



Department of
Taxation

Pertinent Facts Pertaining to Motor Fuel Dealers

Ohio Department of Taxation

Excise, Motor Fuel and Public Utilities Division

P.O. Box 530

Columbus, OH 43216-0530

855-466-3921

Application Information:

MF 201	All	Application for License as a Motor Fuel Dealer	7/10	PDF Fill-in
--------	-----	--	------	-------------

1. Completed and notarized MF201 – Application for License as a Motor Fuel Dealer.
2. A copy of the applicant's latest financial statements prepared by an independent auditor or accountant.
3. A letter of explanation detailing the applicant's intended course of business in Ohio.
4. A copy of Certification from the Ohio Secretary of State.
5. List of all retail service stations owned by the applicant.
6. A surety bond, which will be determined, based on the above information provided.

Dealer Monthly Report Forms:

MF 2	All	Licensed Dealer's Monthly Ohio Motor Fuel Tax Report	7/11	PDF Fill-in
MF 2-1	All	Licensed Dealer's Schedule of Receipts	11/08	PDF Fill-in
MF 2-2	All	Licensed Dealer's Schedule of Disbursements	11/08	PDF Fill-in
MF 2A	All	Gasoline Schedule Recap	12/08	PDF Fill-in
MF 2B	All	Low Sulfur Dyed Diesel Fuel Schedule Recap	12/08	PDF Fill-in
MF 2C	All	Kerosene Fuel Schedule Recap	12/08	PDF Fill-in
MF 2D	All	Clear Diesel Fuel Schedule Recap	12/08	PDF Fill-in
MF 2F	All	Miscellaneous Liquid Petroleum Fuel Schedule Recap	12/08	PDF Fill-in
MF 2G	All	High Sulfur Dyed Diesel Fuel Schedule Recap	12/08	PDF Fill-in

These forms are available on our websites at tax.ohio.gov, go to business, tax forms, motor fuel tax and click on the appropriate form.

Once licensed, the tax report forms must be received by the last day of each month following the report period.

Motor Fuel Information Releases:

Motor Fuel Tax	Revised	Format	Released
Motor Fuel Shrinkage Allowance Reduction for Ohio Motor Fuel Dealers		HTML	July 2009
Motor Fuel Shrinkage Allowances		HTML	June 29, 2007
Temporary Provisions Regarding the Sale and Use of Dyed Diesel Fuel		HTML	September 6, 2005
Fuel Tax Surcharge Reduction for IFTA Accounts		HTML	June 30, 2005
Fuel Tax Surcharge Reduction for Ohio Fuel Use Tax (FUT) Accounts		HTML	June 30, 2005
Motor Fuel Shrinkage Allowance Reduction for Ohio Motor Fuel Dealers		HTML	June 28, 2005
Motor Fuel Tax Increase		HTML	June 3, 2005

Proper Reporting of Biodiesels (Including Soy Oil and Soy Diesels)		HTML	May 16, 2005
Motor Fuel Tax Refund Claims for Agricultural, Industrial, and Miscellaneous Refund Claimants		HTML	August 6, 2004
Motor Fuel Tax Increase		HTML	June 11, 2004
Revised Definition of Transit Buses		HTML	February 12, 2004
Excise And Motor Fuel Tax Division Information Release – Motor Fuel Dealer List Added To The Web Site And Request For E-Mail Addresses		HTML	December 17, 2003
Motor Fuel Tax Refund for School Districts or Educational Services		HTML	July 7, 2003
Motor Fuel Tax Increase and Filing Period Adjustment for Refund Claims for Agricultural, Industrial, and Miscellaneous Refund Claimants		HTML	July 2, 2003
Motor Fuel Tax Increase		HTML	June 10, 2003
Habitual Filing Problems		HTML	May 25, 2001
Prompt Filing of Motor Fuel Tax Returns		HTML	May 25, 2001
Motor Fuel Imported Into Ohio From Michigan		HTML	March 15, 2001
Proper Terminal Reporting		HTML	February 15, 2001
Tank Truck Movements From One Terminal To Another Terminal		HTML	January 11, 2001
Monthly reporting problems for all licensed motor fuel exporters		HTML	November 9, 2000
House Bill 612 information for all licensed motor fuel dealers		HTML	September 8, 2000
House Bill 612 information for all motor fuel refund permit holders (claimants)		HTML	September 8, 2000
House Bill 612 information for all retail motor fuel dealers (service stations)		HTML	September 8, 2000
Filing procedures for all licensed motor fuel dealers		HTML	September 8, 2000
House Bill 612 information for all licensed motor fuel common carriers		HTML	September 6, 2000
House Bill 612 information for all motor fuel terminal operators		HTML	September 6, 2000

These forms are available on our websites at tax.ohio.gov, go to business, Ohio taxes, motor fuel tax, information release and click on the appropriate form.

Ohio Revised Code sections that apply to Motor Fuel Dealers.

5735.01 Motor fuel tax definitions.

As used in this chapter:

(A) "Motor vehicles" includes all vehicles, vessels, watercraft, engines, machines, or mechanical contrivances which are powered by internal combustion engines or motors.

(B) "Motor fuel" means gasoline, diesel fuel, K-1 kerosene, or any other liquid motor fuel, including, but not limited to, liquid petroleum gas or liquid natural gas, but excluding substances prepackaged and sold in containers of five gallons or less.

(C) "K-1 Kerosene" means fuel that conforms to the chemical and physical standards for kerosene no. 1-K as set forth in the American Society for Testing and Materials (ASTM) designated D-3699 "standard for specification for kerosene," as that standard may be modified from time to time. For purposes of inspection and testing, laboratory analysis shall be conducted using methods recognized by the ASTM designation D-3699.

(D) "Diesel fuel" means any liquid fuel capable of use in discrete form or as a blend component in the operation of engines of the diesel type, including transmix when mixed with diesel fuel.

(E) "Gasoline" means any of the following:

(1) All products, commonly or commercially known or sold as gasoline;

(2) Any blend stocks or additives, including alcohol, that are sold for blending with gasoline, other than products typically sold in containers of five gallons or less;

(3) Transmix when mixed with gasoline, unless certified, as required by the tax commissioner, for withdrawal from terminals for reprocessing at refineries;

(4) Alcohol that is offered for sale or sold for use as, or commonly and commercially used as, a fuel for internal combustion engines.

Gasoline does not include diesel fuel, commercial or industrial naphthas or solvents manufactured, imported, received, stored, distributed, sold, or used exclusively for purposes other than as a motor fuel for a motor vehicle or vessel. The blending of any of the products listed in the preceding sentence, regardless of name or characteristics, is conclusively presumed to have been done to produce gasoline, unless the product obtained by the blending is entirely incapable for use as fuel to operate a motor vehicle. An additive, blend stock, or alcohol is presumed to be sold for blending unless a certification is obtained as required by the tax commissioner.

(F) "Public highways" means lands and lots over which the public, either as user or owner, generally has a right to pass, even though the same are closed temporarily by the authorities for the purpose of construction, reconstruction, maintenance, or repair.

(G) "Waters within the boundaries of this state" means all streams, lakes, ponds, marshes, water courses, and all other bodies of surface water, natural or artificial, which are situated wholly or partially within this state or within its jurisdiction, except private impounded bodies of water.

(H) "Person" includes individuals, partnerships, firms, associations, corporations, receivers, trustees in bankruptcy, estates, joint-stock companies, joint ventures, the state and its political subdivisions, and any combination of persons of any form.

(I)(1) "Motor fuel dealer" means any person who satisfies any of the following:

(a) The person imports from another state or foreign country or acquires motor fuel by any means into a terminal in this state;

(b) The person imports motor fuel from another state or foreign country in bulk lot vehicles for subsequent sale and distribution in this state from bulk lot vehicles;

(c) The person refines motor fuel in this state;

(d) The person acquires motor fuel from a motor fuel dealer for subsequent sale and distribution by that person in this state from bulk lot vehicles;

(e) The person possesses an unrevoked permissive motor fuel dealer's license.

(2) Any person who obtains dyed diesel fuel for use other than the operation of motor vehicles upon the public highways or upon waters within the boundaries of this state, but later uses that motor fuel for the operation of motor vehicles upon the public highways or upon waters within the boundaries of this state, is deemed a motor fuel dealer as regards any unpaid motor fuel taxes levied on the motor fuel so used.

(J) As used in sections 5735.05, 5735.25, 5735.29, and 5735.30 of the Revised Code only:

(1) With respect to gasoline, "received" or "receipt" shall be construed as follows:

(a) Gasoline produced at a refinery in this state or delivered to a terminal in this state is deemed received when it is disbursed through a loading rack at that refinery or terminal;

(b) Except as provided in division (J)(1)(a) of this section, gasoline imported into this state or purchased or otherwise acquired in this state by any person is deemed received within this state by that person when the gasoline is withdrawn from the container in which it was transported;

(c) Gasoline delivered or disbursed by any means from a terminal directly to another terminal is not deemed received.

(2) With respect to motor fuel other than gasoline, "received" or "receipt" means distributed or sold for use or used to generate power for the operation of motor vehicles upon the public highways or upon waters within the boundaries of this state. All diesel fuel that is not dyed diesel fuel, regardless of its use, shall be considered as used to generate power for the operation of motor vehicles upon the public highways or upon waters within the boundaries of this state when the fuel is sold or distributed to a person other than a licensed motor fuel dealer or to a person licensed under section 5735.026 of the Revised Code.

(K) Motor fuel used for the operation of licensed motor vehicles employed in the maintenance, construction, or repair of public highways is deemed to be used for the operation of motor vehicles upon the public highways.

(L) "Licensed motor fuel dealer" means any dealer possessing an unrevoked motor fuel dealer's license issued by the tax commissioner as provided in section 5735.02 of the Revised Code.

(M) "Licensed retail dealer" means any retail dealer possessing an unrevoked retail dealer's license issued by the tax commissioner as provided in section 5735.022 of the Revised Code.

(N) "Cents per gallon rate" means the amount computed by the tax commissioner under section 5735.011 of the Revised Code that is used to determine that portion of the tax levied by section 5735.05 of the Revised Code that is computed in the manner prescribed by division (B)(2) of section 5735.06 of the Revised Code and that is applicable for the period that begins on the first day of July following the date on which the commissioner makes the computation.

(O) "Retail dealer" means any person that sells or distributes motor fuel at a retail service station located in this state.

(P) "Retail service station" means a location from which motor fuel is sold to the general public and is dispensed or pumped directly into motor vehicle fuel tanks for consumption.

(Q) "Transit bus" means a motor vehicle that is operated for public transit or paratransit service on a regular and continuing basis within the state by or for a county, a municipal corporation, a county transit board pursuant to sections 306.01 to 306.13 of the Revised Code, a regional transit authority pursuant to sections 306.30 to 306.54 of the Revised Code, or a regional transit commission pursuant to sections 306.80 to 306.90 of the Revised Code. Public transit or paratransit service may include fixed route, demand-responsive, or subscription bus service

transportation, but does not include shared-ride taxi service, carpools, vanpools, jitney service, school bus transportation, or charter or sightseeing services.

(R) "Export" means motor fuel delivered outside this state. Motor fuel delivered outside this state by or for the seller constitutes an export by the seller. Motor fuel delivered outside this state by or for the purchaser constitutes an export by the purchaser.

(S) "Import" means motor fuel delivered into this state from outside this state. Motor fuel delivered into this state from outside this state by or for the seller constitutes an import by the seller. Motor fuel delivered into this state from outside this state by or for the purchaser constitutes an import by the purchaser.

(T) "Terminal" means a motor fuel storage or distribution facility that is supplied by pipeline or marine vessel.

(U) "Consumer" means a buyer of motor fuel for purposes other than resale in any form.

(V) "Bulk lot vehicle" means railroad tank cars, transport tank trucks and tank wagons with a capacity of at least 1,400 gallons.

(W) "Licensed permissive motor fuel dealer" means any person possessing an unrevoked permissive motor fuel dealer's license issued by the tax commissioner under section 5735.021 of the Revised Code.

(X) "Licensed terminal operator" means any person possessing an unrevoked terminal operator's license issued by the tax commissioner under section 5735.026 of the Revised Code.

(Y) "Licensed exporter" means any person possessing an unrevoked exporter's license issued by the tax commissioner under section 5735.026 of the Revised Code.

(Z) "Dyed diesel fuel" means any diesel fuel dyed pursuant to regulations issued by the internal revenue service or a rule promulgated by the tax commissioner.

(AA) "Gross gallons" means U.S. gallons without temperature or barometric adjustments.

(BB) "Net gallons" means U.S. gallons with a temperature adjustment to sixty degrees fahrenheit.

5735.012 Measuring gross gallons and net gallons.

Amounts of motor fuel reported under this chapter shall be measured in gross gallons, except that amounts reported for terminal to terminal transactions shall be measured in net gallons and amounts reported for terminal to Ohio licensed dealer transactions shall be measured in both net gallons and gross gallons.

5735.02 Dealer's license - application - right to refuse license - fee.

A motor fuel dealer shall not receive, use, sell, or distribute any motor fuel or engage in business within this state unless the motor fuel dealer holds an unrevoked license issued by the tax commissioner to engage in such business. To procure such license every motor fuel dealer shall file with the commissioner an application verified under oath by the applicant and in such form as the commissioner prescribes, setting forth, in addition to such other information required by the commissioner, the following:

(A) The name under which the motor fuel dealer will transact business within the state;

(B) The location, including street number address, of its principal office or place of business within this state;

(C) The name and address of the owner, or the names and addresses of the partners if such motor fuel dealer is a partnership, or the names and addresses of the principal officers if such motor fuel dealer is a corporation or an association;

(D) If such motor fuel dealer is a corporation organized under the laws of another state, territory, or country, a certified copy of the certificate or license issued by the Ohio secretary of state showing that such corporation is authorized to transact business in this state;

(E) An agreement that the motor fuel dealer will assume the liability and will pay the tax on any shipment of motor fuel made into the state from any other state or foreign country and sold or caused to be sold by such motor fuel dealer for delivery to a person in this state who is not the holder of an unrevoked motor fuel dealer's license.

An application for a license shall be accompanied by a bond, of the character stipulated and in the amount provided for in section 5735.03 of the Revised Code, which shall be filed with the commissioner.

If any application for a license to transact business as a motor fuel dealer in the state is filed by any person who has had any license previously canceled for cause by the tax commissioner; if the commissioner believes that such application is not filed in good faith or that such application is filed as a subterfuge by some person for the real person in interest who has previously had any license canceled for cause by the tax commissioner; or if the person has violated any provision of this chapter, then the tax commissioner, after a hearing, of which the applicant shall be given five days' notice in writing and at which said applicant shall have the right to appear in person or by counsel and present testimony, may refuse to issue to such person a license to transact business as a motor fuel dealer in the state.

When the application in proper form has been accepted for filing, and the bond accepted and approved, the commissioner shall issue to such motor fuel dealer a license to transact business as a motor fuel dealer in the state, subject to cancellation of such license as provided by law.

(F) No person shall make a false or fraudulent statement on the application required by this section.

5735.023 Retail service station - prohibited acts.

(A) No person operating a retail service station shall store, sell, or attempt to sell or distribute any untaxed motor fuel, except K-1 kerosene, at a retail service station.

(B) A licensed motor fuel dealer that operates a bulk storage plant and also maintains at the same location a retail pump that is connected to a bulk storage tank is not subject to division (A) of this section, except that the licensed motor fuel dealer shall pay the tax on all motor fuel dispensed through the retail pump.

(C) Each day, or part thereof, that a person is in violation of division (A) or (B) of this section constitutes a separate offense for purposes of section 5735.99 of the Revised Code.

5735.024 Sale and distribution exceptions.

(A) The motor fuel taxes imposed under this chapter do not apply to the sale or distribution of motor fuel by a licensed motor fuel dealer to another licensed motor fuel dealer.

(B) The motor fuel taxes imposed under this chapter do not apply to the sale or distribution of motor fuel by a licensed motor fuel dealer to an exporter licensed pursuant to section 5735.026 of the Revised Code.

(C) All motor fuel sold or distributed by a licensed motor fuel dealer directly to a consumer and pumped into a common storage tank that is used for both taxable and nontaxable uses is subject to the motor fuel taxes imposed under this chapter.

(D) The motor fuel taxes imposed under this chapter do not apply to the sale or distribution of dyed diesel fuel by a licensed motor fuel dealer from a location other than a retail service station if sold or distributed in compliance with the notice requirements prescribed by division (A)(1) of section 5735.05 of the Revised Code.

(E) Motor fuel dealers selling or distributing motor fuel to any person shall create, maintain, and compile a record of motor fuel sales that lists the taxing state and the amount of motor fuel tax included in all transactions.

5735.025 Prohibited acts generally.

(A) No person shall recklessly import, sell, use, deliver, transport, distribute, or store motor fuel within this state upon which the taxes imposed by this chapter are owed but have not first been paid to or reported by the holder of an unrevoked motor fuel dealer's license, or for which liability for those taxes has not accrued to the holder of an unrevoked motor fuel dealer's license.

(B) No person shall evade or attempt to evade in any manner a motor fuel tax imposed by this chapter. No person shall aid or abet any person to evade or attempt to evade in any manner a motor fuel tax imposed by this chapter. Each day, or part thereof, that a person evades or attempts to evade a motor fuel tax imposed by this chapter, or aids or abets any person to evade or attempt to evade a motor fuel tax imposed by this chapter, constitutes a separate offense for purposes of section 5735.99 of the Revised Code.

5735.03 Dealer's surety bond - release - lien on property.

Every motor fuel dealer shall file with the tax commissioner a surety bond of not less than five thousand dollars, but may be required by the tax commissioner to submit a surety bond equal to three months' average tax liability, on a form approved by and with a surety satisfactory to the commissioner, upon which the motor fuel dealer shall be the principal obligor and the state shall be the obligee, conditioned upon the prompt filing of true reports and the payment by the motor fuel dealer to the treasurer of state of all motor fuel excise taxes levied by the state, provided that after notice is received from the state by the surety of the delinquency of any taxes, if the surety pays the taxes within thirty days after the receipt of the notice no penalties or interest shall be charged against the surety. If the surety does not pay the taxes within thirty days, but does pay within ninety days from the date of the receipt of notice from the state by the surety, no penalty shall be assessed against the surety but the surety shall pay interest at the rate of six per cent per annum on the unpaid taxes from the date the taxes are due and payable. If the surety does not pay within ninety days then the surety shall be liable for interest and penalties, and the tax commissioner may cancel all bonds issued by the surety.

The commissioner may increase or reduce the amount of the bond required to be filed by any licensed motor fuel dealer. If the commissioner finds that it is necessary to increase the bond to assure payment of the tax, the bond may be increased to an amount equal to three months/average liability or fifty thousand dollars, whichever is greater.

If liability upon the bond thus filed by the motor fuel dealer with the commissioner is discharged or reduced, whether by judgment rendered, payment made, or otherwise, or if, in the opinion of the commissioner any surety on the bond theretofore given has become unsatisfactory or unacceptable, the commissioner may require the motor fuel dealer to file a new bond with satisfactory sureties in the same amount, and if a new bond is not filed the commissioner shall

forthwith cancel the license of the motor fuel dealer. If a new bond is furnished by the motor fuel dealer, the commissioner shall cancel and surrender the bond of the motor fuel dealer for which the new bond is substituted.

A surety on a bond furnished by a motor fuel dealer shall be released from all liability to the state accruing on the bond after the expiration of sixty days from the date upon which the surety lodges with the commissioner a written request to be released. The request shall not operate to release the surety from any liability already accrued, or which accrues before the expiration of the sixty-day period. The commissioner shall promptly on receipt of notice of the request notify the motor fuel dealer who furnished the bond and, unless the motor fuel dealer on or before the expiration of the sixty-day period files with the commissioner a new bond with a surety satisfactory to the commissioner in the amount and form provided in this section, the commissioner shall forthwith cancel the license of the motor fuel dealer. If the new bond is furnished by said motor fuel dealer, the commissioner shall cancel and surrender the bond of the motor fuel dealer for which the new bond is substituted.

The commissioner, in lieu of any surety bond required by this section, may accept a deposit by a motor fuel dealer of cash. Any cash thus accepted shall be deposited with the treasurer of state to be held by the treasurer of state, in the same manner as other cash required to be deposited with the treasurer of state under the laws of the state, for the account of such motor fuel dealer and subject to any lawful claim of the state for any excise tax upon motor fuel, and penalties and interest thereon levied by the laws of this state. The state shall have a lien upon cash thus deposited for the amount of any motor fuel excise taxes and penalty and interest due to the state from the motor fuel dealer in whose behalf they were deposited. The amount of cash to be thus accepted shall in all respects be determined in the same manner as provided in this section for the amount of surety bonds. Any cash deposited shall be subject to levy upon execution to satisfy any judgment secured in any action by the state to recover any motor fuel excise taxes, and penalties and interest found to be due to the state from such motor fuel dealer. The cash shall be released by the treasurer of state upon certificate of the commissioner that the license of the motor fuel dealer in whose behalf they have been deposited has been canceled or that other security has been accepted in lieu thereof, and that the state asserts no claim thereto.

5735.04 Revocation or cancellation of dealer's license - cancellation of bond.

If a motor fuel dealer files a false monthly report of the information required under section 5735.06 of the Revised Code, fails to file a monthly report as required by that section, fails to pay the full amount of the tax as required by the motor fuel laws of the state or as may be agreed upon by the tax commissioner and the motor fuel dealer, or fails to file an inventory report as required by section 5735.061 of the Revised Code, the commissioner may revoke the license of the motor fuel dealer, and notify the motor fuel dealer in writing of such revocation by certified mail sent to the last known address of the motor fuel dealer appearing on the files of the commissioner.

The commissioner may cancel any license issued to any motor fuel dealer, and the cancellation shall become effective at the time that may be determined by the commissioner. The commissioner also may cancel the license of any motor fuel dealer upon sixty days' notice mailed to the last known address of the motor fuel dealer if the commissioner, upon investigation, finds that the person to whom the license has been issued is no longer engaged in the receipt, use, or sale of motor fuel as a motor fuel dealer, and has not been so engaged for the period of six months prior to the cancellation. No license shall be canceled upon the request of any motor fuel dealer unless the motor fuel dealer, prior to the date of cancellation, has paid to the state all motor fuel taxes payable or assumed by the motor fuel dealer under the laws of the state, together with all penalties and fines accruing by reason of any failure of the motor fuel dealer to make accurate reports of receipts of motor fuel or to pay the taxes and penalties.

If the license of any motor fuel dealer is canceled by the commissioner as provided in this section, and if the motor fuel dealer has paid to the state all motor fuel taxes due and payable by the motor fuel dealer under the laws of the state, or assumed by the motor fuel dealer upon the

receipt, sale, or use of motor fuel, together with all penalties accruing by reason of any failure on the part of the motor fuel dealer to make accurate reports or to pay the tax and penalties, then the commissioner shall cancel and surrender the bond theretofore filed by the motor fuel dealer.

5735.05 Levy of motor fuel excise tax - exceptions.

(A) To provide revenue for maintaining the state highway system; to widen existing surfaces on such highways; to resurface such highways; to pay that portion of the construction cost of a highway project which a county, township, or municipal corporation normally would be required to pay, but which the director of transportation, pursuant to division (B) of section 5531.08 of the Revised Code, determines instead will be paid from moneys in the highway operating fund; to enable the counties of the state properly to plan, maintain, and repair their roads and to pay principal, interest, and charges on bonds and other obligations issued pursuant to Chapter 133. of the Revised Code or incurred pursuant to section 5531.09 of the Revised Code for highway improvements; to enable the municipal corporations to plan, construct, reconstruct, repave, widen, maintain, repair, clear, and clean public highways, roads, and streets, and to pay the principal, interest, and charges on bonds and other obligations issued pursuant to Chapter 133. of the Revised Code or incurred pursuant to section 5531.09 of the Revised Code for highway improvements; to enable the Ohio turnpike commission to construct, reconstruct, maintain, and repair turnpike projects; to maintain and repair bridges and viaducts; to purchase, erect, and maintain street and traffic signs and markers; to purchase, erect, and maintain traffic lights and signals; to pay the costs apportioned to the public under sections 4907.47 and 4907.471 of the Revised Code and to supplement revenue already available for such purposes; to pay the costs incurred by the public utilities commission in administering sections 4907.47 to 4907.476 of the Revised Code; to distribute equitably among those persons using the privilege of driving motor vehicles upon such highways and streets the cost of maintaining and repairing them; to pay the interest, principal, and charges on highway capital improvements bonds and other obligations issued pursuant to Section 2m of Article VIII, Ohio Constitution, and section 151.06 of the Revised Code; to pay the interest, principal, and charges on highway obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code; to pay the interest, principal, and charges on major new state infrastructure bonds and other obligations of the state issued pursuant to Section 13 of Article VIII, Ohio Constitution, and section 5531.10 of the Revised Code; to provide revenue for the purposes of sections 1547.71 to 1547.78 of the Revised Code; and to pay the expenses of the department of taxation incident to the administration of the motor fuel laws, a motor fuel excise tax is hereby imposed on all motor fuel dealers upon receipt of motor fuel within this state at the rate of two cents plus the cents per gallon rate on each gallon so received, to be computed in the manner set forth in section 5735.06 of the Revised Code; provided that no tax is hereby imposed upon the following transactions:

(1) The sale of dyed diesel fuel by a licensed motor fuel dealer from a location other than a retail service station provided the licensed motor fuel dealer places on the face of the delivery document or invoice, or both if both are used, a conspicuous notice stating that the fuel is dyed and is not for taxable use, and that taxable use of that fuel is subject to a penalty. The tax commissioner, by rule, may provide that any notice conforming to rules or regulations issued by the United States department of the treasury or the Internal Revenue Service is sufficient notice for the purposes of division (A)(1) of this section.

(2) The sale of K-1 kerosene to a retail service station, except when placed directly in the fuel supply tank of a motor vehicle. Such sale shall be rebuttably presumed to not be distributed or sold for use or used to generate power for the operation of motor vehicles upon the public highways or upon the waters within the boundaries of this state.

(3) The sale of motor fuel by a licensed motor fuel dealer to another licensed motor fuel dealer;

(4) The exportation of motor fuel by a licensed motor fuel dealer from this state to any other state or foreign country;

(5) The sale of motor fuel to the United States government or any of its agencies, except such tax as is permitted by it, where such sale is evidenced by an exemption certificate, in a form approved by the tax commissioner, executed by the United States government or an agency thereof certifying that the motor fuel therein identified has been purchased for the exclusive use of the United States government or its agency;

(6) The sale of motor fuel that is in the process of transportation in foreign or interstate commerce, except insofar as it may be taxable under the Constitution and statutes of the United States, and except as may be agreed upon in writing by the dealer and the commissioner;

(7) The sale of motor fuel when sold exclusively for use in the operation of aircraft, where such sale is evidenced by an exemption certificate prescribed by the commissioner and executed by the purchaser certifying that the motor fuel purchased has been purchased for exclusive use in the operation of aircraft;

(8) The sale for exportation of motor fuel by a licensed motor fuel dealer to a licensed exporter type A;

(9) The sale for exportation of motor fuel by a licensed motor fuel dealer to a licensed exporter type B, provided that the destination state motor fuel tax has been paid or will be accrued and paid by the licensed motor fuel dealer.

(10) The sale to a consumer of diesel fuel, by a motor fuel dealer for delivery from a bulk lot vehicle, for consumption in operating a vessel when the use of such fuel in a vessel would otherwise qualify for a refund under section [5735.14](#) of the Revised Code.

Division (A)(1) of this section does not apply to the sale or distribution of dyed diesel fuel used to operate a motor vehicle on the public highways or upon water within the boundaries of this state by persons permitted under regulations of the United States department of the treasury or of the Internal Revenue Service to so use dyed diesel fuel.

(B) The two cent motor fuel tax levied by this section is also for the purpose of paying the expenses of administering and enforcing the state law relating to the registration and operation of motor vehicles.

(C) After the tax provided for by this section on the receipt of any motor fuel has been paid by the motor fuel dealer, the motor fuel may thereafter be used, sold, or resold by any person having lawful title to it, without incurring liability for such tax.

If a licensed motor fuel dealer sells motor fuel received by the licensed motor fuel dealer to another licensed motor fuel dealer, the seller may deduct on the report required by section 5735.06 of the Revised Code the number of gallons so sold for the month within which the motor fuel was sold or delivered. In this event the number of gallons is deemed to have been received by the purchaser, who shall report and pay the tax imposed thereon.

5735.052 Selling or distributing dyed diesel fuel.

(A) If any person sells or distributes any dyed diesel fuel without the notice required under division (A)(1) of section 5735.05 of the Revised Code, that person is subject to an additional penalty of one dollar per gallon or one hundred dollars, whichever is greater. The penalty may be assessed against the person under section 5735.12 or 5735.121 of the Revised Code.

(B) The tax commissioner may reduce or remit a penalty imposed under this section.

5735.06 Motor fuel dealer to file monthly report - contents of report.

(A) On or before the last day of each month, each motor fuel dealer shall file with the tax commissioner a report for the preceding calendar month, on forms prescribed by or in a form acceptable to the tax commissioner. The report shall include the following information:

(1) An itemized statement of the number of gallons of all motor fuel received during the preceding calendar month by such motor fuel dealer, which has been produced, refined, prepared, distilled, manufactured, blended, or compounded by such motor fuel dealer in the state;

(2) An itemized statement of the number of gallons of all motor fuel received by such motor fuel dealer in the state from any source during the preceding calendar month, other than motor fuel included in division (A)(1) of this section, together with a statement showing the date of receipt of such motor fuel; the name of the person from whom purchased or received; the date of receipt of each shipment of motor fuel; the point of origin and the point of destination of each shipment; the quantity of each of said purchases or shipments; the name of the carrier; the number of gallons contained in each car if shipped by rail; the point of origin, destination, and shipper if shipped by pipe line; or the name and owner of the boat, barge, or vessel if shipped by water;

(3) An itemized statement of the number of gallons of motor fuel which such motor fuel dealer has during the preceding calendar month:

(a) For motor fuel other than gasoline sold for use other than for operating motor vehicles on the public highways or on waters within the boundaries of this state;

(b) Exported from this state to any other state or foreign country as provided in division (A)(4) of section 5735.05 of the Revised Code;

(c) Sold to the United States government or any of its agencies;

(d) Sold for delivery to motor fuel dealers;

(e) Sold exclusively for use in the operation of aircraft;

(4) Such other information incidental to the enforcement of the motor fuel laws of the state as the commissioner requires.

(B) The report shall show the tax due, computed as follows:

(1) The following deductions shall be made from the total number of gallons of motor fuel received by the motor fuel dealer within the state during the preceding calendar month:

(a) The total number of gallons of motor fuel received by the motor fuel dealer within the state and sold or otherwise disposed of during the preceding calendar month as set forth in section 5735.05 of the Revised Code;

(b) The total number of gallons received during the preceding calendar month and sold or otherwise disposed of to another licensed motor fuel dealer pursuant to section 5735.05 of the Revised Code;

(c) To cover the costs of the motor fuel dealer in compiling the report, and evaporation, shrinkage, or other unaccounted-for losses:

(i) If the report is timely filed and the tax is timely paid, three per cent of the total number of gallons of motor fuel received by the motor fuel dealer within the state during the preceding calendar month less the total number of gallons deducted under divisions (B)(1)(a) and (b) of this section, less one per cent of the total number of gallons of motor fuel that were sold to a retail dealer during the preceding calendar month;

(ii) If the report required by division (A) of this section is not timely filed and the tax is not timely paid, no deduction shall be allowed;

(iii) If the report is incomplete, no deduction shall be allowed for any fuel on which the tax is not timely reported and paid;

(2) The number of gallons remaining after the deductions have been made shall be multiplied separately by each of the following amounts:

(a) The cents per gallon rate;

(b) Two cents.

The sum of the products obtained in divisions (B)(2)(a) and (b) of this section shall be the amount of motor fuel tax for the preceding calendar month.

(C) The report shall be filed together with payment of the tax shown on the report to be due, unless the motor fuel dealer is required by section 5735.062 of the Revised Code to pay the tax by electronic funds transfer, in which case the dealer shall file the report pursuant to this section and pay the tax pursuant to section 5735.062 of the Revised Code. The commissioner may extend the time for filing reports and may remit all or part of penalties which may become due under sections 5735.01 to 5735.99 of the Revised Code. For purposes of this section and sections 5735.062 and 5735.12 of the Revised Code, a report required to be filed under this section is considered filed when it is received by the tax commissioner, and remittance of the tax due is considered to be made when the remittance is received by the tax commissioner or when credited to an account designated by the treasurer of state and the tax commissioner for the receipt of tax remittances. The tax commissioner shall immediately forward to the treasurer of state all amounts received under this section.

(D) The tax commissioner may require a motor fuel dealer to file a report for a period other than one month. Such a report, together with payment of the tax, shall be filed not later than thirty days after the last day of the prescribed reporting period.

(E) No person required by this section to file a tax report shall file a false or fraudulent tax report or supporting schedule.

5735.062 Tax payments by electronic funds transfer.

(A) If the total amount of tax required to be paid under section 5735.06 of the Revised Code for any calendar year indicated in the following schedule exceeds the amounts prescribed for that year in the schedule, the dealer shall remit each monthly tax payment in the second ensuing and each succeeding year by electronic funds transfer as prescribed by division (B) of this section.

Year 1992 1993 and thereafter

Total tax payment \$1,200,000 \$600,000

If a dealer's total tax payment for each of two consecutive years beginning with 1993 is six hundred thousand dollars or less, the dealer is relieved of the requirement to remit taxes by electronic funds transfer for the year that next follows the second of the consecutive years in which the total tax payment is six hundred thousand dollars or less, and is relieved of that

requirement for each succeeding year unless the total tax payment in a subsequent year exceeds six hundred thousand dollars.

The tax commissioner shall notify each dealer required to remit taxes by electronic funds transfer of the dealer's obligation to do so, shall maintain an updated list of those dealers, and shall timely certify the list and any additions thereto or deletions therefrom to the treasurer of state. Failure by the tax commissioner to notify a dealer subject to this section to remit taxes by electronic funds transfer does not relieve the dealer of its obligation to remit taxes by electronic funds transfer.

(B) Dealers required by division (A) of this section to remit payments by electronic funds transfer shall remit such payments to the treasurer of state in the manner prescribed by rules adopted by the treasurer under section 113.061 of the Revised Code and on or before the dates specified under section 5735.06 of the Revised Code. The payment of taxes by electronic funds transfer does not affect a dealer's obligation to file the monthly report as required under section 5735.06 of the Revised Code.

A dealer required by this section to remit taxes by electronic funds transfer may apply to the treasurer of state in the manner prescribed by the treasurer to be excused from that requirement. The treasurer of state may excuse the dealer from remittance by electronic funds transfer for good cause shown for the period of time requested by the dealer or for a portion of that period. The treasurer shall notify the tax commissioner and the dealer of the treasurer's decision as soon as is practicable.

(C) If a dealer required by this section to remit taxes by electronic funds transfer remits those taxes by some means other than by electronic funds transfer as prescribed by this section and the rules adopted by the treasurer of state, and the treasurer determines that such failure was not due to reasonable cause or was due to willful neglect, the treasurer shall notify the tax commissioner of the failure to remit by electronic funds transfer and shall provide the commissioner with any information used in making that determination. The tax commissioner may collect an additional charge by assessment in the manner prescribed by section 5735.12 of the Revised Code. The additional charge shall equal five per cent of the amount of the taxes required to be paid by electronic funds transfer, but shall not exceed five thousand dollars. Any additional charge assessed under this section is in addition to any other penalty or charge imposed under this chapter, and shall be considered as revenue arising from taxes imposed under this chapter. The tax commissioner may remit all or a portion of such a charge and may adopt rules governing such remission.

No additional charge shall be assessed under this division against a dealer that has been notified of its obligation to remit taxes under this section and that remits its first two tax payments after such notification by some means other than electronic funds transfer. The additional charge may be assessed upon the remittance of any subsequent tax payment that the dealer remits by some means other than electronic funds transfer.

5735.10 Dealers to retain records - inspection by tax commissioner.

(A) Each motor fuel dealer and each retail dealer shall maintain complete and accurate records of purchases and sales of motor fuel and shall procure and retain all invoices, bills of lading, and other documents relating thereto, except that no retail dealer shall be required to issue or maintain invoices relating to that retail dealer's sales of motor fuel.

(B) Every retail dealer shall take meter readings or totalizer readings and tank stick readings at a retail service station daily.

(C) Every retail dealer shall maintain accurate records each time a retail pump meter or totalizer is serviced, repaired, or replaced. The repair and replacement records must indicate, at a

minimum, the date of the repair or replacement, the meter or pump number, and all ascending and descending numbers.

(D) Such records and documents shall be open during business hours to the inspection of the tax commissioner, and shall be preserved for a period of four years, unless the commissioner, in writing, consents to their destruction within that period, or by order requires that they be kept for a longer period.

No person shall refuse to provide such records and documents to the tax commissioner or any person employed by the commissioner for the purpose of inspecting such records and documents.

(E) No person required by this section to maintain accurate records shall maintain or provide false or fraudulent records.

5735.102 Seizure and sale of fuel and transporting vehicle when taxes not paid.

Whenever the tax commissioner discovers any motor fuel subject to the taxes levied under Chapter 5735. of the Revised Code and upon which the taxes have not been paid, the commissioner may seize and take possession of the motor fuel. The motor fuel shall be forfeited to the state, and the commissioner, within a reasonable time thereafter, may sell the forfeited motor fuel. The commissioner shall collect the taxes due on the forfeited motor fuel from the proceeds of the sale. Proceeds of the sale shall be paid into the state treasury pursuant to this chapter. The seizure and sale shall not relieve any person from fine or imprisonment resulting from a violation of section 5735.022 or 5735.20 of the Revised Code. The sale shall be made in the county in which it is most convenient and economical.

Any motor vehicle used to transport motor fuel seized pursuant to this section also is subject to seizure by the tax commissioner. The tax commissioner may dispose of the seized vehicle in the manner prescribed by this section for disposing of seized motor fuel.

5735.11 Interest on late payment of tax or refund.

(A) If the tax or any portion of the tax imposed by this chapter, whether determined by the tax commissioner or the motor fuel dealer, is not paid on or before the date prescribed in section 5735.06 of the Revised Code, interest shall be collected and paid in the same manner as the tax upon the unpaid amount, computed at the rate per annum prescribed by section 5703.47 of the Revised Code, from the date prescribed for payment of the tax to the date of payment or to the date an assessment is issued under section 5735.12 or 5735.121 of the Revised Code, whichever occurs first. Interest may be collected by assessment in the manner provided in section 5735.12 or 5735.121 of the Revised Code. All interest shall be paid in the same manner as the tax and shall be considered as revenue arising from the tax imposed by section 5735.05 of the Revised Code.

(B) Interest shall be allowed and paid upon any refund granted in respect to the payment of an illegal or erroneous assessment for any tax imposed under this chapter from the date of the overpayment. The interest shall be computed at the rate per annum prescribed by section 5703.47 of the Revised Code.

5735.12 Liability for additional charge or assessment for noncompliance.

(A) Any motor fuel dealer required by this chapter to file reports and pay the tax levied by this chapter who fails to file the report within the time prescribed, may be liable for an additional charge not exceeding the greater of ten per cent of the motor fuel dealer's tax liability for that

month or fifty dollars. The tax commissioner may remit all or a portion of the additional charge and may adopt rules relating to the remission of all or a portion of the charge.

If any person required by this chapter to file reports and pay the taxes, interest, or additional charge levied by this chapter fails to file the report, files an incomplete or incorrect report, or fails to remit the full amount of the tax, interest, or additional charge due for the period covered by the report, the commissioner may make an assessment against the person based upon any information in the commissioner's possession.

No assessment shall be made against any motor fuel dealer for taxes imposed by this chapter more than four years after the date on which the report on which the assessment was based was due or was filed, whichever is later. This section does not bar an assessment against any motor fuel dealer who fails to file a report required by section 5735.06 of the Revised Code, or who files a fraudulent motor fuel tax report.

A penalty of up to fifteen per cent may be added to the amount of every assessment made under this section. The commissioner may adopt rules providing for the imposition and remission of penalties added to assessments made under this section.

The commissioner shall give the party assessed written notice of the assessment in the manner provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) Unless the party assessed files with the tax commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment in writing, signed by the party assessed or that party's authorized agent having knowledge of the facts, the assessment becomes final and the amount of the assessment is due and payable from the party assessed to the treasurer of state. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 of the Revised Code.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the tax commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the party assessed resides or in which the business of the party assessed is conducted. If the party assessed maintains no place of business in this state and is not a resident of this state, the certified copy of the entry may be filed in the office of the clerk of the court of common pleas of Franklin county.

Immediately upon the filing of the entry, the clerk shall enter a judgment for the state against the party assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for state motor fuel tax," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

The portion of the assessment not paid within sixty days after the day the assessment was issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the commissioner issues the assessment until it is paid. Interest shall be paid in the same manner as the tax and may be collected by the issuance of an assessment under this section.

(D) All money collected by the tax commissioner under this section shall be paid to the treasurer of state, and when paid shall be considered as revenue arising from the tax imposed by this chapter.

(E) If the tax commissioner determines that the commissioner has erroneously refunded motor fuel tax to any person, the commissioner may make an assessment against the person for recovery of the erroneously refunded tax.

5735.121 Jeopardy assessment.

(A) If the tax commissioner finds that any person liable for tax under this chapter is about to depart from the state, remove property from the state, conceal self, or conceal the person's property, or do any other act tending to prejudice, obstruct, or render wholly or partly ineffectual proceedings to collect the tax, unless proceedings are commenced without delay, or if the commissioner believes that the collection of the amount due from any person will be jeopardized by delay, the commissioner may issue a jeopardy assessment against the person for the amount of the tax, plus a penalty of up to fifteen per cent. Upon issuance of a jeopardy assessment under this division, the total amount assessed shall immediately be due and payable unless security is provided pursuant to division (C) of this section. Any assessment issued under this section shall bear interest in the manner prescribed in section 5735.12 of the Revised Code.

(B) The commissioner immediately shall file an entry with the clerk of the court of common pleas in the same manner and with the same effect as provided in section 5735.12 of the Revised Code. Notice of the jeopardy assessment shall be served on the person assessed or the legal representative of the person assessed, as provided in section 5703.37 of the Revised Code, within five days of the filing of the entry. The person assessed may petition for reassessment within sixty days of receipt of the notice of jeopardy assessment in the same manner as provided in section 5735.12 of the Revised Code. Full or partial payment of the assessment shall not prejudice the commissioner's consideration of the merits of the assessment as contested by the petition for reassessment. Upon notification of the existence of the judgment filed pursuant to this division, any public official having control or custody of any funds or property of the person assessed immediately shall pay or deliver the funds or property to the commissioner as full or partial satisfaction of the jeopardy assessment. However, funds or property needed as evidence in criminal proceedings or that is expected to be forfeited pursuant to Chapter 2981. of the Revised Code, need not be relinquished by the public official. Upon disposition of criminal and forfeiture proceedings, funds and property not needed as evidence and not forfeited shall be delivered to the commissioner.

(C) If the person subject to a jeopardy assessment files a petition for reassessment and posts security satisfactory to the commissioner in an amount sufficient to satisfy the unpaid balance of the assessment, execution on the judgment shall be stayed pending disposition of the petition for reassessment and all appeals resulting from the petition. If the security is sufficient to satisfy the full amount of the assessment, the commissioner shall return any funds or property of the person that previously were seized. Upon satisfaction of the assessment, the commissioner shall order the security released and the judgment vacated.

(D) The commissioner may adopt rules providing for the imposition and remission of penalties added to assessments made under this section.

5735.122 Applying for refund of illegal or erroneous payment.

The tax commissioner shall refund to dealers or to any person assessed motor fuel tax the amount of taxes paid illegally or erroneously or paid on an illegal or erroneous assessment. Applications for refund shall be filed with the tax commissioner, on the form prescribed by the commissioner, within four years from the date of the illegal or erroneous payment. No person shall file a claim for the tax on fewer than one hundred gallons of motor fuel.

On the filing of the application, the commissioner shall determine the amount of refund to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify the amount to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code, except that no refund

shall be authorized or paid on a claim for the tax on fewer than one hundred gallons of motor fuel. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

The refund authorized by this section or section 5703.70 of the Revised Code shall be reduced by the cents per gallon amount of any qualified fuel credit received under section 5735.145 of the Revised Code, as determined by the commissioner, for each gallon of qualified fuel included in the total gallonage of motor fuel upon which the refund is computed.

5735.123 Assessment where tax not paid or liability accrued to dealer.

If any person imports, sells, uses, delivers, or stores, within this state, motor fuel upon which the tax imposed by this chapter has not first been paid or liability for the tax imposed by this chapter on the motor fuel has not accrued to the holder of an unrevoked motor fuel dealer's license, the commissioner may make an assessment against the person under section 5735.12 or 5735.121 of the Revised Code for the motor fuel taxes imposed by this chapter. The assessment may be based upon any information in the commissioner's possession.

5735.124 Selling or distributing dyed diesel fuel.

(A)(1) Any person that sells or distributes dyed diesel fuel when that person knows or has reason to know that the dyed diesel fuel will be used in the operation of a motor vehicle on the public highways or upon waters within the boundaries of this state is subject to a penalty of one thousand dollars or ten dollars per gallon of dyed diesel fuel so sold or distributed, whichever is greater. Division (A)(1) of this section does not apply to the sale or distribution of dyed diesel fuel used to operate a motor vehicle on the public highways or upon water within the boundaries of this state by persons permitted under regulations of the United States department of the treasury or of the internal revenue service to so use dyed diesel fuel.

(2) Any person that consumes dyed diesel fuel in the operation of a motor vehicle on the public highways or waters within the boundaries of this state is subject to a penalty of one thousand dollars or ten dollars per gallon of the vehicle's fuel supply tank capacity, whichever is greater. Division (A)(2) of this section does not apply to consumption by persons permitted under regulations of the United States department of the treasury or of the internal revenue service to consume dyed diesel fuel in operating a motor vehicle on the public highways or waters within the boundaries of this state.

(B) Any penalty imposed under this section may be assessed under section 5735.12 or 5735.121 of the Revised Code.

(C) If a prior penalty has been issued against a person under this section, the amount of the penalty shall be multiplied by the number of prior penalties imposed on such person under this section, and the resulting amount shall be the total penalty assessed.

(D) The tax commissioner may reduce or remit a penalty assessed under this section.

5735.13 Refund of tax when motor fuel lost or destroyed.

A refund shall be made to any person for the motor fuel tax paid on any motor fuel that is lost or destroyed through leakage, fire, explosion, lightning, flood, tornado, windstorm, or any other cause, except theft, evaporation, shrinkage, and unaccounted-for losses. No refund shall be authorized or ordered under this section for any single loss of less than one hundred gallons, nor except upon notice to the tax commissioner within thirty days from the date of such loss or destruction or the discovery thereof, and upon filing with the tax commissioner within sixty days thereafter an application in the form of an affidavit sworn to by the claimant setting forth in full

the circumstances of the loss, and upon presentation of supporting evidence satisfactory to the commissioner.

On the filing of the application, the commissioner shall determine the amount of the refund to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify the amount to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

The refund authorized by this section or section 5703.70 of the Revised Code shall be reduced by the cents per gallon amount of any qualified fuel credit received under section 5735.145 of the Revised Code, as determined by the commissioner, for each gallon of qualified fuel included in the total gallonage of motor fuel upon which the refund is computed.

5735.19 Records open to inspection by tax commissioner - investigations - forms.

(A) The tax commissioner may examine, during the usual business hours of the day, the records, books, invoices, storage tanks, and any other equipment of any motor fuel dealer, retail dealer, exporter, terminal operator, purchaser, or common carrier pertaining to motor fuel received, sold, shipped, or delivered, to determine whether the taxes imposed by this chapter have been paid and to verify the truth and accuracy of any statement, report, or return.

(B) The tax commissioner may, in the enforcement of the motor fuel laws of this state, hold hearings, take the testimony of any person, issue subpoenas and compel the attendance of witnesses, and conduct such investigations as the commissioner deems necessary. Such information or evidence is not privileged when used by the state or any officer thereof in any proceeding for the collection of the tax, or any prosecution for violation of the motor fuel laws.

(C) The commissioner may prescribe all forms upon which reports shall be made to the commissioner, forms for claims for refund presented to the commissioner, or forms of records to be used by motor fuel dealers.

(D)(1) As used in this division, "designated inspection site" means any state highway inspection station, weigh station, mobile station, or other similar location designated by the tax commissioner to be used as a fuel inspection site.

(2) An employee of the department of taxation that is so authorized by the tax commissioner may physically inspect, examine, or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of fuel, fuel dyes, or fuel markers, and books and records, if any, that are maintained at the place of inspection and are kept to determine tax liability under this chapter. Inspections may be performed at any place at which motor fuel is or may be produced or stored, or at any designated inspection site.

(3) An employee of the department of taxation who is a duly authorized enforcement agent may detain any motor vehicle, train, barge, ship, or vessel for the purpose of inspecting its fuel tanks and storage tanks. Detainment shall be on the premises under inspection or at a designated inspection site. Detainment may continue for a reasonable period of time as is necessary to determine the amount and composition of the fuel.

(4) Any employee described in division (D)(2) or (3) of this section who has been properly trained may take and remove samples of fuel in quantities as are reasonably necessary to determine the composition of the fuel.

(5) No person shall refuse to allow an inspection under division (D) of this section. Any person who refuses to allow an inspection shall be subject to revocation or cancellation of any license or permit issued under Chapter 5728. or 5735. of the Revised Code.

5735.20 Prohibited acts regarding refunds or engaging in business without license.

(A) No person shall do any of the following:

(1) Knowingly collect or attempt to collect or cause to be repaid to the taxpayer or to any other person, either directly or indirectly, any refund of such tax without being entitled to the same;

(2) Engage in business in the state as a motor fuel dealer without holding an unrevoked license to engage in such business;

(3) Engage in business in the state as a retail dealer without holding an unrevoked license to engage in such business;

(4) Engage in business in the state as a permissive motor fuel dealer without holding an unrevoked license to engage in such business;

(5) Engage in business in the state as an exporter without holding an unrevoked license to engage in such business;

(6) Engage in business as a terminal operator without holding an unrevoked license to engage in such business.

(B) Each day, or part thereof, during which any person engages in business as a motor fuel dealer, retail dealer, permissive motor fuel dealer, exporter, or terminal operator without being the holder of an unrevoked license constitutes a separate offense.

5735.21 Shipping document requirements.

(A) No person shall transport motor fuel in a bulk lot vehicle from or to a destination in this state unless the person possesses a shipping document created by a terminal or a bulk plant where the bulk lot vehicle received the fuel. The terminal or bulk plant shall provide the shipping document to the operator of the bulk lot vehicle and the document must contain all of the following:

(1) The name and address of the terminal or bulk plant from which the motor fuel was received;

(2) The name of the carrier;

(3) The date the motor fuel was loaded;

(4) The type of motor fuel and the number of gallons;

(5)(a) If delivery is to only one state, the destination state of the motor fuel as represented by the purchaser of the motor fuel and the number of gallons of the fuel to be delivered.

(b) If delivery is to more than one state, the split loads delivered to each state from the bulk lot vehicle shall be documented by the terminal or bulk plant by issuing shipping documents that list the destination state of each portion of the motor fuel.

(6) Any other information that, in the opinion of the tax commissioner, is necessary for the proper administration of this chapter.

(B) A terminal or bulk plant, the carrier, and the person that received the motor fuel shall retain a copy of the shipping document for a period of four years after the date of receipt of the fuel and shall provide a copy of the document to the tax commissioner upon request.

(C) While transporting motor fuel in this state, each operator of a bulk lot vehicle shall have in its possession the shipping document issued by the terminal or bulk plant. The operator shall show the document to the tax commissioner upon request. The tax commissioner may delegate authority to inspect the document to other governmental agencies. The operator shall provide a copy of the shipping document to the person that receives the fuel when it is delivered.

(D) The operator of the bulk lot vehicle shall deliver the motor fuel only to the destination state as indicated on the shipping document. If the operator has a legitimate need to deliver the motor fuel to a state other than the destination state as listed on the shipping document, the operator may do so only after doing all of the following:

(1) Notifying the tax commissioner prior to delivering the motor fuel into a state other than the designated state;

(2) Receiving a diversion number authorizing the diversion to another state;

(3) Writing on the shipping document the diversion number authorizing the diversion and the new state of destination.

(E) Except as otherwise provided in division (L) of this section, no person located in this state shall accept a shipment of motor fuel from a bulk lot vehicle unless a properly executed shipping document listing this state as the destination state is received from the operator of the bulk lot vehicle. A shipping document listing another state may be accepted if a diversion number is written upon it and the state of destination is corrected. The person receiving the motor fuel shall confirm the diversion by calling a telephone number provided by the tax commissioner. The person receiving the motor fuel shall retain the shipping document for thirty days at the delivery location, and retain the shipping document for four years thereafter at any location normally used to store records by the person receiving the fuel.

(F) Each terminal or bulk plant shall post a notice describing the duties of operators of bulk lot vehicles under this section. The notice shall be posted in a conspicuous location proximate to the point of receipt of shipping papers by operators of bulk lot vehicles. The tax commissioner may prescribe the language, type, style, and format of the notice.

(G)(1) Any operator of a bulk lot vehicle that violates any requirement of this section is subject to a penalty of one thousand dollars for each violation.

(2) Any person receiving motor fuel who accepts a shipping document that does not conform with division (E) of this section is subject to a penalty of one thousand dollars or five times the amount of the unpaid tax, whichever is greater, for each occurrence.

(3) Any person operating a terminal or bulk plant who issues a shipping document that does not conform with division (A) of this section is subject to a penalty of one thousand dollars for each occurrence.

(4) Any person operating a terminal or bulk plant who does not post notice as required under division (F) of this section is subject to a penalty of one hundred dollars for each day the notice is not posted as required by that division.

(H) The tax commissioner may impose the penalties prescribed under division (G) of this section by assessment under section 5735.12 or 5735.121 of the Revised Code.

(I) The tax commissioner may reduce or remit a penalty prescribed under division (G) of this section.

(J) No person shall provide false or fraudulent shipping documents.

No person shall alter a shipping document without first having obtained a diversion number as required by this section.

(K) For the purposes of this section only, "bulk lot vehicles" does not include railroad tank cars.

(L) This section does not apply to the sale or distribution at bulk plants of dyed diesel fuel into straight trucks having designed motor fuel capacity of four thousand two hundred gallons or less.

5735.33 Delegation of investigation powers.

For purposes of enforcing this chapter, the tax commissioner, in accordance with section 5743.45 of the Revised Code, may delegate any investigation powers of the commissioner to any employee of the department of taxation who has been certified by the Ohio peace officer training commission and who is engaged in the enforcement of this chapter. Upon such a delegation in accordance with that section, the provisions of that section relative to the powers and authority of the employee and the suspension or revocation of the delegation apply. No employee of the department shall divulge any information acquired as a result of any investigation pursuant to this chapter, except as may be required by the commissioner or a court.

The department shall cooperate with the attorney general, local law enforcement officials, and the appropriate agencies of the federal government and other states in the investigation and prosecution of violations of this chapter.

5735.34 Sale or discontinuing business.

(A) If any motor fuel dealer sells that motor fuel dealer's entire business or discontinues operating that business, the taxes and any interest and penalties imposed under this chapter that arose prior to the date of sale or discontinuation become due and payable immediately. The motor fuel dealer shall make a final return within fifteen days after the date of the sale or discontinuation of the business. The purchaser of the business shall withhold a sufficient amount of the purchase money to cover the amount of such taxes, interest, and penalties due and unpaid until the seller produces a receipt from the tax commissioner showing that the taxes, interest, and penalties have been paid, or until the seller produces a certificate indicating that no taxes, interest, and penalties are due.

(B) If the purchaser of the business fails to withhold the purchase money required to be withheld under this section, the purchaser of the business is personally liable for the payment of the taxes, interest, and penalties accrued and unpaid during the operation of the business by the seller, but only to the extent of the consideration offered for the entire business.

(C) For purposes of this section, "entire business" means substantially all of the seller's assets determined without regard to any then existing mortgages, liens, security interests or other encumbrances attaching to those assets. A person is considered to have sold the entire business only if the person ceases to qualify as a motor fuel dealer and has relinquished or the tax commissioner has canceled the person's motor fuel dealer's license.

5735.35 Personal liability for unpaid taxes.

(A)(1) If any corporation or business trust required to file reports and to remit taxes imposed under this chapter fails for any reason to file such reports or pay such taxes, any employees of the corporation or business trust having control or supervision of, or charged with the responsibility of, filing reports and making payments, or any officers or trustees of the corporation or business trust responsible for the execution of the corporation's or business trust's fiscal responsibilities, are personally liable for the unpaid liability resulting from the failure to file such reports or pay such taxes.

(2) The dissolution, termination, or bankruptcy of a corporation or business trust shall not discharge a responsible officer's, shareholder's, employee's, or trustee's liability to file reports or remit taxes. The sum due for the liability may be collected by assessment in the manner provided in sections 5735.12 and 5735.121 of the Revised Code.

(B) If more than one person is personally liable under this section for the unpaid tax of a corporation or business trust, then the liability shall be joint and several.

5735.99 Penalty.

(A) Whoever violates division (F) of section 5735.02, division (D) of section 5735.021, division (B) of section 5735.063, division (B) of section 5735.064, or division (A)(2) of section 5735.20 of the Revised Code is guilty of a misdemeanor of the first degree.

(B) Whoever violates division (E) of section 5735.06 of the Revised Code is guilty of a felony of the fourth degree.

(C) Whoever violates section 5735.025 or division (A)(1) of section 5735.20 of the Revised Code is guilty of a misdemeanor of the first degree, if the tax owed or the fraudulent refund received is not greater than five hundred dollars. If the tax owed or the fraudulent refund received is greater than five hundred dollars but not greater than ten thousand dollars, the offender is guilty of a felony of the fourth degree; for each subsequent offense when the tax owed or the fraudulent refund received is greater than five hundred dollars but not greater than ten thousand dollars, the offender is guilty of a felony of the third degree. If the tax owed or the fraudulent refund received is greater than ten thousand dollars, the offender is guilty of a felony of the second degree.

(D) Whoever violates a provision of this chapter for which a penalty is not otherwise prescribed under this section is guilty of a misdemeanor of the fourth degree.

(E) Whoever violates division (D)(5) of section 5735.19 of the Revised Code is guilty of a misdemeanor of the first degree.