

CHAPTER 78

MOTOR VEHICLE AND GENERAL AVIATION FUEL TAXES

SUBCHAPTER I
MOTOR FUEL TAX

78.01	Tax imposed; collected; exceptions.
78.015	Annual adjustment of tax rate.
78.017	Adjustment in 1987.
78.02	Department defined.
78.03	Motor vehicle and mobile machinery and equipment defined.
78.04	Motor fuel defined.
78.05	Blending defined.
78.06	Manufacturing defined.
78.07	Motor fuel received.
78.08	Wholesaler defined.
78.09	Wholesaler's license.
78.10	Application; form; investigation; issue.
78.11	Bond.
78.12	Reports to department; computation of tax.
78.13	Notice by wholesaler of discontinuance, sale or transfer of his business; final report.
78.14	Tax paid is public money.
78.15	Theft of tax moneys.
78.16	Broker and dealer defined.
78.17	Brokers; registration, reports.
78.18	Records to be kept by brokers and dealers.
78.19	Refund for fuel destroyed.
78.20	Refund to retailers.
78.22	Motor fuel floor tax imposed; procedures.

SUBCHAPTER II
SPECIAL FUEL TAX

78.40	Tax imposed; collected; exceptions.
78.405	Annual adjustment of tax rate.
78.407	Adjustment in 1987.
78.41	Department defined.
78.42	Motor vehicle and mobile machinery and equipment defined.
78.43	Special fuel defined.
78.44	Use defined.
78.45	Special fuel dealer defined.
78.46	Special fuel user defined.
78.47	Special fuel license.
78.48	Application; form; investigation; bond; issue.
78.49	Reports to department; computation of tax.
78.50	Notice by special fuel licensee of cessation, sale or transfer of his business; final report.

78.51	Theft of special fuel tax moneys.
78.52	Separate fuel supply tanks required.
78.53	Presumption.

SUBCHAPTER III
GENERAL AVIATION FUEL TAX

78.55	Definitions.
78.555	Tax imposed; rate; collected.
78.56	General aviation fuel license.
78.57	Application; form; investigation; bond; issue.
78.58	Reports to department; computation of tax.
78.59	Notice by general aviation fuel licensee of cessation, sale or transfer of business; final report.
78.60	Theft of general aviation fuel tax moneys.
78.61	Presumption.
78.62	Exemptions.

SUBCHAPTER IV
PROVISIONS COMMON TO MOTOR FUEL TAX, GENERAL
AVIATION FUEL TAX AND SPECIAL FUEL TAX

78.65	Suspension and revocation of licenses.
78.66	Records to be kept by wholesalers and general aviation and special fuel licensees.
78.67	Timely filing.
78.68	Returns; failure to pay; refunds.
78.69	Payment of tax is condition precedent to action to test validity; procedure to recover taxes paid.
78.70	Actions to collect tax and penalties.
78.71	Motor fuel, general aviation fuel and special fuel taxes are preferred claims.
78.72	Preference given actions to enforce this chapter.
78.73	Criminal penalties.
78.74	Remedies and penalties are cumulative.
78.75	Refund; procedure; claim unassignable.
78.77	Registration of transporters; records to be kept.
78.78	Reports by transporters; exceptions.
78.79	Duty of department to enforce fuel tax provisions; promulgate rules.
78.80	Departmental examinations; information; penalty.
78.81	Attorney general and district attorney to prosecute; place of trial.
78.82	Municipalities not to tax motor fuel or special fuel.
78.84	Public depository.

SUBCHAPTER I

MOTOR FUEL TAX

78.01 Tax imposed; collected; exceptions. (1) IMPOSITION OF TAX AND BY WHOM PAID. An excise tax of 15 cents per gallon to June 30, 1984; 16 cents per gallon from July 1, 1984, to March 31, 1985; and thereafter at the rate determined under ss. 78.015 and 78.017 is imposed on all motor fuel sold, used or distributed in this state except as otherwise provided in this chapter. The motor fuel tax is to be computed and paid as provided in this chapter. Except as otherwise provided in this chapter, the wholesaler, as defined in s. 78.08, shall collect from the purchaser and the purchaser shall pay to the wholesaler the tax imposed by this section on each sale of motor fuel by the wholesaler at the time of the sale, irrespective of whether the sale is for cash or on credit. In each subsequent sale or distribution of motor fuel on which the tax has been collected as provided in this subsection, the tax collected shall be added to the selling price so that the tax is paid ultimately by the user of the 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. 71.38.

(e) Motor fuel sold for nonhighway use in mobile machinery and equipment and delivered directly into the consumer's storage tank in an amount of not less than 100 gallons if the supplier obtains from the consumer an annual exemption certificate prescribed by the department.

(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 20th day of each calendar month such user

78.01 VEHICLE AND GENERAL AVIATION FUEL TAXES

87-88 Wis. Stats. 1754

shall file with the department invoices of all such purchases made by him during the preceding month accompanied by a certificate, 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: 1979 c. 221; 1981 c. 20; 1983 a. 27; 1985 a. 153; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 399.

78.015 Annual adjustment of tax rate. (1) Beginning in 1985, on or before April 1 the department shall recompute and publish the rate for the tax imposed under s. 78.01 (1) and the rate under s. 78.14. The new rate per gallon shall be calculated by multiplying the rate in effect at the time of the calculation by an amount obtained by multiplying the amount under sub. (2) by the amount under sub. (3).

(2) Divide the highway maintenance cost index, as computed by the federal department of transportation, federal highway administration, for the year prior to the year during which the calculation is made by that index for the year that is 2 years prior to the year during which the calculation is made.

(3) Divide the number of gallons of motor fuel and special fuel sold in this state, as estimated by the department, during the year 2 years prior to the year during which the calculation is made minus any shrinkage allowed by the department by the number obtained by subtracting from the number of gallons of motor fuel and special fuel sold in this state, as estimated by the department, during the year prior to the year during which the calculation is made any shrinkage allowed by the department.

(4) The rate calculated under this section shall be rounded to the nearest 0.1 cent.

(5) The rate calculated under this section is effective on the April 1 after the calculation.

History: 1983 a. 27.

78.017 Adjustment in 1987. On August 1, 1987, the rate of the tax imposed under s. 78.01 (1), after the adjustment for that year under s. 78.015, shall be increased by 2 cents per gallon.

History: 1987 a. 27.

78.02 Department defined. "Department" means the department of revenue.

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.

78.04 Motor fuel defined. "Motor fuel" means:

(1) All products commonly or commercially known or sold as gasoline or naphtha (except commercial or industrial naphthas or solvents or general aviation fuels as defined in s. 78.55 (3) 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: 1981 c. 20.

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.

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.

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, pipeline terminal, pipeline tank farm or place of manufacture in this state, or motor fuel which is imported into this state by boat, barge or pipeline and delivered in such boat or barge or by such pipeline to any person at a refinery, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture in this state for storage, or motor fuel which is imported into this state and stored for blending by any person at a refinery in this state to correct an imbalance of product output due to excess asphalt production:

(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, pipeline terminal, pipeline 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. However, when motor fuel is shipped by such person from storage at a refinery, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture in this state to a person at another refinery, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture in this state

by boat, barge or pipeline, this paragraph shall then apply to the person to whom so shipped as if he had imported the motor fuel by boat, barge or pipeline;

(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 shipped or delivered to that 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 that 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) (b) 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) Upon written request and for good reason the department may permit the storage of motor fuel in quantities of 100,000 gallons or more at any marine terminal, pipeline terminal, or pipeline tank farm to be supplied by other means of transportation from a refinery within the state, and the motor fuel so supplied shall then be subject to sub. (1) as if imported by boat, barge or pipeline.

(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 or for whose account such shipment or delivery is made to an unlicensed place of business; except that motor fuel sold or distributed to unlicensed persons in this state by a person licensed under s. 78.09 (2) (a) 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: 1983 a. 27, 37.

78.08 Wholesaler defined. "Wholesaler" means any person (including the state and any county, city, town, village or school district thereof, but not including the United States or its agencies except to the extent permitted by the constitution and laws thereof) who produces, refines, blends 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).

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. 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 this state, or any county, city, town, village or school district thereof.

(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) 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.

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 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 nonissuance 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.

78.11 Bond. (1) AMOUNT. (a) To protect the revenues of this state, the department may require any person liable to the

78.11 VEHICLE AND GENERAL AVIATION FUEL TAXES

87-88 Wis. Stats. 1756

department for the tax imposed by this subchapter to place with it, either before or after a wholesaler's license is issued, security in the amount which the department determines. The amount of security required may be increased or decreased as the department deems necessary, but shall not exceed \$100,000. If any applicant or licensee fails or refuses to place such security, the department may refuse to issue or may revoke the license. If any taxpayer is delinquent in the payment of taxes imposed by this subchapter, the department may, upon 10 days' notice, recover the taxes, interest, penalties, costs and disbursements from the taxpayer's security placed with the department. No interest shall be paid or allowed by the state to any person for the deposit of the security.

(b) The security required by this subsection may be in the form of a surety bond furnished to the department payable to the state to secure payment of any and all motor fuel taxes, interest and penalties accrued under this subchapter, together with the costs and disbursements incurred in the collection thereof. The department shall prescribe the form and contents of the bond.

(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.

History: 1973 c. 90.

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 20th

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. 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.

(3m) **EXEMPTION REPORTS.** Any person who purchases motor fuel tax-free under s. 78.01 (2) (e) shall file an annual report not later than April 15 of the year following the reporting period. That report shall be prescribed by the department and shall set forth the number of gallons purchased, the supplier, the use and any other information that the department reasonably requires for the administration and enforcement of this subchapter. The department may not renew the exemption certificate of any person who fails to file the report under this subsection.

(4) **COMPUTATION OF TAX.** Each wholesaler at the time of making the monthly report shall compute and pay to the public depository if one has been designated pursuant to s. 78.84, but otherwise directly 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 the amount provided in s. 78.01 (1) and the resulting figure shall be the amount of the motor fuel tax for the next preceding month.

(5) DEPOSITORIES OF TAXES. The requirements of this section with respect to filing of reports and payment of taxes to the department may be waived and, in lieu thereof, the department of administration may designate a public depository with which such reports and taxes may be filed and deposited. Upon not less than 6 months' notice to the public depository, the secretary of revenue may direct that taxes required to be reported and remitted on and after a date specified be reported and remitted directly to the department of revenue.

History: 1973 c. 333; 1975 c. 180, 421; 1977 c. 418; 1979 c. 221; 1985 a. 153; 1987 a. 399.

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 the business, the wholesaler 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 the business, the name and address of the purchaser or transferee thereof.

(2) FINAL REPORTS. Every wholesaler shall, upon the discontinuance, sale or transfer of the business or upon the cancellation or revocation of a license, make a report as required under s. 78.12 and pay all motor fuel taxes and penalties due the state. Such payment shall be to the public depository if one has been designated pursuant to s. 78.84, but otherwise to the department.

History: 1973 c. 333; 1975 c. 180, 421; 1981 c. 20; 1987 a. 399.

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 the sale or distribution 15 cents per gallon to June 30, 1984; 16 cents per gallon from July 1, 1984, to March 31, 1985; and thereafter at the rate determined under ss. 78.015 and 78.017 on all motor fuel sold or distributed. All sums paid by the purchaser to the wholesaler as taxes upon the motor fuel, upon which the tax imposed by this chapter has not been paid previously, are public money, the property of this state.

History: 1979 c. 221; 1981 c. 20; 1983 a. 27; 1987 a. 27.

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.

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.

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.

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 employee 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.

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 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 claim with the department on forms prescribed and furnished by it, 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.

(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 name must be the name of the claimant and be uniform on all invoices), 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 unless such invoice is upon a special paper or product approved in advance by the department as affording protection equivalent to double-faced carbon paper. A separate original

invoice shall be used for each sale and delivery. The original invoice shall be legibly written and the supplier shall 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 this chapter to be used for carrying out this section and shall return to the retailer said original invoice at the time of said payment. No claim for refund shall be denied or the payment thereof withheld for failure of the original invoice to show the amount of the Wisconsin motor fuel tax as a separate item if the amount of such tax is determinable from the information stated on the original invoice.

(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.

78.22 Motor fuel floor tax imposed; procedures. (1) FLOOR TAX IMPOSED. On the date any motor fuel tax rate change becomes effective under s. 78.01, a floor tax is hereby imposed upon every person who is in possession of any motor fuel held for sale or resale and on which the motor fuel tax already has been imposed. The person shall determine the volume of motor fuel and shall file with the department by the 15th day of the month in which the new tax rate becomes effective a return, together with any tax due on it, determined in accordance with sub. (2).

(2) FLOOR TAX OR REFUND COMPUTATION. The amount of any motor fuel floor tax or refund shall be computed by multiplying the number of gallons of motor fuel held in inventory as determined under sub. (1) by the difference between the tax rate already paid and the new tax rate, and the resulting figure shall be expressed in dollars.

(3) ADMINISTRATION. (a) Sections 71.74 (1), (2), (10), (11), (13) and (14), 71.75 (4) to (7), 71.82 (2) (a) and (b), 71.83 (2) (b) 3, 71.88 (1) (a) and (2) (a), 71.89 to 71.91, 71.92, 73.01 and 73.015 apply to the administration of this section.

(b) The department shall provide the tax return form required under this section.

(4) LATE FILING FEE. Any person who fails to file a motor fuel floor tax return when due shall be required to pay a late filing fee of \$10. A return shall be considered filed in time if it is mailed in a properly addressed envelope with 1st class postage duly prepaid and the envelope is officially post-marked on the date due and the return is actually received by the department within 5 days of the due date.

(5) DELINQUENT INTEREST. If the tax imposed in this section is not paid when due, interest at the rate of 1.5% per month accrues from the date the tax became due until paid.

(6) PENALTY. If any person liable for the tax files a false or fraudulent return, there shall be added to the tax an amount equal to the tax the person evaded or attempted to evade.

History: 1981 c. 20; 1987 a. 312 s. 17.

SUBCHAPTER II

SPECIAL FUEL TAX

78.40 Tax imposed; collected; exceptions. (1) IMPOSITION OF TAX AND BY WHOM PAID. An excise tax of 15 cents per gallon to June 30, 1984; 16 cents per gallon from July 1, 1984, to March 31, 1985; and thereafter at the rate determined under ss. 78.405 and 78.407 is imposed on the use, as defined in s. 78.44, of special fuel. The tax, with respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles in this state, attaches at the time of delivery and shall be collected by the dealer from the special fuel user and shall be paid to the department. The tax, with respect to special fuel acquired by any special fuel user other than by delivery by a special fuel dealer into a fuel supply tank of a motor vehicle, attaches at the time of the use of the fuel and shall be paid to the department by the user. The department may permit any supplier of special fuel to report and pay to the department the tax on special fuel delivered into the storage facility of a special fuel user or retailer which will be consumed for special fuel tax purposes or sold at retail.

(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.

(c) 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. 71.38.

History: 1979 c. 11, 221; 1981 c. 20; 1983 a. 27; 1985 a. 302; 1987 a. 27; 1987 a. 312 s. 17.

78.405 Annual adjustment of tax rate. Beginning in 1985, on or before April 1 the department shall adjust and publish the rate in s. 78.40 using the calculations under s. 78.015. The adjusted rate is effective on the April 1 after it is calculated.

History: 1983 a. 27.

78.407 Adjustment in 1987. On August 1, 1987, the rate of the tax imposed under s. 78.40 (1), after the adjustment for that year under s. 78.405, shall be increased by 2 cents per gallon.

History: 1987 a. 27.

78.41 Department defined. "Department" means the department of revenue.

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.

78.43 Special fuel defined. "Special fuel" means 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 or general aviation fuel as defined in s. 78.55 (3).

History: 1981 c. 20.

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 and the delivery to a retailer or user if the supplier reports and pays the tax under s. 78.40 (1).

History: 1985 a. 302.

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 or to a retailer or user if the supplier reports and pays the tax under s. 78.40 (1).

History: 1985 a. 302.

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.

78.47 Special fuel license. No person may act as a special fuel dealer in this state unless the person holds a valid special fuel license issued 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 may use special fuel in this state unless the person holds a valid special fuel license issued by the department or unless the special fuel has been delivered by a supplier who is authorized under s. 78.40 (1) to report and pay the tax on behalf of the user or retailer.

History: 1979 c. 11; 1985 a. 302.

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 department. It shall be subscribed 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 nonissuance 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.** (a) To protect the revenues of this state, the department may require any person liable to the department for the tax imposed by this subchapter to place with it, either before or after a special fuel license is issued, security in an amount which the department determines. The amount of security required may be increased or decreased as the department deems necessary, but shall not exceed \$25,000. If any applicant or licensee fails or refuses to place such security, the department may refuse to issue or may revoke the license. If any taxpayer is delinquent in the payment of taxes imposed by this subchapter, the department may, upon 10 days' notice, recover the taxes, interest, penalties, cost and disbursements from the taxpayer's security placed with the department. No interest shall be paid or allowed by the state to any person for the deposit of the security.

(b) The security required by this subsection may be in the form of a surety bond furnished to the department payable to the state to secure payment of any and all special fuel taxes, interest and penalties accrued under this subchapter, together with costs and disbursements incurred in the collection thereof. The department shall prescribe the form and contents of the bond.

(c) Section 78.11 (2) to (4), regarding wholesalers' bonds, shall also apply to bonds furnished by special fuel applicants and licensees under this subsection.

History: 1973 c. 90.

78.49 Reports to department; computation of tax. (1) REPORTS OF SPECIAL FUEL LICENSEES. (a) For the purpose of determining the amount of liability to the state for the tax herein imposed, except as provided in par. (b), each special fuel licensee shall, not later than the 20th 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 the licensee's duly authorized agent. 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

78.49 VEHICLE AND GENERAL AVIATION FUEL TAXES

87-88 Wis. Stats. 1760

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.

(b) The department may allow special fuel licensees whose tax liability is less than \$500 per quarter to file on a quarterly basis. Quarterly reports shall be mailed on or before the 20th day of the next month following the end of each calendar quarter. The report shall contain the declaration, subscription and information specified in par. (a).

(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 the monthly or quarterly report shall compute and pay to the public depository if one has been designated under s. 78.84, but otherwise directly to the department, the full amount of the special fuel tax for the next preceding month or quarter. The amount of the special fuel tax shall be computed as follows: the number of gallons of special fuel delivered or placed by the special fuel licensee into the fuel supply tanks of motor vehicles or sold to a retailer if the supplier reports and pays the tax under s. 78.40 (1) shall be multiplied by the amount provided in s. 78.40 (1) and the resulting figure shall be the amount of the special fuel tax for the next preceding month or quarter.

History: 1973 c. 333; 1975 c. 180, 421; 1979 c. 221; 1981 c. 20; 1985 a. 302.

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, the licensee shall notify the department in writing. Said notice shall give the date of cessation, and in the event of sale or transfer of the business, the name and address of the purchaser or transferee thereof.

(2) **FINAL REPORT.** Every special fuel licensee shall, upon such cessation, sale or transfer of the business or upon the cancellation or revocation of a license, make a report as required in s. 78.49 and pay all special fuel taxes and penalties due the state. Such payment shall be to the public depository if one has been designated pursuant to s. 78.84, but otherwise to the department.

History: 1973 c. 333; 1975 c. 180, 421; 1981 c. 20; 1987 a. 399.

78.51 Theft 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 theft and shall be punished as provided by law for the crime of theft, irrespective of whether such special fuel dealer has or claims to have any interest in such moneys so received by him.

78.52 Separate fuel supply tanks required. 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.

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.

SUBCHAPTER III**GENERAL AVIATION FUEL TAX**

78.55 Definitions. In this chapter:

(1) "Air carrier company" has the meaning prescribed in s. 76.02 (5a).

(2) "Aircraft" means any contrivance, except those owned by an air carrier company, invented, used or designed for navigation or flight in the air.

(3) "General aviation fuel" means products placed in the fuel supply tank of aircraft, commonly or commercially known as aviation gasoline and jet turbine fuel and other combustible gases and liquids suitable for the generation of power for propulsion of aircraft.

(4) "General aviation fuel dealer" means any person, including the state and any political subdivision of the state, but not including the United States or its agencies, in the business of handling general aviation fuel who places any part of the fuel into the fuel supply tank of an aircraft not then owned by that person or into the bulk storage facilities of a general aviation fuel user.

(5) "General aviation fuel user" means the owner or other person, including the state and any political subdivision of the state, but not including the United States or its agencies or air carrier companies, who is responsible for the operation of an aircraft at the time general aviation fuel is placed in the fuel supply tank of the aircraft while the aircraft is within this state.

History: 1981 c. 20.

78.555 Tax imposed; rate; collected. An excise tax of 6 cents per gallon is imposed on all general aviation fuel sold, used or distributed in this state except as otherwise provided in this chapter. The general aviation fuel tax is to be computed and paid as provided in this chapter. Except as otherwise provided in this chapter, the general aviation fuel licensee, shall collect from the purchaser and the purchaser shall pay to the licensee the tax imposed by this section on each sale of general aviation fuel by the licensee at the time of the sale, irrespective of whether the sale is for cash or on credit. In each subsequent sale or distribution of general aviation fuel on which the tax has been collected as provided in this subsection, the tax collected shall be added to the selling price so that the tax is paid ultimately by the user of the general aviation fuel.

History: 1981 c. 20.

78.56 General aviation fuel license. No person may act as a general aviation fuel dealer in this state unless the person is the holder of a valid general aviation fuel license issued to the person by the department.

History: 1981 c. 20.

78.57 Application; form; investigation; bond; issue. (1) **FORM.** Application for a general aviation fuel license shall be made on a form prepared and furnished by the department. It shall be subscribed 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 may be issued if the department determines that:

- (a) The application was 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 nonissuance exists.

(3) **HEARING.** Before refusing to issue a license, the department shall grant the applicant a hearing of which he or she shall be given at least 5 days' advance 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 general aviation fuel license is required.

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

(6) **TRANSFER FORBIDDEN.** A general aviation 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 that place shall be immediately surrendered to the department.

(9) **BOND.** (a) To protect the revenues of this state, the department may require any person liable to the department for the tax imposed by this subchapter to place with it, either before or after a general aviation fuel license is issued, security in an amount which the department determines. The amount of security required may be increased or decreased as the department deems necessary, but may not exceed \$25,000. If an applicant or licensee fails or refuses to place such security, the department may refuse to issue or may revoke the license. If any taxpayer is delinquent in the payment of taxes imposed by this subchapter, the department may, upon 10 days' advance written notice, recover the taxes, interest, penalties, cost and disbursements from the taxpayer's security placed with the department. No interest may be paid or allowed by the state to any person for the deposit of the security.

(b) The security required by this subsection may be in the form of a surety bond furnished to the department payable to the state to secure payment of any and all general aviation fuel taxes, interest and penalties accrued under this subchapter, together with costs and disbursements incurred in the collection thereof. The department shall prescribe the form and contents of the bond.

(c) Section 78.11 (2) to (4), regarding wholesalers' bonds, also applies to bonds furnished by general aviation fuel applicants and licensees under this subsection.

History: 1981 c. 20.

78.58 Reports to department; computation of tax. (1) REPORTS OF GENERAL AVIATION FUEL LICENSEES. (a) For the purpose of determining the amount of the licensee's liability to the state for the tax imposed by this subchapter, except as provided in par. (b), each general aviation fuel licensee shall, not later than the 20th day of each month, file a monthly report for the next preceding month with the department on forms furnished and prescribed by it. The report shall contain a declaration by the licensee that the statements contained therein are accurate and are a true return of the amount of general aviation fuel tax due and shall be subscribed by the licensee or the licensee's duly authorized agent.

The report shall show, with reference to each location at which general aviation fuel is delivered or placed by the licensee into a fuel supply tank of any aircraft, such information as the department may reasonably require for the proper administration and enforcement of the general aviation fuel tax. The department shall give due consideration to the varying types of operations and transactions in specifying the information required.

(b) The department may allow a licensee whose tax liability is less than or equal to \$500 per quarter to file on a quarterly basis. The licensee shall mail the quarterly report for the next preceding quarter to the department on or before the 20th day of each quarter.

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

(3) **COMPUTATION OF TAX.** (a) Each general aviation fuel licensee at the time of making the monthly or quarterly report shall compute and pay to the public depository if one has been designated under s. 78.84, but otherwise directly to the department, the full amount of the general aviation fuel tax for the next preceding month or quarter, which shall be computed as follows: the number of gallons of general aviation fuel placed into the fuel supply tanks of an aircraft or into bulk storage facilities by the general aviation fuel licensee, multiplied by 0.06 and the resulting figure expressed in dollars.

History: 1981 c. 20.

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

(2) **FINAL REPORT.** Every general aviation fuel licensee shall, upon such cessation, sale or transfer of the business or upon the cancellation or revocation of a license, make a report as required in s. 78.58 and pay all general aviation fuel taxes and penalties due the state. Such payment shall be to the public depository if one has been designated under s. 78.84, but otherwise to the department.

History: 1981 c. 20; 1987 a. 399.

78.60 Theft of general aviation fuel tax moneys. All sums paid by a purchaser of general aviation fuel to any general aviation fuel dealer as general aviation fuel taxes, which have not theretofore been paid to the state, are public moneys, the property of this state. Any general aviation fuel dealer who fails or refuses to pay over to the state the tax on general aviation 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 such general aviation fuel dealer has or claims to have any interest in such moneys so received.

History: 1981 c. 20.

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

History: 1981 c. 20, 314.

78.62 Exemptions. This subchapter does not apply to aviation fuel delivered to or used by the United States or its agencies or to an air carrier company.

History: 1981 c. 20.

SUBCHAPTER IV

PROVISIONS COMMON TO MOTOR FUEL TAX, GENERAL AVIATION 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 for active use required by s. 78.09 (1) or if a wholesaler, general aviation fuel licensee 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 may be suspended unless the holder of the license has been notified of a hearing to be held on the charges and no license may be revoked until after the holder of the license has been notified of a hearing and has been afforded an opportunity to appear and testify. The department shall notify the licensee in writing of the time and place a hearing of the charges shall be held. The notice shall contain a statement of the alleged violation, and shall be served upon the licensee at least 10 days prior to the hearing, either by personal delivery to the licensee, or by mailing by registered mail to the address of the licensee as shown in the application. At the time and place fixed in the 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 statements, testimony, evidence and argument pertinent to the charges or to any defense thereto. The department may continue the hearing from time to time but not more than 60 days. After the hearing, the department shall rescind the order of suspension, if any, and for good cause shown shall either suspend the license for a given period of time or revoke the license.

(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: 1981 c. 20; 1987 a. 399.

78.66 Records to be kept by wholesalers and general aviation and special fuel licensees. (1) Every wholesaler, general aviation fuel licensee 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, general aviation fuel and special fuel.

(2) Every licensee shall keep true and accurate records of all stocks of motor fuel, crude petroleum, general aviation fuel and special fuel on hand. Every licensee shall take a physical inventory of motor fuel, crude petroleum, general aviation fuel and special fuel 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: 1981 c. 20.

78.67 Timely filing. When the final date provided in this chapter for the filing of any report or claim 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. The provisions on timely filing under s. 71.80 (18) apply to the tax under this chapter.

History: 1985 a. 302; 1987 a. 312 s. 17.

78.68 Returns; failure to pay; refunds. (1) Unpaid taxes shall bear interest at the rate of 12% per year from the due date of the return until paid or deposited with the department, and all refunded taxes bear interest at the rate of 9% per year from the due date of the return to the date on which the refund is certified on the refund rolls.

(1m) All payments of additional amounts owed shall be applied in the following order: penalties, interest, tax principal.

(2) Delinquent tax returns are subject to a \$10 late filing fee. Delinquent motor fuel, special fuel and general aviation fuel taxes bear interest at the rate of 1.5% per month until paid. The taxes imposed by this chapter are delinquent if not paid:

(a) In the case of a timely filed return, no return or a late return, on or before the due date of the return; or

(b) In the case of a deficiency determination of taxes, within 2 months after the date of demand.

(3) If due to neglect an incorrect return is filed, the entire tax finally determined is subject to a penalty of 25% of the tax exclusive of interest or other penalty. A person filing an incorrect return has the burden of proving that the error or errors were due to good cause and not due to neglect.

(4) In case of failure to file any return required under ss. 78.12, 78.49 and 78.58 by the due date, unless it is shown that that failure was due to reasonable cause and not due to neglect, there shall be added to the amount required to be shown as tax on that return 5% of the amount of the tax if the failure is for not more than one month, and an additional 5% of the tax for each additional month or fraction thereof during which the failure continues, not exceeding 25% of the tax in the aggregate. For purposes of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the due date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(5) If a person fails to file a return when due or files a false or fraudulent return with intent in either case to defeat or evade the taxes imposed by this chapter, a penalty of 50% of the tax shall be added to the tax required to be paid, exclusive of interest and other penalties.

(6) Any person who fails to furnish any return required to be made or who fails to furnish any data required by the department may be fined not more than \$500 or imprisoned for not more than 30 days or both.

(7) Any person, including an officer of a corporation, who is required to make, render, sign or verify any report or return required by this chapter and who makes a false or fraudulent report or return or who fails to furnish a report or return when due with the intent, in either case, to defeat or evade the

tax imposed by this subchapter may be fined not more than \$500 or imprisoned for not more than 30 days or both.

(8) No person may aid, abet or assist another in making any false or fraudulent return or false statement in any return required by this chapter with intent to defraud the state or evade payment of the tax, or any part thereof, imposed by this chapter. Any person who violates this subsection may be fined not more than \$500 or imprisoned for not more than 30 days or both.

(9) 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 the tax when due, or intends or is likely to convey, dispose of, or conceal his or her property or abscond from the state, or do any other act which would render the state insecure in collecting the tax when due, the department may demand payment forthwith of all taxes upon all motor fuel received, as defined in s. 78.07, general aviation fuel placed in the fuel supply tank of an aircraft or in bulk storage facilities or special fuel used, as defined in s. 78.44, by the licensee, which shall immediately become payable and collectible as if delinquent, and the property of the licensee shall be subject to attachment as provided in s. 78.70.

History: 1973 c. 333; 1977 c. 29, 289, 418; 1981 c. 20; 1983 a. 368; 1987 a. 399.

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 the licensee conducts the 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 department of administration shall issue its 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 transportation fund.

History: 1977 c. 29 s. 1654 (1); 1977 c. 273.

78.70 Actions to collect tax and penalties. (1) DEPARTMENT AUTHORITY. The department may collect delinquent motor vehicle fuel and general aviation fuel taxes in the manner provided for the collection of delinquent income and franchise taxes under ss. 71.80 (12), 71.82 (2), 71.91 (1) (a) and (c), (2) to (5m) and (7) and 71.92, including proceeding under the authority incorporated by reference in s. 71.91 (5) (j) and the authority to:

- (a) Use the warrant procedures under ss. 71.80 (12), 71.82 (2), 71.91 (1) (a) and (c) and (2) to (5m) and 71.92.
- (b) Release real property from the lien of a warrant.
- (c) Satisfy warrants.
- (d) Approve instalment payment agreements.
- (e) Compromise on the basis of ability to pay.
- (f) Compromise delinquent estimated determinations on the basis of fairness and equity.

(2) **ATTACHMENT.** Delinquent motor fuel, general aviation 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, the licensee shall be deemed to be a nonresident of this state, 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 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, general aviation 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.

(6) **PERSONAL LIABILITY.** Any officer, employe, fiduciary or agent who is responsible for paying taxes under this chapter incurred by another person, as defined in s. 77.51 (10), is personally liable for those taxes. Sections 71.88 (1) (a) and (2) (a), 71.89 and 71.90, as they apply to appeals of income tax assessments, apply to appeals of assessments under this subsection.

History: 1977 c. 29, 418; 1981 c. 20; 1985 a. 29 ss. 1502, 3202 (46) (d); 1987 a. 312 ss. 8, 17.

78.71 Motor fuel, general aviation fuel and special fuel taxes are preferred claims. (1) 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, general aviation fuel or special fuel tax moneys and penalties due the state from the licensee shall be considered preferred claims and the state shall be a preferred creditor and shall be paid in full.

(2) If the property of any consumer of motor fuel, general aviation fuel or special fuel is seized upon any mesne or final process of any court of this state, or when the business of any consumer of motor fuel, general aviation fuel or special fuel is suspended by the action of creditors or put into the hands of any assignee, receiver or trustee, all amounts due any licensee for motor fuel, general aviation fuel or special fuel taxes paid to the state by the licensee on motor fuel, general aviation fuel or special fuel purchased from it by the consumer shall be considered preferred claims and the licensee shall be a pre-

ferred creditor to that extent and shall be paid in full for such taxes paid.

History: 1981 c. 20.

78.72 Preference given actions to enforce this chapter.

All proceedings and hearings, civil or criminal, arising under this chapter shall be given preference.

History: 1983 a. 219.

78.73 Criminal penalties. (1) ACTS FORBIDDEN. Any person who does any of the following may be fined not more than \$500 or imprisoned not more than 6 months or both:

(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 s. 341.45, or otherwise commits a fraud in any application, record, report or claim for refund;

(dm) Presents an exemption certificate under s. 78.01 (2) (e) or 78.40 (2) (d) and uses the fuel obtained tax-free on the basis of the certificate in a manner other than the manner for which the certificate was issued;

(e) Uses any false or fictitious name or address when purchasing or obtaining motor fuel, general aviation fuel or special fuel from any source for sale or consumption in this state; or

(f) Violates a provision of this chapter, except as provided in pars. (a) to (e) and subs. (2) to (4).

(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 may be fined not more than \$5,000 or imprisoned in the county jail for not 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 days 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 or s. 341.45 shall be fined not more than \$5,000 or imprisoned in the county jail for not more than one year or both.

History: 1981 c. 20; 1985 a. 153; 1987 a. 27.

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.

78.75 Refund; procedure; claim unassignable. (1) (a) 1. Except as provided under subds. 2 and 2m, a person who uses motor fuel or special fuel, upon which has been paid the tax required under this chapter, for the purpose of operating a taxicab for the transportation of passengers or for any purpose other than operating a motor vehicle upon the public highways, shall be reimbursed and repaid the amount of the tax paid upon making and filing a claim with the department.

2. A person who uses motor fuel or special fuel upon which has been paid the tax required under this chapter for the purpose of operating a snowmobile, as defined under s.

340.01 (58a), or a motorboat, as defined under s. 30.50 (6), may not be reimbursed or repaid the amount of tax paid.

2m. A person who uses motor fuel or special fuel upon which has been paid the tax required under this chapter for the purpose of operating an all-terrain vehicle, as defined under s. 340.01 (2g), may not be reimbursed or repaid the amount of tax paid unless the all-terrain vehicle is registered for private use under s. 23.33 (2) (d).

3. Claims under subd. 1 shall be made and filed upon forms prescribed and furnished by the department. The forms shall indicate that refunds are not available for motor fuel used for motorboats or gas used for snowmobiles and that the estimated snowmobile gas tax payments are used for snowmobile trails and areas. The forms shall indicate that refunds are not available for gas used for all-terrain vehicles unless the all-terrain vehicle is registered for private use under s. 23.33 (2) (d) and shall indicate that estimated all-terrain vehicle gas tax payments are used for all-terrain vehicle trails and areas. The department shall distribute forms in sufficient quantities to each county clerk.

(b) Such claim shall be filed not later than 12 months after the date of purchase of the motor fuel or special fuel, or the claim shall not be allowed.

(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: date of sale, name and address of seller, name and address of purchaser (which name must be the name of the claimant), number of gallons purchased and the price per gallon, amount of Wisconsin motor fuel or special fuel tax paid as a separate item, and receipt for payment. Double-faced carbon paper shall be used between the original invoice and the first carbon copy unless such invoice is upon a special paper or product approved in advance by the department as affording protection equivalent to double-faced carbon paper. 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 deems 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 and may require a claimant to submit records to substantiate his claim. When the department has approved such claim, it shall pay the claimant the reimbursement herein provided, out of the moneys collected under this chapter 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: 1973 c. 33; 1977 c. 29; 1979 c. 221; 1981 c. 390 s. 252; 1983 a. 189 s. 329 (33); 1985 a. 29; 1987 a. 27.

78.77 Registration of transporters; records to be kept. (1)

No person may transport motor fuel, general aviation fuel or special fuel by truck, trailer, 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 (4), unless each 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.R. is prominently displayed on the vehicle 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 and shall furnish such information concerning the applicant as the department requires. The application shall show the name and address of the applicant, a description of the truck, trailer, semitrailer or other vehicle, 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, semitrailer or other vehicle, and the serial and motor number of any truck.

(2) Every person transporting motor fuel, general aviation fuel or special fuel upon the highways of this state, who obtains the motor fuel, general aviation fuel or special fuel from a refinery, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture shall, while transporting the motor fuel, general aviation fuel or special fuel, carry a copy of the loading ticket or manifest prepared and furnished by the refiner, marine terminal, pipeline terminal, pipeline 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, pipeline terminal, pipeline tank farm or place of manufacture where loaded, point of origin, destination, name of shipper, kind of motor fuel, general aviation fuel or special fuel and number of gallons. Each shipment of motor fuel, general aviation fuel or special fuel by truck, trailer, semitrailer or other vehicle shall have one manifest, and only one, covering the entire load. Deliv-

ery of any shipment may be made to one or more unlicensed places of business at the direction of the licensed wholesaler or general aviation fuel dealer whose name and address appear on the manifest and for whose account the shipment is made if the licensed wholesaler's or general aviation fuel dealer's 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 the 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 the shipment after the deliveries may be delivered to any licensed place of business within this state of the licensed wholesaler or general aviation fuel dealer for whose account such shipment was made, but no balance shall be returned to the place of origin. No shipment of motor fuel, general aviation fuel or special fuel originating at a refinery, marine terminal, pipeline terminal, pipeline 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 transporting motor fuel, general aviation fuel or special fuel shall keep complete and accurate records of all motor fuel, general aviation fuel and special fuel transported.

(3) Any person who transports motor fuel, general aviation 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 or her 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. Each such person shall keep complete and accurate records of all motor fuel, general aviation fuel or special fuel purchased, consumed, sold or otherwise distributed.

(4) No person transporting motor fuel, general aviation fuel or special fuel upon the highways of this state or any person who has custody of the records of motor fuel, general aviation fuel or special fuel transported upon the highways of this state may 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, general aviation 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, general aviation fuel and special fuel shall be retained for a period of 3 years and during that time shall be subject to inspection by the department.

History: 1977 c. 29; 1981 c. 20; 1983 a. 189 s. 329 (29).

78.78 Reports by transporters; exceptions. (1) Every agent or employe of every railroad company, pipeline company, motor truck or motor tank car company, water transportation company, and every other common carrier transporting motor fuel, general aviation fuel or special fuel, either in interstate or intrastate commerce, which originates at or is destined to a point in this state, and every person transporting motor fuel, general aviation 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 the transportation, shall report all the 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: 1981 c. 20; 1985 a. 187.

78.79 Duty of department to enforce fuel tax provisions; promulgate rules. The department shall enforce this chapter and those violations of s. 341.45 (1g) and (1m) which are reported to the department by the department of transportation and see that all violations thereof are promptly prosecuted, 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. The department shall consult and cooperate with the department of transportation in the enforcement of s. 341.45 (1g) and (1m).

History: 1987 a. 27.

78.80 Departmental examinations; information; penalty.

(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, general aviation fuel licensee, special fuel licensee or other person, purchaser or common carrier, pertaining to motor fuel, crude petroleum, general aviation fuel or special fuel 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, general aviation 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, 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, general aviation fuel licensee, special fuel licensee, purchaser or common carrier, or any other person refuses access to the books, records, papers, receipts, invoices, storage tanks and other equipment, and if any witness fails or refuses to obey any subpoena 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) Sections 71.78 (1) and (4) to (9) and 71.83 (2) (a) 3, relating to confidentiality of income and gift tax returns, apply to any information obtained from any person on a motor fuel, general aviation fuel or special fuel tax return, report, schedule, exhibit or other document or from an audit report pertaining to the same.

(4) The department of revenue shall inform each requester of the amount paid or payable under ss. 78.01, 78.40 and 78.555 and reported on a return filed by any city, village, town, county, school district, special purpose district or vocational, technical and adult education district; whether that amount was paid by the statutory due date; the amount of any tax, fees, penalties or interest assessed by the department; and the total amount due or assessed under ss. 78.01, 78.40 and 78.555 but unpaid by the filer, except that the department may not divulge tax return information that in the department's opinion violates the confidentiality of that information with respect to any person other than the units of government and districts specified in this subsection. The department shall provide to the requester a written explanation if it fails to divulge information on grounds of confidentiality. The department shall collect from the person requesting the information a fee of \$4 for each return.

History: 1977 c. 289 ss. 2, 11m; 1979 c. 110; 1981 c. 20; 1987 a. 246, 312.

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 circuit court for Dane county or in the proper court in the county wherein the defendant resides or has its principal place of business.

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.

78.84 Public depository. Each wholesaler shall pay motor fuel taxes, each general aviation fuel licensee shall pay general aviation fuel taxes and each special fuel licensee shall pay special fuel taxes directly to the public depository in this state as the department of administration designates under s. 34.05, to the credit of the transportation fund, if such public depository, prior to such designation, agrees to supply the department of revenue with the deposit reports at such times as the department deems necessary for the proper administration of this chapter. Upon not less than 6 months' notice to a public depository designated under this section, the secretary of revenue may determine that the taxes required to be remitted by wholesalers, general aviation fuel licensees and special fuel licensees on and after a date specified be remitted directly to the department of revenue.

History: 1973 c. 333; 1975 c. 180; 1977 c. 29 s. 1654 (1); 1977 c. 418; 1981 c. 20.