

Chapter 319

1955 REPLACEMENT PART

Motor Vehicle and Aircraft Fuel Taxes

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MOTOR VEHICLE FUEL AND AIRCRAFT FUEL TAXES

319.010 Definitions. As used in ORS 319.010 to 319.430 and in subsection (1) of ORS 319.990, unless the context requires otherwise:

(1) "Aircraft" means every contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air, operated or propelled by the use of aircraft fuel.

(2) "Aircraft fuel" means any gasoline or other motor vehicle fuel sold or distributed for use in operating aircraft engines.

(3) "Aircraft fuel retailer" means any person who receives, stores, uses, sells or distributes aircraft fuel and who operates facilities used exclusively for handling aircraft fuel.

(4) "Airport" means any area of land or water, except a restricted landing area, which is designed for the landing and take-off of aircraft.

(5) "Broker" means and includes every person other than a dealer or subdealer engaged in business as a broker, jobber or wholesale merchant dealing in motor vehicle fuel or aircraft fuel.

(6) "Dealer" means any person who:

(a) Imports or causes to be imported motor vehicle fuels or aircraft fuels for sale, use or distribution in, and after the same reaches the State of Oregon, but "dealer" does not include any person who imports into this state motor vehicle fuel in quantities of 500 gallons or less purchased from a supplier who is licensed as a dealer under ORS 319.010 to 319.430 and who assumes liability for the payment of the applicable license tax to this state; or

(b) Produces, refines, manufactures or compounds motor vehicle fuels or aircraft fuels in the State of Oregon for use, distribution or sale in this state; or

(c) Acquires in this state for sale, use or distribution in this state motor vehicle fuels or aircraft fuels with respect to which there has been no license tax previously paid.

(7) "Department" means:

(a) Prior to July 1, 1956, the Secretary of State.

(b) On and after July 1, 1956, the Department of Motor Vehicles.

(8) "Highway" means every way, thoroughfare and place, of whatever nature, open for use of the public for the purpose of vehicular travel.

(9) "Motor vehicle" means all vehicles, engines or machines, movable or immovable, operated or propelled by the use of motor vehicle fuel.

(10) "Motor vehicle fuel" means and includes gasoline and any other inflammable or combustible gas or liquid, by whatever name such gasoline, gas or liquid is known or sold, usable as fuel for the operation of motor vehicles, except gas or liquid, the chief use of which, as determined by the department, is for purposes other than the propulsion of motor vehicles upon the highways of this state.

(11) "Person" includes every natural person, association, firm, partnership, corporation or the United States.

(12) "Restricted landing area" means any area of land or water, or both, which is used or made available for the landing and takeoff of aircraft, the use of which, except in case of emergency, is provided from time to time by the State Aeronautics Board.

(13) "Service station" means and includes any place operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles or aircraft fuel into the fuel tanks of aircraft.

(14) "Subdealer" means and includes every branch of a dealer, also every person other than a dealer engaging in the business of handling motor vehicle fuel or aircraft fuel for sale and distribution both within and without the State of Oregon. [Amended by 1955 c.287 §19; 1955 c.730 §§1, 15; subsection (7) derived from 1955 c.287 §§19,33 and 1955 c.730 §15]

319.020 Monthly statement by dealer; license tax imposed. (1) Subject to subsections (2) to (4) of this section, in addition to the taxes otherwise provided for by law, every dealer and subdealer engaging in his own name, or in the name of others, or in the name of his representatives or agents in this state, in the sale, use or distribution of motor vehicle fuel or aircraft fuel or withdrawal of motor vehicle fuel or aircraft fuel for sale, use, or distribution within areas in this state within which the state lacks the power to tax the sale, use, or distribution of motor vehicle fuel or aircraft fuel, shall:

(a) Not later than the twenty-fifth day of each calendar month, render a statement to the department of all motor vehicle fuel or aircraft fuel sold, used, distributed or so withdrawn by him in the State of Oregon as well as all such fuel sold, used or distrib-

uted in this state by a purchaser thereof upon which sale, use or distribution the dealer has assumed liability for the applicable license tax during the preceding calendar month.

(b) Pay a license tax computed on the basis of six cents per gallon of such motor vehicle fuel or aircraft fuel so sold, used, distributed or withdrawn as shown by such statement in the manner and within the time provided in ORS 319.010 to 319.430.

(2) When aircraft fuel is sold and delivered by a dealer or subdealer to a person holding a valid and unrevoked license as an aircraft fuel retailer or is delivered by the dealer or subdealer into the fuel tanks of aircraft the license tax shall be computed on the basis of one cent per gallon of fuel so sold and delivered.

(3) In lieu of claiming refund of the tax paid on motor vehicle fuel consumed by such dealer or subdealer in nonhighway use as provided in ORS 319.280, 319.290 and 319.320, or of any prior erroneous payment of license tax made to the state by such dealer or subdealer, the dealer or subdealer may show such motor vehicle fuel as a credit or deduction on the monthly statement and payment of tax.

(4) The license tax computed on the basis of the sale, use, distribution or withdrawal of motor vehicle or aircraft fuel shall not be imposed wherever such tax is prohibited by the Constitution or laws of the United States with respect to such tax. [Amended by 1955 c.730 §2]

319.030 License required to be dealer in motor vehicle fuel. No dealer shall sell, use or distribute any motor vehicle fuel until he has secured a dealer's license as required by ORS 319.010 to 319.430.

319.040 Application for and issuance of dealer's license. (1) Every person, before becoming a dealer in motor vehicle fuel in this state, shall make an application to the department for a license authorizing such person to engage in business as a dealer.

(2) Applications for the license must be made on forms prescribed, prepared and furnished by the department.

(3) The applications shall be accompanied by a duly acknowledged certificate containing:

(a) The name under which the dealer is transacting business within Oregon.

(b) The places of business and location

of distributing stations of the dealer in Oregon.

(c) The name and address of the managing agent, the names and addresses of the several persons constituting the firm or partnership and, if a corporation, the corporate name under which it is authorized to transact business and the names and addresses of its principal officers, resident general agent and attorney in fact.

(4) If the dealer is an association of persons, firm, partnership or corporation organized under the laws of another state, territory or country, if it has not already done so, it must first comply with the laws of Oregon relating to the transaction of its appropriate business in Oregon.

(5) The application for a motor vehicle fuel dealer's license having been accepted for filing, and the bond required by ORS 319.050 having been accepted and approved, the department shall issue to the dealer a license in such form as the department may prescribe to transact business as a dealer in the State of Oregon. The license so issued is not assignable, and is valid only for the dealer in whose name issued.

(6) The department shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all licensed dealers.

319.050. Faithful performance bond. (1) At the time of filing the certificate and application for a dealer's license, the department must require the dealer to file with the department, in such form as shall be prepared by the department, a bond duly executed by the dealer as principal with a corporate surety qualified under ORS 747.010. The bond shall be payable to the State of Oregon conditioned upon faithful performance of all the requirements of ORS 319.010 to 319.430 and subsections (1) to (3) of ORS 319.990, including the payment of all taxes, penalties and other obligations of the dealer, arising out of ORS 319.010 to 319.430 and subsections (1) to (3) of ORS 319.990.

(2) The total amount of the bond or bonds required of any dealer shall be fixed by the department and may be increased or reduced by the department at any time subject to the limitations provided in this section. The total amount of the bond or bonds required of any dealer shall be equivalent to twice his estimated monthly license tax, determined in the manner the depart-

ment deems proper. However, the total amount of the bond or bonds required of any dealer shall never be less than \$1,000 nor more than \$100,000. Any bond given in connection with ORS 319.010 to 319.430 shall be a continuing instrument and shall cover any and all periods of time including the first and all subsequent periods for which a license may be granted in consequence of the giving of the bond. The liability of the surety on the bond for the aggregate of all claims which arise thereunder shall not exceed the amount of the penalty of the bond. No recoveries on any bond or any execution of any new bond shall invalidate any bond, but the total recoveries under any one bond shall not exceed the amount of the bond.

319.060 Deposit in lieu of bond. In lieu of the bond or bonds in total amount as fixed under ORS 319.050, any dealer may deposit with the State Treasurer, under such terms and conditions as the department may prescribe, a like amount of lawful money of the United States or bonds or other obligations of the United States, the State of Oregon, or any county of this state, of an actual market value not less than the amount so fixed by the department.

319.070 Release of surety. Any surety on a bond furnished by a dealer as provided in ORS 319.050 shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of 30 days from the date upon which the surety has lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release or discharge the surety from any liability already accrued or which accrues before the expiration of the 30 day period. The department shall promptly, upon receiving the request, notify the dealer who furnished the bond, and unless the dealer, on or before the expiration of the 30 day period, files a new bond, or makes a deposit in accordance with the requirements of ORS 319.050 and 319.060, the department forthwith shall cancel the dealer's license.

319.080 Additional bond or deposit. The department may require a dealer to give a new or additional surety bond or to deposit additional securities of the character specified in ORS 319.060 if, in its opinion, the security of the surety bond theretofore filed by the dealer, or the market value of the properties deposited as security by the dealer,

becomes impaired or inadequate. Upon failure of the dealer to give the new or additional surety bond or to deposit additional securities within 10 days after being requested so to do by the department, the department forthwith shall cancel his license.

319.090 Immediate collection of tax where dealer fails to secure license; penalties.

(1) If any dealer sells, distributes or uses any motor vehicle fuel without first filing the certificate and bond and securing the license required by ORS 319.030, the license tax provided in ORS 319.020 shall immediately be due and payable on account of all motor vehicle fuel so sold, distributed or used.

(2) The department shall proceed forthwith to determine, from the best available sources, the amount of such tax, and it shall immediately assess the tax in the amount found due, together with a penalty of 100 percent of the tax, and shall make its certificate of such assessment and penalty. In any suit or proceeding to collect such tax or penalty or both, the certificate is prima facie evidence that the dealer therein named is indebted to the State of Oregon in the amount of the tax and penalty therein stated.

(3) Any tax or penalty so assessed may be collected in the manner prescribed in ORS 319.180 with reference to delinquency in payment of the tax or by an action at law, which the Attorney General shall commence and prosecute to final determination at the request of the department.

319.100 Revocation of license. The department shall revoke the license of any dealer refusing or neglecting to comply with any provision of ORS 319.010 to 319.430. The department shall mail by registered mail addressed to such dealer at his last known address appearing on the files of the department, a notice of intention to cancel. The notice shall give the reason for the cancellation. The cancellation shall become effective without further notice if within 10 days from the mailing of the notice the dealer has not made good its default or delinquency.

319.110 Cancellation of license on request of dealer or when licensee no longer a dealer.

(1) The department may, upon written request of a dealer, cancel any license issued to such dealer, the cancellation to become effective 30 days from the date of receipt of the written request.

(2) If the department ascertains and finds that the person to whom a license has been issued is no longer engaged in the business of a dealer, the department may cancel the license of such dealer upon investigation after 30 days' notice has been mailed to the last known address of the dealer.

319.120 Remedies cumulative. The remedies of the state provided in ORS 319.090 to 319.110 are cumulative. No action taken pursuant to those statutes shall relieve any person from the penal provisions of ORS 319.010 to 319.430 and 319.990.

319.130 License required for subdealer. A subdealer, other than a branch of a dealer, shall make application for the license, submit the certificate and provide the bond or deposit required in ORS 319.040 to 319.080 and comply with and be subject to all other provisions of ORS 319.010 to 319.430 and 319.990 exactly the same as required of a dealer, except that the license issued to a subdealer shall not entitle him to engage in business as a dealer but only as a subdealer.

319.140 Purchases by licensed aircraft fuel retailer. Any person who operates a place of business on an airport and who is therein engaged in the use, sale or distribution of aircraft fuel and who operates facilities used exclusively for the storage or dispensing of aircraft fuel, shall, upon application to and approval of the department, be licensed as an aircraft fuel retailer and shall be permitted to purchase aircraft fuel from any licensed dealer or subdealer free of the tax imposed by ORS 319.020, except for the one cent per gallon applying to aircraft fuel, upon evidence to such dealer or subdealer that he holds a valid and unrevoked license as an aircraft fuel retailer as prescribed by the department.

319.150 Aircraft fuel retailer license. Application for an aircraft fuel retailer license shall be upon such form and shall contain such information as the department may prescribe. Upon approval of the application and the issuance of a license, the aircraft fuel retailer is bound by the regulations governing aircraft fuel retailers as prescribed by the department. Failure to comply with such regulations constitutes grounds for cancelation of the license at the discretion of the department. The license is not assignable or transferable and shall upon application and approval be renewed annually.

319.160 Bond of aircraft fuel retailer; deposit in lieu of bond. (1) The application for a license as an aircraft fuel retailer shall be accompanied by the bond of the applicant with a corporate surety qualified under ORS 747.010, or cash or collateral deposits in lieu thereof to be approved by the department, in an amount equivalent to twice the full license tax on motor vehicle fuel, before any exemption, applied to the applicant's estimated monthly gallonage, except that the bond required of any aircraft fuel retailer shall never be less than \$1,000 nor more than \$5,000.

(2) The bond shall be conditioned:

(a) That the applicant will sell or use all fuel purchased by virtue of the license for the exclusive purpose and use of operating the engines or motors of aircraft and such sales will be made to include only the one cent tax.

(b) That the applicant will keep and preserve for a period of two years full and complete records including a separate sales or use invoice for each sale or delivery of all aircraft fuel purchased or otherwise acquired, stored, used or disposed of by him.

(c) That on or before the twenty-fifth of each month the applicant will report to the department on such forms and under such conditions as the department shall prescribe, the inventory, purchases, acquisition, use, sale or other disposition of all aircraft fuel handled by the applicant during the preceding calendar month.

(d) That the applicant will permit the department or its authorized agent to examine during reasonable business hours any and all records of the applicant pertaining to the purchase, acquisition, use, sale or other disposition of motor vehicle fuel or aircraft fuel and any facilities of the applicant used for the receipt, storage or dispensing of aircraft fuel.

(e) That the applicant will make no disposition of aircraft fuel acquired by virtue of the license except deliveries made directly into the fuel supply tank of an aircraft engine, or deliveries made directly into the authorized storage or dispensing facilities operated by him or by another person holding a valid license as an aircraft fuel retailer.

(f) That for aircraft fuel acquired by him under the license and for which he is unable or unwilling to account, the applicant will be liable for the full tax for motor vehicle fuel, except for the one cent per gallon tax paid to the dealer or subdealer.

(g) That if during each of two consecutive calendar months the full tax on motor vehicle fuel applied to the gallonage handled by the applicant under the license exceeds one-half the amount of the bond, the applicant will furnish additional bond at the request of the department.

319.170 Licensed dealer as aircraft fuel retailer. A licensed dealer or subdealer having facilities used for storage or dispensing aircraft fuel is entitled to qualify as an aircraft fuel retailer under ORS 319.140 to 319.160, but the bond and monthly report required of such dealer or subdealer shall be in lieu of the bond and monthly report required of an aircraft fuel retailer.

319.180 Payment of tax; delinquency penalty; collection of delinquent payments.

(1) The license tax imposed by ORS 319.020 shall be paid on or before the twenty-fifth day of each month to the department which shall receipt the dealer or subdealer therefor.

(2) Except as provided in subsection (4) of this section, to any license tax not paid as required by subsection (1) of this section there shall be added a penalty of one percent of such license tax for delinquency, but in no case shall the penalty be less than \$25 nor more than \$500.

(3) Except as provided in subsection (4) of this section, if the tax and penalty required by subsection (2) of this section are not received on or before the close of business on the last day of the month in which the payment is due, a further penalty of 10 percent shall be paid in addition to the penalty provided for in subsection (2) of this section.

(4) If the department determines that the delinquency was due to reasonable cause and without any intent to avoid payment, the penalties provided by subsections (2) and (3) of this section may be waived.

(5) If any person fails to pay the license tax as required by ORS 319.010 to 319.430, or any penalty provided in ORS 319.010 to 319.430 and subsections (1) to (3) of ORS 319.990, the amounts thereof shall be collected from such person for the use of this state. The Attorney General shall commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

(6) No dealer who collects from any person the tax provided for in ORS 319.010 to 319.430, shall knowingly and wilfully fail to

report and pay the same to the department as required by ORS 319.010 to 319.430. [Amended by 1955 c.730 §3]

319.190 Monthly statement of dealer. Every dealer or subdealer in motor vehicle fuel shall render to the department, on or before the twenty-fifth day of each month, on forms prescribed, prepared and furnished by the department, a signed statement of the number of gallons of motor vehicle fuel sold, distributed or used by him or them during the preceding calendar month. The statement shall be signed by one of the principal officers, or by an authorized agent or attorney in fact, in case of a corporation; or by the managing agent or owner in case of a firm or association. All statements filed with the department, as required in this section, are public records. [Amended by 1955 c.730 §4]

319.200 Assessing tax and penalty where dealer fails to report. If any dealer or subdealer fails to file the report required by ORS 319.190, the department shall proceed forthwith to determine from the best available source the amount of motor vehicle fuel sold, distributed or used by such dealer or subdealer for the period unreported, and such determination shall be prima facie evidence of the amount of such fuel sold, distributed or used. The department immediately shall assess the license tax in the amount so determined, adding thereto a penalty of 10 percent for failure to report. The penalty shall be cumulative of other penalties provided in ORS 319.010 to 319.430 and 319.990. In any suit brought to enforce the rights of the state under this section, the certificate of the department showing the amount of taxes, penalties and costs unpaid by any dealer or subdealer and that the same are due and unpaid to the state is prima facie evidence of the facts as shown.

319.210 Billing purchasers. Bills shall be rendered to all purchasers of motor vehicle fuel by dealers or subdealers in motor vehicle fuel. The bills shall separately state and describe to the satisfaction of the department the different products shipped thereunder and shall be serially numbered except where other sales invoice controls acceptable to the department are maintained. [Amended by 1955 c.730 §5]

319.220 Receipt, payment or sale of motor vehicle fuel without invoice or delivery tag prohibited. No person shall re-

ceive and accept any shipment of motor vehicle fuel from any dealer or subdealer, or pay for the same, or sell or offer the shipment for sale, unless the shipment is accompanied by an invoice or delivery tag showing the date upon which shipment was delivered and the name of the dealer or subdealer in motor vehicle fuel. [Amended by 1955 c.730 §6]

319.230 Transporting motor vehicle fuel in bulk. Every person operating any conveyance for the purpose of hauling, transporting or delivering motor vehicle fuel in bulk shall, before entering upon the public highways of this state with such conveyance, have and possess during the entire time of his hauling or transporting such motor vehicle fuel an invoice, bill of sale or other written statement showing the number of gallons, the true name and address of the seller or consignor, the true name and address of the buyer or consignee, if any, of the same, and the name and address of the person who has assumed or who shall assume the payment of the tax. The person hauling such motor vehicle fuel shall at the request of any sheriff, deputy sheriff, constable, state police or other officer authorized by law to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale or other statement.

319.240 Exemption of export fuel. (1) The license tax imposed by ORS 319.020 shall not be imposed on motor vehicle fuel:

(a) Exported from this state by the dealer or subdealer or delivered by the dealer or subdealer to any vessel clearing from a port of this state for a port outside of this state and actually exported from this state in such vessel; or

(b) Sold by a dealer or subdealer in individual quantities of 500 gallons or less for export by the purchaser to another state, territory or country in containers other than the fuel tank of a motor vehicle, if the dealer or subdealer is licensed in the state, territory or country of destination to collect and remit the applicable taxes in the state, territory or country of destination, but every dealer or subdealer shall be required to report such exports and sales to the department in such detail as may be required.

(2) In support of any exemption from license taxes claimed under this section other than in the case of stock transfers or deliveries

in his own equipment, every dealer or subdealer must execute and file with the department an export certificate in such form as shall be prescribed, prepared and furnished by the department, containing a statement, made by some person having actual knowledge of the fact of such exportation, that the motor vehicle fuel has been exported from the State of Oregon, and giving such details with reference to such shipment as the department may require. All export certificates in support of shipments to other states, territories or countries must be completed and on file in the principal office of the dealer in this state within three months after the close of the calendar month in which the shipments to which they relate are made, unless the state, territory or country of destination would not be prejudiced with respect to its collection of taxes thereon if the certificate is not filed within such time. The department may demand of any dealer such additional data as is deemed necessary in support of any such certificate, and failure to supply such data will constitute a waiver of all right to exemption claimed by virtue of such certificate. The department may, in a case where it believes no useful purpose would be served by filing of an export certificate, waive the certificate.

(3) Any motor vehicle fuel carried from this state in the fuel tank of a motor vehicle shall not be considered as exported from this state.

(4) No person shall, through false statement, trick or device, or otherwise, obtain motor vehicle fuel for export upon which the Oregon tax has not been paid and fail to export the same, or any portion thereof, or cause the motor vehicle fuel or any portion thereof not to be exported, or shall divert the motor vehicle fuel or any portion thereof, or shall cause it to be diverted from interstate or foreign transit begun in this state, or shall unlawfully return the motor vehicle fuel or any portion thereof to be used or sold in this state and fail to notify the department and the dealer or subdealer from whom the motor vehicle fuel was originally purchased of his act.

(5) No dealer, subdealer or other person shall conspire with any person to withhold from export, or divert from interstate or foreign transit begun in this state, or to return motor vehicle fuel to this state for sale or use so as to avoid any of the taxes imposed by ORS 319.010 to 319.430.

(6) In support of any exemption from taxes on account of sales of motor vehicle fuel in individual quantities of 500 gallons or less for export by the purchaser, the dealer shall retain in his files for at least three years an export certificate executed by the purchaser in such form and containing such information as is prescribed by the department. This certificate shall be prima facie evidence of the exportation of the motor vehicle fuel to which it applies only if accepted by the dealer in good faith. [Amended by 1953 c.82 §2; 1955 c.730 §7]

319.250 Certain sales to Armed Forces exempted; reports. The license tax imposed by ORS 319.020 shall not be imposed on any motor vehicle fuel sold to the Armed Forces of the United States for use in ships or aircraft or for export from this state, but every dealer or subdealer shall be required to report such exports and sales to the department in such detail as may be required. A certificate by an authorized officer of such Armed Forces shall be accepted by the dealer as sufficient proof that the sale is for the purpose specified in the certificate. [Amended by 1955 c.730 §8]

319.260 Fuel in vehicles coming into state not taxed. Any person coming into Oregon in a motor vehicle may transport in the fuel tank of such vehicle motor vehicle fuel for his own use only and for the purpose of operating such motor vehicle, without securing a license or paying the tax provided in ORS 319.020, or complying with any of the provisions imposed upon dealers by ORS 319.010 to 319.430, but if the motor vehicle fuel so brought into the state is removed from the fuel tank of the vehicle or used for any purpose other than the propulsion of the vehicle, the person so importing the fuel into this state shall be subject to all the provisions of ORS 319.010 to 319.430 and 319.990 applying to dealers.

319.270 Fuel sold or delivered to dealers or subdealers. (1) A dealer or subdealer selling or delivering motor vehicle fuel to dealers or subdealers is not required to pay a license tax thereon. The license tax on such motor vehicle fuel so sold or delivered shall be paid by the dealer or subdealer purchasing or receiving the motor vehicle fuels so sold or delivered to him upon the use thereof by him or the sale or distribution thereof by him to anyone other than a dealer or subdealer.

(2) The dealer or subdealer in rendering monthly statements to the department as required by ORS 319.020 and 319.190 shall show separately the number of gallons of motor vehicle fuel sold or delivered to dealers or subdealers.

319.280 Refunds. Any person who buys and uses any motor vehicle fuel for the purpose of operating or propelling stationary gas engines, tractors or motor boats, or who purchases or uses any such fuel for cleaning or dyeing or other commercial use, except when used in motor vehicles to be operated upon any of the highways of Oregon, or who purchases and exports such fuel for use outside this state, and who has paid any tax on such motor vehicle fuel levied or directed to be paid by ORS 319.010 to 319.430 either directly by the collection of the tax by the vendor from the consumer, or indirectly by adding the amount of the tax to the price of the fuel and paid by the consumer, shall be reimbursed and repaid the amount of such tax paid by him, except as provided in ORS 319.290 to 319.330, upon presenting to the department a statement, accompanied by the original invoices showing such purchases. The statement shall be made over the signature of the claimant, and shall state the total amount of such fuel so purchased and used by such consumer other than in such motor vehicles. The department upon the presentation of the statement and invoices shall cause to be repaid to the consumer from the taxes collected on motor vehicle fuel such taxes so paid by the consumer.

319.290 Limitation on applications for refunds. Applications for refunds made under ORS 319.280, 319.320, 319.330, 319.340, 319.350 and 319.360 must be filed with the department before the expiration of 13 months from the date of purchase or invoice, or not at all. All applications for refunds based upon exportation of motor vehicle fuel from this state must be filed with the department within three months from the date of exportation. [Amended by 1955 c.730 §9]

319.300 Seller to give invoice for each purchase made by person entitled to refund. (1) When motor vehicle fuel is sold to a person who claims to be entitled to a refund of the tax imposed, the seller of the motor vehicle fuel shall make and deliver at the time of the sale separate invoices for each

purchase in such form and containing any information prescribed by the department.

(2) The invoices shall be legibly written and shall be void if any corrections or erasures appear on the face thereof. The original invoice shall be clearly marked "customer's invoice." Any person who alters any part of any invoice that will tend to give to the claimant an illegal gain, shall have the entire claim invalidated. The seller shall for a period of at least one year retain copies of all invoices and make them available to the department upon request. [Amended by 1953 c.77 §2; 1955 c.730 §10]

319.310 Claims for refunds may be required to be under oath; investigation of claims. (1) The department may require any person who makes claim for refund of tax upon motor vehicle fuel to furnish a statement, under oath, giving his occupation, description of the machines or equipment in which the motor vehicle fuel was used, the place where used and such other information as the department may require.

(2) The department may investigate claims and gather and compile such information in regard to the claims as it considers necessary to safeguard the state and prevent fraudulent practices in connection with tax refunds and tax evasions. The department may, in order to establish the validity of any claim, examine the books and records of the claimant for such purposes. Failure of the claimant to accede to the demand for such examination constitutes a waiver of all rights to the refund claimed on account of the transaction questioned.

319.320 Refund of tax on fuel used in operation of vehicles over certain roads. Any person using motor vehicle fuel for the purpose of operating or propelling trucks or other automobile vehicles, whether licensed to operate upon the public highways of this state or not, over (1) any road, thoroughfare or property in private ownership, or (2) any road or thoroughfare, other than a state highway or county road, pursuant to an agreement with any agency of the United States or with a licensee of such agency, or both, if the agreement imposes upon the user of such road or thoroughfare the obligation either to construct such road or thoroughfare at his own expense, to maintain the same at his own expense, or to pay such agency or licensee of such agency a reasonable consideration for the use or right of way of such road or thoroughfare and who has

paid any tax on such motor vehicle fuels levied or directed to be paid, as provided by ORS 319.010 to 319.430, is entitled to claim a refund of the tax so paid on such fuels or for the proportionate part of tax paid on fuels used in the operation of such vehicles, when a part of the operations are over such roads, thoroughfares or property. The proportionate part shall be based upon the number of miles traveled by any such vehicle over such roads, thoroughfares or property as compared to the total number of miles traveled by such vehicle. To be eligible to claim such refund a person shall first establish and maintain a complete record of the operations, miles traveled, gallons of fuel used and other information, in such form and in such detail as the department may prescribe and require, the source of supply of all fuels purchased or used, and the particular vehicles or equipment in which used. Whenever any such claim is received and approved by the department, it shall cause the refund of tax to be paid to the claimant in like manner as provided for paying of other refund claims.

319.330 Refunds to purchasers of fuel for aircraft. (1) Whenever any statement and invoices are presented to the department showing that motor vehicle fuel or aircraft fuel has been purchased and used in operating aircraft engines and upon which the full tax for motor vehicle fuel has been paid, the department shall refund the tax paid, but only after deducting from the tax paid one cent for each gallon of such fuel so purchased and used; except that such deduction shall not be made on claims presented by the United States or on claims presented where a satisfactory showing has been made to the department that such aircraft fuel has been used solely in aircraft operations from a point within the State of Oregon directly to a point outside of the continental limits of the United States. The amount so deducted shall be paid on warrant of the Secretary of State to the State Treasurer, who shall credit such amount to the account or appropriation for the purpose of carrying out the provisions of the state aeronautic law, and such amounts hereby are appropriated for such purposes.

(2) If satisfactory evidence is presented to the department showing that aircraft fuel upon which the tax has been paid has been purchased and used solely in aircraft oper-

ations from a point within the State of Oregon directly to a point outside of the continental limits of the United States, the department shall refund the tax paid.

319.340 Refunds to counties. Any county which buys and uses any motor vehicle fuel for the purpose of operating or propelling road maintainers, graders, tractors, trucks and all other equipment used in the construction and maintenance of county roads, secondary roads and market roads within any county of this state, and which has paid any tax on motor vehicle fuel levied or directed to be paid either directly by the collection of the tax by the vendor from the consumer, or indirectly by adding the amount of the tax to the price of the fuel and paid by the consumer, shall be reimbursed and repaid the amount of the tax paid by the county as provided by ORS 319.280 to 319.330 if such machinery is used exclusively for the maintenance and construction of such county roads.

319.350 Refunds to cities and towns.

(1) Any incorporated city or town, by its proper officer or officers, may secure from the State of Oregon a refund of any and all tax imposed and collected by the state on any motor vehicle fuel purchased and used in any motor vehicle owned and operated by such incorporated city or town for municipal purposes solely.

(2) The department shall establish rules and regulations necessary to safeguard the state in the matter of the tax refunds authorized in this section. Noncompliance with any of such rules and regulations by any incorporated city or town claiming refund under this section is grounds for refusal by the department to allow such claims.

(3) The procedure for refund of motor vehicle fuel tax provided by ORS 319.280 to 319.330 shall apply in so far as applicable to claims for the refunds authorized by this section.

319.360 Refund of tax on fuel used in transportation of rural free delivery or special delivery mail. (1) All taxes collected by the State of Oregon on the sale, use or distribution of any motor vehicle fuel used exclusively in the transportation of rural free delivery mail or special delivery mail of the United States of America shall be refunded to the person paying the tax if the person is engaged solely and exclusively in the transpor-

tation of rural free delivery mail or special delivery mail of the United States of America.

(2) Any person engaged solely and exclusively in the transportation of rural free delivery or special delivery mail of the United States of America, who buys any motor vehicle fuel and uses it exclusively in the transportation of rural free delivery mail or special delivery mail of the United States of America, and who has paid any tax on motor vehicle fuel, either directly by the collection of the tax by the vendor from the consumer or indirectly by adding the amount of the tax to the price of the fuel and paid by the consumer, shall be reimbursed and repaid the amount of the tax paid by him upon presenting to the department a statement accompanied by the original invoice showing the purchase. The statement shall be made over the signature of the claimant and shall state the total amount of fuel so purchased and used by the consumer for the transportation of rural free delivery mail or special delivery mail of the United States of America. The department, upon the presentation of the statement and the voucher, shall cause to be repaid to the consumer, from the taxes collected on motor vehicle fuels, the taxes so paid by the consumer on motor vehicle fuels so used. Applications for refund under this section must be filed with the department within one year from date of purchase or invoice or not at all.

319.370 Examinations and investigations; correcting reports and payments. The department, or its duly authorized agents, may make any examination of the accounts, records, stocks, facilities and equipment of dealers, subdealers, brokers, service stations and other persons engaged in storing, selling or distributing motor vehicle fuel or other petroleum product or products within this state, and such other investigations as it considers necessary in carrying out the provisions of ORS 319.010 to 319.430. If the examinations or investigations disclose that any reports of dealers, subdealers or other persons theretofore filed with the department pursuant to the requirements of ORS 319.010 to 319.430, have shown incorrectly the amount of gallonage of motor vehicle fuel distributed or the tax accruing thereon, the department may make such changes in subsequent reports and payments of such dealers, subdealers or other persons, or may make such refunds, as may be neces-

sary to correct the errors disclosed by its examinations or investigations.

319.375 Limitation on credit for or refund of overpayment and on assessment of additional tax. (1) Except as otherwise provided in ORS 319.010 to 319.430, any credit for erroneous overpayment of tax made by a dealer or subdealer taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a dealer or subdealer must be so taken or filed within three years after the date on which the overpayment was made to the state.

(2) Except in the case of a fraudulent report or neglect to make a report, every notice of additional tax proposed to be assessed under ORS 319.010 to 319.430 shall be served on dealers and subdealers within three years from the date upon which such additional taxes become due. [1955 c.730 §14]

319.380 Examining books and accounts of carrier of motor vehicle fuel. The department or its duly authorized agents may at any time during normal business hours examine the books and accounts of any carrier of motor vehicle fuel operating within this state for the purpose of checking shipments or use of motor vehicle fuel, detecting diversions thereof or evasion of taxes on same in enforcing the provisions of ORS 319.010 to 319.430.

319.390 Records to be kept by dealers; inspection of records. Every dealer or subdealer in motor vehicle fuel shall keep a record in such form as may be prescribed by the department of all purchases, receipts, sales and distribution of motor fuel. The records shall include copies of all invoices or bills of all such sales and shall at all times during the business hours of the day be subject to inspection by the department or its deputies or other officers duly authorized by the department. Upon request from the officials to whom is entrusted the enforcement of the motor fuel tax law of another state, territory, country or the Federal Government, the department shall forward to such officials any information which it may have relative to the import or export of any motor vehicle fuel by any dealer or subdealer, provided such other state, territory, country or Federal Government furnishes like information to this state. [Amended by 1955 c.730 §11]

319.400 Records to be kept three years. Every dealer and subdealer shall maintain

and keep, within the State of Oregon, for a period of three years, all records of motor vehicle fuel used, sold and distributed within this state by such dealer or subdealer, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the department. [Amended by 1955 c.730 §12]

319.410 Disposal of tax moneys; payment of refunds and expenses. (1) The department shall promptly turn over the license tax to the State Treasurer, as other receipts of the department. The State Treasurer shall place the same to the credit of the General Fund.

(2) Refunds of motor vehicle fuel taxes and all necessary expenses incurred by the department in administering the provisions of ORS 319.010 to 319.430, shall be paid by the State Treasurer on warrants drawn by the Secretary of State pursuant to duly verified claims therefor approved by the director of the department and audited by the Secretary of State. The part of the funds produced by the operation of ORS 319.010 to 319.430 that is necessary to pay such refunds and administrative expenses, and no more, hereby is constituted an appropriation from the General Fund in the State Treasury for such purposes.

(3) On the fifteenth day of each month the Secretary of State shall certify to the State Treasurer the balance of such tax in excess of \$150,000, remaining in the General Fund on the last day of the preceding month, after deducting such sums as have been disbursed by warrants of the Secretary of State as provided in this section. The State Treasurer thereupon shall transfer the balance from the General Fund to the State Highway Fund.

(4) The revenue from the license tax of one cent per gallon collected from the use, sale or distribution of aircraft fuel shall be paid on warrant of the Secretary of State to the State Treasurer, who shall credit such amount to the account or appropriation for the purpose of carrying out the provisions of the state aeronautic laws, and such amounts hereby are appropriated for such purposes. [Amended by 1955 c.287 §20]

NOTE: The 1955 amendment to ORS 319.410 takes effect July 1, 1956. Until July 1, 1956, ORS 319.410 as compiled in the 1953 edition will remain in effect.

319.420 ORS 319.510 to 319.880 not affected. ORS 319.010 to 319.410 do not affect or repeal any of the provisions of ORS 319.510 to 319.880.

319.430 Savings clause. All rights and obligations arising under the provisions of the statutes repealed in section 38, chapter 413, Oregon Laws 1945, shall not in any way be affected by such repeal. Such statutes shall be considered in full force and effect for the purpose of carrying out all duties and obligations contracted or arising under such statutes, prior to June 16, 1945.

319.440 to 319.500 [Reserved for expansion]

USE FUEL TAX

319.510 Short title. ORS 319.510 to 319.880 may be cited as the Use Fuel Tax Law of 1943.

319.520 Definitions. As used in ORS 319.510 to 319.880 and in subsection (4) of ORS 319.990, unless the context clearly indicates a different meaning:

(1) "Department" means:

(a) Prior to July 1, 1956, the Secretary of State of Oregon, and his duly authorized agents.

(b) On and after July 1, 1956, the Department of Motor Vehicles.

(2) "Fuel" means any combustible gas, liquid or material of a kind used in an internal combustion engine for the generation of power to propel a motor vehicle on the highways except motor vehicle fuel as defined in ORS 319.010. For the purpose of this section, the words "internal combustion engine" include a diesel engine and any other engine operated by internal combustion or expansion.

(3) "Highway" means every way, thoroughfare and place, of whatever nature, open to the use of the public for the purpose of vehicular travel.

(4) "Motor vehicle" means every self-propelled vehicle operated on the highway, except an implement of husbandry used in agricultural operations and only incidentally operated or moved upon the highway.

(5) "Person" means any individual, firm, copartnership, joint venture, association, corporation, trust, receiver or any group or combination acting as a unit.

(6) "Use," as a noun, means the act of

using; "use," as a verb, means receive into any receptacle on a motor vehicle, fuel to be consumed in propelling the motor vehicle on the highways of this state; and, if the fuel is received into the receptacle outside the taxing jurisdiction of the state, "use," as a verb, means consume in propelling the motor vehicle on the highways of this state.

(7) "User" means any person who uses fuel. [Amended by 1955 c.287 §21]

NOTE: The 1955 amendment to ORS 319.520 takes effect on July 1, 1956. However, ORS 319.520, as compiled above, has been editorially adjusted as authorized by 1955 c.287 §33 and states the law in effect both before and after July 1, 1956.

319.530 Imposition of tax; rate. To compensate this state partially for the use of its highways, an excise tax hereby is imposed at the rate of six cents per gallon on the use of fuel by any user thereof after June 30, 1949. The rate of tax on the use of fuel by any user after June 30, 1943, and before July 1, 1949, shall be five cents per gallon.

319.540 Exemptions. The following are specifically exempted from the tax imposed by ORS 319.530:

(1) The use of fuel for official purposes solely in motor vehicles owned and operated by the United States, the State of Oregon, any county, municipality, district or other political subdivision thereof.

(2) The use of fuel exclusively in the transportation of rural free delivery mail or special delivery mail of the United States of America if such use is by a person engaged solely and exclusively in the transportation of rural free delivery mail or special delivery mail of the United States of America.

(3) The use of fuel in propelling any motor vehicle:

(a) Over any road or thoroughfare in private ownership, or

(b) Over any road or thoroughfare, other than a state highway or county road, pursuant to an agreement with any agency of the United States or with a licensee of such agency, or both, if the agreement imposes upon the user of the road or thoroughfare the obligation either to construct the road or thoroughfare at his own expense, to maintain it at his own expense, or to pay such agency or licensee of such agency a reasonable consideration for the use or right of way of the road or thoroughfare.

319.550 License required to use fuel. No person shall use fuel within this state unless

a use fuel tax license has been issued to him as provided in ORS 319.560 to 319.590 and the license has not been canceled or revoked.

319.560 Application for and issuance of license. Applications for use fuel tax licenses must be made to the department upon forms prescribed by the department and shall set forth such information as the department may require. On receipt of the application, the department shall issue to the applicant a use fuel tax license without charge authorizing the applicant to use fuel within this state. The license is valid only for the person in whose name it is issued and is valid until canceled or revoked.

319.570 Faithful performance bond. (1) At the time of filing the application for a use fuel tax license, the department may require the user to file with the department, in such form as shall be prepared by the department, a bond duly executed by the user as principal with a corporate surety qualified under ORS 747.010. The bond shall be payable to the State of Oregon conditioned upon faithful performance of all the requirements of ORS 319.510 to 319.880, including the payment of all taxes, penalties, interest and other obligations of such user arising out of ORS 319.510 to 319.880 and subsection (4) of 319.990.

(2) The total amount of the bond or bonds required of any user shall be fixed by the department and may be increased or reduced by the department at any time subject to the limitations provided in this section. The total amount of the bond or bonds required of any user shall be equivalent to twice his estimated monthly tax, determined in such manner as the department considers proper. However, the total amount of the bond or bonds required of any user shall never be less than \$10. Any bond given in connection with ORS 319.510 to 319.880 shall be a continuing instrument and shall cover any and all periods of time including the first and all subsequent periods for which a license may be granted in consequence of the giving of the bond. The liability of the surety on the bond for the aggregate of all claims which arise thereunder shall not exceed the amount of the penalty of the bond. No recovery on any bond or any execution of any new bond shall invalidate any bond, but the total recoveries under any one bond shall not exceed the amount of the bond.

319.580 Deposit in lieu of bond. In lieu

of any bond or bonds in total amount as fixed under ORS 319.570, any user may deposit with the department, under such terms and conditions as the department may prescribe, a like amount of lawful money of the United States or negotiable bonds or other obligations of the United States, the State of Oregon, or any county of this state, of an actual market value not less than the amount so fixed by the department. The department shall turn over to the State Treasurer for safekeeping all such deposits so received.

319.590 Release of surety. Any surety on a bond furnished by a user as provided in ORS 319.570 shall be released and discharged from any and all liability to the state accruing on the bond after the expiration of 60 days from the date upon which the surety has lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release or discharge the surety from any liability already accrued or which accrues before the expiration of the 60 day period. The department shall promptly, upon receiving the request, notify the user who furnished the bond, and unless the user, on or before the expiration of the 60 day period, files a new bond, or makes a deposit in accordance with the requirements of ORS 319.580, the department forthwith shall cancel the user's license.

319.600 Display of emblem. An emblem as prescribed by the department shall be displayed in a conspicuous place on each motor vehicle in connection with which fuel is used. Each such emblem shall be issued without charge by the department upon application by a user holding an uncanceled or unrevoked use fuel tax license and shall be displayed only upon the motor vehicle with respect to which it is issued. Failure to display the proper emblem upon any such vehicle operated upon any highway of this state constitutes a violation of ORS 319.510 to 319.880.

319.610 Penalty for unlicensed use of fuel or nondisplay of emblem. Any person who uses fuel to operate a motor vehicle, or to operate motor vehicles, upon any highways within this state and who is not the holder of a valid use fuel tax license, or who does not properly display a valid vehicle emblem upon any vehicle so operated, shall pay, in addition to the tax imposed by ORS

319.530, a penalty of 100 percent of the amount thereof.

319.620 Delivery of fuel unless emblem displayed unlawful; exception. (1) Except as otherwise provided in subsection (2) of this section, no person shall deliver or place fuel, which is to be consumed in propelling a motor vehicle on the highways of this state, into, or cause such fuel to be delivered or placed into, any receptacle on the motor vehicle from which receptacle the fuel is supplied to propel the motor vehicle, unless an emblem is displayed on the motor vehicle as provided in ORS 319.600.

(2) Any person may obtain without charge a permit authorizing him to deliver fuel into the fuel tank of a motor vehicle, upon which the emblem referred to in ORS 319.600 is not displayed, by undertaking to collect and remit to the department the excise tax imposed by ORS 319.530, if such person complies with ORS 319.570 or 319.580 by filing a bond or depositing cash in lieu thereof. The amount of such bond or deposit shall never be less than \$100. Every person holding such a permit shall file a monthly report of taxable sales and shall remit the tax to the department within the time and subject to the same conditions and penalties prescribed for users by ORS 319.680, subsection (1) of ORS 319.690 and ORS 319.710. This subsection shall not be construed to exempt any user from the responsibility of obtaining the required license and emblem, from filing monthly reports or from remitting taxes as provided elsewhere in this chapter. However, any tax paid to vendors under the terms of this subsection shall be treated as a credit or prepayment of tax in the user's report when reporting and paying taxes which must be paid and reported under ORS 319.680 and 319.690 and ORS 767.325 to 767.335. Whenever any tax which is required to be paid under this subsection becomes delinquent it shall be collected in the manner prescribed by ORS 319.740. [Amended by 1955 c.476 §1]

319.630 Revocation of license; reissue of license. (1) The department may revoke the license issued, under ORS 319.550 to 319.600, to any person who fails to comply with any provision of ORS 319.510 to 319.880 or any rule or regulation adopted under ORS 319.510 to 319.880. Before revoking the license the department shall serve written notice on the person ordering him to appear

before the department at a time not less than 10 days after such service and show cause why the license should not be revoked. The notice shall be served in the manner prescribed by subsection (2) of ORS 319.760.

(2) A new license shall not be issued to a person whose license has been revoked unless it appears to the satisfaction of the department that the person will comply with the provisions of ORS 319.510 to 319.880 and the rules and regulations adopted under ORS 319.510 to 319.880.

319.640 Cancellation of license on request of user. If any person to whom a license has been issued pursuant to ORS 319.550 to 319.600 ceases using fuel within this state for a period of six months, he shall immediately request in writing that the department cancel the license. On receipt of the request the department shall cancel the license.

319.650 Notifying department upon ceasing to use fuel in connection with motor vehicle. If any person ceases using fuel within this state in connection with a motor vehicle with respect to which an emblem has been issued pursuant to ORS 319.600 but continues using fuel within this state in connection with another motor vehicle or other motor vehicles, the person shall immediately notify the department.

319.660 Removal of emblem. Any person whose license has been revoked or canceled pursuant to ORS 319.630 or 319.640, or who is required by ORS 319.650 to notify the department that such person has ceased using fuel within this state in connection with a motor vehicle, immediately shall remove from the motor vehicle on which it is displayed and shall destroy or, if the department so requests, shall return to the department each emblem issued to such person under ORS 319.600 or the emblem issued with respect to the motor vehicle in connection with which such person has ceased using fuel within this state, as the case may be.

319.670 License of fuel producer, manufacturer or distributor. (1) No person shall produce, manufacture, import, sell or otherwise distribute fuel in this state unless he is the holder of an uncanceled and unrevoked license issued to him pursuant to this section.

(2) Application for such a license must be made to the department upon forms prescribed, prepared and furnished by the department. No charge shall be made for the license. The license is valid only for the person in whose name it is issued and is valid until canceled or revoked.

(3) The department may revoke the license issued to any person who fails to comply with the provisions of ORS 319.510 to 319.880 or any rule or regulation adopted under ORS 319.510 to 319.880, if the procedure prescribed by ORS 319.630 is followed.

319.680 Date of payment. The excise tax imposed by ORS 319.530 with respect to the use of fuel during any calendar month is due and payable on or before the twentieth day of the immediately succeeding calendar month.

319.690 Monthly report of user; remittance; cancellation of license for failure to render report. (1) Each user shall, on or before the twentieth day of each month, file with the department a report showing the amount of fuel used during the immediately preceding calendar month by the user and such other information as the department may require for the purposes of ORS 319.510 to 319.880. The reports shall be in the form prescribed by the department. Each report shall be accompanied by a remittance payable to the department for the amount of tax due and payable.

(2) Each licensee shall render a report to the department each month regardless of whether the licensee has used fuel during the preceding calendar month. Failure to render the report within 30 days after its due date shall operate as a request for cancellation of the license held by the licensee, and the license shall be considered canceled as of that date.

319.700 Tax as lien. The tax, including any penalty and interest, imposed by ORS 319.510 to 319.880 shall constitute a lien upon, and shall have the effect of an execution duly levied against, any motor vehicle in connection with which the taxable use is made, attaching at the time of such use. The lien shall not be removed until the tax has been paid or the motor vehicle subject to the lien has been sold in payment of such tax. The lien is paramount to all private liens or encumbrances of whatever character upon the motor vehicle and to the rights of

any conditional vendor or any other holder of the legal title in or to the motor vehicle.

319.710 Penalty for failure to pay tax within time prescribed. Any person holding a valid use fuel tax license who fails to pay any tax, except taxes assessed under the provisions of ORS 319.760 to 319.780, within the time prescribed shall pay in addition to the tax a penalty of 10 percent of the amount thereof.

319.720 Delinquency in payment; notice to debtors of user; report to department. If any user is delinquent in the payment of any obligation imposed under ORS 319.510 to 319.880, the department may give notice of the amount of such delinquency by registered mail to all persons having in their possession or under their control any credits or other personal property belonging to such user, or owing any debts to such user, at the time of the receipt by them of the notice. Thereafter any person so notified shall neither transfer nor make other disposition of such credits, personal property or debts until the department has consented to a transfer or other disposition or until 30 days have elapsed from and after the receipt of the notice. All persons so notified must, within five days after the receipt of the notice, advise the department of all such credits, personal property or debts in their possession, under their control or owing by them, as the case may be.

319.730 Collection of delinquent payment. (1) Whenever any user is delinquent in the payment of any obligation imposed under ORS 319.510 to 319.880, the department may proceed to collect the amount due from the user in the manner prescribed in this section.

(2) The department shall seize any motor vehicle subject to the lien provided for by ORS 319.700 and thereafter sell it at public auction to pay such obligation and any and all costs that may have been incurred on account of the seizure and sale.

(3) Notice of the intended sale and the time and place thereof shall be given to the delinquent user and to all persons appearing of record to have an interest in the motor vehicle. The notice shall be given in writing at least 10 days before the date set for the sale by inclosing it in an envelope addressed to the user at his address as it appears in the records of the department and, in the case of any person appearing of

record to have an interest in the motor vehicle, addressed to the person at his last known residence or place of business, and depositing the envelope in the United States mail, postage prepaid. In addition the notice shall be published for at least three times, the first of which shall be not less than 10 days before the date set for the sale, in a newspaper of general circulation published in the county in which the motor vehicle seized is to be sold. If there is no newspaper of general circulation in the county, the notice shall be posted in three public places in the county for such period of 10 days.

(4) The notice shall contain a description of the motor vehicle to be sold, together with a statement of the amount due under ORS 319.510 to 319.880, the name of the user and the further statement that unless such amount is paid before the time fixed in the notice the motor vehicle will be sold in accordance with law and such notice.

(5) The department shall then proceed to sell the motor vehicle in accordance with the law and the notice, and shall deliver to the purchaser a bill of sale which shall vest title in the purchaser. If upon any such sale the moneys received exceed the amount due to the state under ORS 319.510 to 319.880 from the delinquent user, the excess shall be returned to the user and his receipt obtained therefor. If any person having an interest in or lien upon the motor vehicle has filed with the department prior to the sale notice of such interest or lien, the department shall withhold payment of any such excess to the user pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the user shall not be available, the department shall deposit the excess with the State Treasurer as trustee for the user, his heirs, successors or assigns.

319.740 Action by Attorney General to collect delinquency; certificate of department as evidence. (1) Whenever any user is delinquent in the payment of any obligation under ORS 319.510 to 319.880, the department may transmit notice of the delinquency to the Attorney General who shall at once proceed to collect by appropriate legal action the amount due the state from the user.

(2) In any suit brought to enforce the rights of the state under ORS 319.510 to 319.880, a certificate by the department

showing the delinquency is prima facie evidence of the amount of the obligation, of the delinquency thereof and of compliance by the department with all provisions of ORS 319.510 to 319.880 relating to the obligation.

319.750 Remedies cumulative. The remedies of the state provided for in ORS 319.550 to 319.740 are cumulative. No action taken by the department shall be construed to be an election on the part of the state or any of its officers to pursue any remedy under ORS 319.510 to 319.880 and subsection (4) of ORS 319.990 to the exclusion of any other remedy for which provision is made in ORS 319.510 to 319.880 and 319.990.

319.760 Additional assessment. (1) If the department is not satisfied with the report filed or amount of tax paid to the state by any user, the department may make an additional assessment of tax due from such user based upon any information available to the department. Every such additional assessment shall bear interest at the rate of one-half of one percent per month, or fraction thereof, from the twentieth day after the close of the month or months, as the case may be, for which the additional assessment is imposed until paid.

(2) The department shall give to the user written notice of the additional assessment. The notice may be served personally or by mail. If made by mail, service shall be made by depositing the notice in the United States mail, postage prepaid, addressed to the user at his address as it appears in the records of the department.

319.770 Penalties for deficiency. (1) If any part of the deficiency for which the additional assessment under ORS 319.760 is imposed is found to have been occasioned by negligence or intentional disregard of ORS 319.510 to 319.880 or rules and regulations adopted under ORS 319.510 to 319.880, a penalty of 10 percent of the amount of the additional assessment shall be added thereto.

(2) If any part of the deficiency for which such additional assessment is imposed is found to have been occasioned by fraud or an intent to evade ORS 319.510 to 319.880 or rules and regulations adopted under ORS 319.510 to 319.880, a penalty of 25 percent of the amount of the additional assessment shall be added thereto in addition to any 10 percent penalty provided for in subsection (1) of this section.

319.780 Assessing tax and penalty upon failure to make report. (1) If any user neglects or refuses to make a report as required by ORS 319.510 to 319.880, the department shall make an estimate, based upon any information available to the department, for the month or months with respect to which the user failed to make a report, of the amount of fuel used for the user and, upon the basis of the estimate, compute and assess the tax due from the user under ORS 319.510 to 319.880.

(2) Every such assessment shall bear interest at the rate of one-half of one percent per month, or fraction thereof, from the twentieth day after the close of the month or months, as the case may be, for which the assessment is imposed until paid. There shall be added to every such assessment a penalty of 25 percent of the amount thereof.

(3) If the neglect or refusal to make a report as required by ORS 319.510 to 319.880 is found to have been occasioned by fraud or an intent to evade ORS 319.510 to 319.880 or rules and regulations adopted under ORS 319.510 to 319.880, a penalty of 25 percent of the amount of the assessment shall be added to the assessment in addition to the 25 percent penalty provided for in subsection (2) of this section.

(4) The department shall give to the user written notice of the assessment. The notice shall be served in the manner prescribed by subsection (2) of ORS 319.760.

319.790 Petition for reassessment. (1) Any user against whom an assessment is made under ORS 319.760 to 319.780 may petition for a reassessment thereof within 30 days after service upon the user of notice thereof. If a petition is not filed within the 30 day period, the amount of the assessment becomes final at the expiration thereof.

(2) If a petition for reassessment is filed within the 30 day period the department shall reconsider the assessment and, if the user has so requested in his petition, shall grant the user an oral hearing and give the user 10 days' notice of the time and place thereof. The department shall have power to continue the hearing from time to time as may be necessary. The decision of the department upon a petition for reassessment becomes final 30 days after service upon the user of notice thereof.

(3) Any notice required by this section shall be served in the manner prescribed by subsection (2) of ORS 319.760.

319.800 When assessment under ORS 319.760 to 319.780 becomes payable; penalty for late payment. Every assessment made by the department under ORS 319.760 to 319.780 becomes due and payable at the time it becomes final and if not paid to the department when due and payable there shall be added thereto a penalty of 10 percent of the amount of the tax.

319.810 Time limitation on service of notice of additional tax. Except in the case of a fraudulent report or neglect or refusal to make a report, every notice of additional tax proposed to be assessed under ORS 319.510 to 319.880 shall be served on the user within three years after the claimed erroneous report is filed.

319.820 Refund of tax erroneously or illegally collected. (1) If the department determines any amount of tax, penalty or interest has been paid more than once or has been erroneously or illegally collected, the department shall credit such amount against any amounts then due from the user under ORS 319.510 to 319.880 or subsection (4) of ORS 319.990 and shall refund any balance to the user, his successor, administrator or executor.

(2) No such credit or refund shall be allowed unless a claim therefor is filed with the department within three years from the date of overpayment or, with respect to an assessment made under ORS 319.760 to 319.780, within six months after the assessment becomes final, whichever period expires the later. Every such claim must be in writing and must state the specific grounds upon which it is founded. Failure to file such claim within the time prescribed in this section shall constitute waiver of any and all demands against this state on account of overpayments under ORS 319.510 to 319.880. Within 30 days of allowing or disallowing any such claim in whole or in part, the department shall serve notice of such action on the claimant. The service shall be made in the manner prescribed by subsection (2) of ORS 319.760.

(3) Interest shall be computed, allowed and paid upon any overpayment of tax, penalty or interest, unless the overpayment was made intentionally or by reason of negligence, at the rate of one-half of one percent per month, or fraction thereof, from the date of overpayment as follows:

(a) In the case of a refund, to a date preceding the date of the refund warrant

by not more than 30 days, such date to be determined by the department.

(b) In the case of a credit, to the same date that interest is computed on the tax against which the credit is applied.

319.830 Action for recovery of amount illegally collected. (1) No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been illegally collected unless a claim for refund or credit has been duly filed as provided in ORS 319.820.

(2) Within 90 days after service of notice of the action of the department upon such a claim, the claimant may bring an action against the State Treasurer on the grounds set forth in the claim in a court of competent jurisdiction in Marion County for recovery of the whole or any part of the amount with respect to which such claim has been disallowed. If the department fails to serve notice of action on any such claim within six months after the claim is filed, the claimant may, prior to service of notice of the department's action on such claim, consider the claim disallowed and bring an action against the State Treasurer on the grounds set forth in such claim for the recovery of the whole or any part of the amount claimed.

(3) Failure to bring an action within the time specified in this section constitutes a waiver of any and all demands against this state on account of any alleged overpayments under ORS 319.510 to 319.880.

(4) If in any such action, judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any tax due from the plaintiff under ORS 319.510 to 319.880, and the balance of the judgment shall be refunded to the plaintiff. In any such judgment, interest shall be allowed at the rate of six percent per year on the amount found to have been illegally collected from the date of payment of such amount to the date of allowance of credit on account of such judgment or to a date preceding the date of the refund warrant by not more than 30 days, such date to be determined by the department.

(5) No judgment shall be rendered in favor of the plaintiff in any action brought against the State Treasurer to recover any tax paid under ORS 319.510 to 319.880 if the action is brought by or in the name of an assignee of the user paying the tax.

319.840 Enforcement; rules and regu-

lations. The department hereby is charged with the enforcement of the provisions of ORS 319.510 to 319.880 and subsection (4) of ORS 319.990, and hereby is authorized to prescribe, adopt and enforce rules and regulations relating to the administration and enforcement thereof.

319.850 Presumption of use. For the purposes of the proper administration of ORS 319.510 to 319.880 and subsection (4) of ORS 319.990 and to prevent evasion of the tax imposed by ORS 319.530, it shall be presumed, until the contrary is established under such reasonable rules as the department may adopt, that all fuel received into any receptacle on a motor vehicle from which receptacle fuel is supplied to propel such motor vehicle is consumed in propelling such motor vehicle on the highways of this state.

319.860 Users, producers, distributors and others to keep records; department examining books and records. (1) Every user and every person producing, manufacturing, importing, selling, distributing, storing, transporting or otherwise handling fuel shall maintain and keep in this state for a period of not less than three years such records, receipts, invoices and other pertinent papers in such form as the department may require.

(2) The department may examine during normal business hours the books, papers, records and equipment of any user or of any person producing, manufacturing, importing, selling, distributing, storing, transporting or otherwise handling fuel and may investigate the character of the disposition which any such person makes of fuel in order to determine whether all taxes due under ORS 319.510 to 319.880 are being properly reported and paid.

319.870 Results of investigations to be private. It is unlawful for the department, or any person having an administrative duty under ORS 319.510 to 319.880, to divulge the business affairs, operations, or information obtained by an investigation of records and equipment of any user or other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any report, or to permit any report or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law.

However, the department may authorize examination of such reports by, and the giving of information therein contained to other state officers, or tax officers of another state or the Federal Government if a reciprocal arrangement exists.

319.880 Disposal of moneys; payment of refunds and expenses. (1) All money received by the department pursuant to ORS 319.510 to 319.880 shall be turned over promptly to the State Treasurer and the State Treasurer shall place the same to the credit of the General Fund.

(2) Refunds as provided for by ORS 319.510 to 319.880 and all necessary expenses incurred by the department in administering the provisions of ORS 319.510 to 319.880 shall be paid by the State Treasurer on warrants drawn by the Secretary of State. The part of the revenue produced by the operation of ORS 319.510 to 319.880 that is necessary to pay such refunds and administrative expenses, and no more, hereby is constituted an appropriation from the General Fund in the State Treasury for such purposes.

(3) On the first day of each month the Secretary of State shall certify to the State Treasurer the balance of such money in excess of \$5,000 remaining in the General Fund as of the close of business on the last day of the preceding calendar month, after deducting the sums disbursed by warrants of the Secretary of State as provided in this section. The State Treasurer shall thereupon transfer such balance from the General Fund to the State Highway Fund. [Amended by 1955 c.287 §22]

NOTE: The 1955 amendment to ORS 319.880 takes effect on July 1, 1956. However, ORS 319.880, as compiled above, because of the editorial adjustment made to ORS 319.520 as authorized by 1955 c.287 §33, states the law in effect both before and after July 1, 1956.

319.890 to 319.980 [Reserved for expansion]

PENALTIES

319.990 Penalties. (1) Any person who

violates any of the provisions of ORS 319.010 to 319.430, or any person who makes any false statement in any statement required by ORS 319.010 to 319.430 for the refund of any money or tax as provided in ORS 319.010 to 319.430, or who collects or causes to be repaid to him or any person any tax, without being entitled to it under the provisions of ORS 319.010 to 319.430, shall, upon conviction, be punished by a fine of not more than \$1,000, or by imprisonment in the county jail not more than six months, or both.

(2) Violation of subsection (3) of ORS 319.180 is larceny of public money and, upon conviction, is punishable as provided in ORS 165.015.

(3) Violation of any provision of subsections (4) and (5) of ORS 319.240 is punishable, upon conviction, by a fine of not less than \$500 nor more than \$5,000, or by imprisonment in the county jail not exceeding six months, or both.

(4) In addition to any other penalties provided for in ORS 319.510 to 319.880, any person who refuses or neglects to make any report required by the provisions of ORS 319.510 to 319.880, or who knowingly makes, or aids or assists any other person in making, a false statement in any such report or in connection with any claim for refund filed under ORS 319.820, or who knowingly collects, or attempts to collect or causes to be repaid to himself or to any other person, any refund of any amount paid to the state under ORS 319.510 to 319.880 without being entitled to the same, or who uses fuel within this state without being the holder of a valid use fuel tax license, or who otherwise violates any of the provisions of ORS 319.510 to 319.880, shall, upon conviction, be punished by a fine of not more than \$1,000, or by imprisonment in the county jail for not more than six months, or both.

(5) Justice and district courts have concurrent jurisdiction with the circuit court of all violations under the provisions of ORS 319.010 to 319.430 and subsections (1) to (3) of this section.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.
Done at Salem, Oregon,
on October 15, 1955

Sam R. Haley
Legislative Counsel