

DIVISION 170
FUEL LICENSES AND RECORDS

735-170-0000

Definitions

(1) “ODOT Fuels Tax Group” or “Department” means the organizational unit within the Oregon Department of Transportation or its agent that is primarily charged with the administration of ORS 319.010 through 319.880 on behalf of the State of Oregon.

(2) “Ethanol Blended Gasoline” means ethanol has been blended with gasoline and is intended for use in a motor vehicle. This product is defined as motor vehicle fuel and is a taxable product.

(3) “Terminal Position Holder” means a dealer who owns terminal storage inventory in Oregon.

(4) To “Import” means to have ownership title to motor vehicle fuel or aircraft fuel from locations outside of Oregon, at the time it is brought into the State of Oregon by any means of transport, other than motor vehicle fuel brought into Oregon in the fuel tank of a motor vehicle used for the propulsion of the motor vehicle.

(5) “Cause to be Imported” means to have ownership title to motor vehicle fuel or aircraft fuel, at your order, request or solicitation, at the time it is brought into the State of Oregon by any means of transport, other than motor vehicle fuel brought into Oregon in the fuel tank of a motor vehicle used for the propulsion of the motor vehicle.

(6) To “Export” means to have ownership title to motor vehicle fuel or aircraft fuel from locations within Oregon, at the time it is delivered to locations outside Oregon by any means of transport, other than in the fuel tank of a motor vehicle for the purpose of propelling motor vehicle or aircraft except as provided in ORS 319.330.

(7) “Cause to be Exported” means to have ownership title to motor vehicle fuel or aircraft fuel, at your order, request or solicitation, at the time it is exported from the State of Oregon by any means of transport, other than motor vehicle fuel exported from Oregon in the fuel tank of a motor vehicle used for the propulsion of the motor vehicle.

(8) “Ex-Tax” means that the tax is not included in the price of the fuel.

(9) “Invoice” means the receipt or other record of a sale transaction that describes an itemized list of goods shipped specifying the price and terms of sale as defined in OAR 735-170-0010.

(10) “Delivery Tag” means the delivery receipt or other record of a delivery.

(11) “Bill of Lading” means a document issued by the terminal operator that lists goods being shipped and specifies the terms of their transport.

(12) “True Name” means the name that is authorized per Oregon law to conduct business in Oregon.

(13) “Properly Licensed” means that the person or entity “performing the acts of a dealer” is legally licensed under the “true name” and legally authorized to conduct business in Oregon per Oregon law.

(14) “Performing the Acts of a Dealer” means that the dealer is conducting business in Oregon as defined in ORS 319.010(6).

(15) “Best Available Source” means any data or information that can be used to determine tax due including calculated projections or averages based on prior reports or data from other sources as determined by the Department.

(16) "Failure to Report" means any tax report and payment not received by the Department on or before the due date of the next subsequent report.

Stat. Auth.: ORS 184.616, 184.619, 319.010 through 319.430 and 319.990
Stat. Implemented: ORS 319.010 through 319.430, and 319.990

735-170-0010

Records Required

The Department has the authority to prescribe required records under ORS 319.390 and 319.400. Every Oregon dealer, whether licensed or unlicensed, must maintain and keep the following records for at least three years from the date the fuel tax is due:

(1) Stock summary showing monthly totals for the gallons of motor vehicle fuel or aircraft fuel handled for each owned and operated distributing location within the State of Oregon with an analysis as to inventories, receipts, sales, use, transfers, and loss or gain.

(a) An actual physical gallon inventory measurement of motor vehicle fuel and aircraft fuel stocks for each owned and operated distributing location must be taken at the end of each calendar month and preserved for audit purposes.

(b) A record showing all sales and withdrawals of motor vehicle fuel or aircraft fuel from storage. A dealer that withdraws fuel from storage for highway and non-highway use must:

(A) Summarize records into monthly totals and separately show the number of gallons used for highway and non-highway purposes;

(B) Separately show the total number of miles traveled and fuel used for each vehicle;

(C) Separately account for fuel withdrawn from bulk storage and fuel received from other sources;

(2) Purchase journal showing the number of gallons of motor vehicle fuel or aircraft fuel purchased or received each month supported by purchase invoices or other documents.

(3) Sales journal showing the number of gallons of motor vehicle fuel or aircraft fuel sold or distributed each month, supported by sales invoices covering each sale or delivery.

(4) Sales invoice forms must be approved by the Department and must include at least the following information:

(a) Date of sale or delivery;

(b) Point of origin;

(c) Name of dealer making the sale or delivery;

(d) All invoices must separately state and describe to the satisfaction of the Department the various products shipped and must be serially numbered except where other sales invoice controls acceptable to the Department are maintained;

(e) Name and address of the purchaser and delivery point; however, if delivery point is not contained on the invoice, other sales/delivery documents showing delivery point must be provided upon request by the Department.

(f) The gallons of motor vehicle fuel or aircraft fuel sold;

(g) The invoice must clearly show the place and state where the delivery was actually made. Physical delivery address must be kept for audit purposes.

(5) All required records must be summarized into calendar month totals and must be centralized in the accounting office where the periodic tax audit is to be made.

(6) The Department may determine, at its sole discretion, when the auditor for the state must travel outside the State of Oregon to examine the dealer's records. At any time such travel is

determined necessary the dealer must reimburse the state for all travel expenses incurred, including transportation, meals and lodging costs.

(7) The Department has the authority to investigate, examine and audit licensed or unlicensed dealers, carriers, brokers, service stations, and other persons who are storing, selling, or distributing motor vehicle fuels or other petroleum products in Oregon. Such investigations, examinations and audits will occur during normal business hours;

(8) Documentation in the following areas must be made readily available to the Department upon request by the Department by the date prescribed by the Department;

- (a) Accounts;
- (b) Records;
- (c) Stocks;
- (d) Facilities;
- (e) Equipment;
- (f) Shipping;

(9) Dealers who fail to make records available for inspection are subject to assessment based on “best available information,” collection action, and possible license suspension and revocation.

Stat. Auth.: ORS 184.616, 184.619, 319.010 through 319.430 and 319.990
Stats. Implemented: ORS 319.370, 319.380, 319.390, and 319.400

735-170-0020

Required Tax Report Forms and Report Preparation

(1) Every licensed dealer must prepare a tax report that completely summarizes the number of gallons of motor vehicle fuel or aircraft fuel sold, distributed, or used in the State of Oregon each month with required schedules and detail to fully explain the various entries.

(2) A separate set of forms must be prepared for each taxing jurisdiction administered by the Department on forms provided by the Department.

(3) Every licensed dealer must follow motor vehicle fuel tax reporting instructions and use prepared forms as provided by the Department. Willfull or habitual failure to complete tax reports in the manner prescribed by the Department may result in assessment based on “best available information,” collection action, and possible license suspension and revocation.

(4) Computerized report data may be substituted for prescribed forms if it is a reasonable facsimile of the prescribed forms.

Stat. Auth.: ORS 184.616, 184.619, 319.010 through 319.430 and 319.990
Stats. Implemented: ORS 319.010 through 319.430, and 319.990

735-170-0040

Tax Report Filing Dates

(1) A licensed dealer must complete a monthly tax report with full payment of taxes which must be received by the Department not later than the 25th of the succeeding calendar month.

(a) Receipt will be considered the date evidenced by a legible United States Postal Service cancellation stamp, certified mail receipt or other third party official certification.

(b) When an official cancellation stamp or certification is not present, the date that the report and payment is actually received by the Department (or its designee) will be used to determine timeliness.

(c) When the due date falls on a Saturday, a Sunday, or any recognized state or federal holiday, receipt of the report and payment must be received on or before the next business day.

(2) Tax reports and payments not received by the Department in a timely fashion will be considered late and subject to interest and penalty as described in ORS 319.180. Any tax report and payment not received by the due date of the next subsequent report constitutes a “failure to report” and is subject to an additional 10% penalty as described in ORS 319.200.

(3) If the report and payment are not received on or before the 25th day of the month a penalty will be assessed pursuant to ORS 319.180 or, if the Department determines that no tax is due, a penalty of \$25 will be assessed.

Stat. Auth.: ORS 184.616, 184.619, 319.010 thru 319.430, 319.990
Stats. Implemented: ORS 319.020, 319.180, 319.190, 319.200

735-170-0045

Motor Vehicle Fuel Tax Waiver of Late Payment Penalties

(1) ORS 319.090(2) and ORS 319.180(4) allows the Department to waive certain penalties.

(2) Any entity or a person may submit a written request for waiver of penalty to the Department.

(3) The penalty under ORS 319.090 and 319.180 may be waived if the taxpayer shows reasonable cause.

(a) A taxpayer who wishes to apply for waiver of the penalty must make an affirmative showing of all facts alleged as a reasonable cause. The written statement must contain a declaration that it is made under penalty of perjury. The statement should be filed with the report or filed with the Department as soon as possible thereafter.

(b) Circumstances that may constitute reasonable cause include, but are not limited to the following:

(A) War, riot, rebellion, acts of God or other disaster; or

(B) Acts or omissions by a third party which were beyond the control of the person; or

(C) The person in good faith took all steps and precautions reasonably necessary to comply with the statute; and

(D) Any other criteria the Department may find to be informative and appropriate.

(4) For purposes of determining the amount of motor vehicle fuel sold, distributed or used where a dealer fails to report as described in ORS 319.200, “best available source” is defined in OAR 735-170-0000.

(5) Penalties described in ORS 319.190 will not be waived. Penalties described in ORS 319.200 are cumulative to penalties described in ORS 319.090, 319.180 and 319.190 and will not be waived.

(6) The following reasons are not acceptable for granting a penalty waiver:

(a) Employee incompetence or inexperience;

(b) Employee turnover;

(c) Misunderstanding or ignorance of law;

(d) Computer failure or error that is not the result of a natural disaster;

(e) Changeover to new accounting processes, software or upgrades;

(f) Change in company operations;

(g) Errors or reliance on the part of third party suppliers or customers.

(7) Penalties for amended reports and audit adjustments will be applied in accordance with applicable statutes. At the discretion of the Department the following criteria may be used to determine waiver of penalty:

- (a) Accuracy of previous audits and payment history;
- (b) Accuracy of current reports based on Departmental review;
- (c) Compliance with previous audit recommendations;
- (d) Cooperation in providing requested records in a timely manner;
- (e) Any other criteria the Department may find to be informative and appropriate.

Stat. Auth.: ORS 184.616, 184.619, 319.010 through 319.430, 319.990
Stats. Implemented: ORS 319.090, 319.180, 319.200

735-170-0050

Transactions That May be Classified as Export Sales

Transactions that may be classified as export sales consist of:

(1) Motor vehicle fuel and aircraft fuel delivered by an Oregon licensed dealer to a destination outside the state of Oregon where the recipient is licensed in the destination state, country or territory and takes legal title of the fuel is considered an export sale.

(2) Motor vehicle and aircraft fuel leaving Oregon in the fuel tank of a motor vehicle or aircraft used only for the propulsion of the vehicle or aircraft is not an export, except as provided in ORS 319.330.

(3) The export certificate as described in ORS 319.240 is waived.

Stat. Auth.: ORS 184.616, 184.619, 319.010 through 319.430, 319.990
Stat. Implemented: ORS 319.240

735-170-0090

Exemption Certificates

(1) Every licensed dealer making sales or deliveries to the Armed Forces of the United States for which tax exemption is claimed, must complete an Exemption Certificate Form as prescribed by the Department.

(2) In order to obtain exemption from the tax, the Exemption Certificate must be completed and signed at the time of sale and delivery. Whenever the vendor is other than an Oregon licensed dealer, the Exemption Certificate may be turned over to a dealer for credit and for inclusion with the dealer's monthly tax report. All Exemption Certificates must be kept on file in the dealer's office where the tax audit is to be made.

(3) All claims for tax exemption must be entered on the tax report as prescribed in the current motor vehicle fuel tax reporting instructions as provided by the Department.

Stat. Auth.: ORS 184.616, 184.619, 319.010 through 319.430, 319.990
Stat. Implemented: ORS 319.250

735-170-0100

Fuel Lost or Destroyed—Tax Exemption Requirements

The following requirements are for claims by Oregon licensed dealers for exemption from the Oregon tax on motor vehicle fuel or aircraft fuel lost or destroyed through transportation and other mishaps prior to the time title to the product passes from the licensed dealer:

(1) Motor vehicle fuel or aircraft fuel lost by a carrier or other person in this state must be included in the taxable distribution section of the monthly tax report. When a carrier or person responsible for lost motor vehicle or aircraft fuel furnishes acceptable documentation of actual loss, credit for the Oregon tax may be taken. Acceptable documentation of the loss, as described in section (2) of this rule, must be submitted to the Department for approval. After approval by the Department, the documents must be filed with the accounting records in the dealer's office where the tax audit is to be made. Credits for approved losses must be reported as prescribed by the Department.

(2) Acceptable documentary proof of loss will include the following:

(a) A signed statement by the driver of the vehicle, or some person having actual knowledge of the loss, stating:

(A) The circumstances surrounding the accident or mishap;

(B) The total quantity of fuel shipped;

(C) The quantity of fuel actually lost or destroyed;

(D) The quantity of fuel salvaged;

(E) The disposition of the salvaged fuel; and

(F) The procedure used in the determination of the exact quantity of fuel lost or destroyed.

(b) A certified copy of the carrier's settlement of claim against the insurance company, if the loss is occasioned by a for-hire or other insured carrier. The details required by subsection (2)(a) of this rule must be supplied; or

(c) A signed statement by a State Police officer or other person witnessing the accident or mishap, that:

(A) Sets out the details of the accident; and

(B) States the quantity of fuel actually lost as nearly as can be determined by the officer or other person. The details required by subsection (2)(a) of this rule must be supplied.

(3) Losses that occur through accident or mishap to the dealer's own equipment must be supported by a signed statement made by the driver of the vehicle or person directly in charge of the equipment at the time of the accident. The statement must include the details required by subsection (2)(a) of this rule. This statement must be filed in the dealer's office where the tax audit is to be made.

(4) A tax exemption cannot be allowed when motor vehicle fuel is lost under the following conditions:

(a) Fuel lost from storage tanks that are directly connected by means of a pipe line to retail service station pumps, or fuel that the licensed dealer no longer retains complete control over; or

(b) Fuel claimed to have been lost from spillage, leaky valves, loose connections, unloading mishaps, leaky or defective storage tanks, or similar circumstances, where the nature of the loss is such that it cannot be positively established that an actual loss did occur and the exact quantity cannot be determined.

(5) In all cases where employers, agents, carriers, or other persons fail to account satisfactorily or completely for motor vehicle fuel and are charged by the dealer with the value of the product, such transactions must be included in the computation of the license tax.

Stat. Auth.: ORS 184.616, 184.619, 319.010 through 319.430, 319.990

Stats. Implemented: ORS 319.010 and 319.020

735-170-0105

Performance Bond Requirements

(1) Licensed dealers are required to maintain a bond amount that is twice the estimated monthly licensed tax. Twice the dealer's estimated monthly license tax as determined by the Department is computed as follows:

(a) Prior to becoming licensed the required bond amount will be twice the estimated tax based on the estimated taxable gallons stated on the motor vehicle fuel dealer license application;

(b) The Department will periodically review the bond for sufficiency based on an average of the gallons reported by the dealer on its monthly fuel tax reports;

(c) The Department may notify the dealer at any time to increase or decrease the bond. The dealer may at any time request a bond determination from the Department.

(2) When twice the dealer's estimated monthly tax is less than \$1,000 the minimum bond required is \$1,000.

(3) If the dealer's motor vehicle fuel dealer license was issued on or before October 23, 1999 and the dealer's estimated monthly tax is more than \$100,000 the maximum bond is \$100,000.

(4) If the dealer's motor vehicle fuel dealer license was issued after October 23, 1999 and twice the dealer's estimated monthly license tax is more than \$250,000, the maximum bond is \$250,000.

(5) A bond is subject to increase under certain conditions up to a maximum amount of \$1 million.

(a) After a bond has been increased for a period of 24 months, a dealer may submit a written request for reduction of the bond.

(b) If the Department determines that conditions for bond reduction have been met, the bond may be reduced to twice the dealer's estimated monthly tax or a maximum of \$250,000 regardless of when the motor vehicle fuel dealer license was issued.

Stat. Auth.: ORS 184.616, 184.619, 319.010 through 319.430, 319.990

Stats. Implemented: ORS 319.050 through 319.080

735-170-0110

Evidence Demonstrating that a Dealer did not Intend to Avoid Paying Taxes for Purposes of Determining the Bond Amount

(1) The following factors will be taken into consideration for the purposes of determining whether the dealer did not intend to avoid payment of license taxes:

(a) Error on the part of the dealer's financial institution where the dealer can show that such error was not attributable to the dealer;

(b) An Act of God or natural disaster, i.e., earthquake, flood, fire, severe weather conditions;

(c) An act of war or terrorism;

(d) Incapacitation of key personnel responsible for reporting and remitting taxes; or

(e) Other evidence or explanations presented by the dealer demonstrating to the satisfaction of the Department that the dealer's conduct was not intentional or purposely designed to avoid payment of license tax.

(2) If the conduct was due to carelessness, negligence, inattention or disregard of duties on the part of the dealer or someone authorized to act on the dealer's behalf, the Department will not grant a waiver of the bond increase.

(3) The dealer must present a written request for waiver of the bond increase and all related evidence to support the request, to the Department within 30 days of the date of notice of bond increase. The Department will respond to the waiver request within 30 days of receipt.

Stat. Auth.: ORS 184.616, 184.619, 319.010 through 319.430, 319.990
Stat. Implemented: ORS 319.052

735-170-0115

Change in Ownership or Cancellation of License

(1) A licensed dealer must notify the Department in writing of a change in ownership or cancellation of a license as described in ORS 319.125 before the next report is due. Performing the acts of a dealer without being properly licensed may subject the unlicensed dealer to penalties as described in ORS 319.090.

(2) An agent may sign on an individual's behalf when a valid power of attorney or guardianship is in effect.

Stat. Auth.: ORS 184.616, 184.619, 319.010 thru 319.430, 319.990
Stats. Implemented: ORS 319.125

735-170-0120

Notice of Suspension/Revocation – Method of Delivery

(1) Each licensed dealer must provide the Department, by mail, with current contact information for the purpose of notification of license suspension.

(2) The contact information as described in section (1) of this rule must be a postal address and a telephone contact. An e-mail address is optional.

(3) Not later than the first business day following suspension or revocation of an Oregon Motor Vehicle Fuel dealer license, the Department will serve official notice to licensed dealers as follows:

(a) The Department will telephone fuel suppliers listed on the most recent tax report of the suspended or revoked dealer.

(b) The Department will notify all licensed dealers of the suspension or revocation at the postal address, and e-mail address if available, as provided by each dealer.

(4) Each licensed dealer will notify the Department of any change of address or contact information for the purpose of serving notices of suspension or revocation. The information most recently received by the Department from each licensed dealer will be the information that fulfills the Department's notice requirements as required by law.

Stat. Auth.: ORS 184.616, 184.619, 319.010 through 319.430, 319.990
Stats. Implemented: ORS 319.096, 319.102

735-170-0130

Motor Vehicle Fuel Tax Credit of Interest on Tax Overpayments

(1) The Department may allow interest credit for overpayments of motor vehicle fuel tax up to the amount of interest paid for underpayments of tax during any given audit period.

(2) For purposes of ORS 319.180(5)(b) and this rule, "any given audit period" means the time period from the last day of the immediate prior audit period up to the present. If there is no

prior audit, “any given audit period” means a period not to exceed three years from the current date.

(3) Any interest payments made on underpayments of tax from a prior audit period will not be:

- (a) Considered as interest on overpayments in the current audit period; or
- (b) Subject to credit under ORS 319.180(5)(b).

Stat. Auth.: ORS 184.616, 184.619, 319.010 through 319.430, 319.990
Stats. Implemented: ORS 319.180

735-170-0140

Motor Vehicle Tax Refunds to Licensed Oregon Motor Vehicle Fuel Dealers for Uncollectible Accounts

(1) Licensed dealers may file an amended report for credit of taxes paid attributable to uncollectible accounts pursuant to ORS 319.192 as appropriate to the type of fuel that is to be refunded.

(2) Dealers must follow prepared motor vehicle fuel tax reporting instructions for deductions for uncollectible accounts and provide required supporting documents as prescribed. Failure to provide such required supporting documents constitutes a waiver of all rights to the credit.

(3) Upon review and approval of the Amended Reports, the Department will issue a letter authorizing the credit within 90 days after the date of approval.

Stat. Auth.: ORS 184.616, 184.619, 319.010 through 319.430, 319.990
Stats. Implemented: ORS 319.192