



2007 DRAFTING REQUEST

Bill

Received: **01/16/2007**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Kornely**

This file may be shown to any legislator: **NO**

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Pre Topic:

DOA:.....Kornely, BB0352 -

Topic:

Oil company assessment

Instructions:

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Petroleum products gross receipts fee

Oil company assessment

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2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Petroleum Products Gross Receipts Fee
- Tracking Code: BB0352
- SBO team: ECR
- SBO analyst: Sara Kornely
 - Phone: 6-1039
 - Email: sara.kornely@wisconsin.gov
- Agency acronym: DOT/DOR
- Agency number: 395/566
- Priority: High

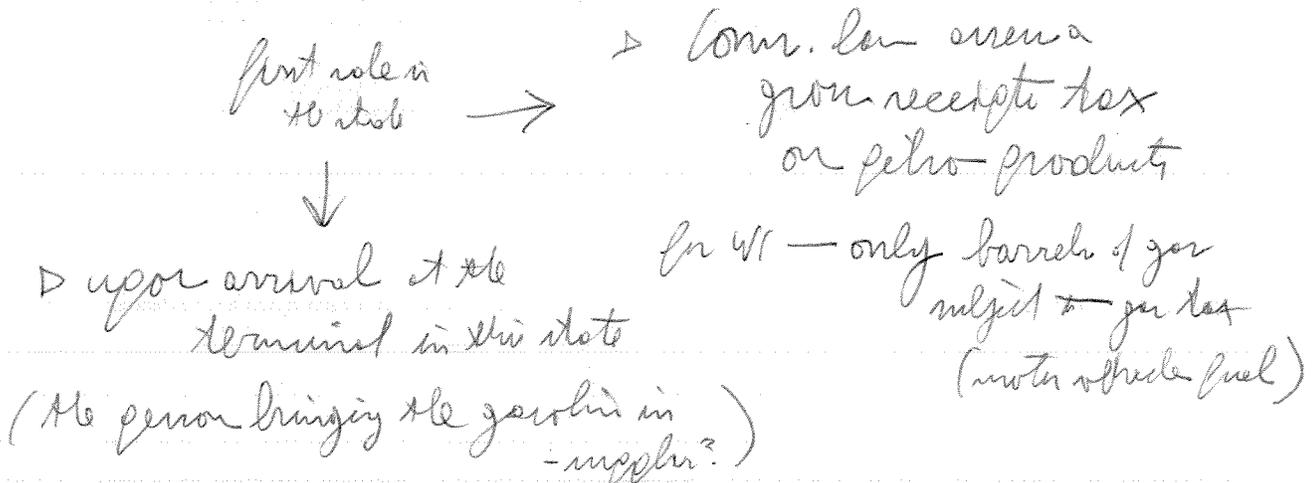
gross receipts tax

Please prepare a statutory language draft that creates a new fee on motor vehicle fuel suppliers as follows:

1. The fee is 2 percent of the gross earnings of a petroleum refining or distribution company derived from the first sale of petroleum products in Wisconsin.
2. The fee payor shall be prohibited from taking any actions to increase or influence the price of motor vehicle fuel in an effort to recoup the fee amount.
3. The fee payor shall be subject to monetary penalties of one-half of the amount of tax paid in the immediately previous quarter if the Department of Revenue determines that the fee payor acted to increase or influence the price of motor fuel in an effort to recoup the fee.
4. The fee shall be collected and paid in a manner similar to the motor vehicle fuel tax, and deposited directly into the transportation fund.

To the extent allowed by federal law

Additionally, the Department of Revenue shall be have authority to conduct any audits or investigations necessary to determine whether motor vehicle fuel prices have been raised in an effort to recoup the fee.





STATE OF CONNECTICUT
DEPARTMENT OF REVENUE SERVICES



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Conn. Agencies Regs. § 12-602-1a. Definitions.

(a) "Company" means any corporation, partnership, limited partnership, association or individual which is engaged in distributing petroleum products within this state.

(b) "Petroleum products" mean refined products made from crude petroleum and its fractionation products, through straight distillation of crude oil or through redistillation of unfinished petroleum derivatives. "Petroleum products" include acid oil; alkylates; aromatic chemicals; asphalt and asphaltic materials, liquid and solid; benzene; butadiene; coke, petroleum; fractionation products of crude petroleum; gas, refinery or still oil; gases, liquefied petroleum; gasoline; greases, lubricating; hydrocarbon fluid; jet fuels; kerosene; mineral jelly; mineral oils, natural; mineral waxes, natural; naphtha; naphthenic acids; oils, fuel, lubricating and illuminating; paraffin wax; petrolatums, non-medicinal; road materials, bituminous; road oils; solvents; and tar or residuum. This list is drawn from the Standard Industrial Classification Manual of 1972, Executive Office of the President, Office of Management and Budget, Major Group 29.

(c) "Gross earnings" mean and include gross receipts from the initial sale of petroleum products, but do not include the amount of state or federal excise taxes on gasoline or special fuel.

(d) "Initial sale of a petroleum product" means the first sale within this state by a company of a petroleum product.

Quick Links

(Effective May 17, 1983.)

Connecticut Department of Revenue Services

25 Sigourney St.
Hartford CT 06106-5032

1-800-382-9463
(In-State)
or 860-297-5962
(TDD/TT Users *only* call
860-297-4911)

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Topic:

GASOLINE TAX; LEGISLATION; PETROLEUM; STATISTICAL INFORMATION; TAX EXEMPTIONS;

Location:

TAXES - GASOLINE;



July 25, 2006

2006-R-0466

PETROLEUM PRODUCTS GROSS EARNINGS TAX

By: Judith Lohman, Chief Analyst

You asked for a description of the petroleum products gross earnings tax. You also asked how current petroleum products gross earnings tax revenue estimates for FY 06 and FY 07 compare to the 2005 estimates for those years.

SUMMARY

The petroleum products gross earnings tax was first enacted in 1980. It applies to petroleum products distributors and covers their earnings from their first sale into Connecticut of taxable petroleum, petroleum products, and products made from petroleum and petroleum derivatives. The tax is payable quarterly. Certain types of products or products used for certain things are exempt, including home heating fuels, certain fuel used by manufacturers, certain kinds of marine fuels, and specified types of petroleum-based alternative fuels.

In 2005, the General Assembly enacted a schedule of rate increases in the petroleum product gross earnings tax. Under this schedule, tax rates will increase gradually from 5% before July 1, 2005 to 8.1% as of July 1, 2013. Two of these increases have already taken effect and the tax rate for FY 06 is 6.3%.

A specified portion of the revenues from the tax are allocated to the Special Transportation Fund (STF) and used to repay state bonds to finance specified transportation infrastructure improvements approved by the General Assembly. Other tax revenue goes to the Underground Storage Tank and the Emergency Spill Response accounts.

FY 06 and FY 07 revenue estimates for the petroleum products gross earnings tax have increased from amounts projected in 2005, according to Rob Wysock of the Office of Fiscal Analysis. The current estimate for FY 06 is nearly \$ 83 million higher and the estimate for FY 07 is \$ 87 million higher than the estimates for those years adopted in 2005.

DESCRIPTION OF THE TAX***Taxable Products***

The tax is levied on the gross earnings from the first sale of petroleum products in Connecticut by petroleum products distributors. Taxed products include gasoline, aviation

fuel, kerosene, diesel fuel, benzol, distillate fuels, residual fuels, and crude oil. The tax also applies to products made from petroleum or petroleum derivatives, such as paint, detergents, antiseptics, fertilizers, nylon, asphalt, and plastics (CGS § 12-587). The tax is payable quarterly. According to the Department of Revenue Services, 700 distributors are subject to the tax.

Exemptions

Revenue from sales of the following types of petroleum products are exempt from the tax.

- Products sold for export and use exclusively outside the state.
- Number 2 heating oil used exclusively for heating, in a commercial fishing vessel, or in a vessel primarily engaged in interstate commerce.
- Bunker fuel oil, intermediate fuel, marine diesel oil, and marine gas oil used in vessels displacing over 4,000 dead weight tons.
- Kerosene used exclusively for heating, when delivered by a truck with a metered delivery ticket or to a centrally metered system servicing a group of homes.
- Propane gas used exclusively for heating or, until July 1, 2008, used a fuel for a motor vehicle.
- Paraffin and microcrystalline waxes.
- Number 6 fuel oil used by manufacturers.
- Until July 1, 2008, petroleum products used as fuel for a fuel cell.
- Any commercial heating oil blend containing no less than 10% of alternative fuels made from agricultural produce; food waste; waste vegetable oil; or municipal solid waste, including biodiesel and low-sulfur dyed diesel fuel (CGS § 587(b)(2), as amended by PA 06-143).

Tax Rates

In 2005, the General Assembly enacted a series of increases in the petroleum products gross earnings tax scheduled to take effect between July 1, 2005 and July 1, 2013, as shown in Table 1 below (PA 05-4, June Special Session). Prior to July 1, 2005, the tax rate was 5%.

Table 1: Petroleum Products Gross Earnings Tax Rate Increases Enacted in 2005

Effective Date	Tax Rate
July 1, 2005	5.8%
July 1, 2006	6.3%
July 1, 2007	7.0%
July 1, 2008	7.5%

July 1, 2013	8.1%
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Revenue Transfers

The Department of Revenue Services is required to transfer a specified amount of petroleum products gross earnings tax revenue to the Special Transportation Fund (STF) each quarter. Until 2006, only tax revenue generated from motor fuel sales was subject to transfer. But in 2006, the General Assembly increased the amount of quarterly tax revenue transfers and made the tax revenue from all types of products available for transfer (PA 06-136 and PA 06-187). The quarterly transfer amounts are shown in Table 2, below.

Table 2: Petroleum Products Gross Earnings Tax Revenues Transferred to the Special Transportation Fund

Fiscal Year	Quarterly STF Transfer (millions)	Annual STF Transfer (millions)
2006	\$ 10. 875	N/A
2007	35. 25	\$ 141. 0
2008	41. 0	164. 0
2009	45. 225	180. 9
2010	45. 225	180. 9
2011	50. 225	200. 9
2012	50. 225	200. 9
2013	50. 225	200. 9
2014 and after	54. 85	219. 4

In addition to the STF transfers, for FYs 06 and 07, \$ 12 million per year, per account is to be transferred to the Underground Storage Tank account and the Emergency Spill Response account.

TAX REVENUE ESTIMATES

The Finance Committee's petroleum products gross earning tax revenue estimates for FYs 06 and 07 were originally adopted in 2005 and revised in 2006. Table 3 shows the original and revised revenue estimates for the two years, according to the Office of Fiscal Analysis.

Table 3: Petroleum Products Gross Earnings Tax Revenue Estimates

	2005 Estimate	2006 Estimate	Increase
FY 06	\$ 199. 8 million	\$ 282. 5 million	\$ 82. 7 million
FY 07	\$ 220. 8 million	\$ 307. 8 million	\$ 87. 0 million

JL: dw

CHAPTER 227*

SALE OF PETROLEUM PRODUCTS GROSS EARNINGS TAX

*Cited. 202 C. 583, 584, 596. Secs. 12-587-12-602 cited. 215 C. 134, 137.

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Sec. 12-587. Definitions. Imposition of tax. Rate. Returns and filing; due date.

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Sec. 12-588. Conduct of business subject to tax by fiduciary.

Sec. 12-589. Refunds of overpayment of tax. Interest.

Sec. 12-590. Penalty for failure to pay tax when due. Waiver of penalty.

Sec. 12-591. Penalties for wilful violations of requirements in this chapter.

Sec. 12-592. Inquiries, investigations or hearings related to the tax.

Sec. 12-593. Deficiency assessments and related penalties. Extension of time for assessment.

Sec. 12-594. Interest added to deficiency assessments. Tax due as a lien on property of the company.

Sec. 12-595. Application for hearing by taxpayer. Hearings ordered by commissioner.

Sec. 12-596. Abatement of uncollectible tax.

Sec. 12-597. Appeals by taxpayer.

Sec. 12-598. Tax on gross earnings in a fiscal year received after the end of such year.

Sec. 12-599. Tax to constitute operating overhead of taxpayer. Limitation on price increases in this state*.

Sec. 12-600. Taxes to be paid before instituting action on tax in court.

Sec. 12-601. Severability.

Sec. 12-602. Regulations.

Secs. 12-603 to 12-609.

Sec. 12-587. Definitions. Imposition of tax. Rate. Returns and filing; due date. (a) As used in this chapter: (1) "Company" includes a corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, individual or any fiduciary thereof; (2) "quarterly period" means a period of three calendar months commencing on the first day of January, April, July or October and ending on the last day of March, June, September or December, respectively; (3) "gross earnings" means all consideration received from the first sale within this state of a petroleum product; (4) "petroleum products" means those products which contain or are made from petroleum or a petroleum derivative; (5) "first sale of petroleum products within this state" means the initial sale of a petroleum product delivered to a location in this state; (6) "export" or "exportation" means the conveyance of petroleum products from within this state to a location outside this state for the purpose of sale or use outside this state; and (7) "sale for exportation" means a sale of petroleum products to a purchaser which itself exports such products.

(b) (1) Except as otherwise provided in subdivision (2) of this subsection, any company which is engaged in the refining or distribution, or both, of petroleum products and which distributes such products in this state shall pay a quarterly tax on its gross earnings derived from the first sale of petroleum products within this state. Each company shall on or before the last day of the month next succeeding each quarterly period render to the commissioner a return on forms prescribed or furnished by the commissioner and signed by the person performing the duties of treasurer or an authorized agent or officer, including the amount of gross earnings derived from the first sale of petroleum products within this state for the quarterly period and such other facts as the commissioner may require for the purpose of making any computation required by this chapter. Except as otherwise provided in subdivision (3) of this subsection, the rate of tax shall be five per cent.

(2) Gross earnings derived from the first sale of the following petroleum products within this state shall be exempt from tax: (A) Any petroleum products sold for exportation from this state for sale or use outside this

state; (B) the product designated by the American Society for Testing and Materials as "Specification for Heating Oil D396-69", commonly known as number 2 heating oil, to be used exclusively for heating purposes or to be used in a commercial fishing vessel, which vessel qualifies for an exemption pursuant to section 12-412; (C) kerosene, commonly known as number 1 oil, to be used exclusively for heating purposes, provided delivery is of both number 1 and number 2 oil, and via a truck with a metered delivery ticket to a residential dwelling or to a centrally metered system serving a group of residential dwellings; (D) the product identified as propane gas, to be used exclusively for heating purposes; (E) bunker fuel oil, intermediate fuel, marine diesel oil and marine gas oil to be used in any vessel having a displacement exceeding four thousand dead weight tons; (F) for any first sale occurring prior to July 1, 2008, propane gas to be used as a fuel for a motor vehicle; (G) for any first sale occurring on or after July 1, 2002, grade number 6 fuel oil, as defined in regulations adopted pursuant to section 16a-22c, to be used exclusively by a company which, in accordance with census data contained in the Standard Industrial Classification Manual, United States Office of Management and Budget, 1987 edition, is included in code classifications 2000 to 3999, inclusive, or in Sector 31, 32 or 33 in the North American Industrial Classification System United States Manual, United States Office of Management and Budget, 1997 edition; (H) for any first sale occurring on or after July 1, 2002, number 2 heating oil to be used exclusively in a vessel primarily engaged in interstate commerce, which vessel qualifies for an exemption under section 12-412; (I) for any first sale occurring on or after July 1, 2000, paraffin or microcrystalline waxes; or (J) for any first sale occurring prior to July 1, 2008, petroleum products to be used as a fuel for a fuel cell, as defined in subdivision (113) of section 12-412.

(3) The rate of tax on gross earnings derived from the first sale of grade number 6 fuel oil, as defined in regulations adopted pursuant to section 16a-22c, to be used exclusively by a company which, in accordance with census data contained in the Standard Industrial Classification Manual, United States Office of Management and Budget, 1987 edition, is included in code classifications 2000 to 3999, inclusive, or in Sector 31, 32 or 33 in the North American Industrial Classification System United States Manual, United States Office of Management and Budget, 1997 edition, or number 2 heating oil used exclusively in a vessel primarily engaged in interstate commerce, which vessel qualifies for an exemption under section 12-412 shall be: (A) Four per cent with respect to calendar quarters commencing on or after July 1, 1998, and prior to July 1, 1999; (B) three per cent with respect to calendar quarters commencing on or after July 1, 1999, and prior to July 1, 2000; (C) two per cent with respect to calendar quarters commencing on or after July 1, 2000, and prior to July 1, 2001; and (D) one per cent with respect to calendar quarters commencing on or after July 1, 2001, and prior to July 1, 2002.

(c) (1) Any company which imports or causes to be imported into this state petroleum products for sale, use or consumption in this state, other than a company subject to and having paid the tax on such company's gross earnings from first sales of petroleum products within this state, which earnings include gross earnings attributable to such imported or caused to be imported petroleum products, in accordance with subsection (b) of this section, shall pay a quarterly tax on the consideration given or contracted to be given for such petroleum product if the consideration given or contracted to be given for all such deliveries during the quarterly period for which such tax is to be paid exceeds three thousand dollars. Except as otherwise provided in subdivision (3) of this subsection, the rate of tax shall be five per cent. Fuel in the fuel supply tanks of a motor vehicle, which fuel tanks are directly connected to the engine, shall not be considered a delivery for the purposes of this subsection.

(2) Consideration given or contracted to be given for petroleum products, gross earnings from the first sale of which are exempt from tax under subdivision (2) of subsection (b) of this section, shall be exempt from tax.

(3) The rate of tax on consideration given or contracted to be given for grade number 6 fuel oil, as defined in regulations adopted pursuant to section 16a-22c, to be used exclusively by a company which, in accordance with census data contained in the Standard Industrial Classification Manual, United States Office of Management and Budget, 1987 edition, is included in code classifications 2000 to 3999, inclusive, or in Sector 31, 32 or 33 in the North American Industrial Classification System United States Manual, United States Office of Management and Budget, 1997 edition, or number 2 heating oil used exclusively in a vessel primarily engaged in interstate commerce, which vessel qualifies for an exemption under section 12-412 shall be: (A)

Four per cent with respect to calendar quarters commencing on or after July 1, 1998, and prior to July 1, 1999; (B) three per cent with respect to calendar quarters commencing on or after July 1, 1999, and prior to July 1, 2000; (C) two per cent with respect to calendar quarters commencing on or after July 1, 2000, and prior to July 1, 2001; and (D) one per cent with respect to calendar quarters commencing on or after July 1, 2001, and prior to July 1, 2002.

(d) The amount of tax reported to be due on such return shall be due and payable on or before the last day of the month next succeeding the quarterly period. The tax imposed under the provisions of this chapter shall be in addition to any other tax imposed by this state on such company.

(e) For the purposes of this chapter, the gross earnings of any producer or refiner of petroleum products operating a service station along the highways or interstate highways within the state pursuant to a contract with the Department of Transportation or operating a service station which is used as a training or test marketing center under the provisions of subsection (b) of section 14-344d, shall be calculated by multiplying the volume of petroleum products delivered by any producer or refiner to any such station by such producer's or refiner's dealer tank wagon price or dealer wholesale price in the area of the service station.

(P.A. 80-71, S. 1, 30; P.A. 82-157, S. 1, 3; P.A. 85-159, S. 13, 19; 85-381, S. 3; 85-469, S. 4, 6; P.A. 87-312, S. 1, 2; P.A. 89-373, S. 2, 10; June Sp. Sess. P.A. 91-3, S. 146, 168; P.A. 92-177, S. 6, 12; May Sp. Sess. P.A. 92-17, S. 50, 59; P.A. 93-74, S. 37, 67; P.A. 94-101, S. 2, 3; May Sp. Sess. P.A. 94-4, S. 23, 85; P.A. 95-160, S. 64, 69; 95-172, S. 3, 4; P.A. 96-183, S. 3, 4; P.A. 97-281, S. 1, 3; P.A. 98-244, S. 25, 35; P.A. 99-121, S. 20, 28; P.A. 00-174, S. 34, 80, 83; June Sp. Sess. P.A. 01-6, S. 20, 31, 67, 85; May 9 Sp. Sess. P.A. 02-4, S. 8; P.A. 04-231, S. 3.)

History: P.A. 80-71 effective July 1, 1980, and applicable to calendar quarters commencing on or after that date; P.A. 82-157 changed provisions concerning type of company subject to tax from (1) a company engaged primarily in refining and distribution of petroleum products to (2) a company engaged in the refining or distribution, or both, of petroleum products, including a new provision that the tax is applicable to gross earnings from sale of any petroleum product which is the first sale of such product in the state; P.A. 85-159 excluded number 2 heating oil from the definition of "petroleum products" except when it is sold as diesel fuel and provided that any savings realized by any company from the elimination of the tax on said product shall be offset by a price decrease in said product, effective May 16, 1985, and applicable to calendar quarters commencing on or after July 1, 1985; P.A. 85-381 (1) divided section into Subsecs., incorporating all important definitions in Subsec. (a), (2) added clarification as to the date the return and tax are due and (3) deleted definitions included in Subsec. (a) as they subsequently appear in this section; P.A. 85-469 revised effective date of P.A. 85-159 but without affecting this section; P.A. 87-312 excluded propane gas used for residential heating from the definition of "petroleum products", effective July 1, 1987, and applicable to calendar quarters commencing on or after that date; P.A. 89-373 amended Subdiv. (b) to increase the tax from two to three per cent of gross earnings and made technical changes in Subsec. (d), effective July 1, 1989, and applicable to gross earnings derived from sales of petroleum products for calendar quarters commencing on or after that date; June Sp. Sess. P.A. 91-3 amended Subsec. (b) to increase the rate of the tax from three to five per cent, added new Subsec. (c), concerning importation of fuel and eliminated the former Subsec. (d), concerning the savings from the elimination of the tax on number 2 heating oil, as obsolete, effective August 22, 1991, and applicable to gross earnings derived from sales of petroleum products for calendar quarters commencing on or after October 1, 1991; P.A. 92-177 amended Subsec. (c) to provide that fuel in the fuel supply tanks of a motor vehicle, which tanks are directly connected to the engine, shall not be considered a delivery for purposes of this subsection; May Sp. Sess. P.A. 92-17 amended Subsec. (a) to exclude certain marine fuel from the definition of petroleum products, effective June 19, 1992, and applicable to gross earnings from sales of petroleum products for calendar quarters commencing on or after July 1, 1992; P.A. 93-74 amended Subsec. (a) redefining "petroleum products" to exclude kerosene in certain circumstances, effective May 19, 1993; P.A. 94-101 amended Subsec. (a) by deleting reference to "state-licensed" suppliers and adding provision re Internal Revenue Service certificate of registry in Subpara. (B) of Subdiv. (4), effective July 1, 1994 and applicable to calendar quarters commencing on or after that date; May Sp. Sess. P.A. 94-4 added a new Subsec. (e) re calculation of gross

earnings of any producer or refiner of petroleum products operating a service station along the highways or interstate highways of the state, effective June 9, 1994, and applicable to taxable years commencing on or after January 1, 1988; P.A. 95-160 revised effective date of May Sp. Sess. P.A. 94-4 but without affecting this section; P.A. 95-172 excluded earnings prior to January 1, 2000, from the sale of propane as a fuel for a motor vehicle from the definition of gross earnings, effective July 1, 1995, and applicable to calendar quarters on and after that date; P.A. 96-183 amended Subsec. (a) to add use by commercial fishing vessels, effective May 31, 1996; P.A. 97-281 amended Subsec. (a) to exclude number 6 fuel oil used by companies in SIC code classifications 2000 to 3999 and number 2 heating oil used in vessels primarily engaged in interstate commerce for calendar quarters commencing on or after July 1, 2002, and amended Subsec. (b) to add new Subdiv. (2) phasing down the rate on number 6 fuel oil and number 2 heating oil effective July 1, 1998, and applicable to calendar quarters on and after that date; P.A. 98-244 reorganized section, made technical changes, added limited liability company and limited liability partnership and changed the term earnings to consideration, effective June 8, 1998, and applicable to calendar quarters commencing on or after October 1, 1998; P.A. 99-121 amended Subsec. (c)(1) to change "its use and consumption" to "sale, use or consumption in this state", effective June 3, 1999, and applicable to calendar quarters commencing on or after July 1, 1999; P.A. 00-174 amended Subsec. (a)(4) to exclude paraffin and microcrystalline waxes from the definition of "petroleum products", effective July 1, 2000, and amended Subsecs. (b) and (c) to include references to companies classified in the North American Industrial Classification System, effective May 26, 2000; June Sp. Sess. P.A. 01-6 made technical changes in Subsecs. (a) and (b) and amended Subsec. (b)(2) to exempt from taxation propane gas sold for use as motor vehicle fuel during the period July 1, 2001, to June 30, 2002, effective July 1, 2001, and amended Subsec. (c)(1) to decrease the threshold for tax liability for imported products from one hundred thousand dollars to three thousand dollars per quarterly period, effective July 1, 2001, and applicable to quarterly periods commencing on or after October 1, 2001; May 9 Sp. Sess. P.A. 02-4 amended Subsec. (b)(2) to extend to July 1, 2004, the exemption for propane used as fuel in Subpara. (F) and to add Subpara. (J) granting an exemption for fuel used in fuel cells prior to July 1, 2004, effective July 1, 2002; P.A. 04-231 amended Subsec. (b)(2)(F) to extend the sunset date for the exemption from July 1, 2004, to July 1, 2008, and amended Subsec. (b)(2)(J) to delete "on or after July 1, 2002, and" and to extend the sunset date for the exemption from July 1, 2004, to July 1, 2008, effective July 1, 2004.

See Sec. 22a-449b re credit of one-third of tax to the Underground Storage Tank Petroleum Clean-up Fund.

Includes within "gross earnings" amounts plaintiff collected as taxes passed through to its customers. 202 C. 583-585, 587, 589, 592-600. Cited. 214 C. 444, 445. Taxability of petroleum product sales is determined according to place at which the products are delivered. 215 C. 134-142.

Subsec. (a):

Subdiv. (1) cited. 202 C. 583, 590, 592, 593.

Subdiv. (4)(A) cited. 44 CS 407.

Subsec. (b):

Cited. 44 CS 407.

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Sec. 12-587a. Tax credit for company liable for tax on sale of petroleum products to purchaser who sells the products outside the state. Purchaser reimbursed by company for tax in purchase price of such products. (a)(1) Any company, as such term is used in section 12-587, liable for the tax imposed under subsection (b) of said section 12-587 on gross earnings from the first sale of petroleum products within this

state, which products the purchaser thereof subsequently sells for exportation and sale or use outside this state, shall be allowed a credit against any tax for which such company is liable in accordance with subsection (b) of said section 12-587, in the amount of tax paid to the state with respect to the sale of such products, provided (A) such purchaser has submitted certification to such company, in such form as prescribed by the Commissioner of Revenue Services, that such products were sold or used outside this state, (B) such certification and any additional information related to such sale or use by such purchaser, which said commissioner may request, have been submitted to said commissioner, and (C) such company makes a payment to such purchaser, related to such products sold or used outside this state, in the amount equal to the tax imposed under said section 12-587 on gross earnings from the first sale to such purchaser within the state.

(2) In addition, such company shall be allowed such credit when there has been any sale of such products subsequent to the sale by such company but prior to sale or use outside this state, provided (A) each purchaser receives payment, related to such products sold or used outside this state, equal to the tax imposed under said section 12-587, on gross earnings from the first sale of such products within this state, and (B) the purchaser selling or using such products outside this state complies with the requirements in this section related to a purchaser of such products from the company liable for such tax.

(b) Any company liable for the tax imposed under subsection (c) of section 12-587 on the consideration given or contracted to be given for petroleum products which it imports or causes to be imported into this state for sale, use or consumption in this state, shall be allowed a credit against tax under subsection (c) of section 12-587 if the company subsequently exports such petroleum products for sale or use outside this state, in the amount of tax paid to the state with respect to the sale, use or consumption in this state of such products.

(P.A. 82-157, S. 2, 3; P.A. 98-244, S. 26, 35; P.A. 03-225, S. 12.)

History: P.A. 82-157 effective May 3, 1982, and applicable to gross earnings on or after May 1, 1982; P.A. 98-244 made technical changes and lettered existing text as Subsec. (a) and added new Subsec. (b) re imported petroleum products, effective June 8, 1998, and applicable to calendar quarters commencing on or after October 1, 1998; P.A. 03-225 made technical changes to conform this section with changes previously made to Sec. 12-587, effective July 9, 2003.

Cited. 215 C. 134, 142.

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Sec. 12-588. Conduct of business subject to tax by fiduciary. Any fiduciary who conducts or is liquidating the business or is selling the assets of any company subject to tax under section 12-587 shall be subject to requirements related to filing returns and to payment of taxes imposed under said section in the same manner and to the same extent as if the business were being conducted or liquidated or assets sold by agents or officers of such company. The return of any fiduciary who has been appointed during a taxable quarter or following such quarter but on or before the last day upon which a return may be filed for such quarter without penalty, shall include complete information with respect to that part of such quarter during which the company conducted the business as well as that part of such quarter in which such fiduciary was acting and taxes shall be paid by such fiduciary for both parts of such quarter.

(P.A. 80-71, S. 2, 30.)

History: P.A. 80-71 effective July 1, 1980, and applicable to calendar quarters commencing on or after that date.

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Sec. 12-589. Refunds of overpayment of tax. Interest. (a)(1) Any company believing that it has overpaid any taxes imposed under section 12-587 may file a claim for refund in writing with the commissioner within three years from the due date for which such overpayment was made, stating the specific grounds upon which the claim is founded. Failure to file a claim within the time prescribed in this section constitutes a waiver of any demand against the state on account of overpayment. Not later than ninety days following receipt of such claim for refund the commissioner shall determine whether such claim is valid and if so, said commissioner shall notify the State Comptroller of the amount of such refund and the State Comptroller shall draw an order on the State Treasurer in the amount thereof for payment to such company. If the commissioner determines that such claim is not valid, either in whole or in part, he shall mail notice of the proposed disallowance to the claimant, which notice shall set forth briefly the commissioner's findings of fact and the basis of disallowance in each case decided in whole or in part adversely to the claimant. Sixty days after the date on which it is mailed, a notice of proposed disallowance shall constitute a final disallowance except only for such amounts as to which the claimant has filed, as provided in subdivision (2) of this subsection, a written protest with the commissioner.

(2) On or before the sixtieth day after the mailing of the proposed disallowance, the claimant may file with the commissioner a written protest against the proposed disallowance in which the claimant sets forth the grounds on which the protest is based. If a protest is filed, the commissioner shall reconsider the proposed disallowance and, if the claimant has so requested, may grant or deny the claimant or the claimant's authorized representatives an oral hearing.

(3) The commissioner shall mail notice of his determination to the claimant, which notice shall set forth briefly the commissioner's findings of fact and the basis of decision in each case decided in whole or in part adversely to the claimant.

(4) The action of the commissioner on the claimant's protest shall be final upon the expiration of one month from the date on which he mails notice of his action to the claimant unless within such period the claimant seeks judicial review of the commissioner's determination pursuant to section 12-597.

(b) To any refund granted as a result of overpayments of any taxes imposed under section 12-587, except refunds due because of any intentional overpayment, there shall be added interest at the rate of two-thirds of one per cent for each month or fraction of a month which elapses between (1) the later of the due date of such taxes or the date of making such overpayment and (2) the date of notice by the Commissioner of Revenue Services that any such refund is due.

(P.A. 80-71, S. 3, 30; P.A. 89-343, S. 4, 17; P.A. 93-361, S. 6; P.A. 95-26, S. 29, 52; P.A. 97-243, S. 61, 67.)

History: P.A. 80-71 effective July 1, 1980, and applicable to calendar quarters commencing on or after that date; P.A. 89-343 increased the rate of interest from one-half to three-fourths of one per cent per month or fraction thereof; P.A. 93-361 made existing section Subsec. (b) and inserted a new Subsec. (a) providing for claims for refund of taxes upon overpayment; P.A. 95-26 amended Subsec. (b) to lower interest rate from three-fourths to two-thirds of one per cent, effective July 1, 1995, and applicable to taxes due and owing on or after July 1, 1995, whether or not those taxes first became due before said date; P.A. 97-243 amended Subsec. (a) to provide for an administrative hearing with the department before taking an appeal to the Superior Court, establish the time for filing a claim and that failure to file within the time prescribed constitutes a waiver of any demand against the state on account of overpayment and made technical changes, effective July 1, 1997, and applicable to claims for refund filed on or after said date.

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Sec. 12-590. Penalty for failure to pay tax when due. Waiver of penalty. (a) If any company fails to pay the tax reported to be due on its return within the time specified under the provisions of this chapter, there shall be imposed a penalty equal to ten per cent of such tax due and unpaid or fifty dollars, whichever is greater. Such tax shall bear interest at the rate of one per cent per month or a fraction thereof, from the due date of such tax until the date of payment.

(b) If any company has not made its return within one month after the time specified under the provisions of this chapter, the commissioner may make such return at any time thereafter according to the best information obtainable and according to the form prescribed. To the tax imposed upon the basis of such return, there shall be added an amount equal to ten per cent of such tax, or fifty dollars, whichever is greater. No taxpayer shall be subject to a penalty under both subsections (a) and (b) of this section in relation to the same tax period. The tax shall bear interest at the rate of one per cent per month or fraction thereof, from the due date of such tax until the date of payment.

(c) Subject to the provisions of section 12-3a, the commissioner may waive all or part of the penalties provided under this chapter when it is proven to his satisfaction that the failure to pay any tax was due to reasonable cause and was not intentional or due to neglect.

(P.A. 80-71, S. 4, 30; P.A. 81-64, S. 21, 23; P.A. 88-314, S. 49, 54; May Sp. Sess. P.A. 94-4, S. 64, 85; P.A. 95-26, S. 30, 52; 95-160, S. 64, 69.)

History: P.A. 80-71 effective July 1, 1980, and applicable to calendar quarters commencing on or after that date; P.A. 81-64 amended penalty provisions to require ten per cent of the tax or fifty dollars if greater, and to include the waiver of penalty provisions applicable to other state taxes, replacing twenty-five dollar penalty for failure to file return and penalty of twenty-five per cent or fifty dollars for failure to pay within three months; P.A. 88-314 restated the penalty provision in Subsec. (a) applicable for failure to pay the tax reported to be due within the time specified and revised the language in Subsec. (b) related to the commissioner's power to prepare a return when not filed within one month after the time specified, adding specific penalties for such case, effective July 1, 1988, and applicable to any tax which first becomes due and payable on or after said date, to any return or report due on or after said date, or in the case of any ongoing obligation imposed in accordance with said act, to the tax period next beginning on or after said date; May Sp. Sess. P.A. 94-4 in Subsec. (b) reduced interest rate from one and two-thirds per cent to one per cent and provided that such interest may only be applied on the tax rather than on the tax and any penalty, effective July 1, 1995, and applicable to taxes due and owing on or after said date; P.A. 95-26 amended Subsec. (a) to lower interest rate from one and two-thirds to one per cent, effective July 1, 1995, and applicable to taxes due and owing on or after July 1, 1995, whether or not those taxes first became due before said date; P.A. 95-160 revised effective date of May Sp. Sess. P.A. 94-4 but without affecting this section.

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Sec. 12-591. Penalties for wilful violations of requirements in this chapter. (a) Any person required under this chapter to pay any tax, or required under this chapter or by regulations adopted in accordance with the provisions of section 12-602 to make a return, keep any records or supply any information, who wilfully fails to pay such tax, make such return, keep such records, or supply such information, at the time required by law or regulations, shall, in addition to any other penalty provided by law, be fined not more than one thousand dollars or imprisoned not more than one year or both. Notwithstanding the provisions of section 54-193, no

person shall be prosecuted for a violation of the provisions of this subsection committed on or after July 1, 1997, except within three years next after such violation has been committed. As used in this section, person includes any officer or employee of a corporation or a member or employer of a partnership under a duty to pay such tax, to make such return, keep such records or supply such information.

(b) Any person who wilfully delivers or discloses to the commissioner or his authorized agent any list, return, account, statement, or other document, known by him to be fraudulent or false in any material matter, shall, in addition to any other penalty provided by law, be fined not more than five thousand dollars or imprisoned not more than five years nor less than one year or both. No person shall be charged with an offense under both subsections (a) and (b) of this section in relation to the same tax period but such person may be charged and prosecuted for both such offenses upon the same information.

(P.A. 80-71, S. 5, 30; P.A. 88-230, S. 1, 12; 88-314, S. 50, 54; P.A. 97-203, S. 11, 20.)

History: P.A. 80-71 effective July 1, 1980, and applicable to calendar quarters commencing on or after that date; P.A. 88-230 proposed to replace reference to "judicial district of Hartford-New Britain" with "judicial district of Hartford" effective September 1, 1991, but said reference was deleted by P.A. 88-314; P.A. 88-314 substituted new language related to the same subject, providing penalties in respect to (1) wilful failure to pay the tax or make a return and (2) wilful delivery of a return or any document known to be fraudulent or false, effective July 1, 1988, and applicable to any tax which first becomes due and payable on or after said date, to any return or report due on or after said date, or in the case of any ongoing obligation imposed in accordance with said act, to the tax period next beginning on or after said date; P.A. 97-203 amended Subsec. (a) to extend to three years the time within which persons wilfully failing to file tax returns or pay taxes may be criminally prosecuted, effective July 1, 1997.

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Sec. 12-592. Inquiries, investigations or hearings related to the tax. The Commissioner of Revenue Services or any agent of said commissioner authorized to conduct any inquiry, investigation or hearing related to the tax imposed under section 12-587 may administer oaths and take testimony under oath relative to such matter of inquiry or investigation. At any such hearing ordered by said commissioner, the commissioner or such agent authorized to conduct such hearing may subpoena witnesses and require the production of books, papers and documents pertinent to such inquiry. No witness under subpoena as aforesaid shall be excused from testifying or from producing books or papers on the ground that such testimony or the production of such books or other documentary evidence would tend to incriminate such witness, provided such evidence or books or papers so produced shall not be used in any criminal proceeding against such witness. If any person disobeys such process or, having appeared in obedience thereto, refuses to answer any pertinent question by said commissioner or such authorized agent, or to produce any books and papers pursuant thereto, said commissioner or such agent may apply to the superior court for the judicial district wherein such person resides or wherein the business under investigation has been conducted, or to any judge of said court if the same is not in session, setting forth such disobedience to process or refusal to answer, and said court or such judge shall cite such person to appear before said court or such judge to answer such question or to produce such books and papers and upon his refusal so to do shall commit such person to a community correctional center until he testifies, but not for a period longer than sixty days. Notwithstanding the serving of the term of such commitment by any person, said commissioner may proceed in all respects with such inquiry and examination as if the witness had not previously been called upon to testify. Officers who serve subpoenas issued by said commissioner or under said commissioner's authority and witnesses attending hearings conducted by said commissioner in accordance with this section shall receive fees and compensation at the same rates as officers and witnesses in the courts of this state, to be paid on vouchers of said commissioner on order of the Comptroller from the proper appropriation for the administration of this section.

(P.A. 80-71, S. 6, 30.)

History: P.A. 80-71 effective July 1, 1980, and applicable to calendar quarters commencing on or after that date.

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Sec. 12-593. Deficiency assessments and related penalties. Extension of time for assessment. The commissioner shall, within three years after the due date for filing a return, or in the case of a completed return filed after such due date, within three years after the date on which such return was received by said commissioner, examine it and in case any error is disclosed by such examination, within thirty days after such disclosure, notify the taxpayer thereof. When it appears that any part of the deficiency for which a deficiency assessment is made is due to negligence or intentional disregard of the provisions of this chapter or regulations promulgated thereunder, there shall be imposed a penalty equal to ten per cent of the amount of such deficiency assessment, or fifty dollars, whichever is greater. When it appears that any part of the deficiency for which a deficiency assessment is made is due to fraud or intent to evade the provisions of this chapter or regulations promulgated thereunder, there shall be imposed a penalty equal to twenty-five per cent of the amount of such deficiency assessment. No taxpayer shall be subject to more than one penalty under this section in relation to the same tax period. Within thirty days of the mailing of such notice, the taxpayer shall pay to said commissioner, in cash or by check, draft or money order drawn to the order of the Commissioner of Revenue Services, any additional amount of tax shown to be due by the corrected return or shall be paid by the State Treasurer, upon order of the Comptroller, any amount shown to be due such taxpayer by such corrected return. The failure of such taxpayer to receive any notice required by this section shall not relieve such taxpayer of the obligation to pay the tax or any interest or penalties thereon. When, before the expiration of the time prescribed in this section for the examination of the return or the assessment of said tax, both said commissioner and such taxpayer have consented in writing to such examination or assessment after such time, the return may be examined and said tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. Said commissioner may also in such a case waive the statute of limitations against a claim for refund by such taxpayer.

(P.A. 80-71, S. 7, 30; P.A. 88-314, S. 51, 54.)

History: P.A. 80-71 effective July 1, 1980, and applicable to calendar quarters commencing on or after that date; P.A. 88-314 deleted the description of tax due date because included in another section and added penalty provisions to the deficiency assessment procedure, effective July 1, 1988, and applicable to any tax which first becomes due and payable on or after said date, to any return or report due on or after said date, or in the case of any ongoing obligation imposed in accordance with said act, to the tax period next beginning on or after said date.

Cited. 44 CS 407.

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Sec. 12-594. Interest added to deficiency assessments. Tax due as a lien on property of the company.
(a) To any taxes which are assessed under section 12-593, there shall be added interest at the rate of one per cent per month or fraction thereof which elapses from the date when the original tax became due and payable. The amount of such tax and any penalty or interest in respect to such tax, due and unpaid, may be collected

under the provisions of section 12-35. The warrant therein provided for shall be signed by the Commissioner of Revenue Services or his authorized agent. The amount of any such tax, penalty and interest shall be a lien, from the last day of the month next preceding the due date of such tax until discharged by payment, against all real estate of the company within the state and a certificate of such lien signed by said commissioner may be filed for record in the office of the clerk of any town in which such real estate is situated and such lien shall take precedence over any other encumbrance, provided no such lien shall be effective as against any bona fide purchaser or qualified encumbrancer of any interest in any such property. When any tax with respect to which a lien has been recorded under the provisions of this section has been satisfied, said commissioner, upon request of any interested party, shall issue a certificate discharging such lien, which certificate shall be recorded in the same office in which the lien was recorded. Any action for the foreclosure of such lien shall be brought by the Attorney General in the name of the state in the superior court for the judicial district in which such property subject to such lien is situated, or, if such property is located in two or more judicial districts, in the superior court for any one such judicial district and the court may limit the time for redemption or order the sale of such property or pass such other or further decree as it judges equitable.

(b) The tax imposed under section 12-587 shall be payable to the Commissioner of Revenue Services. All funds received by said commissioner in accordance with said tax shall be recorded with the Comptroller and shall be deposited daily with the State Treasurer.

(P.A. 80-71, S. 8, 30; P.A. 81-411, S. 41, 42; Nov. Sp. Sess. P.A. 81-4, S. 6, 32; P.A. 82-325, S. 3, 7; P.A. 85-501, S. 7; P.A. 88-314, S. 52, 54; P.A. 95-26, S. 31, 52.)

History: P.A. 80-71 effective July 1, 1980, and applicable to calendar quarters commencing on or after that date; P.A. 81-411 increased interest on taxes not paid when due from one to one and one-fourth per cent per month, effective July 1, 1981, and applicable to taxes becoming due on or after that date; Nov. Sp. Sess. P.A. 81-4 raised interest rate in Subsec. (a) from one and one-fourth to one and two-thirds per cent per month, effective February 1, 1982, and applicable to taxes payable to state which first become due on or after that date; P.A. 82-325 revised effective date of Nov. Sp. Sess. P.A. 81-4 but without affecting this section; P.A. 85-501 provided that lien shall be effective from the last day of the month next preceding the due date of the tax rather than from due date itself and that such lien shall not be effective against a qualified encumbrancer as defined in Sec. 12-35b, deleting reference to purchasers or encumbrancers to whom property is transferred between due date of tax and date of recording lien; P.A. 88-314 amended Subsec. (a) so that the provisions therein are not applicable to the tax due in accordance with Sec. 12-587 but are applicable to deficiency assessments under Sec. 12-593, effective July 1, 1988, and applicable to any tax which first becomes due and payable on or after said date, to any return or report due on or after said date, or in the case of any ongoing obligation imposed in accordance with said act, to the tax period next beginning on or after said date; P.A. 95-26 amended Subsec. (a) to lower interest rate from one and two-thirds to one per cent, effective July 1, 1995, and applicable to taxes due and owing on or after July 1, 1995, whether or not those taxes first became due before said date.

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Sec. 12-595. Application for hearing by taxpayer. Hearings ordered by commissioner. Any taxpayer aggrieved by the action of the Commissioner of Revenue Services or an authorized agent of said commissioner in fixing the amount of tax imposed under section 12-587 or any penalty or interest related thereto may apply to said commissioner in writing, within sixty days after notice of such action is delivered or mailed to such taxpayer, for a hearing and a correction of the amount of such tax, penalty or interest so fixed, setting forth the reasons why such hearing should be granted and the amount in which such tax, penalty or interest should be reduced. Said commissioner shall promptly consider each such application and may grant or deny the hearing requested. If the hearing is denied, the applicant shall be notified thereof forthwith. If it is granted said commissioner shall notify the applicant of the time and place fixed for such hearing. After such hearing said commissioner may make such order in the premises as appears to him just and lawful and shall furnish a copy

of such order to the applicant. Said commissioner may, by notice in writing, at any time within three years after the date when any return of any taxpayer has been due, order a hearing on his own initiative and require the taxpayer or any other individual whom he believes to be in possession of relevant information concerning the taxpayer to appear before him or his authorized agent with any specified books of account, papers or other documents, for examination under oath.

(P.A. 80-71, S. 9, 30; P.A. 91-236, S. 15, 25.)

History: P.A. 80-71 effective July 1, 1980, and applicable to calendar quarters commencing on or after that date; P.A. 91-236 provided for sixty, rather than thirty, days to request a hearing, effective July 1, 1991, and applicable to taxes due on or after that date.

Cited. 202 C. 583, 586.

Cited. 44 CS 407.

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Sec. 12-596. Abatement of uncollectible tax. Section 12-596 is repealed.

(P.A. 80-71, S. 10, 30; P.A. 90-28, S. 9.)

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Sec. 12-597. Appeals by taxpayer. Any taxpayer aggrieved because of any order, decision, determination or disallowance of the Commissioner of Revenue Services made in relation to the tax imposed under section 12-587 may, within one month after service upon the taxpayer of notice of such order, decision, determination or disallowance, take an appeal therefrom to the superior court for the judicial district of New Britain, which shall be accompanied by a citation to said commissioner to appear before said court. Such citation shall be signed by the same authority and such appeal shall be returnable at the same time and served and returned in the same manner as is required in case of a summons in a civil action. The authority issuing the citation shall take from the appellant a bond or recognizance to the state of Connecticut with surety to prosecute the appeal to effect and to comply with the orders and decrees of the court in the premises. Such appeals shall be preferred cases, to be heard, unless cause appears to the contrary, at the first session, by the court or by a committee appointed by it. If the appeal has been taken without probable cause, the court may tax double or triple costs, as the case demands and upon all such appeals which may be denied, costs may be taxed against the appellant at the discretion of the court, but no costs shall be taxed against the state.

(P.A. 80-71, S. 11, 30; P.A. 88-230, S. 1, 12; P.A. 90-98, S. 1, 2; P.A. 93-142, S. 4, 7, 8; P.A. 95-220, S. 4-6; P.A. 99-215, S. 24, 29.)

History: P.A. 80-71 effective July 1, 1980, and applicable to calendar quarters commencing on or after that date; P.A. 88-230 replaced "judicial district of Hartford-New Britain" with "judicial district of Hartford", effective September 1, 1991; P.A. 90-98 changed the effective date of P.A. 88-230 from September 1, 1991, to September 1, 1993; P.A. 93-142 changed the effective date of P.A. 88-230 from September 1, 1993, to September 1, 1996, effective June 14, 1993; P.A. 95-220 changed the effective date of P.A. 88-230 from September 1, 1996, to September 1, 1998, effective July 1, 1995; P.A. 99-215 replaced "judicial district of Hartford" with "judicial district of New Britain", effective June 29, 1999.

Cited. 202 C. 583, 586. Cited. 204 C. 137, 144. Cited. 214 C. 444, 446. Cited. 215 C. 134, 135.

Cited. 44 CS 407.

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Sec. 12-598. Tax on gross earnings in a fiscal year received after the end of such year. Section 12-598 is repealed, effective June 4, 1996.

(P.A. 80-71, S. 12, 30; P.A. 96-221, S. 24, 25.)

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Sec. 12-599. Tax to constitute operating overhead of taxpayer. Limitation on price increases in this state*. (a) It is not the intention of the General Assembly that the tax imposed under section 12-587 be construed as a tax upon purchasers of petroleum products, but that such tax shall be levied upon and be collectible from petroleum companies as defined in said section 12-587, and that such tax shall constitute a part of the operating overhead of such companies.

(b) No petroleum company subject to the tax imposed under section 12-587 shall raise its posted wholesale rack price in Connecticut for any petroleum product exempt from the federal Emergency Petroleum Allocation Act (P.L. 93-159) by an amount higher than the average amount by which such company raises its wholesale rack price for such product in all ports on the eastern coast of the United States.

(P.A. 80-71, S. 13, 30.)

*Unconstitutional as violative of supremacy clause. *Mobil Oil Corp. v. Dubno* (D.C. 1980) 492 F. Supp. 1004.

History: P.A. 80-71 effective July 1, 1980, and applicable to calendar quarters commencing on or after that date.

Subsec. (a):

Cited. 202 C. 583, 594-596.

Cited. 44 CS 407.

Subsec. (b):

Cited. 202 C. 583, 595, 596.

Cited. 44 CS 407.

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Sec. 12-600. Taxes to be paid before instituting action on tax in court. Any taxes, penalties or interest due from any company under the provisions of sections 12-587 to 12-602, inclusive, shall be paid in full before any action may be instituted in any state court to challenge all or any part of the provisions of said sections. No injunction or restraining order shall be issued by any state court to stay or prevent the imposition or collection of taxes as provided under said sections.

(P.A. 80-71, S. 14, 30.)

History: P.A. 80-71 effective July 1, 1980, and applicable to calendar quarters commencing on or after that date.

Cited. 202 C. 583, 586. Cited. 215 C. 134, 135.

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Sec. 12-601. Severability. If any section, part, clause or phrase in sections 12-587 to 12-602, inclusive, is for any reason held to be invalid or unconstitutional, sections, parts, clauses and phrases in said sections not held to be invalid or unconstitutional shall not be affected and shall remain in full force and effect.

(P.A. 80-71, S. 15, 30.)

History: P.A. 80-71 effective July 1, 1980, and applicable to calendar quarters commencing on or after that date.

Cited. 202 C. 583, 596.

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Sec. 12-602. Regulations. The Commissioner of Revenue Services shall adopt regulations in accordance with chapter 54 to implement the provisions of sections 12-587 to 12-602, inclusive, which shall be prima facie evidence of the proper interpretation of said sections. Said commissioner shall prescribe and furnish the form of return required under section 12-587 and require that each such return shall set forth any and all information necessary or desirable in order to determine the amount of tax payable under said section 12-587.

(P.A. 80-71, S. 16, 30.)

History: P.A. 80-71 effective July 1, 1980, and applicable to calendar quarters commencing on or after that date.

Cited. 202 C. 583, 598, 599.

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Secs. 12-603 to 12-609. Reserved for future use.

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Department of Revenue LRB Draft Comments
LRB 0725/1

1. **Bill and/or LRB Number:** LRB-0725/1; Sales and use tax exemptions for certain biotechnology-related transactions.

2. **Type of Taxes Affected:** (please list all that apply)

Sales and Use

3. **Description of the Bill:** (briefly describe the subject matter of the bill and the change/s)

This bill creates sales and use tax exemptions for certain items of tangible personal property sold to a biotechnology business for use exclusively in qualified research. The bill also creates sales and use tax exemptions for certain items of tangible personal property used exclusively in raising animals that are sold to a biotechnology business, a public or private institution of higher education, or a governmental unit for use exclusively in research or manufacturing.

4. **Statutory language problems, if any:** Yes No

(If yes, describe problems and indicate suggested corrective language. Example of problem: The bill language is unclear, does not fully accomplish the desired result, or has undesirable side effects.)

Note: It would be best if the second paragraph of the analysis were to include the exclusive requirement in its description of the exemptions in one more place: "...This bill also creates sales and use tax exemptions...for use by any such entity *exclusively* in research or manufacturing."

5. **Effective date problems, if any, including transitional problems:** Yes No

(If yes, describe problem and suggested effective date or transitional language needed.)

1-23-07

Item - budget - oil company tax

6-1039

2.25% gross receipts based on sale of motor vehicle

fuel at the first point of sale

payer - recipient as defined by ch. 78

DOR

audits - of any "non-through" of taxes

(prepare annual report to submit to gov. & legis.

emergency ruling authority

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1530/1dn
JK:jld:pg

January 24, 2007

Sara:

Please review this draft carefully to ensure that it is consistent with your intent. The draft does not include a severability clause because the severability provision under s. 990.001 (11) applies to all statutes. That subsection reads as follows:

“The provisions of the statutes are severable. The provisions of any session law are severable. If any provision of the statutes or of a session law is invalid, or if the application of either to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.”

Finally, do you want to create an appropriation for DOR to cover the cost of administering the tax created in the draft?

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1530/1dn

JK:n:...

date

jld

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Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1530/1

JK:.....

JLD

DOA:.....Kornely, BB0352 - Petroleum products gross receipts fee

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

in 1-23-07

D-N

don't gen

1

AN ACT ...; relating to: the budget. ✓

Analysis by the Legislative Reference Bureau

TAXATION ✓

OTHER TAXATION ✓

This bill imposes a tax on a motor vehicle fuel supplier at the rate of 2.25 percent ✓ of the supplier's gross receipts from the first sale of motor vehicle fuel in this state. The amount of the tax may not be added to the selling price of any subsequent sale or distribution of the motor vehicle fuel and the supplier may take no action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the tax. The revenue collected from the tax is deposited into the transportation fund. ✓

For further information see the ✓ state fiscal estimate, which will be printed as an appendix to this bill.

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

2

SECTION 1. 25.40 (1) (bd) ✓ of the statutes is created to read:

3

25.40 (1) (bd) Motor vehicle gross receipts taxes under subch. ✓ XIV of ch. 77.

1 SECTION 2. Chapter 77 (title) of the statutes is amended to read:

2 CHAPTER 77

3 TAXATION OF FOREST CROPLANDS;

4 REAL ESTATE TRANSFER FEES;

5 SALES AND USE TAXES; COUNTY

6 AND SPECIAL DISTRICT SALES

7 AND USE TAXES; MANAGED FOREST

8 LAND; TEMPORARY RECYCLING

9 SURCHARGE; LOCAL FOOD AND

10 BEVERAGE TAX; LOCAL RENTAL

11 CAR TAX; PREMIER RESORT AREA

12 TAXES; STATE RENTAL VEHICLE FEE;

13 DRY CLEANING FEES; REGIONAL

14 TRANSIT AUTHORITY FEE; MOTOR VEHICLE FUEL GROSS

15 RECEIPTS TAX

16 SECTION 3. Subchapter XIV of chapter 77 [precedes 77.998] of the statutes is
17 created to read:

18 CHAPTER 77

19 SUBCHAPTER XIV

20 MOTOR VEHICLE FUEL GROSS RECEIPTS TAX

21 77.998 Definitions. In this subchapter:

22 (1) "Department" means the department of revenue.

23 (2) "Motor vehicle fuel" has the meaning given in s. 78.005 (13).

24 (3) "Supplier" has the meaning given in s. 78.005 (14).

1 **77.9981 Imposition.** For the privilege of doing business in this state, there
2 is imposed a tax on a supplier at the rate of 2.25 percent of the supplier's gross
3 receipts in each calendar quarter that are derived from the first sale of motor vehicle
4 fuel in this state. The amount of the tax shall not be added to the selling price of any
5 subsequent sale or distribution of the motor vehicle fuel and the supplier shall take
6 no action to increase or influence the selling price of motor vehicle fuel in order to
7 recover the amount of the tax.

8 **77.9982 Administration.** (1) The department shall administer the tax under
9 this subchapter and may take any action, conduct any proceeding, and impose
10 interest and penalties.

11 (2) The taxes imposed under this subchapter for each calendar quarter are due
12 and payable on the last day of the month next succeeding the calendar quarter for
13 which the taxes are imposed, as provided by the department by rule.

14 (3) In addition to any other audits the department conducts to administer and
15 enforce this subchapter, the department may audit any supplier who is subject to the
16 tax imposed under this subchapter to determine whether the supplier has taken any
17 action to increase or influence the selling price of motor vehicle fuel in order to
18 recover the amount of the tax. Annually, the department shall submit a report to the
19 governor and the legislature, as provided under s. 13.172 (2), that contains
20 information on all audits conducted under this subsection in the previous year.

21 (4) Any supplier who is subject to the tax imposed under this subchapter and
22 who takes any action to increase or influence the selling price of motor vehicle fuel
23 in order to recover the amount of the tax is subject to a penalty in an amount that
24 is equal to 50 percent of the amount of the tax ^{that} the supplier paid in the calendar
25 quarter immediately preceding the date of any such action.

1 (5) Sections. 71.74 (1) to (3), (5), (7), and (9) to (15), 71.75 (1), (2), (6), (7), and
 2 (9), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to
 3 (6), (8) to (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2.
 4 and (b) 1., 2., and 6., (2) (a) 1. to 3. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90,
 5 71.91 (1) (a), (2), (3), and (4) to (7), 71.92, and 71.93 as they apply to the taxes under
 6 ch. 71 apply to the fees under this subchapter.

7 (6) The department shall deposit all revenue collected under this subchapter
 8 into the transportation fund.

9 **SECTION 9141. Nonstatutory provisions; Revenue.**

10 (1) EMERGENCY RULES CONCERNING MOTOR VEHICLE FUEL GROSS RECEIPTS TAX. The
 11 department of revenue may promulgate emergency rules under section 227.24 of the
 12 statutes implementing subchapter XIV of chapter 77 of the statutes, as created by
 13 this act. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the
 14 department of revenue is not required to provide evidence that promulgating a rule
 15 under this subsection as an emergency rule is necessary for the preservation of the
 16 public peace, health, safety, or welfare and is not required to provide a finding of
 17 emergency for a rule promulgated under this subsection.

18 **SECTION 9341. Initial applicability; Revenue.**

19 (1) MOTOR VEHICLE FUEL GROSS RECEIPTS TAX. The treatment of section 25.40 (1)
 20 (bd), ~~chapter 77 (title) and~~ subchapter XIV of chapter 77 of the statutes first applies
 21 to the sales of motor vehicle fuel on the first day of the first calendar quarter
 22 beginning after the effective date of this subsection.

23 (END)

d-note
↓

, and chapter 77 (title)



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1530/1
JK:jld:pg

Oil company assessment

Print R

DOA:.....Kornely, BB0352 - ~~Petroleum products gross receipts fee~~

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

NO # = for the purpose of determining the amount of the assessment, income derived from the first sale of gasoline consisting of at least 85 percent ethanol is not included in the supplier's gross receipts.

1 AN ACT *don't gen* ...; relating to: the budget.

assessment
an assessment
Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

This bill imposes ~~tax~~ *assessment* on a motor vehicle fuel supplier at the rate of 2.25 percent of the supplier's gross receipts from the first sale of motor vehicle fuel in this state. The amount of the ~~tax~~ *assessment* may not be added to the selling price of any subsequent sale or distribution of the motor vehicle fuel and the supplier may take no action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the ~~tax~~ *assessment*. The revenue collected from the ~~tax~~ *assessment* is deposited into the transportation fund.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

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

2 SECTION 1. 25.40 (1) (bd) of the statutes is created to read:

3 25.40 (1) (bd) ~~Motor vehicle gross receipts taxes~~ *Oil company assessments* under subch. XIV of ch. 77.

Oil company assessments

1 SECTION 2. Chapter 77 (title) of the statutes is amended to read:

2 CHAPTER 77

3 TAXATION OF FOREST CROPLANDS;

4 REAL ESTATE TRANSFER FEES;

5 SALES AND USE TAXES; COUNTY

6 AND SPECIAL DISTRICT SALES

7 AND USE TAXES; MANAGED FOREST

8 LAND; TEMPORARY RECYCLING

9 SURCHARGE; LOCAL FOOD AND

10 BEVERAGE TAX; LOCAL RENTAL

11 CAR TAX; PREMIER RESORT AREA

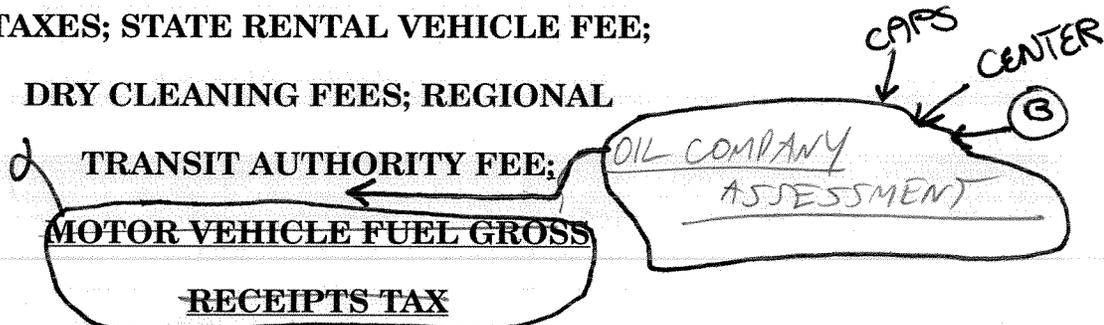
12 TAXES; STATE RENTAL VEHICLE FEE;

13 DRY CLEANING FEES; REGIONAL

14 TRANSIT AUTHORITY FEE;

15 ~~MOTOR VEHICLE FUEL GROSS~~

16 ~~RECEIPTS TAX~~



17 SECTION 3. Subchapter XIV of chapter 77 [precedes 77.998] of the statutes is

18 created to read:

19 CHAPTER 77

20 SUBCHAPTER XIV

21 ~~MOTOR VEHICLE FUEL GROSS~~

22 ~~RECEIPTS TAX~~



23 77.998 Definitions. In this subchapter:

24 (1) "Department" means the department of revenue.

25 (2) "Motor vehicle fuel" has the meaning given in s. 78.005 (13).

(3) "Supplier" has the meaning given in s. 78.005 (14).

77.9981 Imposition. For the privilege of doing business in this state, there is imposed ~~tax~~ ^{an assessment} on ~~a~~ ^{each} supplier at the rate of 2.25 percent of the supplier's gross receipts in each calendar quarter that are derived from the first sale of motor vehicle fuel in this state. The amount of the ~~tax~~ ^{assessment} shall not be added to the selling price of any subsequent sale or distribution of the motor vehicle fuel and the supplier shall take no action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the ~~tax~~ ^{assessment}.

77.9982 Administration. (1) The department shall administer the ~~tax~~ under this subchapter and may take any action, conduct any proceeding, and impose interest and penalties.

(2) The ~~taxes~~ ^{assessments} imposed under this subchapter for each calendar quarter are due and payable on the last day of the month next succeeding the calendar quarter for which the ~~taxes~~ are imposed, as provided by the department by rule.

(3) In addition to any other audits the department conducts to administer and enforce this subchapter, the department may audit any supplier who is subject to the ~~tax~~ ^{assessment} imposed under this subchapter to determine whether the supplier has taken any action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the ~~tax~~. Annually, the department shall submit a report to the governor and the legislature, as provided under s. 13.172 (2), that contains information on all audits conducted under this subsection in the previous year.

(4) Any supplier who is subject to the ~~tax~~ ^{assessment} imposed under this subchapter and who takes any action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the ~~tax~~ is subject to a penalty in an amount that

(3) For purposes of determining the amount of the assessment imposed under this subchapter, income derived from the first sale in this state of gasoline consisting of at least 85 percent ethanol is not included in the supplier's gross receipts.

MOVE

1 is equal to 50 percent of the amount of the ^{assessment} ~~tax~~ that the supplier paid in the calendar
2 quarter immediately preceding the date of any such action.

3 (5) Sections. 71.74 (1) to (3), (5), (7), and (9) to (15), 71.75 (1), (2), (6), (7), and
4 (9), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to
5 (6), (8) to (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2.
6 and (b) 1., 2., and 6., (2) (a) 1. to 3. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90,
7 71.91 (1) (a), (2), (3), and (4) to (7), 71.92, and 71.93 as they apply to the taxes under
8 ch. 71 apply to the ~~taxes~~ ^{assessment} under this subchapter.

9 (6) The department shall deposit all revenue collected under this subchapter
10 into the transportation fund.

11 **SECTION 9141. Nonstatutory provisions; Revenue.**

12 (1) ~~EMERGENCY RULES CONCERNING MOTOR VEHICLE FUEL GROSS RECEIPTS TAX~~. The
13 department of revenue may promulgate emergency rules under section 227.24 of the
14 statutes implementing subchapter XIV of chapter 77 of the statutes, as created by
15 this act. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the
16 department of revenue is not required to provide evidence that promulgating a rule
17 under this subsection as an emergency rule is necessary for the preservation of the
18 public peace, health, safety, or welfare and is not required to provide a finding of
19 emergency for a rule promulgated under this subsection.

20 **SECTION 9341. Initial applicability; Revenue.**

21 (1) ~~MOTOR VEHICLE FUEL GROSS RECEIPTS TAX~~. The treatment of section 25.40 (1)
22 (bd), subchapter XIV of chapter 77, and chapter 77 (title) of the statutes first applies
23 to the sales of motor vehicle fuel on the first day of the first calendar quarter
24 beginning after the effective date of this subsection.

25 (END)

CS
OIL COMPANY ASSESSMENT

CS
OIL COMPANY ASSESSMENT

Kreye, Joseph

From: Kornely, Sara - DOA
Sent: Wednesday, January 24, 2007 3:35 PM
To: Kreye, Joseph
Subject: FW: LRB Draft: 07-1530/1 Petroleum products gross receipts fee
Attachments: 07-1530/1; 07-1530/1dn

Hi Joe – thanks for getting us the draft. We have a couple changes to add already:

1. We would like to call this the "Oil Company Assessment."
2. We would like suppliers to be able to subtract any E-85 sold from the total gallonage/barrelage on their returns. We don't want to do it as a carve-out from the definition of gasoline, but instead would like to find a way to structure it as more of a credit on each return.

Please let me know if you have any questions or concerns. Thanks much again!

Sara Kornely
Dept. of Administration
608-266-1039

From: Greenslet, Patty [mailto:Patty.Greenslet@legis.wisconsin.gov]
Sent: Wednesday, January 24, 2007 9:28 AM
To: Kornely, Sara - DOA
Cc: Grinde, Kirsten - DOA; Hanaman, Cathlene - LEGIS; Palchik, Laurie A - DOA
Subject: LRB Draft: 07-1530/1 Petroleum products gross receipts fee

Following is the PDF version of draft 07-1530/1.

Kreye, Joseph

From: Kornely, Sara - DOA
Sent: Thursday, January 25, 2007 11:42 AM
To: Kreye, Joseph
Subject: RE: LRB Draft: 07-1530/2 Oil company assessment

Sorry, missed the drafters note. Thanks!

Sara Kornely
Dept. of Administration
608-266-1039

From: Kreye, Joseph [mailto:Joseph.Kreye@legis.wisconsin.gov]
Sent: Thursday, January 25, 2007 11:41 AM
To: Kornely, Sara - DOA
Subject: RE: LRB Draft: 07-1530/2 Oil company assessment

Sara,

I can separate the 2, but, as I mentioned in my drafter's note, the severability clause isn't necessary because of s. 990.001 (11).

Joe

From: Kornely, Sara - DOA
Sent: Thursday, January 25, 2007 11:30 AM
To: Kreye, Joseph
Subject: FW: LRB Draft: 07-1530/2 Oil company assessment

Hi Joe – sorry for the piecemeal changes, but here's another one:

We're concerned that if the anti pass-through provision is challenged and struck down, as drafted the entire tax would be struck down as the pass-through prohibition is currently in the imposition section. Can we separate those two and add a severability clause?

Thanks!

Sara Kornely
Dept. of Administration
608-266-1039

From: Greenslet, Patty [mailto:Patty.Greenslet@legis.wisconsin.gov]
Sent: Thursday, January 25, 2007 10:48 AM
To: Kornely, Sara - DOA
Cc: Grinde, Kirsten - DOA; Hanaman, Cathlene - LEGIS; Palchik, Laurie A - DOA
Subject: LRB Draft: 07-1530/2 Oil company assessment

Following is the PDF version of draft 07-1530/2.

01/25/2007