Chapter 319

1959 REPLACEMENT PART

Motor Vehicle and Aircraft Fuel Taxes

MOTOR VEHICLE FUEL AND AIRCRAFT FUEL TAXES

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MOTOR VEHICLE FUEL AND AIRCRAFT FUEL TAXES

319.010 Definitions for ORS 319.010 to 319.430. 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 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 aircraft, except gas or liquid, the chief use of which, as determined by the department is for purposes other than the propulsion of aircraft.

(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 takeoff 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 incurred.

(7) "Department" means the Department of Motor Vehicles.

(8) "Distribution" means, in addition to its ordinary meaning, the delivery of motor vehicle fuel or aircraft fuel by a dealer or subdealer to any service station or into any tank, storage facility or series of tanks or storage facilities connected by pipe lines, from which motor vehicle fuel or aircraft fuel is withdrawn directly for sale or for delivery into the fuel tanks of motor vehicles or aircraft whether or not the service station, tank or storage facility is owned, operated or controlled by the dealer or subdealer.

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

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

(11) "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.

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

(13) "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.

(14) "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.

(15) "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; 1957 c.209 §1; 1959 c.505 §1]

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 distributed 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, except that when aircraft fuel is delivered by a dealer or subdealer into the fuel tanks of aircraft operated by turbine engines (turbo-prop or jet), or when it is delivered into storage facilities operated by a licensed aircraft fuel retailer and used exclusively for fueling aircraft operated by turbine engines (turbo-prop or jet), the tax rate shall be one-half of one cent per gallon.

(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; 1959 c.505 §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 and registered agent.

(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. [Amended by 1957 c.209 §2]

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 department 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 cancelation. The cancelation 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 Cancelation 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 cancelation 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 under paragraph (b) of subsection (1) of ORS 319.020 but subject to the applicable tax imposed by subsection (2) of ORS 319.020. 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. [Amended by 1959 c.505 §3]

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 the applicable tax imposed by subsection (2) of ORS 319.020.

(b) That the applicant will keep and preserve for a period of three 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 applicable tax imposed by subsection (2) of ORS 319.020 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. [Amended by 1957 c.209 §3; 1959 c.505 §4]

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.

(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 shall 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; 1957 c.209 §4; 1959 c.505 §5]

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 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; 1957 c.209 §5]

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 receive 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, and the true name and address of the buyer or consignee, if any, of the same. 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. [Amended by 1957 c. 209 §6]

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 a dealer or subdealer; 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; 1959 c.186 §1]

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 but every dealer or subdealer shall be required to report such 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; 1959 c.186 §2]

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. (1) Any person who has paid any tax on 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, if such person has:

(a) Purchased and used such fuel for the purpose of operating or propelling stationary gas engines, tractors or motor boats; or

(b) Purchased and used such fuel for cleaning or dyeing or other commercial use, except when used in motor vehicles operated upon any highway; or

(c) Purchased and exported such fuel for use in a state, territory or country of destina-

tion where such person is licensed to collect and remit the applicable taxes; or for use in a state, territory or country of destination where the laws would exempt such fuel if purchased there.

(2) Before any such refund may be granted, the person claiming such refund must present 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 for which he is entitled to be reimbursed under subsection (1) of this section. The department upon the presentation of the statement and invoices shall cause to be repaid to the claimant from the taxes collected on motor vehicle fuel such taxes so paid by the claimant. [Amended by 1959 c.186 §3]

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. 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 18 months retain copies of all invoices and make them available to the department upon request. [Amended by 1953 c.77 §2; 1955 c.730 §10; 1957 c.209 §7]

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. The records shall be sufficient to substantiate the accuracy of the claim and shall be in such form and contain such information as the department may require. Failure of the claimant to maintain such records or to accede to the demand for such examination constitutes a waiver of all rights to the refund claimed on account of the transaction questioned. [Amended by 1959 c.186 §4]

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 when such fuel is used in operating aircraft turbine engines (turbo-prop or jet) the deduction shall be one-half of one cent for each gallon. No deduction provided under this subsection shall 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 operations 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. [Amended by 1959 c.505 §6]

319.340 Refunds to counties and road assessment districts. Any county or road assessment district formed under ORS 371.410 to 371.535 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 public highways 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 or road assessment district as provided by ORS 319.280 to 319.330 if such machinery is used exclusively for the maintenance and construction of such public highways. [Amended by 1959 c.203 §1]

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 transportation 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. [Amended by 1957 c.209 §8]

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 necessary 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]

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 for ORS 319.510 to 319.880. As used in ORS 319.510 to 319.880, unless the context clearly indicates a different meaning:

(1) "Delinquent" means having failed to pay a tax or penalty within the time provided by law.

(2) "Department" means the Department of Motor Vehicles.

(3) "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.

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

(5) "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.

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

(7) "Seller" means a person who sells fuel to a user.

(8) "To sell fuel for use in a motor vehicle" means to deliver or place fuel for a price into a receptacle on a motor vehicle, from which receptacle the fuel is supplied to propel the motor vehicle.

(9) "To use fuel in a motor vehicle" means to 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, "to use fuel in a motor vehicle" means to consume in propelling the

motor vehicle on the highways of this state. [Amended by 1955 c.287 §21; 1959 c.188 §1]

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 in a motor vehicle. [Amended by 1959 c.188 §2]

319.540 [Repealed by 1959 c.188 §44]

319.550 User's license required to use fuel. No person shall use fuel in a motor vehicle within this state unless he holds a valid user's license, except that a nonresident may use fuel in a motor vehicle not registered in Oregon for a period not exceeding 30 days without obtaining a user's license or the emblem provided in ORS 319.600, if, for all fuel used in a motor vehicle in this state, he pays to a seller, at the time of the sale, the tax provided in ORS 319.530. [Amended by 1959 c.188 §3]

319.560 Application for and issuance of user's license. A user of fuel in a motor vehicle shall apply to the department for a user's license 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 user's license without charge authorizing the applicant to use fuel in a motor vehicle within this state. The license is valid only for the person in whose name it is issued and is valid until canceled or revoked. [Amended by 1959 c.188 §4]

319.570 Faithful performance bond. (1) At the time of filing the application for a user's license, the department may require the user of fuel in a motor vehicle 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 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 of fuel in a motor vehicle 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 of fuel in a motor vehicle 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 of fuel in a motor vehicle 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. [Amended by 1959 c.188 §5]

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. Except as provided in ORS 319.550, a user of fuel in a motor vehicle shall display an emblem 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 person holding an uncanceled or unrevoked user's license and shall be displayed only upon the motor vehicle with respect to which it is issued. [Amended by 1959 c.188 §6]

319.610 [Repealed by 1959 c.188 §44]

319.611 Penalty for unlicensed use of fuel or nondisplay of authorization or emblem. Except as otherwise provided in ORS 319.550 with respect to a nonresident, if any person uses fuel in a motor vehicle within this state at a time when he does not hold a valid user's license or at a time when he does not display a valid authorization issued by the Public Utility Commissioner of Oregon or a valid user's emblem, a penalty of 25 percent of the tax applicable to the fuel so used shall be imposed. The penalty so imposed shall be in addition to any other penalty imposed under the provisions of ORS 319.510 to 319.990. [1959 c.188 §8]

319.620 [Amended by 1955 c.476 §1; repealed by 1959 c.188 §44]

319.621 Seller's license. (1) No person shall sell fuel for use in a motor vehicle in this state unless he holds a valid seller's license.

(2) A person shall apply to the department for a seller's license 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 require an applicant for a seller's license to file with the department a bond or deposit of not less than $100 under the same terms and conditions prescribed for users in ORS 319.570, 319.580 and 319.590. [Formerly 319.670]

319.630 Revocation of license; reissue of license. (1) The department may revoke the license of a user or seller if he 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 (3) 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. [Amended by 1959 c.188 §10]

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.

319.665 Seller to collect tax unless vehicle has P.U.C. permit. The seller of fuel for use in a motor vehicle shall collect the tax provided by ORS 319.530 at the time he sells the fuel, unless the vehicle into which he delivers or places the fuel bears a valid permit issued by the Public Utility Commissioner of Oregon. [1959 c.188 §12]

319.670 [Amended by 1959 c.188 §9; renumbered 319.621]

319.671 Invoices. (1) The seller of fuel for any purpose shall make a duplicate invoice for every sale of fuel for any purpose and shall retain one copy and give the other copy to the user. The invoice shall show the seller's name and address, the date, the amount of the sale in gallons, and the name and address of the user. The department may prescribe the form of the invoice.

(2) In addition to the invoice entries listed in subsection (1) of this section, the seller of fuel for use in a motor vehicle shall indicate on the invoice the amount of the tax collected, if any, and:

(a) The identification plate or marker number, if the vehicle bears an identification plate or marked issued by the Public Utility Commissioner of Oregon; or

(b) The emblem number, if the vehicle bears a user's emblem; or

(c) The license plate number if the vehicle bears no valid user's emblem or permit issued by the Public Utility Commissioner of Oregon. [1959 c.188 §13]

319.675 Seller's report to department. The seller of fuel for use in a motor vehicle shall report to the department on or before the twentieth day of each month, the amount of fuel sold, during the preceding calendar month, subject to the tax provided by ORS 319.530 and such other information pertaining to fuel handled as the department may require. The department may prescribe the form of the report. [1959 c.188 §14]

319.680 [Repealed by 1959 c.188 §44]

319.681 Payment of tax to department by seller. The seller of fuel for use in a motor vehicle shall remit to the department with each report required by ORS 319.675, all the tax due on the amount of fuel sold. [1959 c.188 §15]

319.690 Monthly report of user; remittance; waiver of requirement; credit against taxes. (1) Except as provided in subsection (2) of this section, each user of fuel in a motor vehicle 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 all the tax shown by the report to be due and payable. Any tax paid to a seller is a credit against the amount of tax otherwise due and payable to the state under ORS 319.510 to 319.880 or ORS 767.325 to 767.335. Also, when filing a monthly tax report, a user may, in lieu of claiming a refund, take a deduction or credit for the tax on any fuel which would otherwise be subject to refund under subsection (1) of ORS 319.831.

(2) If a user of fuel in a motor vehicle gives assurance satisfactory to the department that all fuel used upon Oregon highways will be obtained from sellers licensed as provided in ORS 319.621 and who collect the tax at the time of sale as provided in ORS 319.665, the department may waive, under specified terms and conditions, the requirement that the user make a monthly report. [Amended by 1959 c.188 §16]

319.694 Penalty for delinquency in remitting tax. If any user or seller is delinquent in remitting the tax provided by ORS 319.530 on the date specified in subsection (1) of ORS 319.690 or 319.675 and 319.681, a penalty of 10 percent of the amount of the tax due shall be added to the amount due and the total shall immediately be due and payable. [1959 c.188 §18]

319.697 Records required of sellers and users. (1) Every user of fuel in a motor vehicle shall keep a record of fuel used and be prepared to prove that all the tax due and payable on fuel used has been paid. An invoice, described in ORS 319.671, properly filled out, is proof that any tax due which is shown on the invoice as paid was paid for the fuel covered by the invoice. The user's record of fuel used for any purpose, other than fuel obtained from a seller who collected the tax, shall indicate the date the fuel was obtained, the name and address of the seller from whom the fuel was obtained, and the amount of fuel obtained, in gallons.

(2) Every seller of fuel for any purpose shall keep a record of fuel sold for any purpose and shall be prepared to prove that all the tax provided by ORS 319.530 has been remitted to the department. The department may specify the form of the seller's record.

(3) Every seller, and every user of fuel in a motor vehicle shall preserve in this state for a period of three years all records of fuel used or fuel sold, together with invoices and any other relevant records or papers which may be specified by the department.

(4) The department or its authorized agent may examine every user's or seller's records and papers required to be preserved by subsection (3) of this section, at any time during normal business hours. [1959 c.188 §§19, 20, 21, 22]

319.700 Tax as lien. The tax and the penalty imposed upon a user of fuel in a motor vehicle 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. [Amended by 1959 c.188 §23]

319.710 [Repealed by 1959 c.188 §44]

319.720 Delinquency in payment; notice to debtors of user or seller; report to department. If a user or seller 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 or certified mail to all persons having in their possession or under their control any credits or other personal property belonging to the user or seller, or owing any debts to such user or seller, 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 shall, 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. [Amended by 1959 c.188 §24]

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 or seller 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 tax and penalty due.

(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. [Amended by 1959 c.188 §25]

319.750 [Repealed by 1959 c.188 §44]

319.760 Assessment of deficiency; presumption that fuel subject to tax. (1) If the department is not satisfied that a report filed or amount of tax or penalty paid to the state by any user or seller is correct, the department may assess the tax and penalty due based upon any information available to the department.

(2) If a seller fails to account satisfactorily for any fuel sold or disposed of, it shall be presumed that the fuel not accounted for was sold to users for use in motor vehicles and the department shall assess the tax and penalty due against the seller.

(3) The department shall give to the user or seller written notice of the 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 or seller at his address as it appears in the records of the department. [Amended by 1959 c.188 §26]

319.770 [Repealed by 1959 c.188 §44]

319.780 Assessing tax and penalty upon failure to make report. (1) If any user or seller fails to make a report 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 or seller failed to make a report, and assess the tax and penalty due from the user or seller under ORS 319.510 to 319.880.

(2) The department shall give to the user or seller written notice of the assessment in the manner prescribed by subsection (3) of ORS 319.760. [Amended by 1959 c.188 §27]

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

(2) If a petition for reassessment is filed within the 30-day period the department shall reconsider the assessment and, if requested in his petition, shall grant the user or seller an oral hearing and give the user or seller 10 days' notice of the time and place thereof. The department may continue the hearing from time to time. The department shall serve on the petitioner notice of its finding upon reassessment. If the finding is that a tax or penalty is delinquent, the petitioner shall pay to the department, within 30 days after notice is served, all the tax or penalty found to be delinquent.

(3) Notice required by this section shall be served in the manner prescribed by subsection (3) of ORS 319.760. [Amended by 1959 c.188 §28]

319.800 [Repealed by 1959 c.188 §44]

319.801 Appeal to circuit court. Any person aggrieved by a finding, order or determination by the department under ORS 319.630 or 319.790 may appeal therefrom to the circuit court of the county in which he resides. Such appeal shall be taken within 60 days from the date of the entry or making of such order, finding or determination and in the manner provided by law for appeals in actions at law. [1959 c.188 §30]

319.810 Time limitation on service of notice of additional tax. Except in the case of an alleged fraudulent report, or neglect or refusal to make a report, no notice of assessment shall be served on the user or

seller after three years have expired since the alleged erroneous report was filed or a report should have been filed. [Amended by 1959 c.188 §31]

319.820 Refund of tax erroneously or illegally collected. (1) If the department determines any amount of tax or penalty 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 or seller under ORS 319.510 to 319.880 or subsection (4) of ORS 319.990 and shall refund any balance to the user or seller, his successor, administrator or executor.

(2) A user or seller may claim a credit or refund for any amount of tax or penalty which he has paid more than once or which he has paid or which has been collected erroneously or illegally. No such claim for a credit or refund shall be allowed unless the claim is filed with the department within three years from the date of the payment or collection or, with respect to an assessment made under ORS 319.760 to 319.780, within six months after the assessment becomes conclusive, 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 (3) of ORS 319.760. [Amended by 1959 c.188 §32]

319.830 [Repealed by 1959 c.188 §44]

319.831 Refund of tax on fuel used in operation of vehicle over certain roads. (1) If a user obtains fuel for use in a motor vehicle in this state and pays the use fuel tax on the fuel obtained, he may apply for a refund of that part of the use fuel tax paid which is applicable to use of the fuel to propel a motor vehicle:

(a) In another state, if the user pays to the other state an additional tax on the same fuel; or

(b) Upon any road, thoroughfare or property in private ownership; or

(c) Upon 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 such road or thoroughfare 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.

(2) An application for a refund under subsection (1) of this section shall be filed with the department within 13 months after the date the use fuel tax, for which a refund is claimed, is paid.

(3) The application for a refund provided by subsection (1) of this section shall include a signed statement by the applicant indicating the amount of fuel for which a refund is claimed, and the way in which the fuel was used which qualifies the applicant for a refund. If the fuel upon which the refund is claimed was obtained from a seller to whom the use fuel tax was paid, the application shall be supported by the invoices which cover the purchase of the fuel. If the applicant paid the use fuel tax directly to the department, the applicant shall indicate the source of the fuel and the date it was obtained.

(4) The department may require any person who applies for a refund provided by subsection (1) of this section to furnish a statement, under oath, giving his occupation, description of the machines or equipment in which the fuel was used, the place where used and such other information as the department may require. [1959 c.188 §§34, 35, 36(1)]

319.835 Investigation of refund applications. The department may investigate refund applications and gather and compile such information in regard to the applications 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 application, examine the books and records of the applicant for such purposes. Failure of the applicant to accede to the demand for such examination constitutes a waiver of all rights to a refund on account of the transaction questioned. [1959 c.188 §36(2)]

319.840 Enforcement; rules and regulations. 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 or delivered 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. [Amended by 1959 c.188 §37]

319.860 Producers, distributors and others to keep records; department examining books and records. (1) Every person producing, manufacturing, importing, 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 person producing, manufacturing, importing, 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. [Amended by 1959 c.188 §38]

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.

319.875 Prohibitions. (1) No person shall intentionally make a false statement in any report, petition or application required or permitted by ORS 319.510 to 319.880.

(2) No person shall intentionally collect, or attempt to collect or receive a refund of a tax or penalty paid to the department under ORS 319.510 to 319.880 to which he is not entitled.

(3) No person shall intentionally aid or assist another person to violate any provision of ORS 319.510 to 319.880. [1959 c.188 §§40, 41, 42]

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]

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 (6) 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) Violation of any provision of ORS 319.510 to 319.880 is a misdemeanor.

(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, 319.510 to 319.880 or this section. [Amended by 1959 c.188 §43]

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 November 1, 1959.

Sam R. Haley
Legislative Counsel