Chapter 319

1991 EDITION

Motor Vehicle and Aircraft Fuel Taxes

MOTOR VEHICLE FUEL AND AIRCRAFT FUEL TAXES

319.010 Definitions for ORS 319.010 to 319.430

319.020 Monthly statement by dealer; license tax imposed

Note Reduction in tax for ethanol-blended fuel–1991 c.752 §§13c, 24

319.025 Underground storage tank assessment

Note Effect of assessment under ORS 319.025–1991 c.863 §§19, 20, 21 and 71

319.030 License required to be dealer in motor vehicle fuel

319.040 Application for and issuance of dealer's license

319.050 Faithful performance bond

319.060 Deposit in lieu of bond

319.070 Release of surety

319.080 Additional bond or deposit

319.090 Immediate collection of tax and interest where dealer fails to secure license; waiver; penalties

319.100 Revocation of license

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

319.120 Remedies cumulative

319.125 Change of ownership; cancellation of license

319.180 Payment of tax; delinquency penalty; interest rates; collection of delinquent payments

319.190 Monthly statement of dealer; penalty

319.200 Assessing tax and penalty where dealer fails to report

319.210 Billing purchasers

319.220 Receipt, payment or sale of motor vehicle fuel without invoice or delivery tag prohibited

319.230 Transporting motor vehicle fuel in bulk

319.240 Exemption of export fuel

319.250 Certain sales to Armed Forces exempted; reports

319.260 Fuel in vehicles coming into or leaving state not taxed

319.270 Fuel sold or distributed to dealers

319.275 Liability for assessments, taxes, interest and penalties when person importing fuel does not hold license

Note Effect of ORS 319.025 on ORS 219.275–1991 c.863 §§21a, 60 and 66

319.280 Refunds

319.290 Limitation on applications for refunds

319.300 Seller to give invoice for each purchase made by person entitled to refund

319.310 Claims for refunds may be required to be under oath; investigation of claims

319.320 Refund of tax on fuel used in operation of vehicles over certain roads or private property

319.330 Refunds to purchasers of fuel for aircraft

319.370 Examinations and investigations; correcting reports and payments

319.375 Limitation on credit for or refund of overpayment and on assessment of additional tax

319.380 Examining books and accounts of carrier of motor vehicle fuel

319.390 Records to be kept by dealers; inspection of records

319.400 Records to be kept three years

319.410 Disposition of tax moneys

319.415 Estimate of tax on fuel used for boats; transfer to Boating Safety, Law Enforcement and Facility Account; use

319.417 Estimate of tax on fuel used in aircraft; transfer to State Aeronautic Account; use

319.420 ORS 319.510 to 319.880 not affected

319.430 Savings clause

USE FUEL TAX

319.510 Short title

319.520 Definitions for ORS 319.510 to 319.880

319.530 Imposition of tax; rate

319.550 User's license required to use fuel; exceptions

319.560 Application for and issuance of user's license

319.570 Faithful performance bond

319.580 Deposit in lieu of bond

319.590 Release of surety

319.600 Display of emblem

319.611 Penalty for unlicensed use of fuel or nondisplay of authorization or emblem

319.621 Seller's license

319.630 Revocation of license; reissue of license

319.640 Cancellation of license on request of user

319.650 Notifying division upon ceasing to use fuel in connection with motor vehicle

319.660 Removal of emblem

319.665 Seller to collect tax unless vehicle has P.U.C. permit or user's emblem

319.671 When invoices required

319.675 Seller's report to division

319.681 Payment of tax by seller

319.690 Monthly report of user; remittance; credit against taxes; annual reports of certain users

319.692 Quarterly reports if average monthly tax under $300; when annual reports authorized

319.694 Penalty for delinquency in remitting tax; waiver; interest rates

319.697 Records required of sellers and users; alternative records for certain users
319.700 Tax as lien
319.720 Delinquency in payment; notice to debtors of user or seller; report to division
319.730 Collection of delinquent payment
319.740 Action by Attorney General to collect delinquency; certificate of division as evidence
319.760 Assessment of deficiency; presumption that fuel subject to tax
319.780 Assessing tax and penalty upon failure to make report
319.790 Petition for reassessment
319.801 Appeal to circuit court
319.810 Time limitation on service of notice of additional tax
319.820 Refund of tax erroneously or illegally collected
319.831 Refund of tax on fuel used in operation of vehicle over certain roads or private property
319.835 Investigation of refund applications
319.840 Enforcement; rules and regulations
319.850 Presumption of use
319.860 Producers, distributors and others to keep records; examining books and records
319.870 Results of investigations to be private
319.875 Prohibitions
319.880 Disposition of moneys

PENALTIES

319.990 Penalties

CROSS REFERENCES

Administrative procedures and rules of state agencies, 183 310 to 183.550

Credit for fuel tax paid, 767.832

Date of receipt of reports, remittance and claims for credit or refund, determination, 293.660

Federal areas in state, application of tax laws, 305.605

Interest on deficiency, delinquency or refund, 305.220

Motor Vehicles Division, functions under this chapter, 802.010

Public officer failing to perform duties imposed by tax law, penalty, 305.990

Refund of taxes adjudged invalid, 305.765

Snowmobiles, refunds on fuel prohibited, 802.120

Uniformity of taxation, Const. Art. I, §32, Const. Art, IX, §1

319.180

Actions in other states for Oregon taxes, 305.610

Reciprocal recognition of tax liability, 305.610

319.330

Expenditures without allotment prohibited in certain cases, 291.238

319.410

Revenue from motor vehicle use and fuel tax to be used only for highway purposes, Const. Art. IX, §3a

319.530

Use fuel tax not applicable to vehicles subject to tax based on combined weight of vehicle, 767.830

319.700

Removal of lien before issuing registration card or certificate of title upon transfer of vehicle subject to lien, 803.115

319.740

Actions in other states for Oregon taxes, 305.610

Reciprocal recognition of tax liability, 305.610

319.880

Expenditures without allotment prohibited in certain cases, 291.238

Revenue from motor vehicle use and fuel tax, to be used only for highway purposes, Const. Art. IX, §3a

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, 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 division is for purposes other than the propulsion of aircraft.

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

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

(5) "Bulk transfer" means any change in ownership of motor vehicle fuel or aircraft fuel contained in a terminal storage facility or any physical movement of motor vehicle fuel or aircraft fuel between terminal storage facilities by pipeline or marine transport.

(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;

(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;

(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; or

(d) Acquires title to or possession of motor vehicle fuels or aircraft fuels in this state and exports the product out of this state.

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

(8) "Distribution" means, in addition to its ordinary meaning, the delivery of motor vehicle fuel or aircraft fuel by a dealer 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 whether or not the service station, tank or storage facility is owned, operated or controlled by the dealer.

(9) "First sale, use or distribution of motor vehicle fuel or aircraft fuel" means the first withdrawal, other than by bulk transfer, of motor vehicle fuel or aircraft fuel from terminal storage facilities for sale, use or distribution. "First sale, use or distribution of motor vehicle fuel or aircraft fuel" also means the first sale, use or distribution of motor vehicle fuel or aircraft fuel after import into this state if the motor vehicle fuel or aircraft fuel is delivered other than to the terminal storage facilities of a licensed dealer.

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

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

(12) "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 division, is for purposes other than the propulsion of motor vehicles upon the highways of this state.

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

(14) "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 Department of Transportation.

(15) "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.

(16) "Terminal storage facility" means any fuel storage facility that has marine or pipeline access. [Amended by 1955 c.287 §19; 1955 c.730 §§1, 15; 1957 c.209 §1; 1959 c.505 §1; 1963 c.226 §1; 1987 c.610 §1; 1989 c.664 §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 engaging in the dealer's own name, or in the name of others, in the first 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 25th day of each calendar month, render a statement to the division of all motor vehicle fuel or aircraft fuel sold, used, distributed or so withdrawn by the dealer 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) Except as provided in ORS 319.270, pay a license tax computed on the basis of 22 cents per gallon on the first sale, use or distribution 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, used or distributed by a dealer, the license tax shall be computed on the basis of three cents per gallon of fuel so sold, used or distributed, except that when aircraft fuel usable in aircraft operated by turbine engines (turbo-prop or jet) is sold, used or distributed, 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 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, the dealer 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; 1967 c.463 §1; 1973 c.376 §1; 1977 c.293 §1; 1981 c.698 §1; 1983 c.727 §§1, 5; 1985 c.209 §12; 1987 c.610 §2; 1987 c.899 §§8, 10, 14; 1989 c.664 §2; 1989 c.865 §1; 1991 c.497 §6]

Note: The amendments to 319.020 by section 7, chapter 497, Oregon Laws 1991, take effect January 1, 1993. The text that is effective on and after January 1, 1993, is set forth for the user's convenience.

319.020. (1) Subject to subsections (2) to (4) of this section, in addition to the taxes otherwise provided for by law, every dealer engaging in the dealer's own name, or in the name of others, in the first 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 25th day of each calendar month, render a statement to the division of all motor vehicle fuel or aircraft fuel sold, used, distributed or so withdrawn by the dealer 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) Except as provided in ORS 319.270, pay a license tax computed on the basis of 24 cents per gallon on the first sale, use or distribution 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, used or distributed by a dealer, the license tax shall be computed on the basis of three cents per gallon of fuel so sold, used or distributed, except that when aircraft fuel usable in aircraft operated by turbine engines (turbo-prop or jet) is sold, used or distributed, 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 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, the dealer 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.

Note: Sections 13c and 24, chapter 752, Oregon Laws 1991, provide:

Sec. 13c. Reduction in tax for ethanol-blended fuel. (1) From January 1, 1992, to December 31, 1997, every dealer subject to ORS 319.020 shall pay a license tax that is five cents per gallon less than the rate set in ORS 319.020 on the first sale, use or distribution of ethanol-blended fuel sold, used, distributed or withdrawn in the manner and within the time provided for payment of the motor vehicle fuel tax under ORS 319.010 to 319.430. The amount due under this section shall be in lieu of the amount the dealer would otherwise be required to pay for such fuel under ORS 319.020. The dealer shall render a statement to the Motor Vehicles Division of all such fuel sold, used, distributed or withdrawn in the same manner as a statement is rendered for motor vehicle fuel under ORS 319.020.

(2) As used in this section, "ethanol-blended fuel" means a motor vehicle fuel that is a mixture of at least 10 percent ethanol.

(3) In enacting this section, the Legislative Assembly intends to provide an appropriate incentive for the development of a system of manufacture and distribution for ethanol-blended motor vehicle fuels in this state without causing a large reduction in the revenues of the Highway Fund. The Department of Transportation shall report each biennium to the Legislative Assembly on the effect of this incentive on Highway Fund revenues. In any report in which the Department of Transportation finds that the effect of this incentive on Highway Fund revenues has been more than one percent of the amount collected from taxes imposed by ORS 319.020 and 319.530, the Department of Transportation shall make recommendations to the Legislative Assembly for amendments to this section so that its projected

effect on such revenues in the following biennium does not exceed one percent. [1991 c.752 §13c]

Sec. 24. Section 13c of this Act is repealed on January 1, 1998. [1991 c.752 §24]

319.025 Underground storage tank assessment. (1) Except as provided in subsection (3) of this section, each dealer or person responsible for payment of taxes imposed under ORS 319.020 to 319.430 shall collect an underground storage tank assessment from persons taking delivery of motor vehicle fuel intended for resale from an underground storage tank. The underground storage tank assessment shall be remitted to the Motor Vehicles Division in the manner and within the time provided in ORS 319.010 to 319.430.

(2)(a) The amount of underground storage tank assessment under subsection (1) of this section shall be:

(A) One and two-tenths cents per gallon for motor vehicle fuel deposited in an underground storage tank for temporary storage from which the fuel will later be resold and deposited in underground storage tanks for either resale to the public or resale from nonretail facilities as defined ORS 480.310 for dispensing into a motor vehicle; or

(B) One and one-tenth cents per gallon for motor vehicle fuel deposited in an underground storage tank for either resale to the public or resale from nonretail facilities as defined in ORS 480.310 for dispensing into a motor vehicle.

(b) In accordance with rules of the Motor Vehicles Division, the person taking delivery of motor vehicle fuel from a dealer shall be responsible for informing the dealer whether the delivery is to be assessed at the rate of one and two-tenths or one and one-tenth cents per gallon according to the schedule and criteria established in paragraph (a) of this subsection.

(3) If the intended use of the motor vehicle fuel is for other than resale from an underground storage tank, the motor vehicle fuel is exempt from the underground storage tank assessment. To avoid being charged the assessment in subsection (1) of this section, the person taking delivery of the motor vehicle fuel shall verify the exemption to the dealer. The verification may be in the form of a separate account with the dealer for which the person taking delivery certifies that all transactions charged to this account will be motor fuel deliveries for purposes other than resale from an underground storage tank. The person taking delivery may request a credit or refund from the dealer by verifying the exemption to the dealer within 90 days pursuant to rules adopted by the Motor Vehicles Division. The person taking delivery is responsible for paying the assessment to the Motor Vehicles Division if verification to the dealer is fraudulent or contrary to division rules.

(4) The underground storage tank assessment imposed under subsection (1) of this section shall be transferred upon certification of the Motor Vehicles Division to the State Treasurer, who shall credit the amount to the Underground Storage Tank Compliance and Corrective Action Fund created under ORS 466.791.

(5) The Motor Vehicles Division may prescribe rules as necessary for the administration of this section. [1991 c.863 §18]

Note: 319.025 was added to and made a part of ORS 319.010 to 319.430 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

Note: Sections 19, 20, 21 and 71, chapter 863, Oregon Laws 1991, provide:

Sec. 19. (1) Section 18 of this 1991 Act [319.025] takes effect on October 1, 1991.

(2) Moneys from the underground storage tank assessments imposed by section 18 of this 1991 Act that are due and owing but not yet collected or distributed on July 1, 1999, shall be used for the purposes specified in section 18 of this 1991 Act. [1991 c.863 §19]

Sec. 20. Effect of assessment under ORS 319.025. (1) It is the intent of the Legislative Assembly that funds assessed pursuant to section 18 of this Act [319.025] are not subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution.

(2)(a) Jurisdiction to determine whether section 18 of this Act imposes a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil, natural gas or motor vehicle fuel or levied on the ownership of oil or natural gas that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution is conferred upon the Supreme Court. A petition for review shall be filed within 30 days only after the effective date of this Act [September 29, 1991]. Any person interested in or affected or aggrieved by section 18 of this Act may petition for judicial review. The petition shall state the facts showing how the petitioner is interested, affected or aggrieved, and the ground upon which the petition is based. The Supreme Court shall give priority on its docket to a petition for review filed under this subsection. Filing of a petition shall stay the operation of section 18 of this Act.

(b) Judicial review under paragraph (a) of this subsection shall be limited to:

(A) The provisions of this Act authorizing the imposition of the fee; and

(B) The legislative history and any supporting documents related to section 2, Article VIII or section 3a, Article IX of the Oregon Constitution.

(c) The court may declare the provisions of section 18 of this Act invalid if the court finds that the provisions violate constitutional provisions. [1991 c.863 §20]

Sec. 21. If section 18 of this Act [319.025] or any part thereof is judicially declared to impose a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil, natural gas or motor vehicle fuel or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution,

sections 18 and 19 of this Act are repealed. [1991 c.863 §21]

Sec. 71. Section 18 of this Act [319.025] is repealed July 1, 1999. [1991 c.863 §71]

Note: See note under 466.835.

319.030 License required to be dealer in motor vehicle fuel. No dealer shall sell, use or distribute any motor vehicle fuel until the dealer 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 division 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 division.

(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 division shall issue to the dealer a license in such form as the division 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 division 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 division must require the dealer to file with the division, in such form as shall be prepared by the division, a bond duly executed by the dealer as principal with a corporate surety authorized to transact business in this state. 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 319.990 (1) to (3), including the payment of all taxes, penalties and other obligations of the dealer, arising out of ORS 319.010 to 319.430 and 319.990 (1) to (3).

(2) The total amount of the bond or bonds required of any dealer shall be fixed by the division and may be increased or reduced by the division 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 the estimated monthly license tax, determined in the manner the division 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. [Amended by 1967 c.359 §690]

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 division 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 division.

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 division 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 division 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 division forthwith shall cancel the dealer's license.

319.080 Additional bond or deposit. The division 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 division, the division forthwith shall cancel the license of the dealer.

319.090 Immediate collection of tax and interest where dealer fails to secure license; waiver; 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) Except as otherwise provided in this subsection, the division shall proceed forthwith to determine, from the best available sources, the amount of such tax, and it shall immediately assess the tax and interest 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. The division may waive all or part of a penalty imposed under this subsection if the division determines that a violation of the requirement under this section to file the certificate and bond or to secure the license was due to reasonable cause and without intent to avoid payment of the tax. In any suit or proceeding to collect such tax, interest or penalty, the certificate is prima facie evidence that the dealer therein named is indebted to the State of Oregon in the amount of the tax, interest and penalty therein stated.

(3) Any tax, interest 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 division. [Amended by 1981 c.396 §1; 1989 c.664 §3]

319.100 Revocation of license. The division shall revoke the license of any dealer refusing or neglecting to comply with any provision of ORS 319.010 to 319.430. The division shall mail by certified mail addressed to such dealer at the last-known address appearing on the files of the division, 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. [1989 c.664 §4]

319.110 Cancellation of license on request of dealer or when licensee no longer a dealer. (1) The division 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 division ascertains and finds that the person to whom a license has been issued is no longer engaged in the business of a dealer, the division 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. Except as otherwise provided in ORS 319.180 and 319.200, 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. [Amended by 1967 c.54 §1]

319.125 Change of ownership; cancellation of license. A licensed dealer who has a change of ownership shall notify the division immediately of the change. Upon notification, the division shall immediately cancel the motor vehicle fuel dealer license of the dealer. No license may be issued to any successor of the dealer until the successor completes an application and certificate and supplies the division with an adequate bond. For purposes of this section:

(1) In the case of a corporation with more than 100 stockholders, transfer of stock in normal trading is not considered a change in ownership.

(2) In the case of a corporation with 100 or fewer stockholders, transfer of less than 50 percent of the stock in any period of 12 consecutive months is not considered a change in ownership. [1987 c.610 §21]

Note: 319.125 was added to and made a part of 319.010 to 319.430 but was not added to any smaller series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

319.130 [Repealed by 1987 c.610 §23]

319.140 [Amended by 1959 c.505 §3; 1987 c.158 §50a; 1987 c.610 §3; repealed by 1989 c.664 §6]

319.150 [Repealed by 1989 c.664 §6]

319.160 [Amended by 1957 c.209 §3; 1959 c.505 §4; 1967 c.359 §691; 1987 c.610 §4; repealed by 1989 c.664 §6]

319.170 [Amended by 1987 c.610 §5; repealed by 1989 c.664 §6]

319.180 Payment of tax; delinquency penalty; interest rates; collection of delinquent payments. (1) The license tax imposed by ORS 319.020 shall be paid on or before the 25th day of each month to the division which, upon request, shall receipt the dealer 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 division 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. Penalties imposed by this section shall not apply when the penalty provided in ORS 319.090 has been assessed and paid.

(5)(a) If the license tax imposed by ORS 319.020 is not paid as required by subsection (1) of this section, interest shall be charged at the rate of .0329 percent per day until the tax and interest have been paid in full.

(b) If the license tax imposed by ORS 319.020 is overpaid, the division may credit interest to the account of the taxpayer in the amount of .0329 percent per day up to a maximum amount that equals any interest assessed against the taxpayer under paragraph (a) of this subsection in any given audit period.

(6) 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 319.990 (1) to (3), 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.

(7) No dealer who incurs a tax liability as provided for in ORS 319.010 to 319.430, shall knowingly and willfully fail to report and pay the same to the division as required by ORS 319.010 to 319.430. [Amended by 1955 c.730 §3; 1957 c.209 §4; 1959 c.505 §5; 1963 c.226 §2; 1967 c.54 §2; 1979 c.344 §4; 1987 c.610 §6; 1989 c.664 §5]

319.190 Monthly statement of dealer; penalty. (1) Every dealer in motor vehicle fuel shall render to the division, on or before the 25th day of each month, on forms prescribed, prepared and furnished by the division, a signed statement of the number of gallons of motor vehicle fuel sold, distributed or used by the dealer 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.

(2) The signed statement filed with the division as required by this section is a public record. All other documents, including supporting schedules and information received from other taxing jurisdictions and entities, shall be kept confidential and exempt from public inspection except that such information may be shared with tax collecting entities in other jurisdictions on the condition that the receiving jurisdiction agrees to keep such information confidential. If a statement is not received on or before the 25th day of each month, a penalty shall be assessed pursuant to ORS 319.180 or, if the division determines that no tax is due, a penalty of $25 shall be assessed. [Amended by 1955 c.730 §4; 1957 c.209 §5; 1987 c.610 §7]

319.200 Assessing tax and penalty where dealer fails to report. If any dealer, except one subject to ORS 319.090, fails to file the report required by ORS 319.190, the division shall proceed forthwith to determine from the best available source the amount of motor vehicle fuel sold, distributed or used by such dealer for the period unreported, and such determination shall be prima facie evidence of the amount of such fuel sold, distributed or used. The division 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 division showing the amount of taxes, penalties, interest and costs unpaid by any dealer and that the same are due and unpaid to the state is prima facie evidence of the facts as shown. [Amended by 1967 c.54 §3; 1987 c.610 §8]

319.210 Billing purchasers. Bills shall be rendered to all purchasers of motor vehicle fuel by dealers in motor vehicle fuel. The bills shall separately state and describe to the satisfaction of the division the different products shipped thereunder and shall be serially numbered except where other sales invoice controls acceptable to the division are maintained. [Amended by 1955 c.730 §5; 1987 c.610 §9]

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 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 in motor vehicle fuel. [Amended by 1955 c.730 §6; 1987 c.610 §10]

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 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

(b) Sold by a dealer 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 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 shall be required to report such exports and sales to the division 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 equipment, every dealer must execute and file with the division an export certificate in such form as shall be prescribed, prepared and furnished by the division, 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 division 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 division 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 division 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, except that a refund of the tax may be paid on such fuel as provided in ORS 319.280 (1)(d).

(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 division and the dealer from whom the motor vehicle fuel was originally purchased of the person's act.

(5) No dealer 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 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 division. 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; 1963 c.257 §1; 1987 c.610 §11]

319.250 Certain sales to Armed Forces exempted; reports. The license tax imposed by ORS 319.020 shall not be imposed on any aircraft or motor vehicle fuel sold to the

Armed Forces of the United States for use in ships, aircraft or for export from this state; but every dealer shall be required to report such sales to the division 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; 1961 c.43 §1; 1987 c.610 §12]

319.260 Fuel in vehicles coming into or leaving state not taxed. Any person coming into or leaving Oregon in a motor vehicle may transport in the fuel tank of such vehicle motor vehicle fuel for the purpose of operating such motor vehicle, without complying with any of the provisions imposed upon dealers by ORS 319.010 to 319.430. However, if 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. [Amended by 1987 c.610 §12a]

319.270 Fuel sold or distributed to dealers. (1) Notwithstanding ORS 319.020, if the first sale, use or distribution of motor vehicle fuel or aircraft fuel is from one licensed dealer to another licensed dealer, the selling or distributing dealer is not required to pay the license tax imposed by ORS 319.020. When the purchasing or receiving dealer first sells, uses or distributes the fuel, that dealer shall pay the license tax regardless of whether the sale, use or distribution is to another licensed dealer.

(2) A dealer who renders monthly statements to the division 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. [Amended by 1987 c.610 §13]

319.275 Liability for assessments, taxes, interest and penalties when person importing fuel does not hold license. (1) A person who is not a licensed dealer shall not accept or receive motor vehicle or aircraft fuel in this state from a person who imports motor vehicle or aircraft fuel who does not hold a valid motor vehicle fuel dealer license in this state. If a person who is not a licensed dealer accepts or receives motor vehicle fuel or aircraft fuel from a person who imports motor vehicle fuel or aircraft fuel and does not hold a valid motor vehicle fuel dealer license in this state, the purchaser or receiver shall be liable for all assessments, taxes, interest and penalties contained in ORS 319.010 to 319.430.

(2) A licensed dealer who accepts or receives motor vehicle fuel or aircraft fuel in this state from a person who imports motor vehicle or aircraft fuel who does not hold a valid dealer license in this state shall pay the tax imposed by ORS 319.020 to the division upon the first sale, use or distribution of the motor vehicle fuel or aircraft fuel. [1987 c.610 §22; 1991 c.863 §18a]

Note: 319.275 was added to and made a part of 319.010 to 319.430 but was not added to any smaller series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Sections 21a, 60 and 66, chapter 863, Oregon Laws 1991, provide:

Sec. 21a. Effect of ORS 319.025 on ORS 319.275. If section 18 of this Act [319.025] or any part thereof is judicially declared to impose a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil, natural gas or motor vehicle fuel or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution, ORS 319.275, as amended by section 18a of this Act is further amended to read:

319.275. (1) A person who is not a licensed dealer shall not accept or receive motor vehicle or aircraft fuel in this state from a person who imports motor vehicle or aircraft fuel who does not hold a valid motor vehicle fuel dealer license in this state. If a person who is not a licensed dealer accepts or receives motor vehicle fuel or aircraft fuel from a person who imports motor vehicle fuel or aircraft fuel and does not hold a valid motor vehicle fuel dealer license in this state, the purchaser or receiver shall be liable for all taxes, interest and penalties contained in ORS 319.010 to 319.430.

(2) A licensed dealer who accepts or receives motor vehicle fuel or aircraft fuel in this state from a person who imports motor vehicle or aircraft fuel who does not hold a valid dealer license in this state shall pay the tax imposed by ORS 319.020 to the division upon the first sale, use or distribution of the motor vehicle fuel or aircraft fuel. [1991 c.863 §21a]

Sec. 60. ORS 319.275, as amended by section 18a of this Act, is further amended to read:

319.275. (1) A person who is not a licensed dealer shall not accept or receive motor vehicle or aircraft fuel in this state from a person who imports motor vehicle or aircraft fuel who does not hold a valid motor vehicle fuel dealer license in this state. If a person who is not a licensed dealer accepts or receives motor vehicle fuel or aircraft fuel from a person who imports motor vehicle fuel or aircraft fuel and does not hold a valid motor vehicle fuel dealer license in this state, the purchaser or receiver shall be liable for all taxes, interest and penalties contained in ORS 319.010 to 319.430.

(2) A licensed dealer who accepts or receives motor vehicle fuel or aircraft fuel in this state from a person who imports motor vehicle or aircraft fuel who does not hold a valid dealer license in this state shall pay the tax imposed by ORS 319.020 to the division upon the first sale, use or distribution of the motor vehicle fuel or aircraft fuel. [1991 c.863 §60]

Sec. 66. The amendments to ORS 319.275 by section 60 of this Act become operative on July 1, 1999. [1991 c.863 §66]

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, 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 a stationary gas engine, a tractor or a motor boat, if the motor boat is used for commercial purposes at any time during the period for which the refund is claimed; 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 from this state, in containers other than fuel supply tanks of motor vehicles; or

(d) Purchased and exported such fuel in the fuel supply tank of a motor vehicle and has used such fuel to operate the vehicle upon the highways of another state, if the user has paid to the other state a similar motor vehicle fuel tax on the same fuel, or has paid any other highway use tax the rate for which is increased because such fuel was not purchased in, and the tax thereon paid, to such state.

(2) When a motor vehicle with auxiliary equipment uses fuel and there is no auxiliary motor for such equipment or separate tank for such a motor, a refund may be claimed and allowed as provided by subsection (4) of this section, except as otherwise provided by this subsection, without the necessity of furnishing proof of the amount of fuel used in the operation of the auxiliary equipment. The person claiming the refund may present to the division a statement of the claim and be allowed a refund as follows:

(a) For fuel used in pumping aircraft fuel, motor vehicle fuel, fuel or heating oils or other petroleum products by a power take-off unit on a delivery truck, refund shall be allowed claimant for tax paid on fuel purchased at the rate of three-fourths of one gallon for each 1,000 gallons of petroleum products delivered.

(b) For fuel used in operating a power take-off unit on a cement mixer truck or on a garbage truck, claimant shall be allowed a refund of 25 percent of the tax paid on all fuel used in such a truck.

(3) When a person purchases and uses motor vehicle fuel in a vehicle equipped with a power take-off unit, a refund may be claimed for fuel used to operate the power take-off unit provided the vehicle is equipped with a metering device approved by the division and designed to operate only while the vehicle is stationary and the parking brake is engaged; the quantity of fuel measured by the metering device shall be presumed to be the quantity of fuel consumed by the operation of the power take-off unit.

(4) Before any such refund may be granted, the person claiming such refund must present to the division a statement, accompanied by the original invoices showing such purchases; provided that in lieu of original invoices, refunds submitted under paragraph (d) of subsection (1) of this section shall be accompanied by information showing source of the fuel used and evidence of payment of tax to the state in which the fuel was used. The statement shall be made over the signature of the claimant, and shall state the total amount of such fuel for which the claimant is entitled to be reimbursed under subsection (1) of this section. The division upon the presentation of the statement and invoices, or other required documents, 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; 1963 c.257 §2; 1969 c.465 §1; 1971 c.163 §1; 1973 c.135 §1; 1985 c.152 §1]

319.290 Limitation on applications for refunds. Applications for refunds made under ORS 319.280, 319.320 and 319.330 must be filed with the division before the expiration of 15 months from the date of purchase or invoice, except that unused fuel reported as an ending inventory on any claim may be included in a subsequent claim if presented not later than 15 months from the filing date of the claim which established the inventory. All applications for refunds based upon exportation of motor vehicle fuel from this state in the fuel supply tank of a motor vehicle must be filed with the division before the expiration of 15 months from the last day of the month in which the fuel was used, or before the expiration of 15 months from the date of an assessment for unpaid tax by the state in which the fuel was used. [Amended by 1955 c.730 §9; 1963 c.257 §3; 1979 c.344 §5]

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 division.

(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 division 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 division may require any person who makes claim for refund of tax upon motor vehicle fuel to furnish a statement, under oath, giving the 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 division may require.

(2) The division 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 division 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 division 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 or private property. (1) Upon compliance with subsection (2) or (3) of this section the division shall refund, in the manner provided in subsection (2) or (3) of this section, the tax on motor vehicle fuel that is used in the operation of a motor vehicle:

(a) By any person on any road, thoroughfare or property in private ownership.

(b) By any person on any road, thoroughfare or property, other than a state highway, county road or city street, for the removal of forest products, as defined in ORS 321.005, or the products of such forest products converted to a form other than logs at or near the harvesting site, or for the construction or maintenance of the road, thoroughfare or property, pursuant to a written agreement or permit authorizing the use, construction or maintenance of the road, thoroughfare or property, with or by:

(A) An agency of the United States;

(B) The State Board of Forestry;

(C) The State Forester; or

(D) A licensee of an agency named in subparagraph (A), (B) or (C) of this paragraph.

(c) By an agency of the United States or of this state or of any county, city or port of this state on any road, thoroughfare or property, other than a state highway, county road or city street.

(d) By any person on any county road for the removal of forest products, as defined in ORS 321.005, or the products of such forest products converted to a form other than logs at or near the harvesting site, if:

(A) The use of the county road is pursuant to a written agreement entered into with, or to a permit issued by, the State Board of Forestry, the State Forester or an agency of the United States, authorizing such person to use such road and requiring such person to pay for or to perform the construction or maintenance of the county road;

(B) The board, officer or agency that entered into the agreement or granted the permit, by contract with the county court or board of county commissioners, has assumed the responsibility for the construction or maintenance of such county road; and

(C) Copies of the agreements or permits required by subparagraphs (A) and (B) of this paragraph are filed with the division.

(2) Except for a farmer subject to subsection (3) of this section, the person or agency, as the case may be, 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 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 the person or agency, as the case may be, 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 division 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 division, it shall cause the refund of tax to be paid to the claimant in like manner as provided for paying of other refund claims.

(3) A farmer who has paid any tax on motor vehicle fuels levied or directed to be paid, as provided in ORS 319.010 to 319.430, is entitled to claim a refund of the tax paid on such fuels used in farming operations in the operation of any motor vehicle on any road, thoroughfare or property in private ownership. To be eligible to claim such refund a farmer shall maintain in such form

and in such detail as the division may prescribe and require, a record, supported by purchase invoices, of all such motor vehicle fuel purchased (including fuel purchased to operate any motor vehicle on the highway) and, for each and every motor vehicle operated on the highway, a record of all fuel used and of all miles traveled on the highway. Whenever any such claim is received and approved by the division, it shall cause the refund of tax to be paid to the claimant in like manner as provided for paying of other refund claims.

(4) As used in subsections (2) and (3) of this section, "farmer" includes any person who manages or conducts a farm for the production of livestock or crops but does not include a person who manages or conducts a farm for the production of forest products, as defined in ORS 321.005, or the products of such forest products converted to a form other than logs at or near the harvesting site, or of forest trees unless the production of such forest products or forest trees is only incidental to the primary purpose of the farming operation. [Amended by 1961 c.368 §1; 1965 c.64 §1; 1965 c.425 §2; 1967 c.367 §2; 1979 c.344 §6]

319.330 Refunds to purchasers of fuel for aircraft. (1) Whenever any statement and invoices are presented to the division 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 division shall refund the tax paid, but only after deducting from the tax paid three cents 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 division that such aircraft fuel has been used solely in aircraft operations from a point within the State of Oregon directly to a point not within any state of the United States. The amount so deducted shall be paid on warrant of the Executive Department 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 division 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 not within any state of the United States, the division shall refund the tax paid. [Amended by 1959 c.505 §6; 1973 c.575 §1; 1977 c.293 §2]

319.340 [Amended by 1959 c.203 §1; repealed by 1979 c.344 §11]

319.350 [Amended by 1971 c.118 §1; repealed by 1979 c.344 §11]

319.360 [Amended by 1957 c.209 §8; repealed by 1979 c.344 §11]

319.370 Examinations and investigations; correcting reports and payments. The division, or its duly authorized agents, may make any examination of the accounts, records, stocks, facilities and equipment of dealers, 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 or other persons theretofore filed with the division 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, penalty or interest accruing thereon, the division may make such changes in subsequent reports and payments of such dealers or other persons, or may make such refunds, as may be necessary to correct the errors disclosed by its examinations or investigations. [Amended by 1987 c.610 §14]

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 taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a dealer 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 within three years from the date upon which such additional taxes become due. [1955 c.730 §14; 1987 c.610 §15]

319.380 Examining books and accounts of carrier of motor vehicle fuel. The division 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 in motor vehicle fuel shall keep a record in such form as may be prescribed by the division 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 division or its deputies or other officers duly authorized by the division. 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 division 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, provided such other state, territory, country or Federal Government furnishes like information to this state. [Amended by 1955 c.730 §11; 1987 c.610 §16]

319.400 Records to be kept three years. Every dealer 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, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the division. [Amended by 1955 c.730 §12; 1987 c.610 §17]

319.410 Disposition of tax moneys. (1) The division shall promptly turn over the license tax to the State Treasurer, as other receipts of the division which shall be disposed of as provided in ORS 802.110.

(2) The revenue from the license tax collected from the use, sale or distribution of aircraft fuel as imposed by ORS 319.020 (2) shall be transferred upon certification of the division 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 amount hereby is appropriated for such purpose. [Amended by 1955 c.287 §20; 1961 c.146 §2; 1963 c.226 §3; 1969 c.70 §1; 1983 c.338 §909]

319.415 Estimate of tax on fuel used for boats; transfer to Boating Safety, Law Enforcement and Facility Account; use. (1) On or before July 15, 1987, and on or before July 15 of each year thereafter, the Executive Department, after consultation with the Motor Vehicles Division and the State Marine Board, shall determine as accurately as possible the amount of the motor vehicle fuel tax imposed under ORS 319.010 to 319.430 during the preceding fiscal year with respect to fuel purchased and used to operate or propel motor boats. The amount determined shall be reduced by the amount of any refunds for motor boats used for commercial purposes actually paid during the preceding year on account of ORS 319.280 (1)(a).

(2) The Executive Department shall certify the amount of the estimate made under subsection (1) of this section, as reduced by refunds, to the Motor Vehicles Division, to the State Marine Board and to the State Treasurer. Thereupon, that amount shall be transferred from the Motor Vehicles Division Suspense Account to the Boating Safety, Law Enforcement and Facility Account created under ORS 830.140, and is continuously appropriated to the State Marine Board for the purposes for which the moneys in the Boating Safety, Law Enforcement and Facility Account are appropriated. [1985 c.152 §4]

319.417 Estimate of tax on fuel used in aircraft; transfer to State Aeronautic Account; use. (1) On or after October 3, 1989, and on or before July 15 of each year thereafter, the Executive Department, after consultation with the Aeronautics Division and the Motor Vehicles Division shall estimate, using a methodology approved by the Oregon Transportation Commission, the amount of the motor vehicle fuel tax imposed under ORS 319.010 to 319.430 during the preceding fiscal year with respect to motor vehicle fuel purchased and used in operating aircraft engines and upon which the full tax for motor vehicle fuel has been paid. The estimate shall be reduced by the amount of any refunds actually paid on motor vehicle fuel, excluding those paid on aviation gasoline or jet fuel, during the preceding fiscal year pursuant to ORS 319.330 (1).

(2) The Executive Department shall certify the amount of the estimate made under subsection (1) of this section to the Aeronautics Division, to the Motor Vehicles Division and to the State Treasurer. Thereupon, the amount of the estimate shall be transferred from the Motor Vehicles Division Suspense Account to the State Aeronautic Account and is continuously appropriated to the Aeronautics Division to carry out the purposes of ORS chapters 835 and 836. [1989 c.101 §2]

Note: 319.417 was added to and made a part of 319.010 to 319.430 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

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.

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) "Combined weight" means the total empty weight of all vehicles in a combination plus the total weight of the load carried on that combination of vehicles.

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

(3) "Division" means the Motor Vehicles Division of the Department of Transportation.

(4) "Fuel" means any combustible gas, liquid or material of a kind used for the generation of power to propel a motor vehicle on the highways except motor vehicle fuel as defined in ORS 319.010.

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

(6) "Light weight" means the weight of a vehicle when fully equipped for moving over the highway.

(7) "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.

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

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

(10) "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.

(11) "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; 1977 c.429 §1; 1981 c.703 §1; 1989 c.992 §24a; 1991 c.284 §5]

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 22 cents per gallon on the use of fuel in a motor vehicle. One hundred cubic feet of fuel used or sold in a gaseous state, measured at 14.73 pounds per square inch of pressure at 60 degrees Fahrenheit is taxable at the same rate as a gallon of liquid fuel. [Amended by 1959 c.188 §2; 1967 c.463 §2; 1981 c.698 §2; 1981 c.703 §2; 1983 c.727 §§2, 6; 1985 c.209 §13; 1987 c.899 §§9, 11, 15; 1989 c.865 §2; 1991 c.497 §8]

Note: The amendments to 319.530 by section 9, chapter 497, Oregon Laws 1991, take effect January 1, 1993. The text that is effective on and after January 1, 1993, is set forth for the user's convenience.

319.530. To compensate this state partially for the use of its highways, an excise tax hereby is imposed at the rate of 24 cents per gallon on the use of fuel in a motor vehicle. One hundred cubic feet of fuel used or sold in a gaseous state, measured at 14.73 pounds per square inch of pressure at 60 degrees Fahrenheit is taxable at the same rate as a gallon of liquid fuel.

319.540 [Repealed by 1959 c.188 §44]

319.550 User's license required to use fuel; exceptions. No person shall use fuel in a motor vehicle in this state unless the person holds a valid user's license, except that:

(1) 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, the nonresident pays to a seller, at the time of the sale, the tax provided in ORS 319.530.

(2) No user's license is required for a person who uses fuel in a motor vehicle with a combined weight of 26,000 pounds or less if, for all fuel used in a motor vehicle in this state, the person pays to a seller, at the time of the sale, the tax provided in ORS 319.530.

(3) No user's license is required for a person who uses fuel as described in ORS 319.520 (4) in the vehicles specified in subsection (4) of this section if the person pays to a seller, at the time of the sale, the tax provided in ORS 319.530.

(4) Subsection (3) of this section applies to the following vehicles:

(a) Motor homes as defined in ORS 801.350.

(b) Recreational vehicles as defined in ORS 446.003. [Amended by 1959 c.188 §3; 1977 c.429 §2; 1985 c.265 §1; 1989 c.992 §25; 1991 c.284 §8]

319.560 Application for and issuance of user's license. A user of fuel in a motor vehicle required to be licensed under ORS 319.550 shall apply to the division for a user's license upon forms prescribed by the division and shall set forth such information as the division may require. On receipt of the application, the division shall issue to the

applicant a user's license without charge authorizing the applicant to use fuel in a motor vehicle in 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; 1977 c.429 §3]

319.570 Faithful performance bond. (1) At the time of filing the application for a user's license, the division may require the user of fuel in a motor vehicle to file with the division, in such form as shall be prepared by the division, a bond duly executed by the user as principal with a corporate surety authorized to transact business in this state. 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 319.990 (4).

(2) The total amount of the bond or bonds required of any user of fuel in a motor vehicle shall be fixed by the division and may be increased or reduced by the division 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 the estimated monthly tax of the user, determined in such manner as the division 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; 1967 c.359 §692]

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 division, under such terms and conditions as the division 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 division. The division 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 division 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 division 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 division 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 division 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. If any person required to be licensed under ORS 319.550 uses fuel in a motor vehicle in this state at a time when the person does not hold a valid user's license or at a time when the person does not display a valid authorization issued by the Public Utility Commission 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; 1977 c.429 §4]

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 the person holds a valid seller's license.

(2) A person shall apply to the division for a seller's license upon forms prescribed, prepared and furnished by the division. 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 division may require an applicant for a seller's license to file with the division 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 division may revoke the license of a user or seller if the user or seller 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 division shall serve written notice on the person ordering the person to appear before the division 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 ORS 319.760 (3).

(2) A new license shall not be issued to a person whose license has been revoked unless it appears to the satisfaction of the division 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, the person shall immediately request in writing that the division cancel the license. On receipt of the request the division shall cancel the license.

319.650 Notifying division 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 division.

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 division 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 division so requests, shall return to the division 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 or user's emblem. (1) The seller of fuel for use in a motor vehicle shall collect the tax provided by ORS 319.530 at the time the fuel is sold, unless the vehicle into which the seller delivers or places the fuel bears a valid permit issued by the Public Utility Commission of Oregon or a valid user's emblem issued by the division.

(2) The division shall supply each seller of fuel for use in a motor vehicle with a chart which sets forth the tax imposed on given quantities of fuel. [1959 c.188 §12; 1971 c.149 §1; 1977 c.429 §5]

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

319.671 When invoices required. (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 division may prescribe the form of the invoice. The invoice shall show:

(a) The seller's name and address;

(b) The date;

(c) The amount of the sale in gallons; and

(d) The name and address of the user.

(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 marker issued by the Public Utility Commission of Oregon;

(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 Commission of Oregon.

(3) Notwithstanding subsection (1) of this section, this section does not require any invoice to be prepared for any sale where fuel is delivered into the fuel tank of a vehicle described in this subsection unless the operator of the vehicle requests an invoice. If an invoice is prepared under this subsection, the name and address of a user is not required to be shown on the invoice for sales where the fuel is delivered into the fuel tanks of vehicles described in this subsection. This subsection applies to vehicles:

(a) That have a combined weight of 26,000 pounds or less; and

(b) For which the tax under ORS 319.530 must be paid at the time of sale under ORS 319.665. [1959 c.188 §13; 1981 c.433 §1; 1989 c.992 §26; 1991 c.284 §9]

319.675 Seller's report to division. Except as provided in ORS 319.692, the seller of fuel for use in a motor vehicle shall report to the division on or before the 20th 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 division may require. The division may prescribe the form of the report. [1959 c.188 §14; 1963 c.226 §6]

319.680 [Repealed by 1959 c.188 §44]

319.681 Payment of tax by seller. The seller of fuel for use in a motor vehicle shall remit to the division with each report required by ORS 319.675 all the tax due on the amount of fuel sold less four percent, which the seller shall retain. [1959 c.188 §15; 1977 c.429 §6]

319.690 Monthly report of user; remittance; credit against taxes; annual reports of certain users. (1) Except as provided in subsection (2) of this section and ORS 319.692, each user of fuel in a motor vehicle required to be licensed under ORS 319.550 shall, on or before the 20th day of each month, file with the division a report showing the amount of fuel used during the immediately preceding calendar month by the user and such other information as the division may require for the purposes of ORS 319.510 to 319.880. The reports shall be in the form prescribed by the division. Each report shall be accompanied by a remittance payable to the division 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 767.815 to 767.825. 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 ORS 319.831 (1).

(2) Each user of fuel in a motor vehicle with a light weight of less than 8,000 pounds required to be licensed under ORS 319.550 may file an annual report of all fuel used upon Oregon highways. The report for each calendar year shall be filed on or before March 1 of the year following and shall be accompanied by a remittance payable to the division of all the tax shown to be due and payable on the amount of fuel used. [Amended by 1959 c.188 §16; 1963 c.226 §7; 1971 c.149 §2; 1977 c.429 §7]

319.692 Quarterly reports if average monthly tax under $300; when annual reports authorized. (1) Whenever in the judgment of the Motor Vehicles Division the average monthly tax to be paid by a use fuel seller or user will be less than $300, the division may authorize the seller or user to file quarterly tax reports in lieu of the monthly tax reports required by ORS 319.675 and 319.690. The quarterly reports so authorized, and accompanying remittances as shown thereon to be due and payable, shall be filed on or before the due dates as follows: First quarter, April 20; second quarter, July 20; third quarter, October 20; fourth quarter, January 20. Any provisions of ORS 319.675 and 319.690 otherwise applicable to the filing of monthly reports and remittances shall be applicable to the quarterly filings.

(2) Whenever in the judgment of the Motor Vehicles Division the average annual tax to be paid by a use fuel seller or user will be less than $100, the division may authorize the seller or user to file annual tax reports in lieu of the monthly tax reports required by ORS 319.675 and 319.690. The annual reports authorized by this subsection, and accompanying remittances as shown on the reports to be due and payable, shall be filed on or before January 20 following the year for which the reports are filed. Any provisions of ORS 319.675 and 319.690 otherwise applicable to the filing of monthly reports and remittances shall be applicable to the annual filings. [1963 c.226 §5; 1985 c.265 §2; 1989 c.992 §27]

319.694 Penalty for delinquency in remitting tax; waiver; interest rates. (1) Except as provided in subsection (2) of this section, if any user or seller is delinquent in remitting the tax provided by ORS 319.530 on the date specified in ORS 319.690, 319.675, 319.681 or 319.692, 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.

(2) If the division determines that the delinquency was due to reasonable cause and without any intent to avoid payment, the penalty provided by subsection (1) of this section may be waived.

(3)(a) If the excise tax imposed by ORS 319.530 is not paid as required by ORS 319.690, 319.675, 319.681 or 319.692, interest shall be charged at the rate of .0329 percent per day until the tax and interest have been paid in full.

(b) If the excise tax imposed by ORS 319.530 is overpaid, the division may credit interest to the account of the taxpayer in the amount of .0329 percent per day up to a maximum amount that equals any interest assessed against the taxpayer under paragraph (a) of this subsection in any given audit period. [1959 c.188 §18; 1963 c.226 §8; 1971 c.149 §3; 1987 c.158 §51; 1987 c.610 §18]

319.697 Records required of sellers and users; alternative records for certain users. (1) Every user of fuel in a motor vehicle required to be licensed under ORS 319.550 shall keep a record of fuel used and be prepared to prove that all the tax due and pay-

able 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) In lieu of maintaining an actual record of fuel used, a user required to be licensed under ORS 319.550 who operates a motor vehicle with a light weight of less than 8,000 pounds may maintain an accurate record of miles operated upon Oregon highways. The gallons of taxable fuel used shall be computed by applying a reasonable miles per gallon figure to the Oregon miles operated. The division shall determine whether the miles per gallon figure is reasonable and its decision shall be final.

(3) 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 division. The division may specify the form of the seller's record.

(4) Every seller, and every user of fuel in a motor vehicle required to be licensed under ORS 319.550 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 division.

(5) The division or its authorized agent may examine every user's or seller's records and papers required to be preserved by subsection (4) of this section at any time during normal business hours. [1959 c.188 §§19, 20, 21, 22; 1971 c.149 §4; 1977 c.429 §8]

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 division. If a user or seller is delinquent in the payment of any obligation imposed under ORS 319.510 to 319.880, the division 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 division 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 division 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 division may proceed to collect the amount due from the user in the manner prescribed in this section.

(2) The division 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 enclosing it in an envelope addressed to the user at the address as it appears in the records of the division and, in the case of any person appearing of record to have an interest in the motor vehicle, addressed to the person at the 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 division 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 the receipt obtained therefor. If any person having an interest in or lien upon the motor vehicle has filed with the division prior to the sale notice of such interest or lien, the division 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 division shall deposit the excess with the State Treasurer as trustee for the user, the heirs, successors or assigns of the user.

319.740 Action by Attorney General to collect delinquency; certificate of division as evidence. (1) Whenever any user or seller is delinquent in the payment of any obligation under ORS 319.510 to 319.880, the division 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 division showing the delinquency is prima facie evidence of the amount of the obligation, of the delinquency thereof and of compliance by the division 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 division 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 division may assess the tax and penalty due based upon any information available to the division.

(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 division shall assess the tax and penalty due against the seller.

(3) The division 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 the address as it appears in the records of the division. [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 division shall make an estimate, based upon any information available to the division, 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 division shall give to the user or seller written notice of the assessment in the manner prescribed by ORS 319.760 (3). [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 and 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 division shall reconsider the assessment and, if requested in the 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 division may continue the hearing from time to time. The division 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 division, 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 ORS 319.760 (3). [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 division under ORS 319.630 or 319.790 may appeal therefrom to the circuit court of the county in which the person 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 al-

leged 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 division determines any amount of tax or penalty has been paid more than once or has been erroneously or illegally collected, the division shall credit such amount against any amounts then due from the user or seller under ORS 319.510 to 319.880 or 319.990 (4) and shall refund any balance to the user or seller, the successor, administrator or executor of the user or seller.

(2) A user or seller may claim a credit or refund for any amount of tax or penalty which the user or seller has paid more than once or which the user or seller 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 division within three years from the date of the payment or collection or, with respect to an assessment made under ORS 319.760 and 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 division shall serve notice of such action on the claimant. The service shall be made in the manner prescribed by ORS 319.760 (3). [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 or private property. (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, the user 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, thoroughfare or property, other than a state highway, county road or city street, for the removal of forest products, as defined in ORS 321.005, or the products of such forest products converted to a form other than logs at or near the harvesting site, or for the construction or maintenance of the road, thoroughfare or property, pursuant to a written agreement or permit authorizing the use, construction or maintenance of the road, thoroughfare or property, with or by:

(A) An agency of the United States;

(B) The State Board of Forestry;

(C) The State Forester; or

(D) A licensee of an agency named in subparagraph (A), (B) or (C) of this paragraph; or

(d) By an agency of the United States or of this state or of any county, city or port of this state on any road, thoroughfare or property, other than a state highway, county road or city street; or

(e) By any incorporated city or town of this state; or

(f) When used exclusively in the improvement, construction and maintenance of public highways by any county of this state or by any road assessment district formed under ORS 371.405 to 371.535; or

(g) Upon any county road for the removal of forest products as defined in ORS 321.005, or the products of such forest products converted to a form other than logs at or near the harvesting site, if:

(A) Such use upon the county road is pursuant to a written agreement entered into with, or to a permit issued by, the State Board of Forestry, the State Forester or an agency of the United States, authorizing such user to use such road and requiring such user to pay for or to perform the construction or maintenance of the county road;

(B) The board, officer or agency that entered into the agreement or granted the permit, by contract with the county court or board of county commissioners, has assumed the responsibility for the construction or maintenance of such county road; and

(C) Copies of the agreements or permits required by subparagraphs (A) and (B) of this paragraph are filed with the division.

(2) An application for a refund under subsection (1) of this section shall be filed with the division within 15 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 appli-

cant paid the use fuel tax directly to the division, the applicant shall indicate the source of the fuel and the date it was obtained.

(4) The division may require any person who applies for a refund provided by subsection (1) of this section to furnish a statement, under oath, giving the person's occupation, description of the machines or equipment in which the fuel was used, the place where used and such other information as the division may require. [1959 c.188 §§34, 35, 36(1), 1961 c 542 §1; 1963 c.257 §4; 1965 c.425 §3; 1967 c.367 §3; 1971 c.118 §2; 1979 c.344 §7]

319.835 Investigation of refund applications. The division 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 division 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 division hereby is charged with the enforcement of the provisions of ORS 319.510 to 319.880 and 319.990 (4), 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 319.990 (4) 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 division 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; 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 division may require.

(2) The division 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 division, 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 division 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 division under ORS 319.510 to 319.880 to which the person 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 Disposition of moneys. All money received by the division pursuant to ORS 319.510 to 319.880 shall be turned over promptly to the State Treasurer and shall be disposed of as provided in ORS 802.110. [Amended by 1955 c.287 §22; 1961 c.146 §3; 1969 c.70 §2; 1983 c.338 §910]

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 the person 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 ORS 319.180 (7) is theft of public money and, upon conviction, is punishable as provided in ORS 164.043 to 164.057.

(3) Violation of any provision of ORS 319.240 (4) and (5) is punishable, upon conviction, by a fine of not 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 319.125 and 319.190 to 319.430, 319.510 to 319.880 or this section. [Amended by 1959 c.188 §43; 1961 c.261 §3; 1971 c.743 §355; 1987 c.610 §19; 1987 c.907 §15]