

- l. Tax Payment Delay from Wholesale Distributor to Licensee** (1993 Act 16, repeal and recreate sec. 78.12(5), effective April 1, 1994.)

Wholesale distributors have the option to delay paying the motor vehicle fuel tax to their licensed supplier until the date the fuel tax is due the department by the supplier (15 days after the close of the month in which the wholesale distributor received the fuel). A wholesale distributor who makes delayed tax payments to a licensed supplier must make such payments by electronic funds transfer. If a wholesale distributor fails to make timely payments, the licensed supplier may terminate the right of the wholesale distributor to make delayed payments. A licensed supplier must notify the department of any wholesale distributor who fails to timely make delayed tax payments. If a wholesaler wishes to continue making delayed tax payments, the department will require such distributor to file a surety bond with the department in an amount not exceeding 3 times the highest estimated monthly tax owed by the wholesale distributor. The department will notify licensed suppliers when a distributor has filed a surety bond.

- m. Security Limits Changed for Motor Vehicle Fuel Taxes** (1993 Act 16, amend secs. 78.11(1)(a), 78.48(9) and 78.57(9)(a), effective April 1, 1994.)

The department may require any person liable for motor vehicle fuel taxes to place with the department, either before or after a license is issued, security in the amount which the department determines, but not to exceed 3 times the licensee's average monthly liability for motor vehicle fuel taxes, as estimated by the department.

Prior law contained a maximum security limit of \$25,000 to obtain a special fuel (diesel fuel) license, and a \$100,000 limit to obtain a motor fuel (gasoline) license.

- n. Tax Credit Allowed Licensee for Motor Vehicle Fuel Tax Uncollectible From Customers** (1993 Act 16, create sec. 78.01(2s), effective April 1, 1994.)

A licensed supplier who is unable to recover the motor vehicle fuel tax from a customer is not liable for the tax. With proper documentation the licensed supplier may claim a tax credit for the amount of uncollectible motor vehicle fuel tax.

- o. Seizure and Forfeiture Provisions Created** (1993 Act 16, create sec. 78.21, effective April 1, 1994.)

Any untaxed motor vehicle fuel that is received by a person other than a licensee is subject to seizure along with the vehicle or other means of transportation used to transport the motor vehicle fuel.

Any transporter who imports motor vehicle fuel into Wisconsin for use, distribution, storage or sale and who does not possess a manifest may also be subject to seizure of the motor vehicle fuel and the vehicle.

- p. Supplier and Exporter Licenses** (1993 Act 16, amend sec. 78.10(title) and repeal and recreate sec. 78.09, effective April 1, 1994.)

A person who meets the definition of "supplier" and who is registered under 26 USC 4101 for tax-free transactions in gasoline by the United States Government and who desires to import or acquires immediately upon import, motor vehicle fuel by pipeline or marine vessel from a state, territory or possession of the United States or from a foreign country into a Wisconsin terminal is required to obtain a license from the department. A person who exports motor vehicle fuel is required to obtain an export license or a supplier license from the department. In order to obtain a license to export motor vehicle fuel to another specified state, a person shall be licensed either to collect and remit motor vehicle fuel taxes or to deal in tax-free motor vehicle fuel in that other specified state of destination.

In order to procure a license, a supplier and/or exporter shall file with the department an application prescribed and furnished by the department, which shall be accompanied by a copy of the applicant's license under 26 USC 4101.

q. Installment Payments Will Be Allowed for March 1994 Special Fuel Tax Liability of Certain Dealers/Users (1993 Act 16, create nonstatutory provision, effective April 1, 1994.)

Special fuel dealers/users who are not required to be licensed by the department after March 1994 and who pay the special fuel tax on a monthly basis will be allowed to pay the special fuel tax due for the month of March 1994 in four equal installments (due April 15, 1994; July 15, 1994; October 15, 1994; and January 15, 1995).

Note: Persons licensed both before and after April 1994 are not eligible to make installment payments.

2. Alternate Fuel Tax Created (1993 Act 16, create secs. 78.39 and 78.64; amend secs. 78.40(1) and (2)(a) and (c), 78.47, 78.48(1), (2), (4), (5), (6) and (9), 78.49, 78.50, 78.51, 78.52, 78.53, 78.66, 78.68(2)(intro.) and (9), 78.70(1)(intro.), (2) and (4), 78.71, 78.73(1)(e), 78.75(1m)(a) to (e) and (2), 78.77(1), (2), (3), (4) and (5), 78.78(1), 78.80(1) and (3) and 78.82; repeal sec. 78.40(2)(b); and renumber and amend sec. 78.45 to 78.39(2), and sec. 78.46 to 78.39(3), effective April 1, 1994.)

Under prior law, all fuels used to power a motor vehicle other than gasoline and general aviation fuel were referred to as special fuel. The new provisions create an "alternate fuels" tax for all fuels used to power a motor vehicle other than gasoline, diesel fuel and general aviation fuel.

Any person who is a dealer of alternate fuels or who wants to purchase such fuel ex-tax and place it in the supply tank of a motor vehicle must obtain a license from the department and remit any tax owing directly to the department. An alternate fuel license is valid until suspended or revoked for cause by the department or cancelled by the licensee. There is no fee for this license. The department may require security prior to issuing an alternate fuel license.

Alternate fuel licensees are required to file reports with the department paying any tax due by the

last day of the following month. Quarterly filing and payment may be allowed by the department when a licensee's tax liability averages less than \$500 per quarter.

The tax rate on alternate fuel is the same tax rate per gallon as that which applies to gasoline and diesel fuel.

Numerous definitions are created including:

- "Alternate fuels" means all combustible gases and liquids suitable for generation of power for propulsion of motor vehicles, except that "alternate fuels" does not include motor vehicle fuel (gasoline or diesel fuel) or general aviation fuel. Examples of alternate fuels include compressed natural gas (CNG) and liquid propane gas (LPG).
- "Alternate fuels dealer" means any person (including the state of Wisconsin and any political subdivision thereof, but not including the United States or its agencies except to the extent now or hereafter permitted by the constitution and laws thereof) in the business of handling alternative fuels who delivers any part thereof into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by that person or to a retailer or user if the supplier reports and pays the tax under sec. 78.40(1).
- "Alternate fuels user" means the owner or other person (including the state of Wisconsin and any political subdivision thereof, but not including the United States or its agencies except to the extent now or hereafter permitted by the constitution and laws thereof) responsible for the operation of a motor vehicle at the time an alternate fuel is placed in the fuel supply tank or tanks thereof while such vehicle is within this state.
- "Use" means the receipt, delivery, or placing of alternate fuels into the fuel supply tank of a motor vehicle in Wisconsin, by an alternate fuels user and the delivery to a retailer or user if the supplier reports and pays the tax under sec. 78.40(1).

3. Provisions Relating to Motor Vehicle Fuel, General Aviation Fuel and Alternate Fuel

a. Transporter Registration Changed (1993 Act 16, amend sec. 78.77(1), effective April 1, 1994.)

Each person transporting motor vehicle fuel, general aviation fuel or alternate fuels by truck, trailer, semi-trailer or other vehicle on any highway in Wisconsin from a point without Wisconsin to a point within Wisconsin, from a point within Wisconsin to a point without Wisconsin, or for hire, as defined in sec. 194.01(4), Wis. Stats. (1991-92), is required to register with the department. Each registered transporter will receive one registration number which must be displayed on all of its fuel transport vehicles.

The registration number assigned to fuel transporters will be valid until it is suspended, revoked for cause by the department, or cancelled by the transporter.

Prior law required that a separate registration number be displayed on each vehicle, with annual expiration on June 30.

b. Personal Liability Revised to Include Penalties, Interest or Other Charges (1993 Act 16, amend sec. 78.70(6), effective April 1, 1994.)

Any officer, employee, fiduciary or agent who is responsible for paying taxes, interest, penalties or other charges under Chapter 78 incurred by another person, as defined in sec. 77.51(10), Wis. Stats. (1991-92), is personally liable for those taxes, interest, penalties or other charges.

4. Payment Date for Cigarette Tax Stamps Revised (1993 Act 16, amend secs. 100.30(2)(c)1.b, 139.32(1) and (6) and 139.44(8)(intro.); create secs. 139.32(5m) and (7), 139.321(title) and 139.322; renumber 139.32(8) to 139.321(1) and amend 139.321(1)(intro.) as renumbered; and renumber 139.32(9) to 139.321(2), effective September 1, 1993.)

Cigarette distributors and manufacturers must pay for cigarette stamps by the 15th day after the

month in which cigarette stamps are received. The amount due will be the face value of the stamps received during the previous month, reduced by 2%, but then increased by the department's costs of printing the stamps and shipping them to distributors and manufacturers. Beginning in 1994, the department will annually redetermine the cost of printing the stamps, with the new cost becoming effective on July 1.

The Secretary of Revenue may require any person who has not paid the tax under sec. 139.31(1), Wis. Stats. (1991-92), or who has failed to file a timely report for that tax, to place security with the department in an amount determined by the Secretary. That security may be a surety bond that is payable to the state, and that is in the form prescribed by the Secretary. The Secretary may refuse to issue a permit to, and may revoke the permit of, any person who is required to place security with the department, and fails to do so. Interest may not be paid on security placed with the department. After giving 10 days' notice, the Secretary may recover any tax, interest, penalties, and other charges due the department from the security of any person who is delinquent under Subchapter II of Chapter 139.

Under prior law, cigarette stamps were paid for with cash when purchased from the department, or on credit with payment due at the time of the next stamp purchase, but not later than 30 days after the stamps were acquired.

5. Theft When Cigarette Tax Moneys Are Not Paid (1993 Act 16, create sec. 139.395, effective September 1, 1993.)

All cigarette tax moneys received by a distributor or manufacturer for the sale of cigarettes on which the tax under Subchapter II of Chapter 139, Wis. Stats. (1991-92), has become due and has not been paid are trust funds in the hands of the distributor or manufacturer and are property of the state.

A cigarette distributor or manufacturer who does not pay the taxes to the Department of Revenue is considered guilty of theft under sec. 943.20(1), Wis. Stats. (1991-92).

G. Other

1. Uniform Assessment of Personal Liability (1993 Act 16, amend secs. 71.83(1)(b) 2 and 77.60(9), effective for reporting periods beginning on or after August 12, 1993.)

These amendments define a "person" who may be personally liable to include an officer, employee or other responsible person of a corporation or other form of business association or a member, employee or other responsible person of a partnership or sole proprietorship.

Also, the amendments to sec. 71.83(1)(b)2, Wis. Stats. (1991-92), clarify that:

- a. For assessments of personal liability, the statute of limitations does not apply if the corporation, other form of business association, partnership or sole proprietorship with which the person is associated is assessed within the statute of limitations, under sec. 71.77, Wis. Stats. (1991-92).
- b. Personal liability survives the dissolution of the corporation or other form of business association.

2. Payers of Gambling Winnings Subject to Withholding Must Provide Payee and Department With Written Statement (1993 Act 16, renumber sec. 71.67(4) to 71.67(4)(a); create secs. 71.67(4)(b) and (c) and (5)(c) and (d); and amend sec. 565.30(4), effective for winnings received by a payee on or after August 12, 1993.)

Payers of pari-mutuel wager winnings and Wisconsin lottery winnings are required to provide each payee whose winnings are subject to withholding during the year with 2 copies of a written statement by January 31 of the succeeding year, which shows the following:

- a. The name of the payer and the payer's Wisconsin income tax identification number.
- b. The name of the payee and the payee's social security number.
- c. The gross amount of the lottery prize winnings or pari-mutuel wager winnings subject to withholding.
- d. The total amount of Wisconsin income tax withheld.

Payers are also required to furnish to the Department of Revenue a copy of the written statement given to the payee.

The payee is required to include a copy of the written statement received from the payer, with the payee's Wisconsin income or franchise tax return on which the winnings are reported.

Under prior law, although Wisconsin income tax was required to be withheld from pari-mutuel wager winnings, and Wisconsin lottery winnings, the payer was not required to provide the payee with a written statement showing the amount withheld.
