

No. 114, S.]

[Published August 8, 1951.]

**CHAPTER 687.**

AN ACT to amend 78.04 (1) (introductory paragraph), (4) (b) and (10) (b), 78.09 (1), 78.13 (3) and 78.18 of the statutes, relating to the motor fuel tax and providing a penalty.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 78.04 (1) (introductory paragraph), (4) (b) and (10) (b) of the statutes are amended to read:

78.04 (1) (introductory paragraph) 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 calendar month, file with the department, on forms prescribed by it, monthly reports sworn to by the wholesaler; *provided, however, if the final filing date falls on a Saturday, Sunday or legal holiday the next secular or business day shall be the final filing date.* Such reports shall be considered filed on time if mailed in an envelope addressed to the department, and postmarked before midnight of the \* \* \* *final filing date.* Such reports shall include the following:

(4) (b) Every person, firm or corporation, not a wholesaler, who shall sell for use or use Class 2 motor fuel to propel motor vehicles upon the public highways (other than that which may have been brought into this state in the ordinary fuel tank attached to a motor vehicle) and in machinery and equipment in connection with the construction, repair and maintenance of the public highways upon which said tax has not been paid by any wholesaler shall on or before the \* \* \* *twentieth* day of each month, make a return to the department, duly signed and sworn to, showing the amount of Class 2 motor fuel sold for use, or used during the preceding month, to propel motor vehicles upon the public highways and in machinery and equipment in connection with the construction, repair and maintenance of the public highways and shall thereupon make payment of the tax herein provided, to the department in the same manner as is provided for wholesalers, *provided, however, if the final filing date falls on a Sunday or legal holiday the next secular or business day shall be the final filing date.* Such reports shall be considered filed on time if mailed in an envelope addressed to the department, and postmarked before midnight of the *final filing date.* If any person who shall sell for use, or use, Class 2 motor fuel to propel motor vehicles upon the public highways and in machinery and equipment in connection with the construction, repair and maintenance of the public highways shall be unable to produce a receipted invoice showing the name and address of the person from whom such Class 2 motor fuel was acquired, the date the same was acquired, the quantity thereof, and showing payment of the tax herein imposed with respect to such Class 2 motor fuel, it shall be presumed that no tax has been paid with respect to such Class 2 motor fuel.

(10) (b) On or before the \* \* \* *twentieth* day of the month the operators thereof shall file an itemized report with the department, on forms prescribed and furnished by it, showing the number of gallons of Class 2 motor fuel purchased during the next preceding calendar month, from whom purchased and the amount of motor fuel tax paid thereon, which are used or to be used to propel motor vehicles upon the public highways of this state and in machinery and equipment in connection with the construction, repair and maintenance of the public highways of this state; *provided, however, if the final filing date falls on a Saturday, Sunday or legal holiday the next secular or business day shall be the final filing date.* Such reports will be deemed filed on time if mailed in an envelope properly addressed to the department, and postmarked before midnight of the \* \* \* *final filing date.*

SECTION 2. 78.09 (1) of the statutes is amended to read:

78.09 (1) It shall be unlawful for any person to operate a truck, \* \* \* trailer or semitrailer or any vehicle on any highway in this state in the transportation of motor fuel either (1) from a point without this state to a point within this state, or (2) from a point within this state to a point without this state, or (3) for hire as defined in section 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. 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 \* \* \*.

SECTION 3. 78.13 (3) of the statutes is amended to read:

78.13 (3) Any information obtained by the department as a result of the reports, investigations, examinations or verifications herein required to be made, shall be confidential, except when required to be disclosed in a court of law, and any person who shall divulge any such information shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$500 for each offense; provided, however, 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 tax or any prosecution for violation of any of the provisions of this chapter; and provided that the gallonage reported by \* \* \* both the amount assessed against and the amount paid by any wholesaler, jobber or any other person of motor fuel license taxes 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.*

SECTION 4. 78.18 of the statutes is amended to read:

78.18 No suit shall be maintained in any court to restrain or delay the collection by or payment of the tax herein imposed and to be paid by the wholesaler, upon any ground whatsoever, but the aggrieved wholesaler shall pay over all taxes, penalties and interest when due and in the manner provided in this chapter, 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 wholesaler 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 wholesaler conducts his business in an action at law to recover the tax so paid with legal interest thereon from the date of payment. If it is finally determined that said tax, or any part thereof, was wrongfully paid out for any reason, it shall be the duty of the \* \* \* *director of the department of budget and accounts* to issue his warrant on the state treasurer for the amount of such tax so adjudged to have been wrongfully paid, together with interest thereon, and the treasurer shall pay same out of the \* \* \* *state highway fund.*

Approved July 20, 1951.

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