CHAPTER 78

MOTOR VEHICLE AND GENERAL AVIATION FUEL TAXES

SUBCHAPTER I
MOTOR VEHICLE FUEL TAX
78.005 Definitions.
78.01 Tax imposed; collected; exceptions.
78.015 Annual adjustment of tax rate.
78.017 Adjustment in 1997.
78.07 Motor vehicle fuel received.
78.09 Supplier and exporter licenses.
78.10 Licensing process.
78.11 Bond.
78.12 Reports to department; computation of tax.
78.13 Notice by licensee of discontinuance, sale or transfer of business; final report.
78.15 Theft of tax moneys.
78.155 Penalties for misuse of dyed diesel fuel.
78.19 Refund for fuel destroyed.
78.20 Refund to retailers.
78.21 Seizure and sale.
78.215 Separate fuel supply tanks required.
78.22 Motor vehicle fuel floor tax.
SUBCHAPTER II
ALTERNATE FUELS TAX
78.39 Definitions.
78.40 Tax imposed; collected; exceptions.
78.405 Annual adjustment of the tax rate.
78.407 Adjustment in 1997.
78.47 Alternate fuels license.
78.48 Application; form; investigation; bond; issue.
78.49 Reports to department; computation of tax.
78.50 Notice by alternate fuels licensee of cessation, sale or transfer of business; final report.
78.51 Theft of alternate fuels tax moneys.
78.52 Separate fuel supply tanks required.
78.53 Presumption.
SUBCHAPTER III
GENERAL AVIATION FUEL TAX
78.55 Definitions.
78.555 Tax imposed; rate; collected.
78.56 General aviation fuel license.
78.57 Application; form; investigation; bond; issue.
78.58 Reports to department; computation of tax.
78.59 Notice by general aviation fuel licensee of cessation, sale or transfer of business; final report.
78.60 Theft of general aviation fuel tax moneys.
78.61 Presumption.
78.62 Exemptions.
SUBCHAPTER IV
PROVISIONS COMMON TO MOTOR VEHICLE FUEL TAX, GENERAL AVIATION FUEL TAX AND ALTERNATE FUEL TAX
78.64 Definitions.
78.65 Suspension and revocation of licenses.
78.66 Records to be kept by licensees.
78.67 Timely filing.
78.68 Returns; failure to pay; refunds.
78.69 Appeals.
78.70 Actions to collect tax and penalties.
78.71 Motor vehicle fuel, general aviation fuel and alternate fuels taxes are preferred claims.
78.72 Preference given actions to enforce this chapter.
78.73 Criminal penalties.
78.74 Remedies and penalties are cumulative.
78.75 Refund; procedure; claim unassignable.
78.77 Registration of transporters; records to be kept.
78.78 Reports by transporters; exceptions.
78.79 Duty of department to enforce fuel tax provisions; promulgate rules.
78.80 Departmental examinations; information; penalty.
78.81 Attorney general and district attorney to prosecute; place of trial.
78.82 Municipalities not to tax motor vehicle fuel or alternate fuels.

SUBCHAPTER I

MOTOR VEHICLE FUEL TAX

78.005 Definitions. In this subchapter:

(1) "Alcohol" means fuel ethanol, except denaturant and water, that is at least 98 percent ethanol by volume. "Alcohol" also means ethanol derivative substances that are capable of use as a blendstock, including ethyl tertiary butyl ether, methanol, methanol derivative substances and methyl tertiary butyl ether.

(2) "Blending" means the mixing of one or more petroleum products, with or without another product, and regardless of the original character of the product blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle. "Blending" does not include mixing that occurs in refining by the original refiner of crude petroleum nor mixing of lubricating oil in the production of lubricating oils and greases.

(3) "Bulk plant" means a motor vehicle fuel storage facility, other than a terminal, that is primarily used to redistribute motor vehicle fuel by transporting it in vehicles.

(4) "Department" means the department of revenue.

(5) "Diesel fuel" means any liquid fuel capable of use in discrete form or as a blended component in the operation of diesel−type engines in motor vehicles including number one and number 2 fuel oils, except that kerosene is not "diesel fuel" unless it is blended with diesel fuel for use in motor vehicles that have a diesel−type engine.

(6) "Export" means deliver across the boundaries of this state by or for the seller or purchaser from a place of origin in this state.

(6m) "File" means mail or deliver a document that the department prescribes to the department or, if the department prescribes another method of submitting or another destination, use that other method or submit to that other destination.

(7) "Gasoline" means gasoline, casing head or natural gasoline, benzol, benzine, naphtha, and any blend stock or additive that is sold for blending with gasoline other than products typically sold in containers of less than 5 gallons. "Gasoline" includes a liquid prepared, advertised, offered for sale, sold for use as, or used in the generation of power for the propulsion of a motor vehicle, including a product obtained by blending together any one or more products of petroleum, with or without another product, and regardless of the original character of the petroleum products blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle. "Gasoline" also includes transmix. "Gasoline" does not include diesel fuel, commercial or industrial naphthas or solvents manufactured, imported, received, stored, distributed or sold for exclusive use other than as a fuel for a motor vehicle.

(8) "Import" means deliver across the boundaries of this state by or for the seller or purchaser from a place of origin outside this state.

(9) "Licensee" means a person who is licensed under s. 78.09.

(10) "Manufacturing" means producing motor vehicle fuel by refining or preparing motor vehicle fuel by any process involving substantially more than the blending of motor vehicle fuel.

(11) "Mobile machinery and equipment" includes a vehicle which is self−propelled by an internal combustion engine or motor but not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway such as farm tractors, ditch digging apparatus, power

shovels, drag lines, earth−moving equipment and machinery and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers and earth−moving scrapers. "Mobile machinery and equipment" does not include dump trucks or self−propelled vehicles originally designed for the transportation of persons or property to which machinery has been attached such as truck−mounted transit mixers, cranes, shovels, welders, air compressors, well−boring apparatus, corn shellers, lime spreaders and feed grinders.

(12) "Motor vehicle" means any automobile, truck, truck−tractor, tractor, bus, vehicle or other conveyance that is self−propelled by an internal combustion engine or motor and licensed for highway use, except that "motor vehicle" does not include mobile machinery and equipment.

(13) "Motor vehicle fuel" means gasoline or diesel fuel.

(13b) "Pay" means mail or deliver funds to the department or, if the department prescribes another method of payment or another destination, use that other method or submit to that other destination.

(13d) "Person" includes any individual, sole proprietorship, partnership, limited liability company, corporation, or association. A single−owner entity that is disregarded as a separate entity under ch. 71 is disregarded as a separate entity for purposes of this subchapter.

(13g) "Recreational motorboat" means a motorboat used predominantly for the entertainment, amusement or recreation of the owner of the motorboat, whether or not it is used in a trade or business.

(13j) "Renewable fuel" means fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel used in motor vehicle fuel. "Renewable fuel" includes biodiesel fuel, as defined in s. 168.14 (2m).

(13m) "Retail dealer" means a person, other than a wholesaler distributor, who engages in the business of selling or distributing motor vehicle fuel to the end user in this state.

(13r) "Sign" means write one's signature or, if the department prescribes another method of authenticating, use that other method.

(14) "Supplier" includes a person who imports, or acquires immediately upon import, motor vehicle fuel by pipeline or marine vessel from a state, territory or possession of the United States or from a foreign country into a terminal and who is registered under 26 USC 4101 for tax−free transactions in gasoline. "Supplier" also includes a person who produces in this state; or imports into a terminal or bulk plant; or acquires immediately upon import by truck, railcar or barge into a terminal; alcohol or alcohol derivative substances. "Supplier" also includes a person who produces, manufactures or refines motor vehicle fuel in this state. "Supplier" also includes a person who acquires motor vehicle fuel pursuant to an industry terminal exchange agreement or by a 2−party exchange under section 4105 of the Internal Revenue Code. "Supplier" does not include a retail dealer or wholesaler who merely blends alcohol with gasoline before the sale or distribution of the product. "Supplier" does not include a terminal operator who merely handles in a terminal motor vehicle fuel consigned to the terminal operator.

(15) "Terminal" means a motor vehicle fuel storage and distribution facility that is supplied by a pipeline or a marine vessel and from which motor vehicle fuel may be removed at a rack. "Terminal" does not include any facility at which motor vehicle fuel blend stocks and additives are used in the manufacture of products other than motor vehicle fuel and from which no motor vehicle fuel is removed.

(16) "Terminal operator" means the person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If co−venturers own a terminal, "terminal operator" means the person who is appointed to exercise the responsibility for, or physical control over, and operation of the terminal.

(17) "Transmix" means the buffer between 2 different products in a pipeline shipment, or a mix of 2 different products in a refinery or terminal, that results in an off−grade mixture.

(18) "Wholesaler distributor" means a person who acquires motor vehicle fuel from a supplier or from another wholesaler distributor for subsequent sale at wholesale and distribution by tank cars or tank trucks or both.

History: 1993 a. 16 ss. 1829 to 1845, 1860, 1862, 1863, 1867; 1993 a. 437; 1995 a. 113; 1997 a. 27, 35; 2005 a. 25; 2009 a. 401; 2013 a. 54; 2015 a. 216.

78.01 Tax imposed; collected; exceptions. (1) IMPOSITION OF TAX AND BY WHOM PAID. An excise tax at the rate determined under ss. 78.015 and 78.017 is imposed on all motor vehicle fuel received by a supplier for sale in this state, for sale for export to this state or for export to this state except as otherwise provided in this chapter. The motor vehicle fuel tax is to be computed and paid as provided in this chapter. Except as otherwise provided in this chapter, a person who receives motor vehicle fuel under s. 78.07 shall collect from the purchaser of the motor vehicle fuel that is received, and the purchaser shall pay to the person who receives the motor vehicle fuel under s. 78.07, the tax imposed by this section on each sale of motor vehicle fuel at the time of the sale, irrespective of whether the sale is for cash or on credit. In each subsequent sale or distribution of motor vehicle fuel on which the tax has been collected as provided in this subsection, the tax collected shall be added to the selling price so that the tax is paid ultimately by the user of the motor vehicle fuel.

(2) GASOLINE EXEMPTIONS. No tax is hereby imposed upon or with respect to the following:

(a) Gasoline exported by a person licensed to export. Gasoline carried out of this state in the ordinary fuel tank of a motor vehicle is not gasoline exported.

(b) Gasoline sold to and used by the United States or its agencies if that sale is evidenced by proper documentation.

(d) Gasoline sold to a common motor carrier as defined in ch. 194, if that carrier certifies to the department that the gasoline is for use in the operation of a motor vehicle for the urban mass transportation of passengers as defined in s. 71.38.

(e) Gasoline sold for nonhighway use in mobile machinery and equipment; other than use in a snowmobile, a limited use off−highway motorcycle that is not registered for private use under s. 23.335 (3) (a), an all−terrain vehicle or utility terrain vehicle that is not registered for private use under s. 23.33 (2) (d), or a recreational motorboat; and delivered directly into the consumer's storage tank in an amount of not less than 100 gallons.

(f) Gasoline sold to a general aviation fuel dealer licensed under s. 78.56 for use in an aircraft, as defined in s. 78.55 (2), and delivered directly into the dealer's storage tank in a volume of at least 100 gallons.

(2m) DIESEL FUEL EXEMPTIONS. No tax is imposed under sub. (1), and no supplier, wholesaler or retail dealer may collect a tax, on diesel fuel that is purchased by an end user if that fuel fulfills the requirements under sub. (2p) or fulfills one of the following conditions:

(a) It is exported by a person who is licensed to export.

(b) It is sold to and used by the United States or one of its agencies and that sale is evidenced by proper documentation.

(c) It is sold for use as a heating oil.

(d) It is sold for use in trains.

(e) It is sold to a common motor carrier, as defined in s. 194.01 (1), if that carrier certifies to the department that the diesel fuel is to be used in the operation of a motor vehicle for the urban mass transportation of passengers, as defined in s. 71.38.

(f) It is dyed diesel fuel and is sold for off−highway use other than use in a snowmobile, in a limited use off−highway motorcycle that is not registered for private use under s. 23.335 (3) (a), in an all−terrain vehicle or utility terrain vehicle that is not regis-

tered for private use under s. 23.33 (2) (d) or (2g), or in a recreational motorboat or if no claim for a refund for the tax on the diesel fuel may be made under s. 78.75 (1m) (a) 3.

(g) It is exported by an unlicensed person who has paid the tax on it to the state of destination, as evidenced by a bill of lading.

(2n) PERSONAL RENEWABLE FUEL PRODUCER EXEMPTION. No tax is imposed under sub. (1) on the first 1,000 gallons of renewable fuel produced or converted from another purpose each year by an individual and used by that individual in his or her personal motor vehicle, if the individual does not sell any such renewable fuel during that year.

(2p) DYED FUEL. If indelible dye has been added to diesel fuel before or upon withdrawal at a terminal or refinery rack, that fuel may be used only for an exempt purpose. At the option of the supplier, the dye may be either dye required to be added under federal environmental protection agency requirements or dye that meets specifications of, and is in an amount required by, the department.

(2r) REFUNDS FOR EXEMPT TRANSACTIONS. (a) The ultimate consumer shall assign his or her claim for a refund on undyed exempt diesel fuel and on all exempt gasoline to the person from whom the ultimate consumer purchased the fuel.

(b) A licensed exporter who has purchased diesel fuel from a supplier, paid the tax on it, removed it from a terminal or a refinery for delivery in this state and exported it may claim a refund for that tax by presenting to the department within 3 years after the date of purchase a written statement, under the penalties for perjury, that lists the amount of diesel fuel purchased and exported and that indicates that the purchase price and the tax have been paid.

(2s) LIABILITY PRECLUDED. A licensed supplier who is unable to recover the tax from a purchaser is not liable for the tax and, with proper documentation, may credit the amount of tax against a later remittance of taxes. A wholesaler distributor who is unable to recover the tax from another wholesaler distributor or from a retail dealer is not liable for the tax and, by supplying proper documentation, may apply to the department for a refund.

(2t) EXEMPTION CERTIFICATES. Exemption certificates used to claim the exemptions under subs. (2) and (2m) are valid for 3 years unless cancelled by the department or the person claiming the exemption.

History: 1979 c. 221; 1981 c. 20; 1983 a. 27; 1985 a. 153; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31; 1991 a. 39, 316; 1993 a. 16, 437; 1995 a. 113; 1997 a. 27, 237; 2009 a. 401; 2011 a. 208; 2013 a. 204; 2015 a. 170.

Cross−reference: See also ss. Tax 4.11, 4.12, and 4.65, Wis. adm. code.

78.015 Annual adjustment of tax rate. (1) Before April 1 the department shall recompute and publish the rate for the tax imposed under s. 78.01 (1). The new rate per gallon shall be calculated by multiplying the rate in effect at the time of the calculation by the amount obtained under sub. (2). After the calculation of the rate that takes effect on April 1, 2006, the department shall make no further calculation under this subsection and sub. (2).

(2) Divide the annual average U.S. consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor, for the previous year by that annual average for the year before the previous year.

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

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

History: 1983 a. 27; 1991 a. 39; 1993 a. 16, 437; 1997 a. 27; 2005 a. 85.

78.017 Adjustment in 1997. On November 1, 1997, the rate of the tax imposed under s. 78.01 (1) is increased by one cent.

History: 1997 a. 27.

78.07 Motor vehicle fuel received. (1) Except as provided in subs. (1a) and (3), motor vehicle fuel that is produced, refined, blended or manufactured, or imported for manufacturing, by any person at a refinery, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture is received by a supplier when the motor vehicle fuel is removed from a refinery, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture and placed in tank cars, tank trucks, tank wagons or other types of transportation equipment, containers or facilities at such refinery, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture or when the motor vehicle fuel is placed in any tank or other container from which sales or deliveries not involving transportation of the motor vehicle fuel are made directly.

(1a) Motor vehicle fuel shipped by pipeline spur to an airport hydrant system is received when the motor vehicle fuel is received from the main pipeline into the initial or primary storage facility or holding terminal by the owner of the storage facility or holding terminal.

(3) Except as provided in subs. (1) and (1a), motor vehicle fuel imported is received at the time and place of unloading by the person for whose account that shipment or delivery is made.

(4) Any product that is not motor vehicle fuel and that is blended as a component part of motor vehicle fuel other than at a refinery, marine terminal, pipe line terminal, pipe line tank farm or place of manufacture is received by such person who is the owner of that product at the time and place the blending is completed.

(5) Renewable fuel exempt under s. 78.01 (2n) from the tax under s. 78.01 (1) is not received for the purposes of this section.

History: 1983 a. 27, 37; 1991 a. 316; 1993 a. 16; 2009 a. 401; 2013 a. 20.

Cross−reference: See also s. Tax 4.10, Wis. adm. code.

78.09 Supplier and exporter licenses. (1) No person may import motor vehicle fuel into; or sell, use, transport or store motor vehicle fuel in; this state, unless the tax on that motor vehicle fuel has been paid to, or tax liability accrued by, a holder of an unrevoked supplier license issued by the department, except that a supplier is exempt from that requirement for motor vehicle fuel manufactured in this state or imported by pipeline or marine barge and stored in a terminal in this state, and except that a supplier of alcohol is exempt from that requirement for alcohol imported by barge, railcar or transport truck. A supplier who does not transact business in this state and who has no contacts with this state except sales to wholesaler distributors or retail dealers in another state who ship motor vehicle fuel into this state may apply for, and may be given, a supplier's license under this subsection and thereby submit to the jurisdiction of this state for purposes of this subchapter.

(2) To procure a license, a supplier who holds a valid certificate issued under s. 73.03 (50) shall file with the department an application signed by the owner of the business if the owner is an individual, partnership or unincorporated association or by the president and secretary if the owner is a corporation.

(3) No person may export motor vehicle fuel unless that person has obtained an export license or a supplier license or has paid the destination state motor vehicle fuel tax to the supplier and can demonstrate proof of export in the form of a destination state bill of lading.

(4) In order to obtain a license to export motor vehicle fuel to another specified state, a person shall be licensed either to collect and remit motor vehicle fuel taxes or to deal in tax−free motor vehicle fuel in that other specified state of destination.

(5) To procure an export license, an exporter who holds a valid certificate issued under s. 73.03 (50) shall file with the department an application signed by the owner of the business if the owner is an individual, partnership or unincorporated association or by the president and secretary if the owner is a corporation.

(6) Subject to conditions established by the department, the department shall provide for the payment of the tax imposed by this subchapter by a person importing motor vehicle fuel from a bulk plant located outside of this state.

(7) Subject to conditions established by the department, the department shall provide for export by and the certification for exemption from the tax imposed by this subchapter to a wholesale

distributor exporting motor vehicle fuel out of a bulk plant to a destination outside of this state.

History: 1991 a. 316; 1993 a. 16; 1995 a. 27; 1997 a. 27; 2013 a. 54.

78.10 Licensing process. (1) APPLICATION. Application for a license to receive motor vehicle fuel under s. 78.07 shall be made upon a form prepared and furnished by the department and, in the case of a supplier, the form shall be accompanied by a copy of the applicant's license under 26 USC 4101. The application shall be subscribed by the applicant and shall contain the information that the department reasonably requires for the administration of this subchapter. Only a person who holds a valid certificate under s. 73.03 (50) may apply for a license under this subsection.

(2) INVESTIGATION. The department shall investigate each applicant under sub. (1). No license shall be issued if the department deems that the applicant does not hold a valid certificate under s. 73.03 (50), the application is not filed in good faith, the applicant is not the real party in interest and the license of the real party in interest has been revoked for cause, or other reasonable cause for nonissuance exists.

(3) HEARING. Before refusing to issue a license, the department shall grant the applicant a hearing, of which the applicant shall be given at least 5 days' written notice.

(4) ISSUE. If the application and the bond under s. 78.11, if that bond is required, are approved, the department shall issue a license.

(6) TRANSFER FORBIDDEN. A license under this section is not transferable to another person.

(7) DISPLAY OF LICENSE. Each license shall be preserved and conspicuously displayed at the place of business for which issued.

History: 1991 a. 316; 1993 a. 16; 1995 a. 27; 1997 a. 27.

Cross−reference: See also s. Tax 4.55, Wis. adm. code.

78.11 Bond. (1) AMOUNT. (a) To protect the revenues of this state, the department may require any person liable to the department for the tax imposed by this subchapter to place with it, either before or after a license under s. 78.09 is issued, security in the amount which the department determines. The amount of security required may be increased or decreased as the department deems necessary, but shall not exceed 3 times the licensee's average monthly liability for taxes under this subchapter, as estimated by the department. If any applicant or licensee fails or refuses to place such security, the department may refuse to issue or may revoke the license. If any taxpayer is delinquent in the payment of taxes imposed by this subchapter, the department may, upon 10 days' notice, recover the taxes, interest, penalties, costs and disbursements from the taxpayer's security placed with the department. No interest shall be paid or allowed by the state to any person for the deposit of the security.

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

(2) RELEASE OF SURETY. The surety upon a bond required under sub. (1) may elect to conditionally cancel the bond at any time by filing with the licensee and the department written notice of such conditional cancellation. The surety so filing shall not be discharged from any liability already accrued or which may accrue under the bond before the expiration of 60 days after the filing of said notice. If the licensee does not within 60 days after receiving such notice file a new bond satisfactory to the department with the department, the licensee's license shall be automatically revoked. If a new bond is furnished by a licensee, the department shall cancel and surrender the old bond of the licensee as soon as it is satisfied that all liability under the old bond has been fully discharged.

(3) ADDITIONAL BOND; WHEN REQUIRED. If liability upon the bond filed by any licensee is discharged or reduced by judgment rendered, payment made or otherwise, or if in the opinion of the department, the bond of any licensee has become insufficient by the subsequent insolvency, death or removal of the sureties or any of them, or if for any cause any such bond is deemed insufficient as to sureties or amount, the department shall require any such licensee to give and file additional surety or new bonds in the same manner and form and with sureties satisfactory to the department. If any such licensee fails to file such additional bond within 5 days after written notice from the department, then that licensee's license shall be automatically revoked.

(4) LIABILITY ON BOND CONTINUES. The validity of any bond shall not be affected by the suspension, revocation or cancellation of any license under s. 78.09 or by partial recovery upon the bond or by the execution of any new bond.

History: 1973 c. 90; 1991 a. 316; 1993 a. 16.

Cross−reference: See also s. Tax 4.54, Wis. adm. code.

78.12 Reports to department; computation of tax. (1) GALLONS TO BE REPORTED. For the purpose of the administration of this section, each receipt, shipment or delivery of motor vehicle fuel shall be reported in U.S. standard liquid gallons (231 cubic inches).

(2) REPORTS OF LICENSEES. Each licensee shall, not later than the last day of each month, file a report for the month before the month during which the report is due.

(3) REPORTS OF OTHERS. Any person, including a terminal operator, who is not a licensee and who either uses any motor vehicle fuel in this state or who has possession of any motor vehicle fuel (other than that contained in the ordinary fuel tank attached to a motor vehicle) upon which the motor vehicle fuel tax has not been paid or the liability therefor has not been incurred by any licensee in this state shall file a report and pay the tax on that motor vehicle fuel and shall be subject to this subchapter in the same manner as is provided for licensees.

(4) COMPUTATION OF TAX. At the time when the tax is due under sub. (5), the licensee shall compute that tax as follows:

(a) For gasoline:

1. Subtract the number of gallons under s. 78.01 (2r) for the taxable period from the number of gallons received during the taxable period.

2. Subtract from the amount under subd. 1. an amount equal to 0.0125 multiplied by the number of gallons under subd. 1.

3. Subtract from the amount under subd. 2. an amount equal to 0.001 multiplied by the number of gallons under subd. 1.

4. Multiply the number of gallons under subd. 3. by the rate published under s. 78.015 as increased under s. 78.017.

(b) For diesel fuel:

1. Subtract the number of gallons under s. 78.01 (2r) for the taxable period from the number of gallons received during the taxable period.

2. Multiply the number of gallons under subd. 1. by the rate published under s. 78.015 as increased under s. 78.017.

(5) PAYMENT OF TAX. Licensed suppliers shall pay taxes on motor vehicle fuel no later than the 15th day of the month for motor vehicle fuel sold during the previous month. At the option of a wholesaler distributor, a licensed supplier shall allow the wholesaler distributor to delay paying the tax to the licensed supplier until the date that the tax is due to this state. A wholesaler distributor who makes delayed payments shall make the payments by electronic funds transfer. If a wholesaler distributor fails to make timely payments, the licensed supplier may terminate the right of the wholesaler distributor to make delayed payments. Each licensed supplier shall notify the department of each wholesaler distributor who makes delayed payments of the tax. The department may require any wholesaler distributor who makes delayed payments of the tax to furnish the department a surety bond payable to this state in an amount not to exceed 3 times the highest estimated monthly tax owed by the wholesaler distributor. Whenever the wholesaler distributor pays the licensed supplier,

the licensed supplier shall credit the wholesaler distributor's account for the amount of tax reduction that results from the calculation under s. 78.12 (4) (a) 2.

History: 1973 c. 333; 1975 c. 180, 421; 1977 c. 418; 1979 c. 221; 1985 a. 153; 1987 a. 399; 1991 a. 39, 316; 1993 a. 16, 437; 1997 a. 27; 2005 a. 85.

Cross−reference: See also ss. Tax 4.51, 4.52, and 4.75, Wis. adm. code.

Sub. (3), when read in conjunction with related statutes, provides that a purchaser of motor vehicle fuel from a licensed supplier is liable to the department of revenue for the tax when the purchaser does not pay the tax to the supplier as required by s. 78.01 (1) but does collect the tax from the customers to whom the purchaser sells the fuel and when the department gives a credit to the supplier for the tax it paid as authorized by s. 78.01 (2s). Bender v. Department of Revenue, 2005 WI App 31, 278 Wis. 2d 731, 693 N.W.2d 311, 04−0766.

78.13 Notice by licensee of discontinuance, sale or transfer of business; final report. (1) NOTICE REQUIRED. Whenever any licensee doing business under this subchapter ceases to do business, that licensee shall notify the department in writing immediately. That notice shall specify the date when the licensee ceases doing business and, in the event of the sale or transfer of the business, the name and address of the purchaser or transferee thereof.

(2) FINAL REPORTS. Every licensee shall, upon the cessation of business or upon the cancellation or revocation of a license, make a report as required under s. 78.12 and pay all motor vehicle fuel taxes, interest and penalties due the state. Such payment shall be made under s. 78.12 (5).

History: 1973 c. 333; 1975 c. 180, 421; 1981 c. 20; 1987 a. 399; 1991 a. 189; 1993 a. 16.

78.15 Theft of tax moneys. If any licensee sells any motor vehicle fuel upon which the tax imposed by this subchapter has become due and has not been paid, all motor vehicle fuel tax moneys received by that licensee because of that sale are trust funds in that licensee's hands and the property of this state. Any licensee who fails or refuses to pay over to the state the tax on motor vehicle fuel at the time required under s. 78.12 (5) or who fraudulently withholds or appropriates or otherwise uses such moneys or any portion thereof belonging to this state is guilty of theft and shall be punished as provided by law for the crime of theft, irrespective of whether or not that licensee has or claims to have any interest in the moneys so received by that licensee.

History: 1991 a. 316; 1993 a. 16.

78.155 Penalties for misuse of dyed diesel fuel. (1) Any person who sells dyed diesel fuel to a buyer who the person knows or has reason to know will use the dyed diesel fuel for a purpose that is taxable under this subchapter shall pay to the department a penalty of $1,000 or twice the amount of tax that should have been paid on the dyed diesel fuel, whichever is greater.

(2) Any person who knows or has reason to know that he or she used dyed diesel fuel for a purpose that is taxable under this subchapter shall pay to the department a penalty of $1,000 or twice the amount of tax that should have been paid on the dyed diesel fuel, whichever is greater.

(3) Any retailer who does not conspicuously label a fuel pump, or other delivery facility, that dispenses dyed diesel fuel so as to notify customers that it contains dyed diesel fuel shall pay to the department a penalty of $1,000.

History: 1993 a. 437.

78.19 Refund for fuel destroyed. If any motor vehicle fuel in the possession of a licensee is destroyed by fire, lightning, storm, flood or accident not caused by the willful act of that licensee or any employee thereof, before it is sold or used by that licensee, and if the licensee applies to the department and proves the destruction or loss satisfactorily to the department, the department shall authorize a tax credit or shall refund the amount of tax paid thereon. Such application or claim shall be filed with the department within 15 days after the motor vehicle fuel is destroyed or lost or the tax credit or refund will not be allowed.

History: 1991 a. 316; 1993 a. 16.

78.20 Refund to retailers. (1) In this section, "invoice" means the top copy and not a carbon copy.

(1m) Any person who operates a service station, store, garage or other place of business within this state for the retail sale of gasoline therefrom who has paid the tax required by this subchapter on the gasoline received into that person's storage at such place of business shall be reimbursed and repaid 0.5 percent of such tax to cover shrinkage and evaporation losses upon making and filing a claim.

(2) Such claim shall be filed not later than one year after the date of purchase of the gasoline or the claim will not be allowed.

(3) The supplier shall furnish each retailer with an invoice prepared at the time of delivery, and the retailer shall send that invoice or a list of purchases to the department when making claim for refund. The supplier shall ensure that the invoice contains the following information: date of sale; name and address of supplier; name and address of retailer, which name must be the name of the claimant and be uniform on all invoices; number of gallons purchased and the price per gallon; and the amount of Wisconsin motor vehicle fuel tax on the gasoline as a separate item. If the retailer sends invoices to the department, the retailer shall send a separate invoice for each sale and delivery and each invoice shall be legibly written. If the retailer sends a list of purchases to the department, the retailer shall retain for 4 years the invoices that are evidence of those purchases and allow the department to inspect them.

(4) On the filing of a claim under sub. (3), accompanied by the invoice or a list of purchases, the department shall determine the amount of refund due. The department may make such investigation of the correctness of the facts stated in such claim as it deems necessary. When the department has approved such claim it shall reimburse the claimant under this section out of the moneys collected under this chapter to be used for carrying out this section. No claim for refund shall be denied or the payment thereof withheld for failure of the invoice or list of purchases to show the amount of the Wisconsin motor vehicle fuel tax on the gasoline as a separate item if the amount of such tax is determinable from the information stated on the invoice or list of purchases.

(5) The right of any person to a refund under this section shall not be assignable and the application for a refund shall be made by the same person who purchased the gasoline as shown in the invoice by the person selling the same, and by no other person, and the proceeds or amount of such refund as determined by the department shall be paid to the person whose name appears on the seller's invoice and to no other person.

History: 1989 a. 31; 1991 a. 316; 1993 a. 437; 1997 a. 27.

78.21 Seizure and sale. (1) The department may seize, the department of transportation may seize and the department of transportation may request any police officer to seize, any motor vehicle fuel and the vehicle or other means of transporting it if the person who possesses the motor vehicle fuel does any of the following:

(a) Imports, sells, uses, delivers or stores in this state motor vehicle fuel if the tax on the motor vehicle fuel has not been paid, dye has been added to the motor vehicle fuel or liability for the tax has not been incurred by the holder of an unrevoked supplier license, unless a supplier possesses the motor vehicle fuel and the motor vehicle fuel is manufactured in this state or imported by pipeline or barge and stored in this state and unless an alcohol supplier possesses the motor vehicle fuel and has imported it by barge, railcar or transport truck into a terminal in this state or unless an agricultural user possesses the motor vehicle fuel and that motor vehicle fuel is dyed.

(b) Exports motor vehicle fuel unless the person has an export license or a supplier's license or has paid the motor vehicle fuel tax of the destination state to the supplier and has a bill of lading that proves the export.

(c) Operates or maintains a motor vehicle on any highway in this state with dyed fuel, unless the vehicle is a truck that is used principally for agricultural purposes and is marked with an agricultural use plate or tag or unless the motor vehicle is a truck that has received the fuel in a jurisdiction that permits the introduction of dyed fuel of that color and type into the motor vehicle fuel tank of highway vehicles.

(d) Engages in a business for which a license is required under s. 78.09 and does not have that license.

(e) Operates a transport truck to ship diesel fuel on the highways of the state, destined for delivery in this state, as shown on the shipping papers and does not have on board a shipping paper that sets out on its face a notation that the load is exempt if it is exempt or taxable if it is taxable.

(2) The department of transportation may promulgate rules to interpret sub. (1).

History: 1993 a. 16.

78.215 Separate fuel supply tanks required. Every motor vehicle operated by diesel fuel shall be equipped with a diesel fuel supply tank separate from and in no way connected to any cargo tank on or attached to that motor vehicle.

History: 1993 a. 16.

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

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

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

(4) LATE FILING FEE. Any person who fails to file a motor vehicle fuel floor tax return when due shall pay a late filing fee of $10. A return that is mailed is filed in time if it is mailed in a properly addressed envelope with postage duly prepaid and the envelope is officially postmarked, or marked or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code, on the date due and the return is actually received by the department or at the destination that the department prescribes within 5 days of the due date. A return that is not mailed is timely if it is received on or before the due date by the department or at the destination that the department prescribes. For purposes of this subsection, "mailed" includes delivery by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

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

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

History: 1981 c. 20; 1987 a. 312 s. 17; 1993 a. 16; 1997 a. 27; 2005 a. 49.

SUBCHAPTER II

ALTERNATE FUELS TAX

78.39 Definitions. In this subchapter:

(1) "Alternate fuels" means all combustible gases and liquids suitable for generation of power for propulsion of motor vehicles, except that "alternate fuels" does not include motor vehicle fuel, as defined in s. 78.005 (13), or general aviation fuel, as defined in s. 78.55 (3).

(2) "Alternate fuels dealer" means any person, including the state and any political subdivision of the state, but not including the United States or its agencies except to the extent now or hereafter permitted by the constitution and laws of the United States, in the business of handling alternate fuels who delivers any part of the alternate fuels into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by that person or to a retailer or user if the supplier reports and pays the tax under s. 78.40 (1).

(3) "Alternate fuels user" means the owner or other person, including the state and any political subdivision of the state, but not including the United States or its agencies except to the extent now or hereafter permitted by the constitution and laws of the United States, responsible for the operation of a motor vehicle at the time an alternate fuel is placed in the fuel supply tank or tanks of the motor vehicle while the vehicle is within this state.

(4) "Department" means the department of revenue.

(4m) "File" means mail or deliver a document that the department prescribes to the department or, if the department prescribes another method of submitting or another destination, use that other method or submit to that other destination.

(5) "Motor vehicle" has the meaning given in s. 78.005 (12).

(5d) "Pay" has the meaning given in s. 78.005 (13b).

(5f) "Person" includes any individual, sole proprietorship, partnership, limited liability company, corporation, or association. A single−owner entity that is disregarded as a separate entity under ch. 71 is disregarded as a separate entity for purposes of this subchapter.

(5m) "Sign" has the meaning given in s. 78.005 (13r).

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

(7) "Use" means the receipt, delivery, or placing of alternate fuels into the fuel supply tank of a motor vehicle in this state, by an alternate fuels user and the delivery to a retailer or user if the supplier reports and pays the tax under s. 78.40 (1).

History: 1993 a. 16 ss. 1907, 1918, 1920; 1997 a. 27; 1999 a. 83; 2005 a. 49; 2015 a. 216.

78.40 Tax imposed; collected; exceptions. (1) IMPOSITION OF TAX AND BY WHOM PAID. An excise tax at the rate determined under ss. 78.405 and 78.407 is imposed on the use of alternate fuels. The tax, with respect to all alternate fuel delivered by an alternate fuel dealer into supply tanks of motor vehicles in this state, attaches at the time of delivery and shall be collected by the dealer from the alternate fuels user and shall be paid to the department. The tax, with respect to alternate fuels acquired by any alternate fuels user other than by delivery by an alternate fuel dealer into a fuel supply tank of a motor vehicle, of a snowmobile, of a limited use off−highway motorcycle that is not registered for private use under s. 23.335 (3) (a), of an all−terrain vehicle or utility terrain vehicle that is not registered for private use under s. 23.33 (2) (d) or (2g), or of a recreational motorboat, attaches at the time of the use of the fuel and shall be paid to the department by the user. The department may permit any supplier of alternate fuels to report and pay to the department the tax on alternate fuels delivered into the storage facility of an alternate fuels user or retailer which will be consumed for alternate fuels tax purposes or sold at retail.

(2) EXCEPTIONS. No tax is hereby imposed upon or with respect to the following:

(a) Alternate fuels used by the United States or its agencies where such use is evidenced by an exemption certificate executed by an authorized representative of the U.S. government or agency thereof certifying that the fuel used is for the exclusive consumption by the U.S. government or its agencies.

(c) Alternate fuels used by a common motor carrier as defined in ch. 194, if the carrier certifies to the department that the fuel is for use in the operation of a motor vehicle for the urban mass transportation of passengers as defined in s. 71.38.

History: 1979 c. 11, 221; 1981 c. 20; 1983 a. 27; 1985 a. 302; 1987 a. 27; 1987 a. 312 s. 17; 1991 a. 39; 1993 a. 16; 1995 a. 113; 1997 a. 27; 2011 a. 208; 2015 a. 170.

Cross−reference: See also s. Tax 4.53, Wis. adm. code.

78.405 Annual adjustment of the tax rate. (1) Before April 1, the department annually shall calculate the rate for the tax under s. 78.40 as follows:

(a) Determine the standard number of British thermal units per gallon generated by gasoline.

(b) Determine the standard number of British thermal units per gallon generated by each kind of alternate fuel that is sold in this state.

(c) For each kind of alternate fuel sold in this state, divide the result under par. (b) by the result under par. (a).

(d) For each kind of alternate fuel sold in this state, multiply the result under par. (c), expressed as a decimal, by the rate for the tax under s. 78.01 as adjusted for the current year under s. 78.015.

(2) The rates determined under sub. (1) are effective on the April 1 after they are calculated.

History: 1983 a. 27; 1991 a. 39; 1997 a. 27.

78.407 Adjustment in 1997. On November 1, 1997, the rate of the tax imposed under s. 78.40 (1) is increased by one cent.

History: 1997 a. 27.

78.47 Alternate fuels license. No person may act as an alternate fuels dealer in this state unless the person holds a valid alternate fuels license issued by the department and a valid certificate under s. 73.03 (50). Except for alternate fuel which is delivered by an alternate fuels dealer into a fuel supply tank of any motor vehicle in this state, no person may use an alternate fuel in this state unless the person holds a valid alternate fuel license issued by the department or unless the alternate fuel has been delivered by a supplier who is authorized under s. 78.40 (1) to report and pay the tax on behalf of the user or retailer.

History: 1979 c. 11; 1985 a. 302; 1993 a. 16; 1997 a. 27.

Cross−reference: See also s. Tax 4.53, Wis. adm. code.

78.48 Application; form; investigation; bond; issue. (1) APPLICATION. Application for an alternate fuels license shall be made upon a form prepared and furnished by the department. It shall be subscribed by the applicant and shall contain the information that the department reasonably requires for the administration of this subchapter. Only a person who holds a valid certificate under s. 73.03 (50) may apply for a license under this subsection.

(2) INVESTIGATION. The department shall investigate each applicant under sub. (1). No license may be issued if the department deems that the applicant does not hold a valid certificate under s. 73.03 (50), the application is not filed in good faith, the applicant is not the real party in interest and the license of the real party in interest has been revoked for cause, or other reasonable cause for nonissuance exists.

(3) HEARING. Before refusing to issue a license, the department shall grant the applicant a hearing, of which the applicant shall be given at least 5 days' written notice.

(4) ISSUE. If the application and the bond under sub. (9), if that bond is required, are approved, the department shall issue a license in as many copies as the licensee has places of business for which an alternate fuels license is required.

(6) TRANSFER FORBIDDEN. An alternate fuels license is not transferable to another person or to another place of business.

(7) DISPLAY OF LICENSE. Each license shall be preserved and conspicuously displayed at the place of business for which issued.

(8) DISCONTINUANCE. Upon the discontinuance of the business licensed at any place, the copy of the license issued for such place shall be immediately surrendered to the department.

(9) BOND. (a) To protect the revenues of this state, the department may require any person liable to the department for the tax imposed by this subchapter to place with it, either before or after an alternate fuels license is issued, security in an amount which the department determines. The amount of security required may be increased or decreased as the department deems necessary, but shall not exceed 3 times the licensee's average monthly liability for taxes under this subchapter, as estimated by the department. If any applicant or licensee fails or refuses to place such security, the department may refuse to issue or may revoke the license. If any taxpayer is delinquent in the payment of taxes imposed by this subchapter, the department may, upon 10 days' notice, recover the taxes, interest, penalties, cost and disbursements from the taxpayer's security placed with the department. No interest shall be paid or allowed by the state to any person for the deposit of the security.

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

(c) Section 78.11 (2) to (4), regarding licensees' bonds, also applies to bonds furnished by alternate fuels applicants and licensees under this subsection.

History: 1973 c. 90; 1991 a. 316; 1993 a. 16; 1995 a. 27; 1997 a. 27.

Cross−reference: See also ss. Tax 4.54 and 4.55, Wis. adm. code.

78.49 Reports to department; computation of tax. (1) REPORTS OF ALTERNATE FUELS LICENSEES. (a) For the purpose of determining the amount of liability to the state for the tax under this subchapter, except as provided in par. (b), each alternate fuels licensee shall, not later than the last day of each month, file a monthly report for the next preceding month. Such report shall contain a declaration by the licensee that the statements contained therein are accurate and are a true return of the amount of the alternate fuels tax due and shall be signed by the licensee or the licensee's duly authorized agent.

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

(2) REPORTS OF OTHERS. Any person who is not an alternate fuels licensee and who uses any alternate fuel in this state upon which the tax under this subchapter has not been paid or the liability therefor has not been incurred by any alternate fuels licensee in this state shall file a report and pay the tax on such fuel and shall be subject to this subchapter in the same manner as are alternate fuels licensees.

(3) COMPUTATION OF TAX. Each alternate fuels licensee at the time of making the monthly or quarterly report shall compute and pay to the department the full amount of the alternate fuels tax for the next preceding month or quarter. The amount of the tax shall be computed as follows: the number of gallons of alternate fuels delivered or placed by the licensee into the fuel supply tanks of motor vehicles or sold to a retailer if the supplier reports and pays the tax under s. 78.40 (1) shall be multiplied by the amount provided in s. 78.40 (1) and the resulting figure shall be the amount of the alternate fuels tax for the next preceding month or quarter.

History: 1973 c. 333; 1975 c. 180, 421; 1979 c. 221; 1981 c. 20; 1985 a. 302; 1993 a. 16; 1997 a. 27.

Cross−reference: See also s. Tax 4.53, Wis. adm. code.

78.50 Notice by alternate fuels licensee of cessation, sale or transfer of business; final report. (1) NOTICE REQUIRED. Whenever any alternate fuels licensee ceases to perform any of the acts for which an alternate fuels license is required, the licensee shall notify the department in writing. That notice shall give the date of cessation, and in the event of sale or transfer

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

(2) FINAL REPORT. Every alternate fuels licensee shall, upon such cessation, sale or transfer of the business or upon the cancellation or revocation of a license, make a report as required in s. 78.49 and pay all alternate fuels taxes, interest and penalties due the state. Such payment shall be made to the department.

History: 1973 c. 333; 1975 c. 180, 421; 1981 c. 20; 1987 a. 399; 1991 a. 316; 1993 a. 16.

78.51 Theft of alternate fuels tax moneys. All sums paid by a purchaser of an alternate fuel to an alternate fuels dealer as alternate fuels taxes which have not been paid to the state are public moneys, the property of the state of Wisconsin. Any alternate fuels dealer who fails or refuses to pay over to the state the tax on an alternate fuel at the time required in this chapter, or who fraudulently withholds or appropriates or otherwise uses such moneys or any portion thereof belonging to the state is guilty of theft and shall be punished as provided by law for the crime of theft, irrespective of whether that alternate fuels dealer has or claims to have any interest in such moneys so received by that dealer.

History: 1991 a. 316; 1993 a. 16.

78.52 Separate fuel supply tanks required. Every motor vehicle operated by alternate fuel shall be equipped with an alternate fuel supply tank separate from and in no way connected to any cargo tank on or attached to such motor vehicle.

History: 1993 a. 16.

78.53 Presumption. For the purpose of enforcing this subchapter, it shall be prima facie presumed that all alternate fuel received by an alternate fuels dealer or an alternate fuels user into storage and dispensing equipment designed to fuel motor vehicles is to be transferred or delivered by the dealer or user into the supply tanks of motor vehicles.

History: 1993 a. 16.

SUBCHAPTER III

GENERAL AVIATION FUEL TAX

78.55 Definitions. In this chapter:

(1) "Air carrier company" has the meaning given in s. 70.11 (42) (a) 1.

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

(2g) "Department" means the department of revenue.

(2r) "File" means mail or deliver a document that the department prescribes to the department or, if the department prescribes another method of submitting or another destination, use that other method or submit to that other destination.

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

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

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

(5m) "Pay" means mail or deliver funds to the department or, if the department prescribes another method of payment or another destination, use that other method or submit to that other destination.

(5p) "Person" includes any individual, sole proprietorship, partnership, limited liability company, corporation, or association. A single−owner entity that is disregarded as a separate entity under ch. 71 is disregarded as a separate entity for purposes of this subchapter.

(6) "Sign" means write one's signature or, if the department prescribes another method of authenticating, use that other method.

History: 1981 c. 20; 1997 a. 27, 35; 2001 a. 16; 2015 a. 216.

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

History: 1981 c. 20.

78.56 General aviation fuel license. No person may act as a general aviation fuel dealer in this state unless the person is the holder of a valid general aviation fuel license issued to the person by the department and is the holder of a valid certificate under s. 73.03 (50).

History: 1981 c. 20; 1997 a. 27.

78.57 Application; form; investigation; bond; issue. **(1)** APPLICATION. Application for a general aviation fuel license shall be made on a form prepared and furnished by the department. It shall be subscribed by the applicant and shall contain the information that the department reasonably requires for the administration of this chapter. Only a person who holds a valid certificate under s. 73.03 (50) may apply for a license under this subsection.

(2) INVESTIGATION. The department shall investigate each applicant under sub. (1). No license may be issued if the department determines any of the following:

(a) That the application was not filed in good faith.

(b) That the applicant is not the real party in interest and the license of the real party in interest has been revoked for cause.

(c) That the applicant does not hold a valid certificate under s. 73.03 (50).

(d) That other reasonable cause for nonissuance exists.

(3) HEARING. Before refusing to issue a license, the department shall grant the applicant a hearing, of which he or she shall be given at least 5 days' advance written notice.

(4) ISSUE. If the application and the bond under sub. (9), if that bond is required, are approved, the department shall issue a license in as many copies as the licensee has places of business for which a general aviation fuel license is required.

(6) TRANSFER FORBIDDEN. A general aviation fuel license is not transferable to another person or to another place of business.

(7) DISPLAY OF LICENSE. Each license shall be preserved and conspicuously displayed at the place of business for which issued.

(8) DISCONTINUANCE. Upon the discontinuance of the business licensed at any place, the copy of the license issued for that place shall be immediately surrendered to the department.

(9) BOND. (a) To protect the revenues of this state, the department may require any person liable to the department for the tax imposed by this subchapter to place with it, either before or after

a general aviation fuel license is issued, security in an amount which the department determines. The amount of security required may be increased or decreased as the department deems necessary, but may not exceed 3 times the licensee's average monthly liability for taxes under this subchapter, as estimated by the department. If an applicant or licensee fails or refuses to place such security, the department may refuse to issue or may revoke the license. If any taxpayer is delinquent in the payment of taxes imposed by this subchapter, the department may, upon 10 days' advance written notice, recover the taxes, interest, penalties, cost and disbursements from the taxpayer's security placed with the department. No interest may be paid or allowed by the state to any person for the deposit of the security.

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

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

History: 1981 c. 20; 1993 a. 16; 1995 a. 27; 1997 a. 27.

Cross−reference: See also ss. Tax 4.54 and 4.55, Wis. adm. code.

78.58 Reports to department; computation of tax. **(1)** REPORTS OF GENERAL AVIATION FUEL LICENSEES. (a) For the purpose of determining the amount of the licensee's liability to the state for the tax imposed by this subchapter, except as provided in par. (b), each general aviation fuel licensee shall, not later than the 20th day of each month, file a monthly report for the next preceding month. The licensee or the licensee's duly authorized agent shall sign the report.

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

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

(3) COMPUTATION OF TAX. Each general aviation fuel licensee at the time of making the monthly or quarterly report shall compute and pay the full amount of the general aviation fuel tax for the next preceding month or quarter, which shall be computed as follows: the number of gallons of general aviation fuel placed into the fuel supply tanks of an aircraft or into bulk storage facilities by the general aviation fuel licensee, multiplied by 0.06 and the resulting figure expressed in dollars.

History: 1981 c. 20; 1993 a. 16; 1997 a. 27, 41.

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

(2) FINAL REPORT. Every general aviation fuel licensee shall, upon such cessation, sale or transfer of the business or upon the cancellation or revocation of a license, make a report as required in s. 78.58 and pay all general aviation fuel taxes and penalties due the state.

History: 1981 c. 20; 1987 a. 399; 1993 a. 16; 1997 a. 27.

78.60 Theft of general aviation fuel tax moneys. All sums paid by a purchaser of general aviation fuel to any general aviation fuel dealer as general aviation fuel taxes, which have not theretofore been paid to the state, are public moneys, the property of this state. Any general aviation fuel dealer who fails or refuses to pay over to the state the tax on general aviation fuel at the time required in this chapter or who fraudulently withholds or appropriates or otherwise uses such moneys or any portion thereof belonging to the state is guilty of theft and shall be punished as provided by law for the crime of theft, irrespective of whether such general aviation fuel dealer has or claims to have any interest in such moneys so received.

History: 1981 c. 20.

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

History: 1981 c. 20, 314.

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

History: 1981 c. 20.

SUBCHAPTER IV

PROVISIONS COMMON TO MOTOR VEHICLE FUEL TAX, GENERAL AVIATION FUEL TAX AND ALTERNATE FUEL TAX

78.64 Definitions. In this subchapter:

(1) "Alternate fuels" has the meaning given in s. 78.39 (1).

(2) "Department" means the department of revenue.

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

(4) "Person" includes any individual, sole proprietorship, partnership, limited liability company, corporation, or association. A single−owner entity that is disregarded as a separate entity under ch. 71 is disregarded as a separate entity for purposes of this subchapter.

History: 1993 a. 16; 2015 a. 216.

78.65 Suspension and revocation of licenses. **(1)** If a general aviation fuel licensee or licensee under s. 78.09 or 78.47 violates any provision of this chapter and the department deems good cause exists for suspension or revocation by reason of such violation, it may suspend such person's license, or, after a hearing of the charges is held, it may revoke such license. No license may be suspended unless the holder of the license has been notified of a hearing to be held on the charges and no license may be revoked until after the holder of the license has been notified of a hearing and has been afforded an opportunity to appear and testify. The department shall notify the licensee in writing of the time and place a hearing of the charges shall be held. The notice shall contain a statement of the alleged violation, and shall be served upon the licensee at least 10 days prior to the hearing, either by personal delivery to the licensee, or by mailing by registered mail to the address of the licensee as shown in the application. At the time and place fixed in the notice, the department shall proceed to a hearing of the charges, and the licensee shall be afforded an opportunity to present in person or by counsel statements, testimony, evidence and argument pertinent to the charges or to any defense thereto. The department may continue the hearing from time to time but not more than 60 days. After the hearing, the department shall rescind the order of suspension, if any, and for good cause

shown shall either suspend the license for a period of time or revoke the license.

(3) Upon the suspension or revocation of any license, the department shall request the holder thereof to surrender to it immediately all copies of licenses issued to the holder, and the holder shall surrender promptly all such copies to the department.

History: 1981 c. 20; 1987 a. 399; 1991 a. 316; 1993 a. 16.

78.66 Records to be kept by licensees. (1) Every general aviation fuel licensee and licensee under s. 78.09 or 78.47 shall keep a record of all purchases, receipts, sales, distribution and consumption of each kind or trade name of motor vehicle fuel, crude petroleum and general aviation fuel and each alternate fuel.

(2) Every licensee shall keep true and accurate records of all stocks of motor vehicle fuel, crude petroleum and general aviation fuel and each alternate fuel on hand. Every licensee shall take a physical inventory of those fuels on hand at each licensed location at the close of business on the last day of every month.

(3) Every licensee shall retain the records of the inventory required by sub. (2) and all other records required by this section available for the inspection by the department, and upon demand of the department, any licensee shall furnish a statement under oath reflecting the contents of any record to be kept under this section.

(4) The department may require any person who keeps records in machine−readable form for federal fuel tax purposes to keep those records in the same form for purposes of the taxes under this chapter.

History: 1981 c. 20; 1991 a. 39; 1993 a. 16; 1997 a. 27.

78.67 Timely filing. When the final date provided in this chapter for the filing of any report or claim or for the remittance of any tax or penalty falls on a Saturday, Sunday or legal holiday, the next secular or business day shall be the final date. The provisions on timely filing under s. 71.80 (18) apply to the reports, claims and remittances under this chapter.

History: 1985 a. 302; 1987 a. 312 s. 17; 1993 a. 16.

78.68 Returns; failure to pay; refunds. (1) Unpaid taxes shall bear interest at the rate of 12 percent per year from the due date of the tax until paid or deposited with the department, and all refunded taxes bear interest at the rate of 3 percent per year from the due date of the return to the date on which the refund is certified on the refund rolls.

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

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

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

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

(3) If an incorrect return is filed, and upon a showing by the department under s. 73.16 (4), the entire tax finally determined is subject to a penalty of 25 percent of the tax exclusive of interest or other penalty.

(4) In case of failure to file any return required under ss. 78.12, 78.49, and 78.58 by the due date, and upon a showing by the department under s. 73.16 (4), there shall be added to the amount required to be shown as tax on that return 5 percent of the amount of the tax if the failure is for not more than one month, and an additional 5 percent of the tax for each additional month or fraction thereof during which the failure continues, not exceeding 25 percent of the tax in the aggregate. For purposes of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the due date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

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

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

(7) Any person, including an officer of a corporation or a manager of a limited liability company, who is required to make, render, sign or verify any report or return required by this chapter and who makes a false or fraudulent report or return or who fails to furnish a report or return when due with the intent, in either case, to defeat or evade the tax imposed by this subchapter may be fined not more than $500 or imprisoned for not more than 30 days or both.

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

(9) Before any tax becomes due, if the department has reason to believe that any licensee intends or is likely to evade or attempt to evade payment of the tax when due, or intends or is likely to convey, dispose of, or conceal his or her property or abscond from the state, or do any other act which would render the state insecure in collecting the tax when due, the department may demand payment forthwith of all taxes upon all motor vehicle fuel received under s. 78.07, general aviation fuel placed in the fuel supply tank of an aircraft or in bulk storage facilities or alternate fuel used, as defined in s. 78.39 (7), by the licensee, which shall immediately become payable and collectible as if delinquent, and the property of the licensee shall be subject to attachment as provided in s. 78.70.

(10) Except as provided in ss. 78.19, 78.20 (2) and 78.75 (1m) (b), s. 71.75 (2) and (4) to (7) as it applies to the taxes under ch. 71 applies to the taxes under this chapter. Sections 71.74 (13), 71.75 (9) and (10), 71.80 (3), 71.93, 71.935, and 73.03 (52), (52m), and (52n), as they apply to refunds of the taxes under ch. 71 apply to the refund of the taxes under this chapter.

History: 1973 c. 333; 1977 c. 29, 289, 418; 1981 c. 20; 1983 a. 368; 1987 a. 399; 1991 a. 39; 1993 a. 16, 112, 205, 437; 2011 a. 68; 2013 a. 20.

Cross−reference: See also s. Tax 4.51, Wis. adm. code.

78.69 Appeals. Sections 71.88 (1) (a) and (2) (a), 71.89 and 71.90 as they apply to the taxes under ch. 71 apply to the taxes under this chapter.

History: 1977 c. 29 s. 1654 (1); 1977 c. 273; 1991 a. 39.

78.70 Actions to collect tax and penalties. (1) DEPARTMENT AUTHORITY. The department may collect delinquent motor vehicle fuel, alternate fuel and general aviation fuel taxes in the manner provided for the collection of delinquent income and franchise taxes under ss. 71.80 (12), 71.82 (2), 71.91 (1) (a) and (c) and (2) to (7), 71.92 and 73.0301, including proceeding under the authority incorporated by reference in s. 71.91 (5) (j) and the authority to:

(a) Use the warrant procedures under ss. 71.74 (14), 71.80 (12), 71.82 (2), 71.91 (1) (a) and (c) and (2) to (5m) and 71.92.

(b) Release real property from the lien of a warrant.

(c) Satisfy warrants.

(d) Approve installment payment agreements.

(e) Compromise on the basis of ability to pay.

(f) Compromise delinquent estimated determinations on the basis of fairness and equity.

(2) ATTACHMENT. Delinquent motor vehicle fuel, general aviation fuel or alternate fuel tax shall also be collectible and enforceable by a writ of attachment brought by the attorney general or district attorney in the name of the state against the lands, goods, chattels, credits or other personal property of the licensee, and for the purpose of this section, the licensee shall be deemed to be a nonresident of this state, and such attachment shall be governed in all respects by the provisions of law relating to attachments against nonresidents, but no attachment bond shall be required of the state, nor shall an indemnity bond be required or demanded of any sheriff or constable serving such writ of attachment, and no sheriff or constable shall be liable in damages on account of levying any attachment when acting under the direction of the attorney general or district attorney.

(3) GARNISHMENT. The sheriff or constable shall also summon the persons named in said writ of attachment as garnishees, and all persons within the sheriff's or constable's county whom the attorney general or district attorney shall designate as having any property, effects, choses in action or credits in their possession or power, belonging to the defendant, or who are in anywise indebted to such defendant, the same as if their names had been inserted in such writ.

(4) ASSESSMENT CONSTITUTES PRIMA FACIE EVIDENCE. In any action or proceeding for the collection of the tax from the licensee, or any penalties imposed in connection therewith, an assessment by the department, made pursuant to this chapter, of the amount of the motor vehicle fuel, alternate fuel or general aviation fuel taxes, or any penalties imposed in connection therewith, due from the licensee, shall constitute prima facie evidence of the claim of the state, and the burden of proof shall be upon the licensee to show that the assessment was incorrect and contrary to law.

(5) NO WAIVER. Nothing in this section shall be construed as forfeiting or waiving any right to collect said tax and penalties by an action upon any bond that may be filed with the department under this chapter, or by suit, or otherwise, and in case such suit, action or proceeding has been instituted for the collection of said tax, such suit, action or other proceeding shall not be construed as waiving any other right herein provided.

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

(7) STATUTES OF LIMITATIONS. Section 71.77 as it applies to the taxes under ch. 71 applies to the taxes under this chapter, except that the period during which notice of an additional assessment shall be given begins on the due date of the report under this chapter.

History: 1977 c. 29, 418; 1981 c. 20; 1985 a. 29 ss. 1502, 3202 (46) (d); 1987 a. 312 ss. 8, 17; 1991 a. 39, 316; 1993 a. 16; 1995 a. 233, 408; 1997 a. 237.

78.71 Motor vehicle fuel, general aviation fuel and alternate fuels taxes are preferred claims. (1) If the property of any licensee is seized upon any mesne or final process of any court of this state, or when the business of any licensee is suspended by the action of creditors or put into the hands of any assignee, receiver or trustee, all motor vehicle fuel, general aviation fuel or alternate fuels tax moneys and penalties due the state from the licensee shall be considered preferred claims and the state shall be a preferred creditor and shall be paid in full.

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

History: 1981 c. 20; 1993 a. 16.

78.72 Preference given actions to enforce this chapter. All proceedings and hearings, civil or criminal, arising under this chapter shall be given preference.

History: 1983 a. 219.

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

(a) Displays, or causes or permits to be displayed, or has possession of, any license knowing the same to be fictitious, or to have been suspended, canceled, revoked or altered;

(b) Lends to, or knowingly permits the use by, one not entitled thereto, any license issued to the person lending it or permitting it to be used;

(c) Displays or represents as the person's own any license not issued to the person displaying the same;

(d) Uses a false or fictitious name or gives a false or fictitious address in any application or form required by this chapter, or otherwise commits a fraud in any application, record, report or claim for refund;

(dm) Presents an exemption certificate under s. 78.01 (2) (e) or obtains motor vehicle fuel tax−free under s. 78.01 (2) (f), and uses the fuel obtained tax−free on the basis of the certificate in a manner other than the manner for which the certificate was issued;

(dr) Uses motor vehicle fuel purchased tax−free and obtained from the storage tank of a general aviation fuel dealer, as defined in s. 78.55 (4), in a motor vehicle for highway purposes;

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

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

(2) SELLING WITHOUT A LICENSE. Each day in which any person acts as a licensee without a license shall constitute a separate offense, and for each such offense may be fined not more than $5,000 or imprisoned in the county jail for not more than one year or both.

(3) ATTEMPT TO ASSIGN LICENSE. Any person who assigns or attempts to assign a license issued under this chapter, or who fails to display the license conspicuously at the person's place of business, shall be fined not more than $25 or imprisoned for not more than 10 days for each such offense.

(4) FAILURE TO REPORT OR PAY. Any person who fails or refuses to make a report or payment as provided in this chapter shall be fined not more than $5,000 or imprisoned in the county jail for not more than one year or both.

History: 1981 c. 20; 1985 a. 153; 1987 a. 27; 1989 a. 31; 1991 a. 316; 1993 a. 16; 1997 a. 27, 237.

78.74 Remedies and penalties are cumulative. All of the remedies, prosecutions and penalties under this chapter shall be cumulative; no action for recovery of one penalty shall be a bar to or affect the recovery of any other penalty or be a bar to any criminal prosecution.

78.75 Refund; procedure; claim unassignable. (1) In this section, "invoice" means the top copy and not a carbon copy.

(1m) (a) 1. Except as provided under subds. 2. and 2m., a person who uses motor vehicle fuel or an alternate fuel upon which has been paid the tax required under this chapter, for the purpose of operating a taxicab for the transportation of passengers, for the

purpose of operating a motorboat exempt from registration as a motor vehicle under s. 341.05 (20) on privately owned land or for any purpose other than operating a motor vehicle upon the public highways, shall be reimbursed and repaid the amount of the tax paid upon making and filing a claim if the claim is for the tax on 100 gallons or more.

2. A person who uses motor vehicle fuel or an alternate fuel upon which has been paid the tax required under this chapter for the purpose of operating a snowmobile, as defined under s. 340.01 (58a), an aircraft, as defined under s. 78.55 (2), or a motorboat, as defined under s. 30.50 (6), unless the motorboat is not a recreational motorboat, may not be reimbursed or repaid the amount of tax paid.

2m. A person who uses motor vehicle fuel or an alternate fuel upon which has been paid the tax required under this chapter for the purpose of operating an all−terrain vehicle, as defined under s. 340.01 (2g), or a utility terrain vehicle, as defined under s. 23.33 (1) (ng), may not be reimbursed or repaid the amount of tax paid unless the all−terrain vehicle or utility terrain vehicle is registered for private use under s. 23.33 (2) (d) or (2g). A person who uses motor vehicle fuel or an alternate fuel upon which has been paid the tax required under this chapter for the purposes of operating a limited use off−highway motorcycle, as defined in s. 23.335 (1) (o), that is registered under s. 23.335 (3) may not be reimbursed or repaid the amount of tax paid unless the off−highway motorcycle is registered for private use under s. 23.335 (3) (a).

3. Claims under subd. 1. shall be made and filed. The forms shall indicate that refunds are not available for motor vehicle fuel or alternate fuels used for motorboats, except motorboats exempt from registration as motor vehicles under s. 341.05 (20) and motorboats that are not recreational motorboats, or motor vehicle fuel or alternate fuels used for snowmobiles and that the estimated snowmobile motor vehicle fuel or alternate fuels tax payments are used for snowmobile trails and areas. The forms shall indicate that refunds are not available for motor vehicle fuel or alternate fuels used for all−terrain vehicles or utility terrain vehicles unless the vehicle is registered for private use under s. 23.33 (2) (d) or (2g) and shall indicate that estimated all−terrain vehicle or utility terrain vehicle motor vehicle fuel or alternate fuels tax payments are used for all−terrain vehicle trails and areas. The forms shall indicate that refunds are not available for motor vehicle fuel or alternate fuels used for limited use off−highway motorcycles unless the motorcycle is registered for private use under s. 23.335 (3) (a) and shall indicate that estimated off−highway motorcycle fuel or alternate fuels tax payments are used for off−highway motorcycle trails and areas. The forms shall also indicate that refunds are not available for the tax on less than 100 gallons. The department shall distribute forms in sufficient quantities to each county clerk.

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

(c) The seller, upon request, shall furnish each purchaser with an invoice prepared at the time of delivery, and the purchaser shall send that invoice or a list of purchases to the department when making a claim for refund. The invoice shall contain the following information: date of sale; name and address of seller; name of purchaser, which name must be the name of the claimant; number of gallons purchased; the type of fuel; the purchase price; and the amount of Wisconsin motor vehicle fuel or alternate fuels tax as a separate item. If the purchaser sends invoices to the department, the purchaser shall send a separate invoice for each sale and delivery, and the invoice shall be legibly written and shall comply with the foregoing requirements. If the purchaser sends a list of purchases to the department, the purchaser shall retain for 4 years the invoices that are evidence of those purchases and allow the department to inspect them. The claim shall state whether or not the applicant owns an automobile or truck or any other motor−driven machinery or appliance which consumes motor vehicle fuel or an alternate fuel; the total number of gallons of motor vehicle fuel or alternate fuel purchased; the number of gallons of such motor vehicle fuel or alternate fuel purchased on which refund is claimed; a detailed statement of the consumption of such motor vehicle fuel or alternate fuel on which a refund is claimed, describing the machinery, equipment or appliance in which consumed, giving the serial or manufacturer's number of the motor and the approximate number of gallons consumed in each; or if such fuel were not consumed in any such machinery, equipment or appliance, then a description of the purposes for which the fuel was consumed with the approximate number of gallons consumed for each purpose; a statement whether or not deduction has been made for motor vehicle fuel or alternate fuels consumed in applicant's automobile or truck; and such other information as the department deems necessary.

(e) On the filing of a claim under par. (a), accompanied by the invoice or list of purchases, the department shall determine the amount of refund due. The department may make such investigation of the correctness of the facts stated in such claim as it deems necessary and may require a claimant to submit records to substantiate the claim. When the department has approved such claim, it shall reimburse the claimant out of the moneys collected under this chapter to be used for carrying out this section. No refund shall be claimed by or allowed to any person on account of any motor vehicle fuel or alternate fuel carried from this state in the ordinary fuel tank of a motor vehicle.

(f) The penalty provided in this chapter for presenting a false or fraudulent statement shall be printed in full on the claim form.

(2) The right of any person to a refund under this section shall not be assignable and the application for a refund shall be made by the same person who purchased the motor vehicle fuel or alternate fuel as shown in the invoice by the person selling the same, and by no other person, and the proceeds or amount of such refund as determined by the department shall be paid to the person whose name appears on the seller's invoice and to no other person.

History: 1973 c. 33; 1977 c. 29; 1979 c. 221; 1981 c. 390 s. 252; 1983 a. 189 s. 329 (33); 1985 a. 29; 1987 a. 27; 1989 a. 31; 1993 a. 16, 437; 1995 a. 113, 408; 1997 a. 27, 291; 2011 a. 208; 2015 a. 170.

Cross−reference: See also ss. Tax 4.01, 4.02, 4.03, and 4.05, Wis. adm. code.

78.77 Registration of transporters; records to be kept. **(1)** No person may transport motor vehicle fuel, general aviation fuel or alternate fuels by truck, trailer, semitrailer or other vehicle on any highway in this state from a point without this state to a point within this state, from a point within this state to a point without this state or for hire, as defined in s. 194.01 (4), unless that person has a valid certificate under s. 73.03 (50) and is registered with the department and unless the registration number furnished by the department for the vehicle preceded by the letters W.D.R. is prominently displayed on the vehicle by painting the registration number on each side and on the rear of the vehicle in characters not less than 5 inches in height with a stroke not less than three−fourths inch in width. The registration is valid until it is suspended, revoked for cause or canceled. A registration is not transferable to another person or place of business. Application for registration shall be upon forms prescribed by the department and shall furnish such information concerning the applicant as the department requires. The application shall show the name and address of the applicant, a description of the truck, trailer, semitrailer or other vehicle, the license number and the state in which issued, the name and address of the licensee, the capacity in gallons of the fuel tank or tanks, the serial number of the trailer, semitrailer or other vehicle, and the serial and motor number of any truck.

(2) Every person transporting motor vehicle fuel, general aviation fuel or alternate fuels upon the highways of this state who obtains the motor vehicle fuel, general aviation fuel or alternate fuel from a refinery, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture shall, while transporting the motor vehicle fuel, general aviation fuel or alternate fuel, carry a copy of the manifest, which shall be serially numbered and shall show the date of loading, name of refinery, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture where

loaded, point of origin, destination state, name of shipper, kind of motor vehicle fuel, general aviation fuel or alternate fuel and number of gallons. The refiner, marine terminal, pipeline terminal, pipeline tank farm or place of manufacture where the fuel is loaded shall prepare and furnish the manifest. Each shipment of motor vehicle fuel, general aviation fuel or alternate fuel by truck, trailer, semitrailer or other vehicle shall have one manifest. Delivery of any shipment may be made to one or more unlicensed places of business at the direction of the licensee under s. 78.09 or 78.47 or general aviation fuel dealer whose name and address appear on the manifest and for whose account the shipment is made if the licensee's or general aviation fuel dealer's copy of the manifest is supported by delivery tickets each showing the manifest number and complete information concerning the delivery and the original or copy of the delivery ticket is at the time of delivery presented to the person to whom any part of the shipment is delivered. Every person transporting motor vehicle fuel, general aviation fuel or alternate fuel shall keep complete and accurate records of all such fuel transported.

(3) Any person who transports motor vehicle fuel, general aviation fuel or an alternate fuel upon the highways of this state by truck, tractor, trailer, semitrailer or any vehicle which is not required to be registered under sub. (1) shall have his or her name and address painted on each side of the vehicle not less than 5 inches in height; if the vehicle is operated by a licensee duly licensed in this state, the trade insignia or trade name regularly used by such licensee for tank vehicle identification together with the name of the city, village or town from which the vehicle is customarily operated may be substituted for the name and address of the licensee. Each such person shall keep complete and accurate records of all motor vehicle fuel, general aviation fuel or alternate fuel purchased, consumed, sold or otherwise distributed.

(4) No person transporting motor vehicle fuel, general aviation fuel or an alternate fuel upon the highways of this state or any person who has custody of the records of motor vehicle fuel, general aviation fuel or alternate fuels transported upon the highways of this state may refuse at any time to divulge to the department, its agents or employees any information demanded by the department, its agents or employees concerning motor vehicle fuel, general aviation fuel or alternate fuel transported or being transported.

(5) Book records, sales tickets, invoices, delivery tickets, bills of lading, loading tickets or manifests, and other papers pertaining to the transportation, purchase, sale or distribution of motor vehicle fuel, general aviation fuel and alternate fuels shall be retained and shall be subject to inspection by the department.

History: 1977 c. 29; 1981 c. 20; 1983 a. 189 s. 329 (29); 1991 a. 39; 1993 a. 16, 246; 1997 a. 27.

78.78 Reports by transporters; exceptions. (1) Every agent or employee of every railroad company, pipeline company, motor truck or motor tank car company, water transportation company, and every other common carrier transporting motor vehicle fuel, general aviation fuel or alternate fuels, either in interstate or intrastate commerce, which originates at or is destined to a point in this state, and every person transporting motor vehicle fuel, general aviation fuel or alternate fuels interstate, which transportation originates at or is destined to a point in this state, who has the custody of books and records showing the transportation, shall report all the transportation to the department on forms prescribed and furnished by it. A supplier or terminal operator may rely on information about the destination of fuel provided under this subsection by an exporter. Only the exporter is liable for the tax due as a result of diverting the fuel from the represented destination state.

(2) The reports under sub. (1) shall cover monthly periods, and shall be filed with the department on or before the 30th day after the close of the month covered by the report, and shall contain the following information: the name and address of the transporter, the month and year covered by the report, the date of unloading, the initials and number of the car if shipped by rail, the loading ticket or manifest number and the registration number required by s. 78.77 if shipped by truck transport, the name of the consignor, the point of origin, the name of the consignee, the name of the person to whom delivery has in fact been made if other than the original named consignee, the point of unloading, and the quantity of each shipment in gallons.

(3) Any transporter who fails to file timely a report required under this section shall pay to the department a late filing fee of $10. A report that is mailed is timely if it is mailed in a properly addressed envelope with 1st class postage, if the envelope is postmarked on or before the due date and if the report is received by the department or at the destination that the department prescribes within 5 days after the due date. A report that is not mailed is timely if it is received on or before the due date by the department or at the destination that the department prescribes.

History: 1981 c. 20; 1985 a. 187; 1993 a. 16, 437; 1997 a. 27.

78.79 Duty of department to enforce fuel tax provisions; promulgate rules. The department shall enforce this chapter and see that all violations thereof are promptly prosecuted, and that all moneys received by licensees and other persons and in their hands as trust funds and due the state are recovered and collected. The department may promulgate reasonable rules relating to the administration and enforcement of this chapter, and rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings.

History: 1987 a. 27; 1989 a. 31.

78.80 Departmental examinations; information; penalty. (1) The department, or any deputy, employee or agent appointed in writing, is authorized at any time during the business day to examine the books, records, papers, receipts, invoices, storage tanks and any equipment of any licensee under s. 78.09 or 78.47, broker, dealer, general aviation fuel licensee or other person, purchaser or common carrier, pertaining to motor vehicle fuel, crude petroleum or general aviation fuel or alternate fuels to verify the truth and accuracy of any statement, report or return, or to ascertain whether or not the taxes imposed by this chapter have been paid or to determine the financial responsibility of any licensee for the payment of motor vehicle fuel or general aviation fuel or alternate fuels taxes. The department may redetermine taxes and may allow credits for overpayments due to error. The department may determine any person's liability for a tax under this chapter on the basis of sampling, whether or not the person being audited has complete records of transactions and whether or not the person being audited consents.

(1m) Sections 71.74 (1), (2), (10) and (11) and 71.75 (4) as they apply to the taxes under ch. 71 apply to the taxes under this chapter. Section 71.74 (13) as it applies to the collection of taxes under ch. 71 applies to the collection of taxes under this chapter.

(2) The department may hold hearings, issue subpoenas, administer oaths to witnesses, take the sworn testimony of any person and cause it to be transcribed into writing and conduct such investigations as it may deem necessary. If any broker, dealer, general aviation fuel licensee, licensee under s. 78.09 or 78.47, purchaser or common carrier, or any other person refuses access to the books, records, papers, receipts, invoices, storage tanks and other equipment, and if any witness fails or refuses to obey any subpoena or fails or refuses to testify before the department, then the department shall certify the names and facts to any court of competent jurisdiction and the court shall enter such order as the enforcement of this chapter and justice shall require.

(3) Sections 71.78 (1) and (4) to (9) and 71.83 (2) (a) 3., relating to confidentiality of income and franchise tax returns, apply to any information obtained from any person on a motor vehicle fuel, general aviation fuel or alternate fuels tax return, report, schedule, exhibit, or other document or from an audit report pertaining to the same.

(4) The department of revenue shall inform each requester of the amount paid or payable under ss. 78.01, 78.40 and 78.555 and reported on a return filed by any city, village, town, county, school

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

History: 1977 c. 289 ss. 2, 11m; 1979 c. 110; 1981 c. 20; 1987 a. 246, 312; 1991 a. 39; 1993 a. 16, 399; 1995 a. 428; 2015 a. 216.

78.81 Attorney general and district attorney to prosecute; place of trial. (1) Upon request of the department, the attorney general or proper district attorney shall prosecute any action to enforce this chapter.

(2) Any action brought under this chapter may be brought either in the circuit court for Dane County or in the proper court in the county wherein the defendant resides or has its principal place of business.

78.82 Municipalities not to tax motor vehicle fuel or alternate fuels. No county, city, village, town or other political subdivision shall levy or collect any excise, license, privilege or occupational tax upon motor vehicle fuel or alternate fuels or upon the buying, selling, handling or consuming of motor vehicle fuel or alternate fuels.

History: 1993 a. 16.