

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 79.

Department of Transportation.

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

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

CHAPTER 80.

Laying Highways.

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

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

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

1. Validation of Highways, Recorded and Worked.

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

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

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

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

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

2. Validation of Highways, Unrecorded and Worked.

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