683.

The motor fuel tax imposed under ch. 78, Stats. 1937, is levied upon sales of gasoline and other motor vehicle fuels within the meaning of the Hayden-Cartwright act, permitting the state to collect such taxes on motor fuels sold for private use at post exchanges on military reservations. It is only where the state has ceded land and exclusive jurisdiction thereof to the U.S. government or where the U.S. government has otherwise acquired exclusive jurisdiction that enabling legislation such as the Hayden-Cartwright act becomes necessary in order for the state to exercise its jurisdiction and to tax motor fuels sold on reservations for private use. 27 Atty. Gen. 452.

78.02 History: 1953 c. 510; Stats. 1953 s. 78.02; 1969 c. 276 s. 590 (1).

78.03 History: 1953 c. 510; Stats. 1953 s. 78.03; 1955 c. 337.

78.04 History: 1953 c. 510; Stats. 1953 s. 78.04; 1955 c. 215; 1967 c. 130.

78.05 History: 1953 c. 510; Stats. 1953 s. 78.05.

78.06 History: 1953 c. 510; Stats. 1953 s. 78.06.

78.07 History: 1953 c. 510; Stats. 1953 s. 78.07; 1959 c. 636; 1961 c. 100; 1967 c. 130 ss. 2, 14; 1967 c. 270; 1969 c. 55.

Motor fuel imported into this state by railroad tank car to be blended is "received" and subject to the motor fuel tax when unloaded in this state. 33 Atty. Gen. 52.

78.08 History: 1953 c. 510; Stats. 1953 s. 78.08; 1967 c. 130.

78.09 History: 1953 c. 510; Stats. 1953 s. 78.09; 1955 c. 608; 1967 c. 130.

78.10 History: 1953 c. 510; Stats. 1953 s. 78.10; 1969 c. 9.

78.11 History: 1953 c. 510; Stats. 1953 s. 78.11; 1965 c. 433 s. 121; 1967 c. 291 s. 14.

Under ch. 312, Laws 1933, the state treasurer may accept the personal bond of county highway committee members or other security furnished by the county not in the form of a bond. 22 Atty. Gen. 581.

Receivers who are engaged in business as wholesalers must file the bond required. 22 Atty. Gen. 723.

The state treasurer should cancel and surrender the old bond whenever a new bond has been furnished by a wholesale dealer in motor fuel, as soon as satisfied that all liability under the old bond has been fully discharged. 23 Atty. Gen. 782.

78.12 History: 1953 c. 510, 631; Stats. 1953 s. 78.12; 1955 c. 287, 336; 1965 c. 593; 1969 c. 9.

78.13 History: 1953 c. 510; Stats. 1953 s. 78.13; 1963 c. 450.

78.14 History: 1953 c. 510; Stats. 1953 s. 78.14; 1955 c. 287; 1965 c. 593.

78.15 History: 1953 c. 510; Stats. 1953 s. 78.15; 1955 c. 696 s. 18.

78.16 History: 1953 c. 510; Stats. 1953 s. 78.16.

78.17 History: 1953 c. 510; Stats. 1953 s. 78.17.

78.18 History: 1953 c. 510; Stats. 1953 s. 78.18.

78.19 History: 1953 c. 510; Stats. 1953 s. 78.19.

78.20 History: 1955 c. 336; Stats. 1955 s. 78.20; 1961 c. 599; 1967 c. 130; 1969 c. 9.

78.40 History: 1953 c. 510; Stats. 1953 s. 78.40; 1955 c. 240, 287; 1965 c. 593.

78.41 History: 1953 c. 510; Stats. 1953 s. 78.41; 1969 c. 276 s. 590 (1).

78.42 History: 1953 c. 510; Stats. 1953 s. 78.42; 1955 c. 337.

78.43 History: 1953 c. 510; Stats. 1953 s. 78.43.

78.44 History: 1953 c. 510; Stats. 1953 s. 78.44.

78.45 History: 1953 c. 510; Stats. 1953 s. 78.45.

78.46 History: 1953 c. 510; Stats. 1953 s. 78.46.

78.47 History: 1953 c. 510; Stats. 1953 s. 78.47.

78.48 History: 1953 c. 510; Stats. 1953 s. 78.48; 1969 c. 9.

78.49 History: 1953 c. 510; Stats. 1953 s. 78.49; 1955 c. 287, 336, 652; 1965 c. 593; 1969 c. 9.

78.50 History: 1953 c. 510; Stats. 1953 s. 78.50; 1963 c. 450.

78.51 History: 1953 c. 510; Stats. 1953 s. 78.51; 1957 c. 97.

78.52 History: 1953 c. 510; Stats. 1953 s. 78.52; 1955 c. 287; 1965 c. 593; 1967 c. 130.

78.53 History: 1953 c. 510; Stats. 1953 s. 78.53.

78.65 History: 1953 c. 510; Stats. 1953 s. 78.65; 1967 c. 130.

78.66 History: 1953 c. 510; Stats. 1953 s. 78.66.

78.67 History: 1953 c. 510; Stats. 1953 s. 78.67; 1959 c. 181; 1967 c. 130.

78.68 History: 1953 c. 510; Stats. 1953 s. 78.68; 1963 c. 428, 450; 1967 c. 130, 156.

78.69 History: 1953 c. 510; Stats. 1953 s. 78.69; 1959 c. 659 s. 79.

78.70 History: 1953 c. 510; Stats. 1953 s. 78.70.

In an action to foreclose a lien claim on an oil company's property, the mere fact that the company, in an answer to the state's cross-complaint, expressed willingness to give the state a lien on its property for unpaid gasoline taxes is not controlling and does not change the situation revealed by the undisputed facts under which the state was not entitled to a lien. *Hilam, Inc. v. Petersen Oil Co.* 217 W 86, 258 NW 365.

78.71 History: 1953 c. 510; Stats. 1953 s. 78.71; 1969 c. 362.

78.72 History: 1953 c. 510; Stats. 1953 s. 78.72.

78.73 History: 1953 c. 510; Stats. 1953 s. 78.73; 1965 c. 7; 1967 c. 130.

Making a dealer's failure to pay over motor vehicle fuel taxes collected by him a misdemeanor imposes a penalty for mere nonpayment and does not preclude prosecution of the dealer for embezzlement where intent to defraud appears. *Anderson v. State*, 221 W 78, 265 NW 210.

Filing a fraudulent claim for refund of motor fuel taxes is a violation of 78.27 (d), Stats. 1947, although the fraud is discovered and no money is paid on such claim. 36 Atty. Gen. 425.

78.74 History: 1953 c. 510; Stats. 1953 s. 78.74.

78.75 History: 1953 c. 510, 631; Stats. 1953 s. 78.75; 1955 c. 593; 1967 c. 130; 1969 c. 9.

A county is not entitled, under 78.09, Stats. 1931, to a refund of motor vehicle fuel tax paid on gasoline used in county trucks and tractors in plowing snow on public highways. 20 Atty. Gen. 1268.

An individual who uses motor fuel in a farm truck for power purposes on a farm is not entitled to refund of motor fuel tax. 22 Atty. Gen. 872.

A county is not entitled to refund of the state gasoline tax paid by it, when gasoline is used in recovery program projects. 23 Atty. Gen. 84.

The owner of a truck which, while it remains on highways, pumps by means of a small gasoline consuming pump oil from tank on chassis to a household tank is not entitled

to a refund under 78.14, Stats. 1935. 25 Atty. Gen. 293.

An original invoice for the sale of motor fuel which does not on its face give the name of the seller so as to clearly identify the one who made the sale will not support a claim for refund under 78.75, Stats. 1955. 44 Atty. Gen. 345.

Under 78.75, Stats. 1955, the refund to a motor fuel wholesaler consuming its entire receipt for nonhighway use is limited to the amount of tax it has paid thereon. 46 Atty. Gen. 30.

78.76 History: 1953 c. 510; Stats. 1953 s. 78.76.

A deputy oil inspector, appointed under ch. 168, has no power as such to stop a vehicle transporting more than 20 gallons of gasoline into Wisconsin, examine documents covering shipment, inspect gasoline and then report the origin and destination of shipment; but such duties may be conferred on him for performance of duties under 78.09, Stats. 1939. 28 Atty. Gen. 342.

78.77 History: 1953 c. 510, 631; Stats. 1953 s. 78.77; 1967 c. 270; 1969 c. 9; 1969 c. 276 s. 590 (4).

78.78 History: 1953 c. 510; Stats. 1953 s. 78.78.

78.79 History: 1953 c. 510; Stats. 1953 s. 78.79.

A written directive of the department of taxation, instructing its auditors that any shortage or shrinkage in nontaxable Class 2 motor fuel over and above one per cent of the amount purchased should be deemed to have been blended with taxable Class 1 motor fuel and sold as Class 1 motor fuel when delivered by tank truck with 2 or more compartments, with a single pump and meter, and that the excess of over one per cent of shortage should be assessed as taxable motor fuel, was a rule or regulation, within 78.13, 78.24, and 227.01 (2), Stats. 1947, which was required by 227.03 to be filed in the office of the secretary of state before becoming effective, and hence, if otherwise valid, it was not effective and could not be applied until so filed. *Mondovi Co-op. Equity Asso. v. State*, 258 W 505, 46 NW (2d) 825.

78.80 History: 1953 c. 510; Stats. 1953 s. 78.80; 1955 c. 613.

The provisions of 78.13 (3), Stats. 1951, according confidential status to records of the department of taxation, extend to all records relative to administration of ch. 78. 41 Atty. Gen. 78.

78.81 History: 1953 c. 510; Stats. 1953 s. 78.81; 1961 c. 495.

78.82 History: 1953 c. 510; Stats. 1953 s. 78.82.

78.83 History: 1953 c. 510; Stats. 1953 s. 78.83.

CHAPTER 79.

Department of Transportation.

79.01 History: 1969 c. 157; Stats. 1969 s. 79.01.

79.02 History: 1969 c. 157; Stats. 1969 s. 79.02.

CHAPTER 80.

Laying Highways.

Editor's Note: Extensive notes on ch. 334, Laws 1943, revising the highway laws, are set forth on pages 1296 to 1300, Wis. Statutes, 1943.

80.01 History: 1869 c. 152 s. 85, 86; 1874 c. 50; R. S. 1878 s. 1295; 1882 c. 253; 1885 c. 102; Ann. Stats. 1889 s. 1294, 1294a, 1295; Stats. 1898 s. 1294, 1295; 1901 c. 132 s. 1 to 3; Supl. 1906 s. 1299j to 1299L; 1909 c. 91; 1911 c. 663 s. 150; 1949 c. 70; 1913 c. 525; 1923 c. 108 s. 3, 4, 76 to 78; Stats. 1923 s. 80.01, 80.63; 1931 c. 295 s. 2; 1943 c. 334 s. 16, 17; Stats. 1943 s. 80.01; 1949 c. 70; 1951 c. 380, 520.

1. Validation of highways, recorded and worked.
2. Validation of highways, unrecorded and worked.
3. Use and protection of abutting lands.
4. Defective proceedings; dedication.

1. Validation of Highways, Recorded and Worked.

Under sec. 1295, R. S. 1878, in order that a road may become a public highway by having been worked for 3 years, there must at least be an order laying out such highway, made by the proper officers and filed in the office of the town clerk where such highway is situated. *Beyer v. Crandon*, 98 W 306, 73 NW 771.

Defects in proceedings to lay out a highway across a railroad right-of-way are not cured by opening and working such highway, if within 3 years the railroad company fences across the same and puts in gates. *Hunter v. Chicago, St. P., M. & O. R. Co.* 99 W 613, 75 NW 977.

A highway laid out by irregular order and then abandoned under 80.32 (2) does not become a public highway thereafter by being worked for 3 years under the provisions of 80.01, Stats. 1921. The maintenance of gates across the line of travel is inconsistent with the existence of a public highway. *State v. Halvorson*, 187 W 611, 205 NW 426.

The highway validated by sec. 86, ch. 152, Laws 1869, is not a highway by user but a highway laid out by the supervisors of a town, and the language "so far as they have been so opened and worked", in sec. 86, does not limit the width of the highway to that part actually worked and traveled, but the width of the highway is as determined by the order of the supervisors laying it out. *Jacobosky v. Ahnapée*, 244 W 640, 13 NW (2d) 72.

On highways by user as distinguished from laid highways see *Barrows v. Kenosha County*, 8 W (2d) 58, 98 NW(2d) 461.

2. Validation of Highways, Unrecorded and Worked.

Where there is a continuous line of road used by the public and work has been done on a portion thereof under direction of the authorities for more than 10 years it is a public highway. *Schribner v. Blute*, 28 W 148.