

CHAPTER 78.

MOTOR VEHICLE FUEL TAXES.

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SUBCHAPTER I.

MOTOR FUEL TAX.

78.01 Tax imposed; collected; exceptions. (1) AMOUNT OF TAX AND BY WHOM PAID. An excise tax of 6 cents per gallon is hereby imposed on all motor fuel sold, used or distributed in this state except as otherwise provided. The motor fuel tax is to be computed and paid as provided in this chapter. Except as otherwise provided, the wholesaler, as hereinafter defined, shall collect from the purchaser and the purchaser shall pay to such wholesaler the tax imposed by this section on each sale of motor fuel by such wholesaler at the time of such sale, irrespective of whether such sale is for cash or on credit. In each subsequent sale or distribution of motor fuel on which the tax has been collected as herein provided, the tax so collected shall be added to the selling price so that said tax is paid ultimately by the user of said motor fuel.

(2) EXCEPTIONS. No tax is hereby imposed upon or with respect to the following:

(a) Motor fuel exported from this state by a licensed wholesaler if transported by him or motor fuel exported from this state from a wholesaler's licensed place of business if transported by a carrier for hire. Motor fuel carried out of this state in the ordinary fuel tank of a motor vehicle is not motor fuel exported from this state.

(b) Motor fuel sold to the United States or its agencies where such sale is evidenced by an exemption certificate executed by an authorized representative of the U. S. government or agency thereof certifying that the motor fuel purchased is for the exclusive use of the U. S. government or its agencies.

(c) Motor fuel sold to any post exchange or other concessionaire upon any federal reservation within this state, but the tax on such motor fuel shall be collected by the department from such post exchange or other concessionaire to the extent permitted by federal law.

(d) Motor fuel sold to a common motor carrier as defined in ch. 194, when such carrier certifies to the department that the motor fuel is for use in the operation of a motor vehicle for the urban mass transportation of passengers as defined in s. 71.18 (2) (a).

(3) MOTOR FUEL USED FOR INDUSTRIAL PURPOSES EXEMPT; CONDITIONS. Any user of motor fuel for industrial purposes who buys in original packages motor fuel on which the tax has not been imposed shall be exempt from payment of the tax upon obtaining authority for such exemption from and posting bond with the department in a sum approved by it. Not later than the twentieth day of each calendar month such user shall file with the department invoices of all such purchases made by him during the preceding month accompanied by an affidavit, prescribed and furnished by the department, certifying that the purchased motor fuel is to be used solely for industrial purposes and will not be used in any motor vehicle upon any public highway.

History: 1953 c. 510; 1955 c. 240, 287.

78.02 Department defined. "Department" means the state department of taxation.

History: 1953 c. 510.

78.03 Motor vehicle and mobile machinery and equipment defined. (1) "Motor vehicle", as used in this chapter, means any automobile, truck, truck-tractor, tractor, bus, vehicle or other conveyance which is self-propelled by an internal combustion engine or motor and licensed for highway use, except it does not include mobile machinery and equipment.

(2) "Mobile machinery and equipment", as used in this chapter, means a vehicle which is self-propelled by an internal combustion engine or motor but not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway such as farm tractors, ditch digging apparatus, power shovels, drag lines, earth-moving equipment and machinery and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers and earth-moving scrapers. The foregoing enumeration shall not operate to exclude other vehicles which are within the general terms of this subsection.

(3) Mobile machinery and equipment shall not include dump trucks or self-propelled vehicles originally designed for the transportation of persons or property to which machinery has been attached such as truck-mounted transit mixers, cranes, shovels, welders, air compressors, well-boring apparatus, corn shellers, lime spreaders and feed grinders.

History: 1953 c. 510; 1955 c. 337.

78.04 Motor fuel defined. "Motor fuel" means:

(1) All products commonly or commercially known or sold as gasoline (including casing-head and absorption or natural gasoline), benzol, benzene or naphtha (except commercial or industrial naphthas or solvents for exclusive use other than as a fuel for motor vehicles) regardless of their classification or uses;

(2) Any liquid prepared, advertised, offered for sale or sold for use as or commonly and commercially used as a fuel in internal combustion engines (if such liquid has a flash point of less than 110 degrees Fahrenheit when tested in the Tagliabue closed cup or when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene and similar petroleum products (American Society of Testing Materials designation D-86) shows not less than 10 per cent distilled (recovered) below 347 degrees Fahrenheit or not less than 95 per cent distilled (recovered) below 464 degrees Fahrenheit) but not including combustible gases which exist in a gaseous state at 60 degrees Fahrenheit and at a pressure of 14-7/10 pounds per square inch absolute, unless, until and to the extent such combustible gases are used as an ingredient of motor fuel as defined in sub. (1); or

(3) That quantity of any other product, regardless of character, when used as an ingredient of motor fuel as defined in sub. (1) or (2).

History: 1953 c. 510; 1955 c. 215.

78.05 Blending defined. "Blending" means the mixing together of any one or more products of petroleum, with or without other products, and regardless of the original character of the products so blended, provided the resultant product so obtained is motor fuel as defined in s. 78.04.

History: 1953 c. 510.

78.06 Manufacturing defined. "Manufacturing" means producing motor fuel by refining or preparing motor fuel by any process involving substantially more than the blending of motor fuel.

History: 1953 c. 510.

78.07 Motor fuel received. (1) Motor fuel which is produced, refined, blended or manufactured, or imported into this state for manufacturing, by any person at a refinery, marine terminal, pipe line terminal, pipe line tank farm or place of manufacture in this state, or motor fuel which is imported into this state by boat, barge or pipe line and delivered in such boat or barge or by such pipe line to any person at a refinery, marine terminal, pipe line terminal, pipe line tank farm or place of manufacture in this state for storage:

(a) Except as otherwise provided in pars. (b) and (c), shall be deemed received by such person when the motor fuel is loaded into tank cars, ships or barges, tank trucks, tank wagons or other types of transportation equipment, containers or facilities at such refinery, marine terminal, pipe line terminal, pipe line tank farm or place of manufacture for ultimate destination within this state or when the motor fuel is placed in any tank or other container from which sales or deliveries not involving transportation are made directly;

(b) Shall be deemed received by a wholesaler licensed under s. 78.09 (1), other than the aforementioned person, at the time and place of withdrawal when withdrawn in 4,000 gallon lots or more and shipped or delivered to such wholesaler's licensed place of business, or if shipped or delivered to an unlicensed place of business shall be deemed received by the wholesaler licensed under s. 78.09 (1) for whose account such shipment or delivery is made to the unlicensed place of business; or

(c) Shall be deemed received by a wholesaler licensed under s. 78.09 (2) (c) at the time and place of withdrawal when withdrawn in 4,000 gallon lots or more pursuant to such license and loaded into such wholesaler's transportation equipment for export from this state.

(2) (a) During any period of an emergency when marine or pipe line transportation to any marine terminal, pipe line terminal or pipe line tank farm is interrupted, the department may permit the storage at such marine terminal, pipe line terminal or pipe line tank farm to be supplied by other means of transportation from within or without this state and the motor fuel so supplied shall then be subject to the provisions of sub. (1) as if imported by boat, barge or pipe line.

(b) In case of an emergency the department may permit the storage of motor fuel in quantities of 100,000 gallons or more at any marine terminal, pipe-line terminal, or pipe-line tank farm to be supplied by other means of transportation from a refinery within the state, and the motor fuel so stored shall then be subject to the provisions of sub. (1) as if imported by boat, barge or pipe-line.

(3) Except as provided in subs. (1) and (2), motor fuel imported into this state shall be deemed received in this state at the time and place of unloading and by the person who is the owner thereof immediately after unloading; except that motor fuel sold or distributed to unlicensed persons in this state by a person licensed under s. 78.09 (2) (a) or (b) shall be deemed received by such licensed person at the time and place of unloading in this state.

(4) Any product, not a motor fuel, blended as a component part of motor fuel other than at a refinery, marine terminal, pipe line terminal, pipe line tank farm or place of manufacture shall be deemed received by such person who is the owner thereof at the time and place the blending is completed.

History: 1953 c. 510.

78.08 Wholesaler defined. "Wholesaler" means any person (including the state of Wisconsin and any political subdivision thereof, but not including the United States or its agencies except to the extent now or hereafter permitted by the constitution and laws thereof) who produces, refines, blends, manufactures or receives (within the meaning of the word "received" as defined in s. 78.07) motor fuel in this state, but does not include industrial users who receive motor fuel under s. 78.01 (3).

History: 1953 c. 510.

78.09 Wholesaler's license. (1) **REQUIRED.** No person shall act as a wholesaler within this state unless such person is the holder of a valid license issued to him under s. 78.10. No license to act as a wholesaler shall be issued upon any application for any location in this state unless the person applying therefor has at such location a minimum storage capacity of 20,000 gallons for active use in the receipt, storage and disposition of motor fuel; except such minimum shall not apply to storage at airports for motor fuel for exclusive use in airplanes or to storage facilities owned and operated by a county, town, city or village for motor fuel for its own use.

(2) **PERMISSIVE LICENSING.** Upon application to the department and compliance by the applicant with the provisions of this chapter, the department shall issue a wholesaler's license to any person similarly licensed by and in an adjoining state who desires to:

(a) Assume the motor fuel tax liability on motor fuel he sells and ships or delivers from his licensed place of business in the adjoining state to any unlicensed person in this state within a local trading area extending into this state not more than 25 miles from such person's licensed place of business;

(b) Assume the motor fuel tax liability on commercial solvents and cleaners, taxable as motor fuel, which he ships or delivers in barrel or drum lots or less to any unlicensed person in this state; or

(c) Purchase motor fuel in 4,000 gallon lots or more from storage at a refinery, marine terminal, pipe line terminal, pipe line tank farm or place of manufacture in this state for export from this state in the transportation equipment of such person.

(3) **PRIVILEGES LIMITED.** The privileges of a license issued under sub. (2) shall be limited to the purpose for which issued.

(4) **VALIDITY OF LICENSES IN EFFECT ON SEPTEMBER 1, 1953.** Wholesalers' licenses which are valid immediately prior to September 1, 1953 shall be continued in effect to the same extent as heretofore permitted and until subsequently revoked for cause or canceled, except those wholesalers' licenses which were issued to persons for Class 2 motor fuel which licenses shall be automatically canceled on said date. Persons holding such automatically canceled licenses, upon application and compliance with this chapter as hereinafter provided, shall be issued a special fuel license.

History: 1953 c. 510; 1955 c. 608.

78.10 Application; form; investigation; issue. (1) **FORM.** Application for a license as a wholesaler shall be made upon a form prepared and furnished by the department. It shall be subscribed and sworn to by the applicant and shall contain such information as the department may reasonably require for the administration of this chapter.

(2) **INVESTIGATION.** The department shall investigate each applicant. No license shall be issued if the department deems that (a) the application is not filed in good faith; (b) the applicant is not the real party in interest and the license of the real party in interest has been revoked for cause; or (c) other reasonable cause for non-issuance exists.

(3) **HEARING.** Before refusing to issue a license, the department shall grant the applicant a hearing of which he shall be given at least 5 days' written notice.

(4) **ISSUE.** If the application and bond are approved, the department shall issue a license in as many copies as the licensee has wholesale places of business stated in his application which qualify for a license.

(5) **TERM OF LICENSE.** A wholesaler's license is valid until suspended, revoked for cause or canceled.

(6) **TRANSFER FORBIDDEN.** A wholesaler's license is not transferable to another person or to another place of business.

(7) **DISPLAY OF LICENSE.** Each license shall be preserved and conspicuously displayed at the place of business for which issued.

(8) **OTHER PLACES OF BUSINESS; DISCONTINUANCE.** Before a licensed wholesaler acts as a wholesaler at any other place of business, he shall immediately request the department to issue an additional copy of his license, and if such other place of business qualifies for a license then the department shall issue an additional copy thereof. Upon the discontinuance of the business licensed at any place, the copy of the license issued for such place shall be immediately surrendered to the department.

History: 1953 c. 510.

78.11 Bond. (1) **AMOUNT.** No wholesaler's license shall be issued to any person or continued in force for any person unless such person has filed a surety bond with the department payable to the state of Wisconsin to secure payment of any and all motor fuel taxes and penalties accrued under this chapter. The department shall prescribe the form and contents of the bond. The amount of the bond shall be determined by the department and the amount may be increased or decreased as the department may deem necessary but shall not exceed \$100,000 and shall not be less than \$1,000.

(2) **RELEASE OF SURETY.** If the surety upon said bond so elects, he may conditionally cancel the bond at any time by filing with the wholesaler and the department written notice of such conditional cancellation. The surety so filing shall not be discharged from any liability already accrued or which may accrue under said bond before the expiration of 60 days after the filing of said notice. If the wholesaler shall not within 60 days after receiving such notice file a new bond satisfactory to the department with the department,

his license to act as a wholesaler shall be automatically revoked. If a new bond is furnished by a wholesaler, the department shall cancel and surrender the old bond of the wholesaler as soon as it is satisfied that all liability under the old bond has been fully discharged.

(3) **ADDITIONAL BOND; WHEN REQUIRED.** If liability upon the bond filed by any wholesaler is discharged or reduced by judgment rendered, payment made or otherwise, or if in the opinion of the department, the bond of any wholesaler has become insufficient by the subsequent insolvency, death or removal of the sureties or any of them, or if for any cause any such bond is deemed insufficient as to sureties or amount, the department shall require any such wholesaler to give and file additional surety or new bonds in the same manner and form and with sureties satisfactory to the department. If any such wholesaler fails to file such additional bond within 5 days after written notice from the department, then his license shall be automatically revoked.

(4) **LIABILITY ON BOND CONTINUES.** The validity of any bond shall not be affected by the suspension, revocation or cancellation of any wholesaler's license or by partial recovery upon the bond or by the execution of any new bond.

(5) **DEPARTMENT SHALL CONTRACT; PREMIUM PAYMENT.** The department shall contract annually for surety bonds to be filed by wholesalers. A wholesaler may furnish other surety satisfactory to the department in equal form and amount. The premiums on the contracted surety bonds shall be paid from the appropriation made by s. 20.800 (1).

History: 1953 c. 510.

78.12 Reports to department; computation of tax. (1) **GALLONS TO BE REPORTED.** For the purpose of the administration of this section, (a) each intrastate receipt, shipment or delivery of motor fuel shall be reported in U. S. standard liquid gallons (231 cubic inches) except that the department may upon written application therefor permit the reported gallons as invoiced to the wholesaler by whom the shipment is received as provided in s. 78.07 (1) (b); and (b) each interstate receipt, shipment or delivery of motor fuel shall be reported in gallons as originally invoiced.

(2) **REPORTS OF WHOLESALERS.** For the purpose of determining the amount of his liability to the state for the tax herein imposed, each wholesaler shall, not later than the twentieth day of each month, file a monthly report with the department, on forms furnished and prescribed by it. Such report shall contain a declaration by the wholesaler that the statements contained therein are accurate and is a true return of the amount of motor fuel tax due and shall be subscribed by the wholesaler or his duly authorized agent and witnessed by 2 witnesses. Such report shall include the following:

(a) An itemized statement of the number of gallons of motor fuel he received (as defined in s. 78.07) in this state during the next preceding month;

(b) An itemized statement of the number of gallons of motor fuel he acquired tax included in this state during the next preceding month;

(c) An itemized statement of the number of gallons of motor fuel exported from this state pursuant to s. 78.01 (2) (a) during the next preceding month;

(d) An itemized statement of the number of gallons of motor fuel he sold to the U. S. government or its agencies in this state during the next preceding month;

(e) An itemized statement of the number of gallons of motor fuel he sold to any post exchange or other concessionaire upon any federal reservation in this state during the next preceding month;

(f) Such other information as the department may reasonably require for the administration of the motor fuel tax.

(3) **REPORTS OF OTHERS.** Any person, not a wholesaler or an authorized industrial user, who uses any motor fuel in this state or who has in his possession any motor fuel (other than that contained in the ordinary fuel tank attached to a motor vehicle), upon which the motor fuel tax has not been paid or the liability therefor has not been incurred by any wholesaler in this state, shall file a report and make payment of the tax on such motor fuel and shall be subject to this chapter in the same manner as is provided for wholesalers.

(4) **COMPUTATION OF TAX.** Each wholesaler at the time of making his monthly report shall compute and pay to the department the full amount of the motor fuel tax for the next preceding month, which shall be computed as follows:

(a) From the total number of gallons of motor fuel received (as defined in s. 78.07) by the wholesaler within this state during the next preceding month shall be made the following deductions:

1. That number of gallons of motor fuel received by the wholesaler within this state and sold, used or otherwise disposed of during the next preceding month as set forth in s. 78.01 (2);

2. That number of gallons of motor fuel which is equal to one and one-half per cent of the total number of gallons received by the wholesaler within this state, less any deductions taken in s. 78.01 (2) during the next preceding month, to cover evaporation and shrinkage.

(b) The number of gallons thus obtained shall be multiplied by six one-hundredths and the resulting figure expressed in dollars shall be the amount of the motor fuel tax for such preceding month.

History: 1953 c. 510, 631; 1955 c. 287, 336.

78.13 Notice by wholesaler of discontinuance, sale or transfer of his business; final report. (1) NOTICE REQUIRED. Whenever any wholesaler doing business under this chapter ceases to be a wholesaler by reason of the discontinuance, sale or transfer of his business, he shall notify the department in writing immediately of such discontinuance, sale or transfer. Said notice shall give the date of discontinuance, sale or transfer and in the event of the sale or transfer of his business, the name and address of the purchaser or transferee thereof.

(2) FINAL REPORTS. Every wholesaler shall, within 10 days after the discontinuance, sale or transfer of his business takes effect or within 10 days after the cancellation or revocation of his license except as otherwise provided in s. 78.68, make a report as required under s. 78.12 and pay all motor fuel taxes and penalties due the state.

History: 1953 c. 510.

78.14 Tax paid is public money. Every wholesaler who sells or distributes any motor fuel for any purpose in this state shall collect from the purchaser at the time of such sale or distribution 6 cents per gallon on all such motor fuel sold or distributed, and any and all sums so paid by the purchaser to the wholesaler as taxes upon such motor fuel, upon which the tax imposed by this chapter has not theretofore been paid, are public money, the property of the state of Wisconsin.

History: 1953 c. 510; 1955 c. 287.

78.15 Theft of tax moneys. If any wholesaler sells any motor fuel upon which the tax imposed by this chapter has become due and has not been paid, all motor fuel tax moneys received by such wholesaler because of said sale are trust funds in his hands and the property of the state of Wisconsin. Any wholesaler who fails or refuses to pay over to the state the tax on motor fuel at the time required in this chapter, or who fraudulently withholds or appropriates or otherwise uses such moneys or any portion thereof belonging to the state, is guilty of theft and shall be punished as provided by law for the crime of theft, irrespective of whether any such wholesaler has or claims to have any interest in such moneys so received by him.

History: 1953 c. 510; 1955 c. 696.

78.16 Broker and dealer defined. (1) BROKER DEFINED. "Broker" means every person, other than a wholesaler or dealer, engaged in a brokerage business dealing in motor fuel.

(2) DEALER DEFINED. "Dealer" means every person, other than a wholesaler or broker, engaged in business as a merchant or retailer dealing in motor fuel.

78.17 Brokers; registration, reports. (1) No person shall act as a broker for the sale of motor fuel to be imported into and delivered to a purchaser in this state without first registering as a motor fuel broker with the department. Application for registration shall be upon forms prescribed by the department, shall be under oath and shall furnish such information concerning the applicant as the department requires.

(2) Between the first and twentieth of each calendar month every registered broker shall make return to the department on such forms as it shall prescribe, showing all sales of motor fuel made by him during the preceding month.

History: 1953 c. 510.

78.18 Records to be kept by brokers and dealers. Every broker and dealer shall keep a true and accurate record of all purchases of motor fuel, crude petroleum and special fuels (as defined in s. 78.43) in such manner as to disclose the vendor, the quantity purchased, the correct description of the commodity and the means of transportation to said broker and dealer, as well as all of the sales of such motor fuel, crude petroleum and special fuels in such manner as to disclose the vendee, the quantity sold, the correct description of the commodity and the means of transportation from said broker or dealer to the vendee. All such records required by this section shall be retained for a period of 3 years and shall at all times be available for inspection by the department which may require a statement from said broker or dealer under oath reflecting the contents thereof.

History: 1953 c. 510.

78.19 Refund for fuel destroyed. If any motor fuel in transit and consigned to or in possession of a licensed wholesaler is destroyed by fire, lightning, storm, flood or accident not caused by the wilful act of such wholesaler or any employe thereof, before being sold or used by him, upon proper application therefor and proof of such destruction or loss satisfactory to the department, it shall authorize tax credit or refund the amount of tax paid thereon. Such application or claim shall be filed with the department within 15 days after the motor fuel is so destroyed or lost or the tax credit or refund will not be allowed.

History: 1953 c. 510.

78.20 Refund to retailers. (1) Any person who operates a service station, store, garage or other place of business within this state for the retail sale of motor fuel therefrom who has paid the tax required to be paid by this subchapter on the motor fuel received into his storage at such place of business shall be reimbursed and repaid one-half of one per cent of such tax to cover shrinkage and evaporation losses upon making and filing a duly certified claim with the department on forms prescribed and furnished by it which has been witnessed by 2 witnesses or acknowledged before a notary public, except this subsection shall not apply to any person who is licensed under this subchapter as a wholesaler of motor fuel at such place of business.

(2) Such claim shall be filed not later than one year after the date of purchase of the motor fuel or the claim will not be allowed; but if the final filing date falls on a Saturday, Sunday or a legal holiday, the next secular or business day shall be the final filing date.

(3) The supplier shall furnish each retailer with the original invoice prepared at the time of delivery, and the retailer shall send such original invoice to the department when making claim for refund. The term "original invoice", as used herein, means the top copy and not a duplicate original or carbon copy of the original invoice. The original invoice shall be printed or rubber stamped with the words "Original Invoice" and shall in addition contain the following information: 1. date of sale, 2. name and address of supplier, 3. name and address of retailer (which must be the name of the claimant), 4. number of gallons purchased and the price per gallon, 5. amount of Wisconsin motor fuel tax as a separate item, 6. receipt for payment. Double-faced carbon paper shall be used between the original invoice and the first carbon copy. A separate original invoice shall be used for each sale and delivery. The original invoice shall be legibly written and comply with the foregoing requirements.

(4) On the filing of such claim, accompanied by the paid original invoice, the department shall determine the amount of refund due. The department may make such investigation of the correctness of the facts stated in such claim as it deems necessary. When the department has approved such claim it shall pay the claimant the reimbursement herein provided out of the moneys collected under ch. 78 to be used for carrying out this section.

(5) The right of any person to a refund under this section shall not be assignable and the application for a refund shall be made by the same person who purchased the motor fuel as shown in the invoice by the person selling the same, and by no other person, and the proceeds or amount of such refund as determined by the department shall be paid to the person whose name appears on the seller's invoice and to no other person.

History: 1955 c. 336.

SUBCHAPTER II.

SPECIAL FUEL TAX.

78.40 Tax imposed; collected; exceptions. (1) AMOUNT OF TAX AND BY WHOM PAID. An excise tax of 6 cents per gallon is hereby imposed on the use (as defined in s. 78.44) of special fuel. Said tax, with respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles in this state, shall attach at the time of such delivery and shall be collected by such dealer from the special fuel user and shall be paid over to the department as hereinafter provided. Said tax, with respect to special fuel acquired by any special fuel user in any manner other than by delivery by a special fuel dealer into a fuel supply tank of a motor vehicle, shall attach at the time of the use of such fuel and shall be paid over to the department by such user as hereinafter provided.

(2) EXCEPTIONS. No tax is hereby imposed upon or with respect to the following:

(a) Special fuel used by the United States or its agencies where such use is evidenced by an exemption certificate executed by an authorized representative of the U. S. government or agency thereof certifying that the special fuel used is for the exclusive consumption by the U. S. government or its agencies.

(b) Special fuel used by any post exchange or other concessionaire upon any federal reservation within this state, but the tax on such special fuel shall be collected by the

department from such post exchange or other concessionaire to the extent permitted by federal law.

(e) Special fuel used by a common motor carrier as defined in ch. 194, when such carrier certifies to the department that the motor fuel is for use in the operation of a motor vehicle for the urban mass transportation of passengers as defined in s. 71.18 (2) (a).

History: 1953 c. 510; 1955 c. 240, 287.

78.41 Department defined. "Department" means the state department of taxation.

History: 1953 c. 510.

78.42 Motor vehicle and mobile machinery and equipment defined. (1) "Motor vehicle", as used in this chapter, means any automobile, truck, truck-tractor, tractor, bus, vehicle or other conveyance which is self-propelled by an internal combustion engine or motor and licensed for highway use, except it does not include mobile machinery and equipment.

(2) "Mobile machinery and equipment", as used in this chapter, means a vehicle which is self-propelled by an internal combustion engine or motor but not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway such as farm tractors, ditch-digging apparatus, power shovels, drag lines, earth-moving equipment and machinery and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers and earth-moving scrapers. The foregoing enumeration shall not operate to exclude other vehicles which are within the general terms of this subsection.

(3) Mobile machinery and equipment shall not include dump trucks or self-propelled vehicles originally designed for the transportation of persons or property to which machinery has been attached such as truck-mounted transit mixers, cranes, shovels, welders, air compressors, well-boring apparatus, corn shellers, lime spreaders and feed grinders.

History: 1953 c. 510; 1955 c. 337.

78.43 Special fuel defined. "Special fuel" means and includes all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor fuel as defined in s. 78.04.

History: 1953 c. 510.

78.44 Use defined. "Use," as related to special fuel, means the receipt, delivery or placing of special fuel by a special fuel user into the fuel supply tank or tanks of any motor vehicle while such vehicle is within this state.

History: 1953 c. 510.

78.45 Special fuel dealer defined. "Special fuel dealer" means any person (including the state of Wisconsin and any political subdivision thereof, but not including the United States or its agencies except to the extent now or hereafter permitted by the constitution and laws thereof) in the business of handling special fuel who delivers any part thereof into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him.

History: 1953 c. 510.

78.46 Special fuel user defined. "Special fuel user" means the owner or other person (including the state of Wisconsin and any political subdivision thereof, but not including the United States or its agencies except to the extent now or hereafter permitted by the constitution and laws thereof) responsible for the operation of a motor vehicle at the time special fuel is placed in the fuel supply tank or tanks thereof while such vehicle is within this state.

History: 1953 c. 510.

78.47 Special fuel license. No person shall act as a special fuel dealer in this state unless such person is the holder of a valid special fuel license issued to him by the department. Except for special fuel which is delivered by a special fuel dealer into a fuel supply tank of any motor vehicle in this state, no person shall use special fuel in this state unless such person is the holder of a valid special fuel license issued to him by the department. A copy of such special fuel license shall be required for each separate place of business where special fuel is regularly delivered or placed into the fuel supply tank of a motor vehicle.

History: 1953 c. 510.

78.48 Application; form; investigation; bond; issue. (1) FORM. Application for a special fuel license shall be made upon a form prepared and furnished by the depart-

ment. It shall be subscribed and sworn to by the applicant and shall contain such information as the department may reasonably require for the administration of this chapter.

(2) INVESTIGATION. The department shall investigate each applicant. No license shall be issued if the department deems that (a) the application is not filed in good faith; (b) the applicant is not the real party in interest and the license of the real party in interest has been revoked for cause; or (c) other reasonable cause for non-issuance exists.

(3) HEARING. Before refusing to issue a license, the department shall grant the applicant a hearing of which he shall be given at least 5 days' written notice.

(4) ISSUE. If the application and bond are approved, the department shall issue a license in as many copies as the licensee has places of business for which a special fuel license is required.

(5) TERM OF LICENSE. A special fuel license is valid until suspended, revoked for cause or canceled.

(6) TRANSFER FORBIDDEN. A special fuel license is not transferable to another person or to another place of business.

(7) DISPLAY OF LICENSE. Each license shall be preserved and conspicuously displayed at the place of business for which issued.

(8) DISCONTINUANCE. Upon the discontinuance of the business licensed at any place, the copy of the license issued for such place shall be immediately surrendered to the department.

(9) BOND. No special fuel license shall be issued to any person or continued in force for any person unless such person has furnished a surety bond to the department payable to the state of Wisconsin to secure payment of any and all special fuel taxes and penalties accrued under this chapter. The department shall prescribe the form and contents of the bond. The amount of the bond shall be determined by the department and the amount may be increased or decreased as the department deems necessary but shall not exceed \$25,000 and shall not be less than \$500. Section 78.11 (2), (3), (4) and (5) with respect to wholesalers' bonds shall apply to bonds furnished by special fuel licensees under this subsection.

78.49 Reports to department; computation of tax. (1) REPORTS OF SPECIAL FUEL LICENSEES. For the purpose of determining the amount of his liability to the state for the tax herein imposed, each special fuel licensee shall, not later than the twentieth day of each month, file a monthly report for the next preceding month with the department on forms furnished and prescribed by it. Such report shall contain a declaration by the special fuel licensee that the statements contained therein are accurate and are a true return of the amount of special fuel tax due and shall be subscribed by the special fuel licensee or his duly authorized agent and witnessed by 2 witnesses. The report shall show, with reference to each location at which special fuel is delivered or placed by such special fuel licensee into a fuel supply tank of any motor vehicle, such information as the department may reasonably require for the proper administration and enforcement of the special fuel tax. The department shall give due consideration to the varying types of operations and transactions in specifying the information required.

(2) REPORTS OF OTHERS. Any person, not a special fuel licensee, who uses any special fuel in this state upon which the special fuel tax has not been paid or the liability therefor has not been incurred by any special fuel licensee in this state, shall file a report and make payment of the tax on such special fuel and shall be subject to this chapter in the same manner as is provided for special fuel licensees.

(3) COMPUTATION OF TAX. Each special fuel licensee at the time of making his monthly report shall compute and pay to the department the full amount of the special fuel tax for the next preceding month, which shall be computed as follows: the number of gallons of special fuel delivered or placed by such special fuel licensee into the fuel supply tanks of motor vehicles shall be multiplied by six one-hundredths and the resulting figure expressed in dollars.

History: 1953 c. 510; 1955 c. 287, 336, 652.

78.50 Notice by special fuel licensee of cessation, sale or transfer of his business; final report. (1) NOTICE REQUIRED. Whenever any special fuel licensee ceases to perform any of the acts for which a special fuel license is required, he shall notify the department in writing. Said notice shall give the date of cessation, and in the event of sale or transfer of his business, the name and address of the purchaser or transferee thereof.

(2) FINAL REPORT. Every special fuel licensee shall, within 10 days after such cessation, sale or transfer of his business takes effect or within 10 days after the cancellation

or revocation of his license, except as otherwise provided in s. 78.68, make a report as required in s. 78.49 and pay all special fuel taxes and penalties due the state.

History: 1953 c. 510.

78.51 Embezzlement of special fuel tax moneys. All sums paid by a purchaser of special fuel to a special fuel dealer as special fuel taxes, which have not theretofore been paid to the state, are public moneys, the property of the state of Wisconsin. Any special fuel dealer who fails or refuses to pay over to the state the tax on special fuel at the time required in this chapter, or who fraudulently withholds or appropriates or otherwise uses such moneys or any portion thereof belonging to the state is guilty of embezzlement and shall be punished as provided by law for the crime of embezzlement, irrespective of whether such special fuel dealer has or claims to have any interest in such moneys so received by him.

History: 1953 c. 510.

78.52 Separate fuel supply tanks required; exception. Every motor vehicle operated by special fuel shall be equipped with a special fuel supply tank separate from and in no way connected to any cargo tank on or attached to such motor vehicle, except that any motor vehicle which is not so equipped on September 1, 1953 and which has a direct fuel supply line from the cargo tank to the motor of such vehicle shall be excluded from this requirement for the period that such motor vehicle is operated by the same owner and is not so equipped, and such cargo tank shall not be considered to be the fuel supply tank of that motor vehicle; provided that such motor vehicle, which is not so equipped, shall have an accurate metering device installed in the fuel supply line to measure the amount of special fuel consumed in the operation of such motor vehicle. The number of gallons of special fuel so consumed, as determined by such metering device, shall be multiplied by six one-hundredths of the resulting figure expressed in dollars which figure shall be the special fuel tax due to the state therefor. The payment of the special fuel tax so computed shall be made to the state in the same manner as provided in s. 78.49.

History: 1953 c. 510; 1955 c. 287.

78.53 Presumption. For the purpose of enforcing this chapter, it shall be prima facie presumed that all special fuel received by a special fuel dealer or a special fuel user into storage and dispensing equipment designed to fuel motor vehicles is to be transferred or delivered by the special fuel dealer or special fuel user into the supply tanks of motor vehicles.

History: 1953 c. 510.

SUBCHAPTER III.

PROVISIONS COMMON TO MOTOR FUEL TAX AND SPECIAL FUEL TAX.

78.65 Suspension and revocation of licenses. (1) If a wholesaler fails to maintain at any licensed location the minimum storage capacity required by s. 78.09 (1) or if a wholesaler or special fuel licensee violates any provision of this chapter, and the department deems good cause exists for suspension or revocation by reason of such violation, it may suspend such person's license, or, after a hearing of the charges is held, it may revoke such license. No license shall be suspended unless the holder thereof has been duly notified of a hearing to be held on the charges, and no license shall be revoked until after the holder thereof has been duly notified of a hearing and has been afforded an opportunity to appear and testify. The department shall notify said licensee in writing of the time and place a hearing of the charges shall be held. Such notice shall contain a statement of the alleged violation, and shall be served upon the licensee at least 10 days prior to said hearing, either by delivery of the same personally to the licensee, or by mailing the same by registered mail to the address of said licensee as shown in the application for a license theretofore filed by said licensee. At the time and place fixed in said notice, the department shall proceed to a hearing of the charges, and the licensee shall be afforded an opportunity to present in person or by counsel such statements, testimony, evidence and argument as may be pertinent to the charges or to any defense thereto. The department may continue such hearing from time to time but not to exceed a period of 60 days. After such hearing, the department shall rescind the order of suspension, if any exists, and good cause appearing therefor shall either suspend the license for a given period of time or revoke the license.

(2) No hearing shall be afforded in those instances where the licensee has automatically revoked his license pursuant to s. 78.11 or 78.68.

(3) Upon the suspension or revocation of any license, the department shall request the holder thereof to surrender to it immediately all copies of licenses issued to him, and the holder shall surrender promptly all such copies to the department.

History: 1953 c. 510.

78.66 Records to be kept by wholesalers and special fuel licensees. (1) Every wholesaler and special fuel licensee shall keep a record of all purchases, receipts, sales, distribution and consumption of each kind or trade name of motor fuel, crude petroleum and special fuel.

(2) Every licensee shall keep true and accurate records of all stocks of motor fuel, crude petroleum and special fuels on hand. Every licensee shall take a physical inventory of motor fuel, crude petroleum and special fuels on hand at each licensed location at the close of business on the last day of every month.

(3) Every licensee shall retain the records of the inventory required by sub. (2) and all other records required by this section available for the inspection by the department for a period of 3 years, and upon demand of the department, any licensee shall furnish a statement under oath reflecting the contents of any record to be kept under this section.

History: 1953 c. 510.

78.67 Extension of final filing date when the final date falls on Saturday, Sunday or legal holiday. When the final date provided in ss. 78.01, 78.12, 78.13, 78.17, 78.49, 78.50, 78.68, 78.76 and 78.78 for the filing of any report or for the remittance of any tax or penalty falls on a Saturday, Sunday or legal holiday, the next secular or business day shall be the final date. Any such report or remittance which is delivered to the department by United States mail shall be considered timely filed or remitted if the envelope in which it is mailed is properly addressed to the department and postmarked before midnight of the final date.

History: 1953 c. 510.

78.68 Failure to report, pay tax. (1) **CALENDAR MONTH REPORT AND TAX, PROCEDURE, PENALTIES.** (a) If any licensee fails, neglects or refuses to file a motor fuel or special fuel tax report for any calendar month when due, the department shall send a written demand to file such report to the licensee by registered mail addressed to said licensee at the address of the principal place of business of said licensee within 10 days after the due filing date of said report. A penalty of \$10 is hereby imposed for failure, neglect or refusal to file such report when due and if such report is not filed and the penalty paid within 20 days from the date when such report was due the license of said licensee shall be automatically revoked.

(b) If any licensee fails, neglects or refuses to make tax payment for any calendar month when due, the department shall send a written demand for payment to the licensee by registered mail addressed to said licensee at the address of the principal place of business of said licensee within 10 days after said payment was due. A penalty of \$15 is hereby imposed for the first failure, neglect or refusal within a calendar year to make such tax payment when due and a penalty of 10 per cent of the amount of tax due but not less than \$15 is hereby imposed for each successive failure, neglect or refusal to make such tax payment when due within the same calendar year. If tax remittance was made when due but by a defective bank check, the department may waive the penalty if it appears to the department that the defect was not intentional and the defect is corrected promptly. If such tax and penalty are not paid within 20 days from the date when due, the license of said licensee shall be automatically revoked and the department shall determine the amount of tax due and shall proceed to collect such motor fuel or special fuel tax and penalty in the manner provided in this chapter.

(2) **INCORRECT OR INCOMPLETE REPORTS, UNPAID TAX, TAX ESTIMATED, PENALTIES.** If any licensee makes and files any incorrect or incomplete report, or fails, neglects or refuses to pay all the tax for any calendar month, the department, upon discovering said incorrect or incomplete report or unpaid tax, shall estimate the motor fuel or special fuel receipts or distributions of said licensee, based upon such information as is available in its office or elsewhere, and shall determine the amount of any motor fuel or special fuel tax still due from said licensee and shall add to said amount a penalty of 15 per cent thereof for failure, neglect or refusal to pay said tax, except that if it appears to the department that any unpaid tax was due to an unintentional miscalculation on the report, the 15 per cent penalty shall be waived. The department may also waive any penalty amounting to \$6 or less if it appears to be in the best interest of the state to do so. Such waivers of tax penalty shall be voided if said tax is not paid within one month after the date of demand as provided for in this subsection. The amount so fixed shall be prima facie evidence of the correctness of said estimate. The department shall send a written demand for any amended report required and for payment of said tax and penalty to the licensee by mail addressed to said licensee at the address of the principal place of business of said licensee. If such amended report is not filed or if the tax and penalty due are not paid within 2 months from the date of said demand, the license of said licensee shall be automatically revoked and the department shall prepare such amended

report and proceed to collect such motor fuel or special fuel tax and penalty in the manner herein provided.

(3) **FINAL REPORT, UNPAID TAX.** A penalty of \$10 is hereby imposed for failure, neglect or refusal to file a final report and a penalty of 10 per cent of the amount of tax due but not less than \$15 is hereby imposed for failure, neglect or refusal to pay the tax as required in ss. 78.13 (2) and 78.50 (2).

(4) **DELINQUENT TAXES, COLLECTION.** Whenever any licensee has become delinquent in the payment of such tax then all taxes on all motor fuel received (as defined in s. 78.07) or special fuel used (as defined in s. 78.44) by such licensee since the date when the delinquency occurred shall forthwith become due and payable upon demand of the department. Thereupon all such additional taxes unpaid shall be subject to collection in the same manner as a delinquent motor fuel or special fuel tax and for such purposes s. 78.70 relating to attachment shall apply.

(5) **TAX EVASION PREVENTED.** Before any tax becomes due, if the department has reason to believe that any licensee intends or is likely to evade or attempt to evade payment of such tax when due, or intends or is likely to convey, dispose of, or conceal his property or abscond from the state, or do any other act which would render the state insecure in collecting such tax when due, the department may demand payment forthwith of all taxes upon all motor fuel received (as defined in s. 78.07) or special fuel used (as defined in s. 78.44) by said licensee, which shall immediately become payable and collectible as if delinquent, and the property of such licensee shall be subject to attachment as provided in s. 78.70.

History: 1953 c. 510.

When wholesaler of motor fuel makes in- (7), department of taxation must impose the correct monthly report and fails to pay all 15 per cent penalty in accordance with 78.06 of the tax due as prescribed by 78.04 (1) and (2). 38 Atty. Gen. 606.

78.69 Payment of tax is condition precedent to action to test validity; procedure to recover taxes paid. No suit shall be maintained in any court to restrain or delay the collection or repayment of the taxes herein imposed and to be paid by the licensee. The aggrieved licensee shall pay over all taxes and penalties when due, and if paid under protest, shall at the time of making payment file a protest under oath setting forth the amount or part of said payment alleged to be paid over under protest and wrongfully collected by the department, and the reasons why the whole or said part thereof was wrongfully collected. If so paid under protest, the licensee may at any time within 90 days from the date of such payment sue the state in the circuit court of the county in which said licensee conducts his business to recover the taxes and penalties so paid with legal interest thereon from the date of payment. If it is finally determined that said taxes and penalties, or any part thereof, were wrongfully paid, the director of the department of budget and accounts shall issue his warrant on the state treasurer for the amount of such taxes and penalties so adjudged to have been wrongfully paid, together with interest thereon, and the treasurer shall pay the same out of the state highway fund.

History: 1953 c. 510.

78.70 Actions to collect tax and penalties; injunction, receiver, attachment, garnishment; assessment constitutes prima facie evidence. (1) **ACTION TO COLLECT TAX; INJUNCTION AND RECEIVER.** If a licensee fails or refuses to pay motor fuel or special fuel tax moneys after demand made therefor by the department, such delinquent tax moneys together with the tax penalties provided for in s. 78.68 shall be recovered by and in the name of the state, and the attorney general or proper district attorney is authorized and directed to institute suit therefor in any court of competent jurisdiction against said licensee, or his surety, if any, or both. In the event such suit or attachment as hereinafter provided for is instituted, upon application made by the attorney general or district attorney, the court may, without requiring any bond, enjoin and restrain the defendant from consuming, distributing, selling or offering to sell any motor fuel or special fuel subject to said motor fuel or special fuel taxes until any judgment and costs imposed in said suit or attachment have been paid, and the court shall, upon application by the attorney general or district attorney, appoint a receiver of the property and business of the delinquent defendant for the purpose of impounding the same as security for any judgment which has been or may be recovered, and said taxes and penalties shall constitute a first and prior lien against the property of said licensee, including all property of whatsoever nature belonging to him whether used in his business or otherwise, and which lien shall be paramount and superior to any other lien, of whatever nature, against said property, whether attaching prior or subsequent to the time when said taxes became due.

(2) **ATTACHMENT.** Said motor fuel or special fuel tax shall also be collectible and enforceable by a writ of attachment brought by the attorney general or district attorney in the name of the state against the lands, goods, chattels, credits or other personal property of the licensee, and for the purpose of this section, said licensee shall be deemed to

be a nonresident of the state of Wisconsin, and such attachment shall be governed in all respects by the provisions of law relating to attachments against nonresidents, but no attachment bond shall be required of the state, nor shall an indemnity bond be required or demanded of any sheriff or constable serving such writ of attachment, and no sheriff or constable shall be liable in damages on account of levying any attachment when acting under the direction of the attorney general or such district attorney.

(3) **GARNISHMENT.** The sheriff or constable shall also summon the persons named in said writ of attachment as garnishees, and all persons within his county whom the attorney general or district attorney shall designate as having any property, effects, choses in action or credits in their possession or power, belonging to the defendant, or who are in anywise indebted to such defendant, the same as if their names had been inserted in such writ.

(4) **ASSESSMENT CONSTITUTES PRIMA FACIE EVIDENCE.** In any action or proceeding for the collection of the tax from the licensee, or any penalties imposed in connection therewith, an assessment by the department, made pursuant to this chapter, of the amount of the motor fuel or special fuel taxes, or any penalties imposed in connection therewith, due from the licensee, shall constitute prima facie evidence of the claim of the state, and the burden of proof shall be upon the licensee to show that the assessment was incorrect and contrary to law.

(5) **NO WAIVER.** Nothing in this section shall be construed as forfeiting or waiving any right to collect said tax and penalties by an action upon any bond that may be filed with the department under this chapter, or by suit, or otherwise, and in case such suit, action or proceeding has been instituted for the collection of said tax, such suit, action or other proceeding shall not be construed as waiving any other right herein provided.

History: 1953 c. 510.

78.71 Motor fuel and special fuel taxes are preferred claims. If the property of any licensee is seized upon any mesne or final process of any court of this state, or when the business of any licensee is suspended by the action of creditors or put into the hands of any assignee, receiver or trustee, all motor fuel or special fuel tax moneys and penalties due the state from such licensee shall be considered preferred claims and the state shall be a preferred creditor and shall be paid in full.

History: 1953 c. 510.

78.72 Precedence of actions to enforce this chapter. All proceedings and hearings, civil or criminal, arising under this chapter shall have priority in hearing and determination over all other civil proceedings in any court except election contests, criminal and other cases in which the public is the moving party.

History: 1953 c. 510.

78.73 Criminal penalties. (1) **ACTS FORBIDDEN.** Any person who:

(a) Displays, or causes or permits to be displayed, or has possession of, any license knowing the same to be fictitious, or to have been suspended, canceled, revoked or altered;

(b) Lends to, or knowingly permits the use by, one not entitled thereto, any license issued to the person lending it or permitting it to be used;

(c) Displays or represents as his own any license not issued to the person displaying the same;

(d) Uses a false or fictitious name or gives a false or fictitious address in any application or form required by this chapter, or otherwise commits a fraud in any application, record, report or claim for refund; or

(e) Uses any false or fictitious name or gives any false or fictitious address when purchasing or obtaining motor fuel or special fuel from any source for sale or consumption in this state shall be fined not less than \$100 nor more than \$500 or imprisoned in the county jail for not to exceed 6 months or both.

(2) **SELLING WITHOUT A LICENSE.** Each day in which any person acts as a licensee without a license shall constitute a separate offense, and for each such offense such person shall be fined not more than \$5,000 or imprisoned in the county jail for not less than 60 day nor more than one year or both.

(3) **ATTEMPT TO ASSIGN LICENSE.** Any person who assigns or attempts to assign a license issued under this chapter, or who fails to display his license conspicuously at his place of business, shall be fined not more than \$25 or imprisoned for not more than 10 day for each such offense.

(4) **FAILURE TO REPORT OR PAY.** Any person who fails or refuses to make a report or payment as provided in this chapter shall be fined not more than \$5,000 or imprisoned in the county jail for not less than one year nor more than 10 years or both.

(5) OMNIBUS PROVISIONS. Except as otherwise provided in subs. (1), (2), (3) and (4), any person violating any provision of this chapter shall be fined not less than \$25 nor more than \$500 or imprisoned not more than 6 months or both.

History: 1953 c. 510.

78.74 Remedies and penalties are cumulative. All of the remedies, prosecutions and penalties under this chapter shall be cumulative; no action for recovery of one penalty shall be a bar to or affect the recovery of any other penalty or be a bar to any criminal prosecution.

History: 1953 c. 510.

78.75 Refund for fuel not used on highways; procedure, claim unassignable. (1)

(a) Any person who consumes motor fuel or special fuel, upon which has been paid the tax required to be paid under this chapter, for any purpose other than operating a motor vehicle upon the public highways, shall be reimbursed and repaid the amount of the tax so paid upon making and filing a duly certified claim, witnessed by 2 witnesses or acknowledged before a notary public, with the department, upon forms prescribed and furnished by it. The department shall distribute forms in sufficient quantities to each county clerk.

(b) Such claim must be filed not later than 6 months after the date of purchase of the motor fuel or special fuel, or the claim will not be allowed; provided, however, if the final filing date falls on a Saturday, Sunday or a legal holiday, the next secular or business day shall be the final filing date.

(c) The seller, upon request, shall furnish each purchaser with the original invoice prepared at the time of delivery, and the purchaser shall send such original invoice to the department when making claim for refund. The term "original invoice", as used herein, means the top copy and not a duplicate original or carbon copy of the original invoice. The original invoice shall be printed or rubber stamped with the words "Original Invoice" and shall in addition contain the following information: 1. date of sale, 2. name and address of seller, 3. name and address of purchaser (which name must be the name of the claimant), 4. number of gallons purchased and the price per gallon, 5. amount of Wisconsin motor fuel or special fuel tax paid as a separate item, 6. receipt for payment. Double faced carbon paper shall be used between the original invoice and the first carbon copy. A separate original invoice must be used for each sale and delivery. The original invoice shall be legibly written and shall comply with the foregoing requirements. The claim shall state whether or not the applicant owns an automobile or truck or any other motor-driven machinery or appliance which consumes motor fuel or special fuel; the total number of gallons of motor fuel or special fuel purchased; the number of gallons of such motor fuel or special fuel purchased on which refund is claimed; a detailed statement of the consumption of such motor fuel or special fuel on which refund is claimed, describing the machinery, equipment or appliance in which consumed, giving the serial or manufacturer's number of the motor and the approximate number of gallons consumed in each; or if such fuel were not consumed in any such machinery, equipment or appliance, then a description of the purposes for which the fuel was consumed with the approximate number of gallons consumed for each purpose; a statement whether or not deduction has been made for motor fuel or special fuel consumed in applicant's automobile or truck; and such other information as the department may deem necessary.

(d) A duplicate original invoice may be used to support a claim for refund when accompanied by an affidavit by the purchaser that the original invoice has been lost or destroyed. The seller, when issuing such duplicate original invoice, shall indicate on the face of the invoice that it is a duplicate original invoice and such invoice shall contain the same information as in the original invoice.

(e) On the filing of such claim, accompanied by the paid original invoice, the department shall determine the amount of refund due. The department may make such investigation of the correctness of the facts stated in such claim as it deems necessary. When the department has approved such claim, it shall pay the claimant the reimbursement herein provided, out of the moneys collected under ch. 78 to be used for carrying out this section. No refund shall be claimed by or allowed to any person on account of any motor fuel or special fuel carried from this state in the ordinary fuel tank of a motor vehicle.

(f) The penalty provided in this chapter for presenting a false or fraudulent statement shall be printed in full on the claim form.

(2) The right of any person to a refund under this chapter shall not be assignable and the application for a refund shall be made by the same person who purchased the motor fuel or special fuel as shown in the invoice by the person selling the same, and by no other person, and the proceeds or amount of such refund as determined by the department shall be paid to the person whose name appears on the seller's invoice and to no other person.

History: 1953 c. 510, 631; 1955 c. 593.

78.76 Importation in vehicle tanks regulated; taxes. (1) Every person who purchases or obtains motor fuel or special fuel outside of this state and operates any motor vehicle into this state upon the public highways of this state and transports motor fuel or special fuel in the fuel supply tank or tanks attached or unattached to said motor vehicle for the sole purpose of operating said vehicle, shall pay the Wisconsin motor fuel or special fuel tax on the gallons consumed by such motor vehicle while operated on Wisconsin public highways, except that this section shall not apply to any motor vehicle coming into this state with a motor fuel or special fuel tank capacity not to exceed 20 gallons. Payment of the tax shall be made by purchase of motor fuel or special fuel within Wisconsin of such gallonage as is equivalent to the gallonage consumed while operating such motor vehicle on the public highways of Wisconsin, or by direct remittance to the department. If deemed necessary to determine the amount of tax due or to prevent tax evasion, the department may require any such person to report on forms prescribed by it, and to pay taxes in the same manner as is provided for licensees. Every person required to make returns and pay the tax herein imposed shall be subject to all provisions of this chapter and all fines and penalties herein imposed for violations thereof.

(2) Every person regularly or habitually operating motor vehicles upon the public highways of any other state and using in said motor vehicles motor fuel or special fuel purchased or obtained in this state, shall be allowed a credit or refund equal to the tax on said motor fuel or special fuel actually paid to the state in which it is used, but not to exceed the tax imposed on said motor fuel or special fuel by this state, except that this subsection shall not apply to any motor vehicle going into such other state from this state with not to exceed 20 gallons of motor fuel or special fuel in its tanks or with a motor fuel or special fuel tank capacity not to exceed 20 gallons. No such credits or refund shall be allowed for taxes paid to any state which imposes a tax upon motor fuel or special fuel purchased or obtained in this state and used on the highways of such other state, and which does not allow a similar credit or refund for the tax paid to this state on motor fuel or special fuel purchased or acquired in such other state and used on highways of this state. Every person claiming a credit or refund shall, within 30 days after the tax to such other state is paid, file a report in such form as is prescribed by the department, together with such proof of the payment of the tax and of the fact that it was paid on motor fuel or special fuel purchased or obtained within this state as the department may require. Any such claimant not required so to do under sub. (1) shall make and file returns in the same manner and containing the same information as required by persons to whom sub. (1) is applicable. This subsection shall supersede any provision of this chapter in conflict therewith.

(3) The department is hereby empowered to enter into reciprocal agreements with the appropriate officials of any other state under which it may waive all or any part of the requirements imposed by this section upon those who use motor fuel or special fuel upon which the tax has been paid to such other state, provided that the officials of such other state grant equivalent privileges with respect to motor fuel or special fuel used in such other state but upon which the tax has been paid to Wisconsin.

History: 1953 c. 510.

78.77 Registration of transporters; records to be kept. (1) No person shall transport motor fuel or special fuel by truck, trailer or semitrailer or other vehicle on any highway in this state (a) from a point without this state to a point within this state, or (b) from a point within this state to a point without this state, or (c) for hire as defined in s. 194.01 (15), unless each such vehicle so used is registered with the department and unless the registration number furnished by the department for the vehicle preceded by the letters W. D. T. (meaning Wisconsin Department of Taxation) is prominently displayed thereon by painting the same on each side and on the rear of the vehicle in characters not less than 5 inches in height with a stroke not less than three-fourths inch in width. The registration shall expire annually on June 30. Application for registration shall be upon forms prescribed by the department, shall be under oath, and shall furnish such information concerning the applicant as the department may require. The application shall show the name and address of the applicant, a description of the truck, trailer or semitrailer, the license number and the state in which issued, the name and address of the licensee, the capacity in gallons of the fuel tank or tanks, the serial number of the trailer or semitrailer, and the serial and motor number of the truck.

(2) Every person transporting motor fuel or special fuel upon the highways of this state, who obtains the motor fuel or special fuel from a refinery, marine terminal, pipe line terminal, pipe line tank farm or place of manufacture shall, while transporting the motor fuel or special fuel, have with him a copy of the loading ticket or manifest prepared and furnished by the refinery, marine terminal, pipe line terminal, pipe line tank farm or place of manufacture where loaded, which shall be serially numbered and shall show the date of loading, name of refinery, marine terminal, pipe line terminal, pipe line

tank farm or place of manufacture where loaded, point of origin, name of shipper, kind of motor fuel or special fuel and number of gallons. Each such shipment of motor fuel or special fuel by truck, trailer, semitrailer or other vehicle shall have one manifest, and only one, covering the entire load. Delivery into this state of any such shipment interstate must be made to one destination only, and the name of the person to whom delivery is to be made and the destination shall be shown on the manifest and a copy of the manifest shall be presented at the time of delivery to the person to whom delivery is made. Delivery of any such shipment intrastate may be made to one or more unlicensed places of business at the direction of the licensed wholesaler whose name and address appear on the manifest and for whose account such shipment is made provided his copy of the manifest is supported by delivery tickets each showing the manifest number and complete information concerning the delivery and the original or copy of such delivery ticket is at the time of delivery presented to the person to whom any part of the shipment is delivered, except any remaining balance from such shipment after such deliveries may be delivered to any licensed place of business within this state of the licensed wholesaler for whose account such shipment was made, but no such balance shall be returned to the place of origin. No shipment of motor fuel or special fuel originating at a refinery, marine terminal, pipe line terminal, pipe line tank farm or place of manufacture in this state shall be delivered in part to a location within this state and in part to a location without this state. Every person so transporting motor fuel or special fuel shall keep complete and accurate records of all motor fuel and special fuel so transported.

(3) Any person who transports motor fuel or special fuel upon the highways of this state by truck, tractor, trailer, semitrailer or any vehicle which is not required to be registered under sub. (1) shall have his name and address painted on each side of the vehicle not less than 5 inches in height; if the vehicle is operated by a licensee duly licensed in this state, the trade insignia or trade name regularly used by such licensee for tank vehicle identification together with the name of the city from which the vehicle is customarily operated may be substituted for the name and address of the licensee. Such person shall keep complete and accurate records of all motor fuel or special fuel purchased, consumed, sold or otherwise distributed.

(4) No person transporting motor fuel or special fuel upon the highways of this state or any person who has custody of the records of motor fuel or special fuel transported upon the highways of this state shall refuse at any time to divulge to the department, its agents or employes any information demanded by the department, its agents or employes concerning motor fuel or special fuel transported or being transported.

(5) Book records, sales tickets, invoices, delivery tickets, bills of lading, loading tickets or manifests, and other papers pertaining to the transportation, purchase, sale or distribution of motor fuel and special fuel shall be retained for a period of 3 years and during such time shall be subject to inspection by the department.

History: 1953 c. 510, 631.

78.78 Reports by transporters; exceptions. (1) Every agent or employe of every railroad company, street, suburban or interurban railroad company, pipe line company, motor truck or motor tank car company, water transportation company, and every other common carrier transporting motor fuel or special fuel, either in interstate or in intrastate commerce, which originates at or is destined to a point in this state, and every person transporting motor fuel or special fuel interstate, which transportation originates at or is destined to a point in this state, who has the custody of books and records showing such transportation, shall report all such transportation to the department on forms prescribed and furnished by it. This subsection shall not apply to local distribution of motor fuel by persons in bordering states licensed by the department under s. 78.09 (2) (a) for motor fuel distributed by them into the local trading area specified or to persons in this state similarly licensed by a bordering state for comparable purposes.

(2) The reports shall cover monthly periods, and shall be filed with the department on or before the 30th day after the close of the month covered by the report, and shall contain the following information: the name and address of the transporter, the month and year covered by the report, the date of unloading, the initials and number of the car if shipped by rail, the loading ticket or manifest number and the registration number required by s. 78.77 if shipped by truck transport, the name of the consignor, the point of origin, the name of the consignee, the name of the person to whom delivery has in fact been made if other than the original named consignee, the point of unloading, and the quantity of each shipment in gallons, classified as gasoline, casing-head or natural gasoline, benzol, benzine, naphtha, low flash power fuel, kerosene, distillate, liquefied petroleum gas, or other petroleum product.

History: 1953 c. 510.

78.79 Duty of department to enforce this chapter; promulgate rules. The department shall enforce this chapter and see that all violations thereof are promptly prose-

cutted, and that all moneys received by licensees and other persons and in their hands as trust funds and due the state are recovered and collected. The department may promulgate reasonable rules relating to the administration and enforcement of this chapter, and rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings:

History: 1953 c. 510.

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 [Stats. 1949], 227.01 (2), 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 Assn. v. State*, 258 W 505, 46 NW (2d) 825.

78.80 Visitorial and inquisitorial power of department; information and evidence not public; penalty for disclosing same. (1) The department, or any deputy, employe or agent appointed in writing, is authorized at any time during the business day to examine the books, records, papers, receipts, invoices, storage tanks and any equipment of any wholesaler, broker, dealer, special fuel licensee or other person, purchaser or common carrier, pertaining to motor fuel, crude petroleum or special fuels to verify the truth and accuracy of any statement, report or return, or to ascertain whether or not the taxes imposed by this chapter have been paid or to determine the financial responsibility of any licensee for the payment of motor fuel or special fuel taxes. The department is further authorized to redetermine taxes and to allow credits for overpayments due to error.

(2) The department may hold hearings, issue subpoenas duces tecum, administer oaths to witnesses, take the sworn testimony of any person and cause it to be transcribed into writing and conduct such investigations as it may deem necessary. If any wholesaler, broker, dealer, special fuel licensee, purchaser or common carrier, or any other person refuses access to said books, records, papers, receipts, invoices, storage tanks and other equipment, and if any witness fails or refuses to obey any subpoena or subpoena duces tecum or fails or refuses to testify before the department, then the department shall certify the names and facts to any court of competent jurisdiction and the court shall enter such order as the enforcement of this chapter and justice shall require.

(3) Any information obtained by the department as a result of the reports, investigations, examinations or verifications herein required shall be confidential, except when required to be disclosed in a court of law, and any person who divulges such information shall be fined not less than \$50 nor more than \$500 for each offense; provided that this provision shall not be construed to mean that such information or evidence is privileged when used by the state or any representative thereof in any proceeding to collect the motor fuel or special fuel taxes or in any prosecution for violation of the provisions of this chapter or when used by a legislator or a legislator-elect for the purpose of legislation; and provided that the gallonage reported by, the amount of tax assessed against and the amount of tax paid by the wholesaler, broker, dealer, special fuel licensee or any other person shall be and remain records open to the inspection of the public, and may be published by the department; and provided that information concerning suspected violations of other state laws or regulations may be referred by the department to the proper enforcement agencies.

History: 1953 c. 510; 1955 c. 613.

Provisions of 78.13 (3), Stats. 1951, accord relative to administration of motor fuel tax under ch. 78. 41 Atty. Gen. 78.

78.81 Attorney general and district attorney to prosecute; place of trial. (1) Upon request of the department, the attorney general or proper district attorney shall prosecute any action to enforce this chapter.

(2) Any action brought under this chapter may be brought either in the superior or circuit court for Dane county or in the proper court in the county wherein the defendant resides or has its principal place of business.

History: 1953 c. 510.

78.82 Municipalities not to tax motor fuel or special fuel. No county, city, village, town or other political subdivision shall levy or collect any excise, license, privilege or occupational tax upon motor fuel or special fuel or upon the buying, selling, handling or consuming of motor fuel or special fuel.

History: 1953 c. 510.

78.83 Reciprocity as to information. The department shall, upon request from officials to whom are entrusted the enforcement of the motor vehicle fuel tax laws of any other state or of the U. S. government, forward to such officials any information which it

may have relative to the manufacture, receipt, sale, use, transportation or shipment by any person of motor fuel, crude petroleum and special fuels, provided such other state or the U. S. government provides for the furnishing of like information.

History: 1953 c. 510.

78.84 Department shall estimate administration costs. At the beginning of each fiscal year the department shall estimate the costs to be incurred relating to the administration of the tax on motor vehicle fuels imposed by ch. 78 and the payment of premium on contracted bonds furnished under s. 78.11 (5) and shall certify such cost estimates to the director of budget and accounts who shall forthwith draw his warrant on the highway fund for such amount and deposit such proceeds in the general fund. The estimated costs of administering the tax on motor vehicle fuels imposed by ch. 78 and the estimated costs of paying premiums on contracted bonds furnished under s. 78.11 (5) shall be adjusted to actual costs on the cash basis per the records of the department of budget and accounts as of June 30 following, and such adjustment shall be reflected in the fund transfer covering cost estimates for the ensuing year pursuant to this subsection.

History: 1953 c. 510.