



Department of  
Taxation

# **Pertinent Facts Pertaining to Motor Fuel Terminals**

**Ohio Department of Taxation**

**Excise, Motor Fuel and Public Utilities Division**

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## Application Information:

Completed and notarized MF205 – Application for License as a Motor Fuel Terminal Operator.

## Terminal Operator Monthly Report Forms:

TO 2	Terminal Report	09/00
TO 2-1	Schedule 2A – Terminal Operator Schedule of Receipts	09/00
TO2-2	Schedule 4A – Terminal Operator Schedule of Disbursements	09/00

Please contact our office for copies of these forms.

## 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		HTML	July 2, 2003

Refund Claims for Agricultural, Industrial, and Miscellaneous Refund Claimants			
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](http://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 Terminal Operators

### 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.

(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.

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

(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.

## **5735.027 Application for terminal operator's license.**

(A) No person shall act in the capacity of a terminal operator within this state unless the person holds an unrevoked license issued by the tax commissioner to engage as a terminal operator. A person desiring to be a terminal operator shall file with the commissioner an application sworn to under oath. The application shall include the following:

- (1) The name under which the terminal operator will transact business in this state;
- (2) The location, including street number address, of the terminal operator's principal office or place of business within this state;
- (3) The location, including street number address, of each terminal operated in this state by the applicant;
- (4) The name and address of the owner, or the names and addresses of the partners if such terminal operator is a partnership, or the names and addresses of the principal officers if such terminal operator is a corporation or association;
- (5) If such terminal operator is a corporation organized under the laws of another state, territory, or country, a certified copy of the certificate or license issued by the Secretary of State showing that the corporation is authorized to transact business in this state;
- (6) Any other information the commissioner deems necessary.

(B) The tax commissioner may require a bond adequate to ensure compliance with this chapter as a condition of issuance of any license under this section. The commissioner shall prescribe the form and content of the bond.

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

- (a) The applicant has previously had a license issued under this chapter canceled for cause by the tax commissioner;
- (b) The tax commissioner believes that the 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 under 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 terminal operator in any of the circumstances described in division (C)(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.

(D) When an application in proper form has been accepted for filing, and any required bond accepted and approved, the commissioner shall issue to such terminal operator a license to transact business as a terminal operator in the state, subject to cancellation of such license as provided by law.

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

## **5735.043 Revocation or cancellation of license of terminal operator.**

If a terminal operator files a false monthly report of the information required under section 5735.063 of the Revised Code, or fails to file the monthly report required by section 5735.063 of the Revised Code, the tax commissioner may revoke the license of the terminal operator. The commissioner shall notify the terminal operator in writing of such revocation by certified mail sent to the last known address of the terminal operator appearing on the files of the commissioner.

The commissioner also may cancel the license of any terminal operator upon sixty days' notice mailed to the last known address of the terminal operator if the commissioner finds that the person to whom the license has been issued is no longer engaged as a terminal operator in this state, and has not been so engaged for at least six months prior to cancellation.

## **5735.063 Terminal operator to file monthly report - contents of report.**

(A) On or before the last day of each month, each terminal operator 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) The physical inventory of all motor fuel on hand in each terminal in this state on the first and last day of the preceding calendar month;

(2) An itemized statement of the number of gallons of all motor fuel received during the preceding calendar month by such terminal operator into each terminal in this state;

(3) An itemized statement of the number of gallons of all motor fuel dispensed during the preceding calendar month by such terminal operator from each terminal in this state;

(4) Any other information the commissioner considers necessary.

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

## **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.