Ohio | Department of Taxation

Pertinent Facts Pertaining to Motor Fuel Retail Service Stations

Ohio Department of Taxation

Excise, Motor Fuel and Public Utilities Division
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Application for license as a Retail Motor Fuel Dealer:

MF 203	**All**	**Application for License as a Retail Motor Fuel Dealer**	12/08	**PDF Fill-in**

Diversion Registration

The state of Ohio has contracted with Trac III to manage diversion registration. Contact information is:

TRAC III
203 ½ East Main Street
Mt. Horeb, WI 53572
608-237-1345
http://www.trac3.net/

Shipping Documents and Diversion Requirements

1. The requirements for shipping papers and diversion authorization apply to the transportation of all motor fuels, including dyed diesel fuel; except for dyed diesel fuel distributed by tank wagons from bulk plants.

2. IRS registered terminals must issue machine generated shipping papers showing the state of destination for each transport truck (semi) or tank wagon shipment.

3. Bulk plant operators may issue wither manually prepared or machine generated shipping papers.

4. Bulk plant operators are required to issue shipping papers with respect to tank wagons receiving dyed fuel, but are required to issue shipping papers to all transport trucks (semis) loading at the bulk plant, and all tank wagons receiving clear fuel. .

5. Each transport truck (semi) or tank wagon receiving product at a terminal shall carry on-board shipping papers issued by the terminal.

6. Every transporter shall provide a copy of the shipping paper to the retail outlet or bulk plant operator.

7. The terminal, bulk plant, carrier and the person receiving the fuel must retain a copy of the shipping papers for four years. They must be keep at the delivery location for the first thirty days.

8. Any transporter of a qualified shipment that is delivering motor fuel to a state other than the state listed on the shipping papers issued by the terminal or bulk plant, **must** obtain a diversion number and physically record the diversion number on the shipping document. A diversion number can be obtained by accessing the web address www.trac3.net. After the initial registration, follow the instructions to enter the load details and obtain the diversion number.

9. Each retailer or bulk plant operator shall examine, within a reasonable period of time (e.g., within one business day), the shipping paper accompanying the transport truck or tank wagon load delivered to their location. The retailer or bulk plant operator shall either reject the load or report to the Ohio Department of Taxation any load which is not showing Ohio as the destination state, unless a diversion number is recorded on the shipping papers. Shipping papers that have a diversion number may be verified by accessing. www.fueltrac.us.

Ohio Revised Code Sections applicable to Retailers:

5735.01 Motor fuel tax definitions.

As used in this chapter:

(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.

(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.

5735.022 Application for retail dealer's license.

(A) A retail dealer shall not receive, use, sell, or distribute any motor fuel or engage in business within this state unless the retail dealer holds an unrevoked license, for each retail location, issued by the tax commissioner to engage in such business. To obtain a retail dealer's license, a person shall file with the tax commissioner an application sworn to under oath by that person. The application shall include the following:

(1) The name under which the retail dealer will transact business within the state;

(2) The location, including street number address, of the retail dealer's business within this state;

(3) The name, address, and social security number of the owner, or the names, addresses, and social security numbers of the partners if such retail dealer is a partnership, or the names, addresses, and social security numbers of the principal officers if such retail dealer is a corporation or association;

(4) Any other information the tax commissioner shall require.

(B)(1) After a hearing as provided in division (B)(2) of this section, the tax commissioner may refuse to issue a license to transact business as a retail dealer in the state in the following circumstances:

(a) The applicant has previously had a license issued pursuant to this chapter canceled for cause by the tax commissioner;

(b) The tax commissioner believes that an application is not filed in good faith;

(c) The applicant has previously violated any provision of this chapter;

(d) The application is filed as a subterfuge by the applicant for the real person in interest who has previously had a license issued pursuant to this chapter canceled for cause by the tax commissioner or who has violated any provision of this chapter.

(2) The tax commissioner shall conduct a hearing before refusing to issue a license to transact business as a retail dealer in the state in any of the circumstances described in division (B)(1) of this section. The applicant shall be given five days' notice, in writing, of the hearing. The applicant may appear in person or be represented by counsel, and may present testimony at the hearing.

(C) When an application in proper form has been accepted for filing, the commissioner shall issue a license to transact business as a retail dealer in this state, subject to cancellation of such license as provided by law.

(D) 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.

5735.025 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.

5735.041 Revocation of license of retail dealer.

(A) The tax commissioner may revoke the license of a retail dealer in the following circumstances:

(1) The retail dealer sells or attempts to sell any motor fuel upon which any motor fuel tax imposed by this chapter has not been paid;

(2) The retail dealer attempts to evade any motor fuel tax imposed by this chapter;

(3) The retail dealer violates any provision of this chapter.

(B) The commissioner shall notify the retail dealer in writing of the revocation by certified mail sent to the last known address of the retail dealer appearing on the files of the commissioner.

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.

5735.10 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.

5735.103 Padlocking pumps of retail service station.

Whenever the tax commissioner discovers any motor fuel at a retail service station subject to the taxes levied under this chapter and upon which the taxes have not been paid, the commissioner may padlock the pumps of the retail service station until the taxes are paid.

5735.141 Refunds for shrinkage and evaporation.

Any retail dealer of motor fuel shall receive a refund for Ohio motor fuel taxes paid on fuel lost by a retail dealer through shrinkage and evaporation. This refund shall be one per cent of the Ohio motor fuel taxes paid on fuel purchased during any semiannual period ending the thirtieth day of June or the thirty-first day of December.

In order to receive a refund the retail dealer shall file with the tax commissioner, within one hundred twenty days after the thirtieth day of June and the thirty-first day of December of each year, an application for a refund stating the quantity of motor fuel that was purchased for resale by the applicant during the preceding semiannual period ending the thirtieth day of June or the thirty-first day of December and upon which the motor fuel tax has been paid. No person shall file a claim for the tax on fewer than one hundred gallons of motor fuel. The form and contents of the application shall be prescribed by the commissioner, and the application shall be signed in accordance with section 5703.25 of the Revised Code. 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. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

No refund shall be authorized or ordered under this section for any single claim for the tax on fewer than one hundred gallons of motor fuel.

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.

The right to receive any refund under this section or section 5703.70 of the Revised Code is not assignable. The payment of the refund shall not be made to any person other than the retail dealer originally entitled thereto, except that the refund may be paid to the executor, administrator, receiver, trustee in bankruptcy, or assignee in insolvency proceedings of such retailer.

A motor fuel dealer shall be deemed to be a retail dealer when acting in a retail capacity.

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.