

Chapter Tax 4

MOTOR VEHICLE FUEL TAXATION

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Tax 4.01 Portable motor equipment. (s. 78.75, Stats.) Portable motor equipment attached to any motor vehicle must have a separate fuel tank, and detailed records must be kept of the gallonage consumed in the motor of portable equipment.

Tax 4.02 Resellers' personal claims for refund. (s. 78.75, Stats.) Motor fuel resellers who make personal claims for refund of tax paid on gallonage used for tax exempt purposes shall make out an original invoice to themselves for each sale in the same manner as to any other customer. In addition the claim must be supported by paid invoices from the company from whom the motor fuel was originally purchased.

Tax 4.03 Public highways closed to public travel. (s. 78.75, Stats.) Motor fuel used in connection with the construction, repair, and maintenance of the public highways shall not be construed as used on a public highway when it is being used on a highway entirely closed to the public travel.

Tax 4.04 No printing on back of original invoice. (s. 78.75, Stats.) The original invoice shall have no printing on the back where the sales record is carboned.

Tax 4.05 Taxicabs. (s. 78.75 (1m) (a) 1, Stats.) (1) DEFINITIONS. In this section, "taxicab" means a motor vehicle having a passenger carrying capacity of less than 15 persons, held for public hire, at designated places, charging passengers upon a time or distance basis, and carrying passengers to designations without following any fixed routes. "Taxicab" shall not include any of the following:

- a. Motor vehicles rented to be driven by the renter or his agent.
- b. Motor vehicles operated primarily as funeral cars.
- c. Car pools and van pools operated by private individuals, nonprofit organizations or city, state or federal governments.
- d. Motor vehicles operated primarily as ambulances.
- e. Motor vehicles operated primarily for transporting property.
- f. Motor vehicles not designated "Vehicle has or will be used for public transportation (taxi)" on the motor vehicle registration form, Form MV-1, filed with the department of transportation.

Examples: 1) A rent-a-car does not qualify as a taxicab.

2) A limousine with driver that holds 8 people is hired by a wedding party to transport them throughout a city on a per hour basis. The limousine is considered a taxicab.

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(2) **GENERAL.** A person who uses motor fuel or special fuel in operating a taxicab for the transportation of passengers and has paid a tax on the fuel under ch. 78, Stats., may file a claim for refund of the tax paid with the department, provided the claim is for tax on 100 gallons or more.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91.

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Tax 4.50 Assignment, use and reporting of Wisconsin state tax number. (s. 78.77, Stats.) Each shipment, transfer, purchase or sale of a petroleum product which is reportable to the Wisconsin department of revenue, in accordance with ch. 78, Stats., shall bear a "Wisconsin state tax number". In this section "Wisconsin state tax number" means the number provided for in subs. (1) through (4).

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(1) **ASSIGNMENT.** The assignment of a "Wisconsin state tax number" shall in each case originate with the shipper and be assigned by him or her. All subsequent transactions, invoices and reports regarding each respective shipment shall use and make reference to this number.

(2) **RAILWAY TANK CAR SHIPMENTS.** On all railway tank car shipments the tank car initials and number shall become the "Wisconsin state tax number".

(3) **TRUCK TRANSPORT SHIPMENTS.** On all truck transport shipments the manifest number shall become the "Wisconsin state tax number".

(4) **OTHER SHIPMENTS.** On all other types of shipments, which do not involve the use of tank car initials and number or manifest number, the shipper shall assign as the "Wisconsin state tax number" the invoice number. An invoice number shall not be assigned by a shipper as the "Wisconsin state tax number" in any case where tank car initials and number or manifest number is involved.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; renum. to be (intro.) and am., cr. (1), (2), (3) and (4), Register, June, 1983, No. 330, eff. 7-1-83.

Tax 4.51 Measuring withdrawals. (s. 78.12, Stats.) All withdrawals of motor fuel from Wisconsin refineries, marine terminals, or pipe line terminals shall be measured in liquid gallons by accurate meters; however, it is not necessary to meter withdrawals into railway tank cars.

Tax 4.52 Separate schedules. (s. 78.12, Stats.) Separate schedules must be filed for each Wisconsin refinery, marine terminal, or pipe line terminal.

Tax 4.53 Certificate of authorization. (ss. 78.40 (1), 78.47 and 78.49 (3), Stats.) (1) **THE STATUTES.** A special fuel dealer may be authorized by a special fuel user, if the special fuel dealer agrees, to report and pay the tax on special fuel delivered into a bulk storage facility of the user. The user then is not required to obtain a special fuel license from the department.

(2) **GENERAL.** (a) A certificate of authorization (Form MF-207) may be executed by a purchaser of special fuel to request a supplier of special fuel to bill the purchaser for both the special fuel and the special fuel tax.

(b) A certificate of authorization executed by a supplier of special fuel indicates the supplier's acceptance of the purchaser's request to bill the special fuel tax on bulk deliveries and remit it to the department.

(3) **EFFECT OF CERTIFICATES.** (a) If a purchaser and seller of special fuel agree that the seller will collect the special fuel tax from the purchaser and remit it to the department, the purchaser is not required to obtain a special fuel license from the department nor to submit monthly reports of tax liability.

(b) The supplier will compute the monthly tax liability by adding the number of gallons of special fuel placed in storage facilities where purchasers have executed certificates of authorization to the number of gallons of special fuel placed in fuel supply tanks of motor vehicles.

Note: Blank certificates of authorization (Form MF-207) may be obtained by writing to the Wisconsin Department of Revenue, Excise Tax Bureau, P. O. Box 8900, Madison, WI 53708.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

Tax 4.54 Security requirements. (ss. 78.11, 78.48 (9) and 78.57 (9), Stats.) (1) **GENERAL.** Under ss. 78.11, 78.48 (9) and 78.57 (9), Stats., the department may require motor fuel, special fuel and general aviation fuel taxpayers to deposit security with the department. This security may be required before or after the fuel tax license is issued. The amount of security determination will be made by the department. The amount of the security may not exceed \$100,000 for motor fuel and \$25,000 for special fuel and general aviation fuel. If any person fails or refuses to place the security, the department may refuse to issue the license or revoke the license.

(2) **FACTORS FOR DEPARTMENT'S CONSIDERATION.** (a) In determining whether security will be required and the amount of security to be required, the department shall consider all relevant factors, including:

1. Evidence of adequate financial responsibility. The evidence may include a person's assets and liabilities, liquidity of assets, estimated expenditures and potential fuel tax liability.

2. The person's prior record of filing tax returns and paying taxes of any kind with the department.

3. Type of entity making the sales of motor fuel, special fuel and general aviation fuel.

Example: A sole proprietor or partner having nonbusiness financial resources may be a better risk than a corporation having limited assets.

(b) Although the individual factors listed in par. (a) shall be considered in determining security requirements, each case shall be determined on its merits as evaluated by the department of revenue. Protection of the fuel tax revenues shall be the major consideration in determining security requirements. However, due consideration shall be given to reasonable evidence that security is not necessary.

(c) In instances in which the department determines security in excess of \$100 is required, notification of this requirement shall include a written statement clearly describing the reasons for the requirement and a description or calculation showing how the amount of the security requirement was determined.

(3) **TYPES OF SECURITY.** Acceptable types of security include, but are not limited to:

(a) Noninterest-bearing:

1. Cash, certified check or money order.
2. Surety bonds issued by authorized underwriters.

(b) Interest-bearing: Time certificates of deposit issued by financial institutions and made payable to the department. Interest earned on the certificates shall be paid to the depositor.

(4) DETERMINATION OF AMOUNT. (a) If security is required, the amount shall be equal to the depositor's average quarterly Wisconsin fuel tax liability increased to the next highest even \$100 amount, unless the department determines under sub. (2) that for good cause a higher amount is appropriate. The estimate of the depositor's average quarterly fuel tax liability shall be based on whichever of the following the department considers most appropriate in the circumstances:

1. The depositor's previous fuel tax liability.
2. The depositor's predecessor's fuel tax liability.
3. The estimated tax liability shown on the application for a license.
4. Other factors, such as the department's estimate of tax liability based on its experience with other similar activities.

(b) If at the time of the security review the person has an outstanding fuel tax delinquency, the delinquent amount shall be added to the estimated average quarterly fuel tax liability and the sum of the two shall be the amount of security required.

(5) RETURN OF DEPOSIT. (a) Any security deposited shall be returned to the taxpayer if the taxpayer has, for 24 consecutive months, complied with all the requirements of ch. 78, Stats.

(b) The 24 month compliance requirement described in par. (a) shall begin on the day the deposit is received by the department.

(c) Within 30 days after the conclusion of the 24 month period described in par. (a), the department shall review the taxpayer's compliance record. If the taxpayer has complied with ch. 78, Stats., the department shall within 60 days after the expiration of the 24 month period certify the deposit for refund.

(d) Compliance with ch. 78 means that:

1. Fuel tax reports are timely filed.
2. All payments are made when due.
3. No penalties due to negligence or fraud are assessed for filing periods within the 24 month compliance period.
4. No assessment of additional tax, interest or other charges for filing periods within the 24 month compliance period is unpaid at the end of the 24 month compliance period.
5. No delinquencies of fuel tax, interest or other charges imposed under ch. 78 exist with the department of revenue.

(e) If a taxpayer does not meet the compliance requirements set forth in par. (d), the deposit shall be retained by the department until the tax-

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payer is in compliance for 24 consecutive months from the date of the latest incident of noncompliance.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91.

Tax 4.55 Ownership and name changes. (ss. 78.10 (6), 78.48 (6) and 78.57 (6), Stats.) (1) **GENERAL.** Under ss. 78.10 (6), 78.48 (6) and 78.57 (6), Stats., a fuel tax license is not transferable to another person or to another place of business. This section clarifies when a change in ownership or name of a business requires a new fuel tax license.

(2) **OWNERSHIP CHANGES.** (a) When there is a change in ownership of a business, the new owner shall apply for a new license using form MF-100, except as provided in par. (c). The new owner shall notify the department no later than 10 days prior to the change. Security may be required as provided in s. Tax 4.54.

(b) A new license shall be obtained when there is a change in type of ownership such as between a sole proprietorship, partnership, corporation or other form of ownership, except as provided in par. (c). *emery
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Example: A new license is required if: 1) A sole proprietorship or partnership incorporates.

2) A sole proprietorship is sold to a different sole proprietor.

3) A sole proprietorship becomes a partnership.

4) A partner in a partnership leaves the partnership or a partner is added to the partnership.

5) The federal employer identification number of a business changes.

(c) A change in the ownership of a corporation does not require a new license unless either of the following occurs:

1. A corporation is merged with another corporation, the merged corporation ceases to exist, and the surviving corporation does not have a valid license.

2. The federal employer identification number of a corporation changes.

(3) **NAME CHANGE.** (a) A licensee shall notify the department of a name change at least 10 days prior to the change and the licensee shall retain the same license number.

(b) A rider, verifying the name change, such as one filed by a licensee's insurance company at the request of the licensee, shall be submitted to the department. If no security is on file or a rider is not filed with the department, new security shall be deposited under the new name, as required under s. Tax 4.54, and any old security shall be returned to the licensee.

Note: Copies of Form MF-100 may be obtained by writing or calling Wisconsin Department of Revenue, Excise Tax Bureau, P.O. Box 8905, Madison, WI 53708, (608) 266-6701.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91.

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