Chapter 319A

1999 EDITION

Diesel Fuel Taxes

(Provisions relating to chapter 1060, Oregon Laws 1999 (diesel fuel taxes), are compiled as notes in ORS chapter 319A)

Note: Sections 1 to 41, 79 and 80, chapter 1060, Oregon Laws 1999, were referred to the people by referendum petition for their approval or rejection at the biennial primary election to be held throughout this state on May 16, 2000. If chapter 1060 is approved by the people, sections 1 to 41, 79 and 80, chapter 1060, Oregon Laws 1999, become operative March 1, 2001. See section 88, chapter 1060, Oregon Laws 1999, as amended by section 6, chapter 1075, Oregon Laws 1999, and section 112, chapter 1060, Oregon Laws 1999. If chapter 1060 is approved by the people, sections 1 to 41 and 79, chapter 1060, Oregon Laws 1999, are repealed January 1, 2006. See sections 1 and 3, chapter 1075, Oregon Laws 1999. Sections 1 to 41, 79 and 80, chapter 1060, Oregon Laws 1999, are set forth for the user's convenience.

Sec. 1. As used in sections 1 to 41 of this 1999 Act:

(1) “Accountable diesel fuel” means diesel fuel that is subject to the reporting requirements of sections 1 to 41 of this 1999 Act.

(2) “Blended diesel fuel” means accountable diesel fuel produced by blending that can be used to propel a diesel-engine motor vehicle.

(3) “Blender” means a person who engages in the process of blending.

(4) “Blending” means the mixing together of products that results in a product that is suitable or practical for use as a fuel in diesel engines. “Blending” does not mean the mixing that might occur in the process known as refining by the original refiner of crude petroleum. The commingling of products during transportation in a pipeline is not considered blending.

(5) “Bulk storage” means the placing of diesel fuel into a receptacle other than the fuel tank of a motor vehicle.

(6) “Bulk transfer” means a transfer of diesel fuel by pipeline or vessel.

(7) “Bulk transfer-terminal system” means the diesel fuel distribution system consisting of refineries, pipelines, vessels and terminals. Diesel fuel in a refinery, pipeline, vessel or terminal is in the bulk transfer-terminal system. Diesel fuel in the fuel tank of an engine or motor vehicle, or in a railcar, trailer, truck or other equipment suitable for ground transportation, is not in the bulk transfer-terminal system.

(8) “Department” means the Department of Transportation.

(9) “Diesel fuel” means any liquid that is commonly or commercially known, offered for sale or used as fuel in a diesel engine.

(10) “Direct delivery” means removal of accountable diesel fuel from a bulk storage facility to another destination by any mode of transportation in which the fuel reaches the destination without interim storage.

(11) “Director” means the Director of Transportation.

(12) “Distributor” means a person who acquires accountable diesel fuel from a supplier, distributor or licensee for subsequent sale and distribution.

(13) “Dyed diesel fuel user” means a person authorized under the Internal Revenue Code to operate a motor vehicle on the highway using diesel fuel that has been dyed in accordance with Internal Revenue Service requirements, in which the use is not exempt from the diesel fuel tax imposed under section 2 of this 1999 Act.

(14) “Evade” or “evasion” means to diminish or avoid the computation, assessment or payment of authorized taxes or fees through:

(a) An intentional false statement, misrepresentation of fact or other act of deception; or

(b) An intentional omission, failure to file a return or report, or other act of deception.

(15) “Export” means to deliver accountable diesel fuel to an out of state destination. Delivery of accountable diesel fuel out of state by or on behalf of a seller constitutes exporting by the seller. Delivery of accountable diesel fuel out of state by or on behalf of a purchaser constitutes exporting by the purchaser.

(16) “Exporter” means a person who exports accountable diesel fuel. If the exporter of record is acting as an agent,

the person for whom the agent acts is the exporter. If there is no exporter of record, the person who owns the fuel at the time of export is the exporter.

(17) “Import” means to deliver accountable diesel fuel into this state. Delivery of accountable diesel fuel into this state by or on behalf of a seller constitutes importing by the seller. Delivery of accountable diesel fuel into this state by or on behalf of a purchaser constitutes importing by the purchaser.

(18) “Importer” means a person who imports accountable diesel fuel. If the importer of record is acting as an agent, the person for whom the agent acts is the importer. If there is no importer of record, the person who owns the fuel at the time of import is the importer.

(19) “International fuel tax agreement licensee” means a diesel fuel user operating qualified motor vehicles in interstate commerce and licensed by the department under an international fuel tax agreement described in ORS 825.555.

(20) “Lessor” means a person:

(a) Whose principal business is the bona fide leasing or renting to the general public of motor vehicles, without drivers, for compensation; and

(b) Who maintains established places of business and whose lease and rental contracts require the motor vehicles to be returned to the established places of business.

(21) “Licensee” means a person holding a license issued under section 15 of this 1999 Act.

(22) “Motor vehicle” means a self-propelled vehicle, designed for operation upon land, that utilizes diesel fuel as the means of propulsion.

(23) “Person” means an individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, receiver, trustee, guardian or any other representative appointed by a court. “Person” also means a city, county or other political subdivision of the state. When applied to a partnership or association, “person” includes the partners or members of the partnership or association, in addition to the partnership or association itself. When applied to a limited liability company or a corporation, “person” includes the officers, agents or employees of the company or corporation in addition to the company or corporation itself.

(24) “Pipeline” means a fuel distribution system that moves fuel, in bulk, through a pipe, either from a refinery to a terminal or from a terminal to another terminal.

(25) “Position holder” means a person who holds the inventory position in diesel fuel, as reflected by the records of the terminal operator. A person holds the inventory position in diesel fuel if the person has a contractual agreement with the terminal operator for the use of bulk storage facilities and for services at a terminal with respect to diesel fuel. “Position holder” includes a terminal operator who owns diesel fuel in the operator's terminal.

(26) “Rack” means a mechanism for delivering diesel fuel from a refinery or terminal into a truck, trailer, railcar or other means of nonbulk transfer.

(27) “Refiner” means a person who owns, operates or otherwise controls a refinery.

(28) “Refinery” means a facility used to process crude oil, unfinished oil or other hydrocarbons into accountable diesel fuel.

(29) “Removal” means a physical transfer of diesel fuel other than by evaporation, loss or destruction.

(30) “Sale” means, in addition to its ordinary meaning, any exchange, gift or other disposition of accountable diesel fuel.

(31) “Supplier” means a person who owns and stores diesel fuel in a terminal facility or who refines and stores diesel fuel at a refinery.

(32) “Terminal” means a diesel fuel storage and distribution facility that has been assigned a terminal control number by the Internal Revenue Service, is supplied by pipeline or vessel, and from which accountable diesel fuel is removed at a rack.

(33) “Terminal operator” means a person who owns, operates or otherwise controls a terminal.

(34) “Two-party exchange” or “buy-sell agreement” means a transaction in which taxable diesel fuel is transferred from one licensed supplier to another licensed supplier, pursuant to an exchange agreement whereby the supplier that is the position holder agrees to deliver taxable diesel fuel to the other supplier or the other supplier's customer at the rack of the terminal where the delivering supplier is the position holder.

(35) “User” means a person who uses diesel fuel. [1999 c.1060 s.1]

Sec. 2. (1) There is levied and imposed upon diesel fuel a tax at the rate of 29 cents on each gallon of diesel fuel.

(2) The tax imposed by subsection (1) of this section is imposed when:

(a) Diesel fuel is removed from a terminal in this state if the diesel fuel is removed at the rack, unless the removal

is to a licensed exporter for direct delivery to a destination outside this state;

(b) Diesel fuel is removed from a refinery in this state if either of the following applies:

(A) The removal is by bulk transfer and the refiner or the owner of the diesel fuel immediately before the removal is not a licensee; or

(B) The removal is at the refinery rack unless the removal is to a licensed exporter for direct delivery to a destination outside this state;

(c) Diesel fuel enters into this state for sale, consumption, use or storage if either of the following applies:

(A) The entry is by bulk transfer and the importer is not a licensee; or

(B) The entry is not by bulk transfer;

(d) Diesel fuel is removed in this state to an unlicensed entity unless there was a prior taxable removal, entry or sale of the diesel fuel;

(e) Blended diesel fuel is removed or sold in this state by the blender of the fuel. The number of gallons of blended diesel fuel subject to tax is the difference between the total number of gallons of blended diesel fuel removed or sold and the number of gallons of previously taxed diesel fuel used to produce the blended diesel fuel; or

(f) Dyed diesel fuel is used on a highway, as authorized by the Internal Revenue Code, unless the use is exempt from the diesel fuel tax.

(3) The tax imposed by this section, if required to be collected by a licensee, is held in trust by the licensee until paid to the Department of Transportation. A person who fails to collect the tax imposed by this section, or who has collected the tax and fails to pay it to the department in the manner prescribed under sections 1 to 41 of this 1999 Act, is personally liable to the state for the amount of the tax. [1999 c.1060 s.2]

Sec. 3. The tax imposed under section 2 of this 1999 Act, if not previously imposed and paid, must be paid to the Department of Transportation by diesel fuel users and persons licensed under an international fuel tax agreement or other fuel tax reciprocity agreements entered into with the State of Oregon on the use of diesel fuel to operate motor vehicles on the highways of this state, unless the use is exempt from the tax under sections 1 to 41 of this 1999 Act. [1999 c.1060 s.3]

Sec. 4. (1) A position holder shall remit tax to the Department of Transportation on diesel fuel removed from a terminal as provided in section 2 of this 1999 Act. On a two-party exchange or buy-sell agreement between two suppliers, the receiving exchange partner or buyer becomes the position holder who shall remit the tax.

(2) A refiner shall remit tax to the department on diesel fuel removed from a refinery as provided in section 2 of this 1999 Act.

(3) An importer shall remit tax to the department on diesel fuel imported into this state as provided in section 2 of this 1999 Act.

(4) A blender shall remit tax to the department on the removal or sale of blended diesel fuel as provided in section 2 of this 1999 Act.

(5) A dyed diesel fuel user shall remit tax to the department on the use of dyed diesel fuel as provided in section 2 of this 1999 Act. [1999 c.1060 s.4]

Sec. 5. A terminal operator is jointly and severally liable for remitting the tax imposed under section 2 of this 1999 Act if, at the time of removal:

(1) The terminal operator is not a licensee;

(2) The position holder is a person other than the terminal operator and is not a licensee;

(3) The position holder has an expired Internal Revenue Service notification certificate issued under 26 C.F.R. part 48; or

(4) The terminal operator had reason to believe that information on the notification certificate was false. [1999 c.1060 s.5]

Sec. 6. A terminal operator is jointly and severally liable for remitting the tax imposed under section 2 of this 1999 Act if, in connection with the removal of diesel fuel that is not dyed in accordance with Internal Revenue Service requirements, the terminal operator provides a person with a bill of lading, shipping paper or similar document indicating that the diesel fuel is dyed in accordance with Internal Revenue Service requirements. [1999 c.1060 s.6]

Sec. 7. (1) A person may not operate or maintain a motor vehicle on a public highway of this state with dyed

diesel fuel in the fuel tank unless the use is authorized under the Internal Revenue Code and the person holds a valid dyed diesel fuel user license issued to the person by the Department of Transportation. The diesel fuel tax set forth in section 2 of this 1999 Act is imposed on users of dyed diesel fuel authorized under the Internal Revenue Code to operate motor vehicles on the highway using dyed diesel fuel, unless the use is exempt from the diesel fuel tax.

(2) Unless such use is expressly authorized under the Internal Revenue Code or sections 1 to 41 of this 1999 Act, a person who uses dyed diesel fuel in operating a motor vehicle on the public highways of this state is subject to a civil penalty of $10 for each gallon of dyed diesel fuel placed into the fuel tank of the motor vehicle, or $1,000, whichever is greater. The civil penalty shall be imposed in the manner provided by ORS 183.090 and shall be deposited in the State Highway Fund.

(3) For the purposes of enforcement of this section, members of the Oregon State Police, motor carrier enforcement officers and weighmasters may inspect, collect, analyze and secure samples of diesel fuel used in the operation of a motor vehicle on the public highways of this state to detect the presence of dye or other chemical compounds.

(4) The Department of Transportation shall, by July 1, 2000, develop and implement procedures for inspection, collection, analysis and storage of diesel fuel samples collected under subsection (3) of this section. [1999 c.1060 s.7]

Sec. 8. (1) Diesel fuel that is dyed satisfies the dyeing requirements of sections 1 to 41 of this 1999 Act if it meets the dyeing requirements of the Internal Revenue Service, including but not limited to requirements of type, dosage and timing.

(2) Notice is required with respect to use of dyed diesel fuel. The notice requirement of this subsection is satisfied if the notice meets notice requirements of regulations published by the Internal Revenue Service. [1999 c.1060 s.8]

Sec. 9. A diesel fuel supplier is entitled to a credit of the tax paid to the Department of Transportation on sales of diesel fuel for which the supplier received less than full consideration from or on behalf of the purchaser. The amount of consideration received shall be apportioned between the charges for the fuel and the tax for the fuel. The amount of the tax credit shall not exceed the amount of tax imposed under section 2 of this 1999 Act on such sales. If the supplier has taken a credit under this section, any amounts collected for application against the accounts on which the credit is based shall be apportioned between the charges for the fuel and the corresponding tax for the fuel and shall be reported on a subsequent return filed after such collection, and the amount of credit received by the supplier based upon the collected amount shall be returned to the department. If the credit has not been taken, the amount of the credit due to the supplier shall be adjusted by the department to reflect the decrease in the amount on which the claim is based. [1999 c.1060 s.9]

Sec. 10. A diesel fuel distributor, diesel fuel importer or diesel fuel blender, under rules adopted by the Department of Transportation, is entitled to a refund of the tax paid on the sales of diesel fuel for which less than full consideration has been received from or on behalf of the purchaser and that have been declared to be worthless accounts receivable. The amount of consideration received shall be apportioned between the charges for the fuel and the tax for the fuel. The amount of the tax refunded must not exceed the amount of tax paid under sections 1 to 41 of this 1999 Act by the distributor, importer or blender. If the distributor, importer or blender subsequently collects any amount for the account declared worthless, the amount collected shall be apportioned between the charges for the fuel and the corresponding tax for the fuel. The diesel fuel tax collected must be returned to the department. [1999 c.1060 s.10]

Sec. 11. (1) Unless a person holds a valid license issued by the Department of Transportation, the person may not engage in this state in the business of:

(a) Diesel fuel supplier;

(b) Diesel fuel distributor;

(c) Diesel fuel exporter;

(d) Diesel fuel importer;

(e) Diesel fuel blender;

(f) Dyed diesel fuel user; or

(g) International fuel tax agreement licensee.

(2) A person engaged in more than one kind of activity described in subsection (1) of this section for which a license is required must have a separate license for each activity, but a diesel fuel supplier is not required to obtain a separate license for any other activity for which a license is required.

(3) Diesel fuel users operating motor vehicles that have a combined weight of 26,000 pounds or less are not

required to be licensed. Diesel fuel users operating motor vehicles in interstate commerce that have two axles and a combined weight exceeding 26,000 pounds, or that have three or more axles regardless of weight, and diesel fuel users operating a combination of vehicles that has a combined weight exceeding 26,000 pounds, must comply with the licensing and reporting requirements of sections 1 to 41 of this 1999 Act. A copy of the license must be carried in each motor vehicle entering this state. As used in this subsection, "combined weight" has the meaning given in ORS 825.005. [1999 c.1060 s.11]

Sec. 12. (1) An out-of-state diesel fuel user who is not registered under the International Fuel Tax Agreement and who operates a motor vehicle in this state for commercial purposes shall apply to the Department of Transportation for a trip permit that shall be valid for a period of three consecutive days beginning and ending on the dates specified on the face of the issued permit. The permit is valid only for the motor vehicle for which it is issued and when the permit fee has been paid.

(2) Every trip permit shall identify the motor vehicle for which it is issued, be completed in its entirety and be signed and dated by the operator of the motor vehicle before operation of the motor vehicle on the public highways of this state. Alteration or correction of data on the permit such as dates, vehicle license number or vehicle identification number invalidates the permit.

(3) For each trip permit issued, the department shall collect a filing fee of $1, an administrative fee of $10 and an excise tax of $15. The fees and tax shall be in lieu of the diesel fuel tax otherwise assessable against the permit holder for importing and using diesel fuel in a motor vehicle on the public highways of this state and no report of mileage shall be required for that motor vehicle. The department may not issue a permit if:

(a) The applicant has outstanding fuel taxes, penalties or interest owing to this state;

(b) The applicant has had a diesel fuel license revoked for cause and the cause has not been removed; or

(c) The applicant is a licensee under an international fuel tax agreement authorized by ORS 825.555.

(4) Blank trip permits may be obtained from the department or agents appointed by the department. Agents appointed by the department may retain the filing fee collected for each trip permit to defray expenses incurred in handling and selling the permits.

(5) Fees and excise taxes collected by the department for trip permits shall be credited and deposited in the same manner as the diesel fuel taxes collected under sections 1 to 41 of this 1999 Act and shall not be subject to exchange, refund or credit.

(6) Notwithstanding subsection (3) of this section, the department may by rule set the filing fee for trip permits that are sold by agents. [1999 c.1060 s.12]

Sec. 13. (1) An applicant for a license issued under section 15 of this 1999 Act shall apply to the Department of Transportation on a form prepared and furnished by the department. The form shall contain any information that the department deems necessary.

(2) Every application for a diesel fuel license, other than an application for a dyed diesel fuel user license or international fuel tax agreement license, must contain the following information to the extent it applies to the applicant:

(a) Satisfactory proof of the applicant's identity, including but not limited to either:

(A) Proof of registration with the Internal Revenue Service under the provisions of section 4101 of the Internal Revenue Code; or

(B) The applicant's fingerprints or those of the officers, directors, partners or other principals in the business entity making the application;

(b) The applicant's form and place of business, including proof that the individual or business entity is licensed to do business in this state;

(c) The qualifications and business history of the applicant and any officer, director, partner or other principal thereof;

(d) The applicant's financial condition or history, including a bank reference and whether the applicant or any officer, director, partner or principal has ever been declared bankrupt or has an unsatisfied judgment in a federal or state court; and

(e) Whether the applicant or any officer, director, partner or other principal has, within the preceding 10 years, been found guilty of a crime that directly relates to the business for which the license is sought or, within the preceding five years, has suffered a judgment in a civil action involving fraud, misrepresentation, conversion or dishonesty.

(3) An applicant for a license as a diesel fuel importer must list on the application each state, province or country from which the applicant intends to import fuel and, if required by the state, province or country listed, must be licensed or registered for diesel fuel tax purposes in that state, province or country.

(4) An applicant for a license as a diesel fuel exporter must list on the application each state, province or country to which the exporter intends to export diesel fuel received in this state by means of a transfer outside the bulk transfer-terminal system and, if required by the state, province or country listed, must be licensed or registered for diesel fuel tax purposes in that state, province or country.

(5) An applicant for a license as a diesel fuel supplier must have a certificate of registry that is issued under the Internal Revenue Code and authorizes the applicant to enter into federal tax-free transactions on diesel fuel in the bulk transfer-terminal system.

(6) An application for a dyed diesel fuel user license must be made to the department. The application must be filed on a form prepared and furnished by the department and contain any information that the department deems necessary.

(7) An application for an international fuel tax agreement license must be made to the department in the manner provided in an international fuel tax agreement entered into under ORS 825.555, or as provided by rule by the department.

(8) After receipt of an application for a license, the Director of Transportation may conduct an investigation to determine whether the facts set forth in the application are true. The director may also request criminal offender information from the Department of State Police in the manner required by section 79 of this 1999 Act. The results of the background investigation, including criminal offender information, may be released to authorized department personnel as the director deems necessary. The Department of Transportation shall charge a license applicant or license holder a fee of $50 for each background investigation conducted. [1999 c.1060 s.13]

Sec. 14. (1) Except as otherwise provided in subsection (6) of this section, a diesel fuel license may not be issued to any person or continued in force unless the person has furnished a bond or an irrevocable letter of credit, in a form that the Department of Transportation may require, to secure the person's compliance with the provisions of sections 1 to 41 of this 1999 Act and the payment of any and all taxes, interest and penalties owed by the person. The requirement of furnishing a bond or letter of credit may be waived for diesel fuel distributors who deliver diesel fuel only into the fuel tanks of marine vessels, for dyed diesel fuel users and for persons issued a license under an international fuel tax agreement.

(2) The total amount of the bond or letter of credit required of any licensee shall be fixed by the department and may be increased or reduced by the department at any time subject to the limitations provided in this section. The total amount of the bond or letter of credit required of any licensee shall be equivalent to twice the estimated monthly license tax, determined in the manner the department deems proper. However, except as provided in subsection (3) of this section, the total amount of the bond or letter of credit required of any licensee may never be less than $1,000 nor more than $100,000.

(3) The total amount of the bond or letter of credit required of persons described in this subsection shall never be less than $1,000 nor more than $250,000. This subsection applies to the following:

(a) A person who first applies for a license.

(b) A person who has not faithfully performed, as determined by the department, for the last three years, the requirements of sections 1 to 41 of this 1999 Act, as required by subsection (1) of this section. If the department determines that the person has not faithfully performed the requirements, and that the lack of faithful performance was due to reasonable cause and was without any intent to avoid payment, the department may waive the additional bond or letter of credit requirement imposed under this subsection.

(4) Any bond or letter of credit given in connection with sections 1 to 41 of this 1999 Act 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 or letter of credit. The liability of the surety on the bond or letter of credit for the aggregate of all claims that arise thereunder shall not exceed the amount of the penalty of the bond or letter of credit. No recoveries on any bond or letter of credit and no execution of any new bond or letter of credit shall invalidate any bond or letter of credit, but the total recoveries on any one bond or letter of credit shall not exceed the amount of the bond or letter of credit.

(5) A licensee required under this section to obtain a bond or letter of credit may demand by proper petition a hearing on the necessity of such bond or letter of credit or the reasonableness of the amount required. A hearing shall be granted and held within 10 days after the demand therefor. The decision of the department shall become final 10

days after service of the order on the licensee.

(6) In lieu of the bond or letter of credit required by this section, a person may deposit with the State Treasurer, under such terms and conditions as the Department of Transportation may prescribe, a like amount of lawful money of the United States or bonds or other obligations of the United States, the State of Oregon or any county of this state, of an actual market value not less than the amount so fixed by the department. [1999 c.1060 s.14]

Sec. 15. (1) Upon receipt and approval of an application and a bond or other security, if required, the Department of Transportation shall issue a license to the applicant. However, the department may refuse to issue a license to any person:

(a) Who formerly held a license issued under this section or ORS 319.510 to 319.880 that, prior to the time of filing the application, was revoked for cause;

(b) Who has submitted an application as a subterfuge for the real party in interest whose license, prior to the time of filing the application, was revoked for cause;

(c) Who has had a diesel fuel license revoked for cause;

(d) Who has an unsatisfied debt to the state assessed under sections 1 to 41 of this 1999 Act;

(e) Who formerly held a license issued by the federal government or by this or any other state that allowed the person to buy or sell untaxed motor vehicle or diesel fuel, and the license was revoked for cause;

(f) Who has pled guilty to or was convicted in this or any other state, or in any federal jurisdiction, of a felony crime directly related to the applicant's business, or who has been subject to a civil judgment involving fraud, misrepresentation, conversion or dishonesty;

(g) Who has misrepresented or concealed a material fact in obtaining or renewing a license;

(h) Who has violated a statute or administrative rule regulating fuel taxation or distribution;

(i) Who has failed to cooperate with the department's investigations by:

(A) Not furnishing papers or documents;

(B) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or

(C) Not responding to a subpoena issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

(j) Who has failed to comply with an order issued by the Director of Transportation; or

(k) Upon other sufficient cause being shown.

(2) Before refusing to issue a license, the department shall grant the applicant a hearing and shall give the applicant at least 20 days' written notice of the time and place of the hearing.

(3) The department shall determine, from the information shown in the application or other investigation, the type and class of license to be issued. For the purpose of considering any application for a diesel fuel license, the department may inspect, cause an inspection, investigate or cause an investigation of the records of this or any other state or of the federal government to determine the truthfulness of the information on the application form.

(4) All licenses shall be posted in a conspicuous place or kept available for inspection at the principal place of business of the licensee. Licensees shall reproduce the license by photostatic or other method and keep a copy on display for ready inspection at each additional place of business or other place of storage from which diesel fuel is sold, delivered or used and in each motor vehicle used by the licensee to transport diesel fuel purchased by the licensee for resale, delivery or use.

(5) Each diesel fuel license shall be valid until suspended or revoked for cause or until otherwise canceled.

(6) A diesel fuel license is not transferable. [1999 c.1060 s.15]

Sec. 16. (1) The Department of Transportation may revoke the license of any licensee for any of the grounds constituting cause for refusal of a license set forth in section 15 of this 1999 Act or for other reasonable cause. Before revoking a license, the department shall issue a notice to the licensee directing the licensee to show cause within 10 days of the date of the notice as to why the license should not be revoked. At any time prior to and pending a hearing, the department may, in the exercise of reasonable discretion, suspend the license.

(2) The department may, upon written request of a licensee or upon surrender of the license by the licensee, cancel any diesel fuel license. The cancellation shall take effect 30 days after receipt of the written request or surrender of the license.

(3) Any surety on a bond, irrevocable letter of credit or other security furnished by the licensee as provided in section 14 of this 1999 Act shall be released and discharged from any and all liability to the state that accrues on the

bond, letter of credit or other security after 30 days from the date the surety lodges with the department a written request to be released and discharged. This provision does not relieve, release or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. The department shall, upon receiving the request, promptly notify the licensee who furnished the bond, letter of credit or other security and, unless the licensee files a new bond, irrevocable letter of credit or other security on or before the expiration of the 30-day period in accordance with this section, shall immediately cancel the license.

(4) The department may require a new or additional bond, irrevocable letter of credit or other security if, in its opinion, the security furnished by the licensee under section 14 of this 1999 Act becomes impaired or inadequate. Upon failure of the licensee to furnish a new or additional bond, letter of credit or other security within 10 days after being requested to do so by the department, or if the licensee fails or refuses to file reports and remit or pay taxes at the intervals fixed by the department, the department shall cancel the license. [1999 c.1060 s.16]

Sec. 17. A diesel fuel licensee who has a change of ownership shall immediately notify the Department of Transportation of the change. Upon notification, the department shall immediately cancel the license of the licensee. No license may be issued to any successor of the licensee until the successor completes an application and furnishes an adequate bond, irrevocable letter of credit or other security to the department. 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. [1999 c.1060 s.17]

Sec. 18. (1) Every licensee and every other person importing, manufacturing, refining, dealing in, transporting, blending or storing diesel fuel in this state shall keep a complete record of all diesel fuel purchased or received and all diesel fuel sold, delivered or used by the person. Records shall be kept for a period of not less than five years and shall be open to inspection by the Department of Transportation or its authorized representatives during regular business hours. Those records shall show:

(a) The date of each receipt of diesel fuel;

(b) The name and address of the person from whom the diesel fuel was purchased or received;

(c) The number of gallons received at each place of business or place of storage in the State of Oregon;

(d) The date of each sale or delivery;

(e) The number of gallons sold, delivered or used for taxable purposes;

(f) The number of gallons sold, delivered or used for any purpose not subject to the tax imposed under section 2 of this 1999 Act;

(g) The name, address and diesel fuel license number of the purchaser if the diesel fuel tax is not collected on the sale or delivery; and

(h) The inventories of diesel fuel on hand at each place of business at the end of each month.

(2)(a) All international fuel tax agreement licensees and dyed diesel fuel users authorized to use dyed diesel fuel on the public highways of this state in vehicles licensed for highway operation shall maintain detailed mileage records on an individual vehicle basis. The mileage records shall show both on-highway and off-highway usage of diesel fuel on a daily basis for each vehicle.

(b) In the absence of operating records that show both on-highway and off-highway usage of diesel fuel on a daily basis for each vehicle, fuel consumption shall be calculated at the rate of one gallon for every:

(A) Four miles traveled by a vehicle with a combined weight of over 40,000 pounds;

(B) Seven miles traveled by a vehicle with a combined weight of 12,001 to 40,000 pounds;

(C) Ten miles traveled by a vehicle with a combined weight of 6,001 to 12,000 pounds; and

(D) Sixteen miles traveled by a vehicle with a combined weight of 6,000 pounds or less.

(c) As used in paragraph (b) of this subsection, “combined weight” has the meaning given in ORS 825.005.

(3) The department may require a person other than a licensee engaged in the business of selling, purchasing, distributing, storing, transporting or delivering diesel fuel to submit periodic reports to the department regarding the disposition of the fuel. The reports must be on forms prescribed by the department and must contain any information the department requires.

(4) Every person operating any conveyance for the purpose of hauling, transporting or delivering diesel fuel in bulk shall possess, during the entire time the person is hauling diesel fuel, an invoice, bill of sale or other statement showing the name, address and license number of the seller or consigner, the destination, name and address of the

purchaser or consignee, the license number of the purchaser or consignee, if applicable, and the number of gallons transported. The person hauling diesel fuel shall produce, at the request of any law enforcement officer or authorized representative of the department, the invoice, bill of sale or other statement and shall permit the officer or representative to inspect and gauge the contents of the vehicle.

(5) Every person subject to the record keeping requirements of this section shall retain and make available to the department all source documents in the form of invoices, bills of sale and other documents that clearly support the records as presented to the department pursuant to this section.

(6) Every licensee shall keep a true and accurate record on such forms as the department may prescribe of all stocks of diesel fuel on hand. Every licensee shall take a physical inventory of all diesel fuel at least once during each calendar month and have the record of such inventory available at all times for inspection by the department. Upon demand by the department, every licensee shall furnish a statement under oath as to the contents of any records required under this subsection. [1999 c.1060 s.18]

Sec. 19. (1) The Department of Transportation, or its duly authorized agents, may examine the accounts, records, stocks, facilities and equipment of diesel fuel licensees, dealers, brokers, service stations and other persons engaged in transporting, storing, selling or distributing diesel fuel or other petroleum products within this state, and make any other investigations that it considers necessary in carrying out the provisions of sections 1 to 41 of this 1999 Act. If the examinations or investigations disclose that any reports of licensees or other persons theretofore filed with the department pursuant to the requirements of sections 1 to 41 of this 1999 Act have shown incorrectly the amount in gallons of diesel fuel distributed or the tax, penalty or interest accruing thereon, the department may make any changes in subsequent reports and payments of such persons, or may make any refunds, that are necessary to correct the errors disclosed by its examinations or investigations.

(2) The Department of Transportation may not divulge the business affairs, operations or information obtained by an investigation of records and equipment of any licensee or other person visited or examined in the discharge of official duty under sections 1 to 41 of this 1999 Act, or the amount or sources of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any report, or permit any report or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law. However, the department may authorize examination of such reports by and the giving of information therein contained to other state officers, or tax officers of another state or the federal government if a reciprocal arrangement exists.

(3) In enforcing the provisions of sections 1 to 41 of this 1999 Act, the department or its duly authorized agents may at any time during normal business hours examine the books and accounts of any diesel fuel licensee operating within this state for the purpose of checking shipments or use of diesel fuel, or detecting diversions of diesel fuel or evasion of the tax on diesel fuel. [1999 c.1060 s.19]

Sec. 20. (1) For the purpose of determining the amount of liability for the tax imposed under section 2 of this 1999 Act and to periodically update license information, each licensee other than a diesel fuel distributor, international fuel tax agreement licensee or dyed diesel fuel user shall file monthly tax reports with the Department of Transportation on forms prescribed by the department.

(2) Dyed diesel fuel users whose estimated annual tax liability is $250 or less shall file reports annually. Dyed diesel fuel users whose estimated annual tax liability is more than $250 shall file reports quarterly. Diesel fuel users licensed under an international fuel tax agreement shall file reports quarterly.

(3) At the time the diesel fuel license is issued, the department shall establish the reporting frequency for each licensee for which reporting frequency is not determined under subsection (1) or (2) of this section. If it becomes apparent that a licensee is not reporting in accordance with the established schedule, the department shall change the licensee's reporting frequency by giving 30 days' notice to the licensee by mail to the licensee's address of record. A report shall be filed with the department even though no diesel fuel was used, or no tax is due, for the reporting period.

(4) Each tax report shall contain a declaration by the licensee to the effect that the statements contained therein are true and are made under penalty of perjury. The report shall contain information that the department finds necessary for the proper administration and enforcement of the provisions of sections 1 to 41 of this 1999 Act.

(5) A licensee shall file a tax report on or before the last day of the next succeeding calendar month following the period to which the report relates.

(6) Subject to the written approval of the department, tax reports may cover a period ending on a day other than the last day of the calendar month. Licensees granted approval to file reports in this manner shall file the reports on or

before the 25th day following the end of the reporting period. No change to this reporting period shall be made without the written authorization of the department.

(7) If the final filing date falls on a Saturday, Sunday or legal holiday, the next business day thereafter shall be the final filing date. Tax reports shall be considered filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing the report properly addressed to the department, or on the date it was mailed, if proof satisfactory to the department is available to establish the mailing date. Envelopes received within five business days of the final filing date shall be accepted as timely filed if the post office cancellation mark is not present or is not legible. Envelopes received after the fifth business day after the final filing date shall be deemed to have not been timely filed if the post office cancellation mark is not present or is not legible.

(8) The department, if it deems it necessary in order to ensure payment of the tax imposed under section 2 of this 1999 Act or to facilitate the administration of sections 1 to 41 of this 1999 Act, may require the filing of reports and tax remittances at intervals of less than one month if, in its opinion, an existing bond, irrevocable letter of credit or other security has become impaired or inadequate.

(9) The signed report filed with the department 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 disclosure except that the information may be shared with tax collecting entities in other jurisdictions if the receiving jurisdiction agrees to keep the information confidential.

(10) Notwithstanding subsection (9) of this section, the department shall disclose to the Legislative Revenue Officer or an authorized representative of the Legislative Revenue Officer the information described in this section if the request for the information is made in writing, specifies the purposes for which the request is made or information is required and is signed by the Legislative Revenue Officer or an authorized representative. Information that is confidential under subsection (9) of this section shall be kept confidential by the Legislative Revenue Officer or the representative of the Legislative Revenue Officer. [1999 c.1060 s.20]

Sec. 21. (1) The tax imposed under section 2 of this 1999 Act shall be computed by multiplying the tax rate per gallon provided in section 2 of this 1999 Act by the number of gallons of diesel fuel subject to the diesel fuel tax. The tax shall be paid to the state by diesel fuel suppliers, who shall collect the tax from diesel fuel distributors.

(2) Each supplier may retain an amount equal to two percent of the amount of tax collected by the supplier as a fee for making the collection. The fee shall be distributed as follows:

(a) One-half shall be retained by the supplier.

(b) One-half shall be passed to the distributor. If the diesel fuel is resold by the distributor to another distributor, the selling distributor shall pass on one-half of its one-half to the buying distributor.

(3) At the election of the distributor, the payment of the diesel fuel tax owed on diesel fuel purchased from a supplier shall be remitted to the supplier on terms agreed to by the distributor and the supplier no later than the 22nd day of the month next succeeding the month the liability for the tax is incurred by the supplier. This election shall be subject to a condition that the distributor's remittances of all amounts of diesel fuel tax due to the supplier shall be paid by electronic funds transfer. The distributor's election may be terminated by the supplier if the distributor does not make timely payments to the supplier as required by this section. This subsection does not apply if the distributor is required by the supplier to pay cash or a cash equivalent for diesel fuel purchases.

(4) The tax owed to the state is due on the date a report is required to be filed under section 20 of this 1999 Act. [1999 c.1060 s.21]

Sec. 22. (1) A diesel fuel supplier shall notify, no later than the 20th day or the next business day following the 20th day after the diesel fuel tax is due from the diesel fuel distributor under section 21 of this 1999 Act, the Department of Transportation of the failure of a diesel fuel distributor to pay the full amount of the tax owed.

(2) Upon notification and submission of satisfactory evidence by a supplier that a distributor has failed to comply with section 21 of this 1999 Act, the department may suspend the license of the distributor. The unpaid tax liability due from the distributor shall be immediately due and payable to the Department of Transportation.

(3) Upon the suspension of the license, the department shall immediately notify all suppliers that the authority of the distributor to purchase tax-deferred diesel fuel has been suspended and that tax must be paid by the distributor on all subsequent purchases of diesel fuel at the time of removal.

(4) If, after notification by the department, a supplier continues to sell tax-deferred diesel fuel to a distributor whose license is suspended, the supplier's license is subject to revocation or suspension under this section or section 16 of this 1999 Act. If notified of a license suspension, a supplier is liable for any unpaid diesel fuel tax owed on diesel

fuel sold to a distributor whose license has been suspended. [1999 c.1060 s.22]

Sec. 23. (1) Except as provided in subsection (3) of this section, if any supplier or other diesel fuel licensee with tax due under sections 1 to 41 of this 1999 Act is delinquent in remitting the tax imposed under section 2 of this 1999 Act on the date specified in section 20 or 21 of this 1999 Act, the Department of Transportation shall assess a penalty of 10 percent of the tax unpaid by the due date.

(2) If a report required by section 20 of this 1999 Act is not received on or before the due date of the report, the department shall assess a penalty of 10 percent of the tax unpaid by the due date, or, if the department determines that no tax is due, the department shall assess a penalty of $50.

(3) If the department determines that the delinquency was due to reasonable cause and without any intent to avoid payment, the penalties provided in subsections (1) and (2) of this section may be waived.

(4)(a) If any licensee sells, distributes or uses any diesel fuel without first furnishing the bond, irrevocable letter of credit or other security required by section 14 of this 1999 Act or obtaining the license required by section 11 of this 1999 Act, the tax imposed under section 2 of this 1999 Act shall immediately be due and payable on account of all diesel fuel so sold, distributed or used.

(b) Except as otherwise provided in this paragraph, the department shall proceed forthwith to determine, from the best available sources, the amount of tax due under paragraph (a) of this subsection, and the department 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 department may waive all or part of a penalty imposed under this paragraph if the department determines that a violation of the requirement to furnish the security or to obtain the license was due to reasonable cause. In any suit or proceeding to collect such tax, interest or penalty, the certificate is prima facie evidence that the licensee therein named is indebted to the State of Oregon in the amount of the tax, interest and penalty therein stated.

(5)(a) If the tax imposed under section 2 of this 1999 Act is not paid as required by sections 1 to 41 of this 1999 Act, 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 tax imposed under section 2 of this 1999 Act is overpaid, the department 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. [1999 c.1060 s.23]

Sec. 24. (1) Any person who violates any of the provisions of sections 1 to 41 of this 1999 Act, any person who makes any false statement in any statement required by sections 1 to 41 of this 1999 Act for the refund of any moneys or taxes as provided in sections 1 to 41 of this 1999 Act, or any person who collects or causes any tax to be repaid to the person or to any other person without being entitled to that tax under the provisions of sections 1 to 41 of this 1999 Act, shall, upon conviction, be punished by a fine of not more than $1,000, or by imprisonment in the county jail for not more than six months, or both.

(2) Knowingly and willfully failing to report and pay a tax liability to the Department of Transportation as required by sections 20 and 21 of this 1999 Act is theft of public money and, upon conviction, is punishable as provided in ORS 164.043 to 164.057.

(3)(a) A person may not, through false statement, trick, device or otherwise, obtain diesel fuel for export upon which the Oregon tax has not been paid and fail to export the diesel fuel or any portion thereof, or cause the diesel fuel or any portion thereof not to be exported, nor divert the diesel fuel or any portion thereof, or cause the diesel fuel to be diverted from interstate or foreign transit begun in this state, nor unlawfully return the diesel fuel or any portion thereof to be used or sold in this state and fail to notify the department and the licensee from whom the diesel fuel was originally purchased of the person's act. A licensee or other person may not conspire with any person to withhold from export, divert from interstate or foreign transit begun in this state, or return diesel fuel to this state for sale or use for the purpose of avoiding any of the taxes imposed under section 2 of this 1999 Act.

(b) Violation of paragraph (a) of this subsection is punishable, upon conviction, by a fine of not more than $5,000, or by imprisonment in the county jail for not more than six months, or both.

(4) Justice courts have concurrent jurisdiction with circuit courts over all violations under the provisions of sections 1 to 41 of this 1999 Act. [1999 c.1060 s.24]

Sec. 25. The remedies of the state provided in sections 1 to 41 of this 1999 Act are cumulative. No action taken pursuant to sections 1 to 41 of this 1999 Act shall relieve any person from the criminal penalty provisions of section 24 of this 1999 Act. [1999 c.1060 s.25]

Sec. 26. The tax and any penalty imposed upon a licensee under sections 1 to 41 of this 1999 Act shall constitute a lien in favor of the State of Oregon upon all franchises, property and rights to property, whether real or personal, then belonging to or thereafter acquired by the licensee, whether such property is employed by the licensee for personal or business use or is in the hands of a trustee, receiver or assignee for the benefit of creditors, from the date the tax was due and payable until the amount of the lien is paid or the property is sold in payment of the lien. The lien is paramount to all private liens or encumbrances of whatever character upon the property except that such lien shall not be valid against any bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached prior to the time the Department of Transportation has filed and recorded notice of the lien. [1999 c.1060 s.26]

Sec. 27. If a licensee is delinquent in the payment of any obligation imposed under sections 1 to 41 of this 1999 Act, the Department of Transportation 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 licensee, or owing any debts to such licensee, at the time of the receipt by those persons of the notice. Thereafter, any person so notified shall neither transfer nor make other disposition of such credits, personal property or debts until the department has consented to a transfer or other disposition or until 30 days have elapsed from and after the receipt of the notice. All persons so notified shall, within five days after the receipt of the notice, advise the department of all such credits, personal property or debts in their possession, under their control or owing by them, as the case may be. [1999 c.1060 s.27]

Sec. 28. (1) If a licensee is delinquent in the payment of any obligation imposed under sections 1 to 41 of this 1999 Act, the Department of Transportation may proceed to collect the amount due from the licensee in the manner prescribed in this section.

(2) The department shall seize any property subject to the lien provided for in section 26 of this 1999 Act and sell the property 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 of the sale shall be given to the delinquent licensee and to all persons appearing of record to have an interest in the property. 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 licensee at the address as it appears in the records of the department and, in the case of any person appearing of record to have an interest in the property, 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 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 property 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 a period of 10 days.

(4) The notice shall contain a description of the property to be sold, together with a statement of the amount due under sections 1 to 41 of this 1999 Act, the name of the licensee and the further statement that, unless such amount is paid before the time fixed in the notice, the property will be sold in accordance with the law and the notice.

(5) The department shall then proceed to sell the property in accordance with the law and the notice and shall deliver to the purchaser a bill of sale that vests title in the purchaser. If upon the sale the moneys received exceed the amount due to the state under sections 1 to 41 of this 1999 Act from the delinquent licensee, the excess shall be returned to the licensee and a receipt obtained therefor. If any person having an interest in or lien upon the property has filed with the department notice of such interest or lien prior to the sale, the department shall withhold payment of any such excess to the licensee pending a determination of the rights of the respective parties to the property by a court of competent jurisdiction. If for any reason the receipt of the licensee is not available, the department shall deposit the excess with the State Treasurer as trustee for the licensee, the heirs, successors or assigns of the licensee. [1999 c.1060 s.28]

Sec. 29. (1) Whenever any licensee is delinquent in the payment of any obligation under sections 1 to 41 of this 1999 Act, the Department of Transportation may transmit notice of the delinquency to the Attorney General, who shall at once proceed to collect the tax and penalty due by appropriate legal action.

(2) In any suit brought to enforce the rights of the state under sections 1 to 41 of this 1999 Act, a certificate by the department showing the delinquency is prima facie evidence of the amount of the obligation, of the delinquency thereof and of compliance by the department with all provisions of sections 1 to 41 of this 1999 Act relating to the

obligation. [1999 c.1060 s.29]

Sec. 30. (1) If the Department of Transportation is not satisfied that a report filed is correct or the amount of tax or penalty paid to the state by a licensee is correct, the department may assess the tax and penalty due based upon any information available to the department.

(2) If a licensee fails to account satisfactorily for any diesel fuel sold or disposed of, it shall be presumed that the diesel fuel not accounted for was diverted to a use subject to the tax imposed under section 2 of this 1999 Act without taxes being paid in accordance with the requirements of sections 1 to 41 of this 1999 Act.

(3) The department shall give to the licensee 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 licensee at the address as it appears in the records of the department. [1999 c.1060 s.30]

Sec. 31. (1) If a licensee fails to make a report required by section 20 of this 1999 Act, the Department of Transportation shall make an estimate, based upon any information available to the department, for the month or months with respect to which the licensee failed to make a report, and assess the tax and penalty due from the licensee under sections 1 to 41 of this 1999 Act.

(2) The department shall give to the licensee written notice of the assessment in the manner prescribed by section 30 (3) of this 1999 Act. [1999 c.1060 s.31]

Sec. 32. (1) Any licensee against whom an assessment is made under section 30 or 31 of this 1999 Act may petition the Department of Transportation for a reassessment within 30 days after service of notice of the assessment. If a petition is not filed within the 30-day period, the amount of the assessment becomes conclusive.

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

(3) Notice required by this section shall be served in the manner prescribed by section 30 (3) of this 1999 Act. [1999 c.1060 s.32]

Sec. 33. Any person aggrieved by a finding, order or determination by the Department of Transportation under section 16 or 32 of this 1999 Act may appeal therefrom to the circuit court of the county in which the person resides. The 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. [1999 c.1060 s.33]

Sec. 34. 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 a licensee after three years have expired since the alleged erroneous report was filed or a report should have been filed. [1999 c.1060 s.34]

Sec. 35. (1) If the Department of Transportation determines that any amount of tax or penalty has been paid more than once or has been erroneously or illegally collected, the department shall credit such amount against any amounts then due from the licensee under sections 1 to 41 of this 1999 Act and shall refund any balance to the licensee or to the successor, administrator or executor of the licensee.

(2) A licensee may claim a credit or refund for any amount of tax or penalty that the licensee has paid more than once, or that has been paid or collected erroneously or illegally. No claim for a credit or refund shall be allowed unless the claim is filed with the department within three years from the date of the payment or collection or, with respect to an assessment made under section 30 or 31 of this 1999 Act, within six months after the assessment becomes conclusive, whichever period expires later. Every claim must be in writing and must state the specific grounds upon which it is founded. Failure to file a claim within the time prescribed in this section shall constitute a waiver of any and all demands against the state for overpayments under sections 1 to 41 of this 1999 Act. Within 30 days of allowing or disallowing any such claim in whole or in part, the department shall serve notice of the action on the claimant. The service shall be made in the manner prescribed by section 30 (3) of this 1999 Act. [1999 c.1060 s.35]

Sec. 36. (1) If a user obtains diesel fuel for use in a motor vehicle in this state and pays the diesel fuel tax on the fuel obtained and does not present a claim for a refund under subsection (2) of this section, the user may apply for a refund of that part of the tax paid that is applicable to use of the diesel fuel to propel a motor vehicle:

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

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

(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;

(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;

(e) By an agency of the United States or by any city, transportation district, mass transportation district or metropolitan service district 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.

(2) The department shall allow refunds as provided in this subsection to a licensee or user presenting a claim who does not apply for a refund under subsection (1) of this section. Refunds shall be given under this subsection as follows:

(a) For diesel fuel used in operating a power take-off unit on a concrete mixer, self-loading log truck, garbage truck or recycling truck, where there is no separate fuel supply tank for the power take-off unit, a claimant shall be allowed a refund of 45 percent of the tax paid. The department may establish by rule additional formulas for determining diesel fuel usage when operating other types of equipment by means of power take-off units when direct measurement of the diesel fuel used is not feasible.

(b) For diesel fuel used in a motor vehicle designed to carry logs, poles, pilings, sand or gravel, a claimant shall be allowed a refund of up to 25 percent of the tax paid on all diesel fuel used by the claimant in this state, provided that the claimant shows evidence of the total number of gallons of diesel fuel used in this state on the highways and of the total number of gallons used in this state off the highways. However, log trucks may claim a refund of up to 15 percent of the tax paid without providing evidence of the total number of gallons of diesel fuel used in this state on the highways and of the total number of gallons used in this state off the highways.

(c) For diesel fuel used in operating a motor vehicle exclusively owned and operated by an investor-owned utility, a claimant shall be allowed a refund of 70 percent of the tax paid.

(d) For diesel fuel where there is a separate fuel supply dedicated to the operation of ancillary equipment and not used to propel the motor vehicle, a claimant shall be allowed a refund of 100 percent of the tax paid.

(3) An application for a refund under subsection (1) or (2) of this section shall be filed with the department within 15 months after the payment of diesel fuel tax for which a refund is claimed.

(4) The application for a refund provided by subsection (1) or (2) of this section shall include a signed statement by the applicant indicating the amount of diesel fuel for which a refund is claimed, and the manner in which the diesel fuel was used that qualifies the applicant for a refund. If the diesel fuel upon which the refund is claimed was obtained from a seller to whom the diesel fuel tax was paid, the application shall be supported by the invoices that cover the purchase of the diesel fuel. If the applicant paid the diesel fuel tax directly to the department, the applicant shall indicate the source of the diesel fuel and the date it was obtained.

(5) The department may require any person who applies for a refund provided by subsection (1) or (2) of this section to furnish a statement, under oath, giving the person's occupation, a description of the machines or equipment in which the diesel fuel was used, the place where the diesel fuel was used and any other information the department may require. [1999 c.1060 s.36]

Sec. 37. The Department of Transportation may investigate refund applications submitted under section 36 of this 1999 Act and gather and compile any information in regard to the applications that it considers necessary to safeguard the state and prevent fraudulent practices in connection with tax refunds and tax evasions. The department may, in

order to establish the validity of an application, examine the books and records of the applicant for such purposes. Failure of the applicant to accede to the demand for examination constitutes a waiver of all rights to a refund for the transaction questioned. [1999 c.1060 s.37]

Sec. 38. Notwithstanding any other provision of law, the Department of Transportation may enter into agreements with the governing body of any Indian tribe residing on a reservation in Oregon to provide refunds to the tribe of state diesel fuel taxes for diesel fuel purchased on the reservation and used by tribal members on tribal reservation lands, other than for diesel fuel used on state highways, county roads or city streets supported by the State Highway Fund. [1999 c.1060 s.38]

Sec. 39. The ultimate liability for the tax imposed under section 2 of this 1999 Act is upon the user, regardless of the manner in which collection of the tax is provided for in sections 1 to 41 of this 1999 Act. [1999 c.1060 s.39]

Sec. 40. (1) The Department of Transportation may adopt any rules it considers necessary to implement and enforce the provisions of sections 1 to 41 of this 1999 Act.

(2) The department may enter into a fuel tax cooperative agreement with another state or a Canadian province for the administration, collection and enforcement of each state's or province's diesel fuel taxes. [1999 c.1060 s.40]

Sec. 41. (1) Except as otherwise specifically provided in this section, violation by a person of any requirement of sections 1 to 41 of this 1999 Act is a misdemeanor.

(2) A licensee who appropriates or converts the tax collected by the licensee under section 2 of this 1999 Act to the licensee's own use or to any use other than the payment of the tax, to the extent that the moneys required to be collected are not available for payment on the due date as prescribed in sections 20 and 21 of this 1999 Act, is guilty of theft of public money and, upon conviction, may be punished as provided in ORS 164.043 to 164.057.

(3) Justice courts have concurrent jurisdiction with the circuit court of all violations of the provisions of sections 1 to 41 of this 1999 Act. [1999 c.1060 s.41]

Sec. 79. (1) Upon the request of the Department of Transportation, the Department of State Police shall furnish to the authorized staff of the Department of Transportation any information about an applicant for a license under section 13 of this 1999 Act that the Department of State Police may have in its possession from its central bureau of criminal identification, including but not limited to manual or computerized criminal offender information.

(2)(a) If the background investigation conducted under subsection (1) of this section does not disclose any activity that would disqualify an applicant from becoming a diesel fuel licensee pursuant to section 15 of this 1999 Act, the Department of State Police shall conduct nationwide criminal records checks of the applicant through the Federal Bureau of Investigation by use of the applicant's fingerprints and shall report the results to the authorized staff of the Department of Transportation, who must be specifically authorized to receive the information.

(b) The Federal Bureau of Investigation shall return the fingerprint cards used to conduct the criminal records checks and shall not keep any record of the fingerprints. However, if the policy of the Federal Bureau of Investigation authorizing return of the fingerprint cards is changed, the Department of State Police shall cease to send the cards to the Federal Bureau of Investigation but shall continue to process the information through other available resources.

(c) When the Federal Bureau of Investigation returns the fingerprint cards to the Department of State Police, the Department of State Police shall maintain the fingerprint cards in its files.

(3) For purposes of requesting and receiving the information and data described in subsections (1) and (2) of this section, the Department of Transportation is a designated agency for purposes of ORS 181.010 to 181.560 and 181.715 to 181.730. [1999 c.1060 s.79]

Sec. 80. (1) All diesel fuel held by a person required to be licensed under section 11 of this 1999 Act on the operative date of section 2 of this 1999 Act [March 1, 2001, if chapter 1060, Oregon Laws 1999, is approved by the people] on which no tax has been paid shall be subject to a one-time inventory tax. Persons subject to the inventory tax shall:

(a) Take an inventory of all undyed diesel fuel in their possession to determine the number of gallons held in storage on the operative date of section 2 of this 1999 Act;

(b) File a report with the Department of Transportation showing the number of gallons held in storage; and

(c) Pay a tax not more than 30 days after the inventory date based upon the number of gallons held in storage

multiplied by the tax rate specified in section 2 of this 1999 Act.

(2) In determining the amount of tax due under this section, an amount may be excluded that represents the level of undyed diesel fuel that cannot be pumped out of the tank because the fuel is below the mouth of the draw pipe. For this purpose, 200 gallons may be deducted for storage tanks with a capacity of 10,000 gallons or less and 400 gallons may be deducted for tanks with a capacity exceeding 10,000 gallons. [1999 c.1060 s.80]

Note: Sections 81 and 82, chapter 1060, Oregon Laws 1999, were referred to the people by referendum petition for their approval or rejection at the biennial primary election to be held throughout this state on May 16, 2000. If chapter 1060 is approved by the people, sections 81 and 82 become operative March 1, 2001, and section 81 is repealed December 1, 2003. See section 88, chapter 1060, Oregon Laws 1999, as amended by section 6, chapter 1075, Oregon Laws 1999, and sections 112 and 113, chapter 1060, Oregon Laws 1999. The text that, if chapter 1060 is approved by the people, is operative on March 1, 2001, is set forth for the user's convenience, except that in section 81, the references to “July 1, 2000” should be to “March 1, 2001,” the references to “January 1, 2001” should be to “September 1, 2001” and the reference to “March 1, 2001” should be to “February 1, 2003” and in section 82, the reference to “2001” should be to “2003.” See section 113, chapter 1060, Oregon Laws 1999.

Sec. 81. The Department of Transportation shall forecast the amount of revenue that will be generated by the tax rate established by section 2 of this 1999 Act and the registration fees established by the amendments to ORS 803.420 (10) by section 45 of this 1999 Act for the period July 1, 2000, to January 1, 2001. If actual revenues from the tax and registration fees for the period July 1, 2000, to January 1, 2001, are more than five percent higher or lower than the amount forecast, then notwithstanding ORS 171.132, the Governor shall submit a proposal to the Legislative Assembly by March 1, 2001, to adjust the tax rate or registration fees or both. The purpose of the adjustment shall be to assure that vehicles weighing more than 26,000 pounds are paying their appropriate share of highway costs as determined by the highway cost responsibility study. [1999 c.1060 s.81]

Sec. 82. Section 81 of this 1999 Act is repealed on December 1, 2001. [1999 c.1060 s.82]

Note: 171.132 was repealed by section 8, chapter 1074, Oregon Laws 1999. The text of section 81, chapter 1060, Oregon Laws 1999, was not amended by enactment of the Legislative Assembly to reflect the repeal. Editorial adjustment of section 81, chapter 1060, Oregon Laws 1999, for the repeal of 171.132 has not been made.
