

CHAPTER 296

TAX ON GASOLINE AND GASOLINE SUBSTITUTES

296.01 DEFINITIONS.

HISTORY. 1925 c. 297 s. 1; M.S. 1927 s. 2720-70; 1929 c. 425 s. 1; 1933 c. 365 s. 1; 1933 c. 417 s. 1; Ex. 1934 c. 51 s. 1; M. Supp. s. 3787-1; 1941 c. 495 s. 1; 1943 c. 320 ss. 1 to 3; 1945 c. 412 ss. 1, 2.

Under the charter of Minneapolis, the council has authority in the exercise of police power to enact an ordinance requiring a license from those engaged in the conduct of gasoline filling stations located on private property. If it was in fact merely a tax disguised as a license, it would not be legal. *Crescent Oil Co. v City of Minneapolis*, 175 M 276, 221 NW 6.

Laws 1925, Chapter 297, as amended by Laws 1937, Chapter 376, does not impose a tax on gasoline used in machinery for processing gravel in gravel pits. *Hallett v Spaeth*, 212 M 531, 4 NW(2d) 337.

The test for determining whether an appropriation is toward a "highway purpose" is not whether each dollar is earmarked for each separate item of the highway expense, but whether the charge on the highway fund accurately reflects highway expenses. *Cory v King*, 214 M 535, 8 NW(2d) 614.

"Gasoline" defined. 1938 OAG 417, Aug. 31, 1937.

"Responsible persons" defined. 1938 OAG 419, Oct. 12, 1937.

Refunds. 1938 OAG 420, Dec. 28, 1937.

296.02 EXCISE TAX ON GASOLINE.

HISTORY. 1875 c. 86; 1876 c. 90; 1877 cc. 71, 72; 1878 c. 37; G.S. 1878 c. 6 ss. 115 to 123; 1889 c. 246; 1893 c. 20; G.S. 1894 ss. 444 to 458; R.L. 1905 ss. 1724 to 1733; 1909 c. 502; G.S. 1913 ss. 3622, 3623, 3625 to 3628, 3630, 3631; 1915 c. 27; 1919 c. 520; G.S. 1923 ss. 3778, 3779, 3781, 3784; 1925 c. 297 s. 2; M.S. 1927 s. 2720-71; 1929 c. 310 c. 1; 1937 c. 376; 1937 c. 383 s. 1; 1939 c. 350; 1941 c. 162 s. 1; 1945 c. 412 s. 1.

Prior to the enactment of Laws 1925, Chapter 297, our statutes provided for the inspection of gasoline imported into the state and the payment of an inspection fee by the "distributor." Although the distributor may pass the charge on to his vendee, the tax is a direct charge against the distributor. *Arneson v Barber*, 210 M 42, 297 NW 335.

Classification and allowance for evaporation is within the constitutional powers of legislative determination. *Arneson v Barber*, 210 M 42, 297 NW 335.

Intentment of the act is to impose a tax on all gasoline used in generating power for propelling vehicles used on the highways; and except with the express consent of the federal government, property on the Ft. Snelling reservation is not subject to tax. *State v Ristine*, 36 F. Supp. 3.

Under the Hayden-Cartwright act, Minnesota is entitled to collect gasoline tax on motor fuel sold on a military reservation by the post exchange, and which was not for the exclusive use of the United States. *State v Kelley*, 126 F(2d) 863.

Gasoline used by state armory commission is not exempt from the tax. 1936 OAG 324e, May 11, 1936.

The four per cent tax may be collected on all sales of fuel used in Diesel-motored trucks and tractors operated on the highways. 1938 OAG 417, Aug. 31, 1937 (324e).

Laws 1937, Chapter 376, relating to tax on oil used in machinery operated by municipalities for the purpose of constructing and maintaining public highways, is sustained. 1938 OAG 420, Dec. 28, 1937 (324k).

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Gasoline tax is not in lieu of personal property tax. 1942 OAG 330, March 1, 1941.

296.025 EXCISE TAX ON GASOLINE SUBSTITUTES.

HISTORY. 1941 c. 494; 1945 c. 412 s. 4.

296.04 INSPECTION OF PETROLEUM PRODUCTS.

HISTORY. 1941 c. 495 s. 2; 1943 c. 320 s. 4.

State highway department is not subject to the tax on the user of special use fuels under Laws 1941, Chapter 495, Section 10, Subdivision 2. 1942 OAG 286, Oct. 28, 1941 (324-E).

296.05 SPECIFICATIONS.

HISTORY. 1941 c. 495 s. 3; 1943 c. 320 s. 5; 1945 c. 412 s. 5.

296.06 DISTRIBUTORS MUST BE LICENSED.

HISTORY. 1941 c. 495 s. 4; 1943 c. 320 s. 6; 1945 c. 154.

296.07 CERTIFICATE OF REGISTRATION FILED.

HISTORY. 1941 c. 495 s. 5; 1945 c. 412 s. 6.

296.08 BLENDERS MUST SECURE PERMITS.

HISTORY. 1941 c. 495 s. 6.

296.09 INDUSTRIAL USER PERMIT.

HISTORY. 1941 c. 495 s. 7; 1945 c. 412 s. 7.

296.10 INTERSTATE TRANSPORT PERMIT.

HISTORY. 1941 c. 495 s. 8; 1943 c. 320 s. 7; 1945 c. 152 s. 1.

296.11 COMMISSIONER MAY REVOKE LICENSES.

HISTORY. 1941 c. 495 s. 9.

296.12 SPECIAL USE FUELS.

HISTORY. 1941 c. 495 s. 10; 1943 c. 320 s. 8; 1945 c. 412 s. 8.

See s. 296.04.

296.13 INSPECTION FEES.

HISTORY. 1941 c. 495 s. 11.

296.14 REPORTS TO COMMISSIONER.

HISTORY. 1941 c. 495 s. 12; 1943 c. 320 ss. 9, 10; 1945 c. 412 s. 9.

296.15 PENALTIES FOR NON-PAYMENT OF TAX.

HISTORY. 1941 c. 495 s. 13; 1943 c. 320 s. 11.

296.16 GASOLINE DEEMED FOR USE IN MOTOR VEHICLES.

HISTORY. 1941 c. 495 s. 14; 1945 c. 412 s. 10.

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296.17 REPORTS OF GASOLINE ON HAND.

HISTORY. 1941 c. 495 s. 15; 1943 c. 320 s. 12; 1945 c. 412 s. 11; 1945 c. 480.

296.18 REIMBURSEMENT IN CERTAIN CASES.

HISTORY. 1925 c. 297 s. 10; 1927 c. 434 s. 6; M.S. 1927 s. 2720-79; 1929 c. 257 s. 1; 1937 c. 376 s. 1; 1939 c. 114; 1941 c. 491; 1941 c. 495 s. 16; 1945 c. 152 s. 2; 1945 c. 412 s. 12.

The fact that Wisconsin taxes gasoline purchased in Minnesota but used on Wisconsin highways does not warrant a refund to the person doubly taxed. 1934 OAG 794, Dec. 20, 1934 (324i).

State departments are not exempt from payment of the tax. OAG April 26, 1935 (324m).

Where there occur extraordinary losses of oil, a refund may be claimed if supported by proper affidavits. OAG June 4, 1937 (324b).

Those who have paid an excise tax on oil used in machinery processing and conveying road material used on highways are not entitled to a refund. 1938 OAG 421, Sept. 24, 1937 (324k).

Refund may be made when the gasoline is used exclusively for agricultural purposes, as in a feed grinder and a tractor used on the farm. OAG March 11, 1938 (324q).

296.19 CONSTRUCTION OF SECTIONS 296.01 TO 296.27.

HISTORY. 1941 c. 495 s. 17.

296.20 GASOLINE TAXES TO BE IN LIEU OF ALL OTHER TAXES EXCEPT AD VALOREM TAXES.

HISTORY. 1925 c. 297 s. 13; M.S. 1927 s. 2720-82; 1941 c. 495 s. 18.

See Arneson v Barber, 210 M 42, 297 NW 335.

296.21 DEALERS AND DISTRIBUTORS TO KEEP ACCURATE RECORDS.

HISTORY. 1941 c. 495 s. 19; 1945 c. 152 s. 3.

296.22 SAFETY REQUIREMENTS.

HISTORY. 1941 c. 495 s. 20; 1943 c. 320 ss. 13, 14; 1945 c. 152 s. 4.

296.23 CERTAIN BLENDING PROHIBITED.

HISTORY. 1941 c. 495 s. 21.

296.24 CERTAIN ACTS MISDEMEANORS.

HISTORY. 1941 c. 495 s. 22.

296.25 FAILURE TO COMPLY WITH PROVISIONS A MISDEMEANOR.

HISTORY. 1941 c. 495 s. 23; 1945 c. 412 s. 13.

296.26 ACTIONS FOR RECOVERY OF PENALTY NOT TO BAR CRIMINAL PROSECUTIONS.

HISTORY. 1941 c. 495 s. 24.

296.27 RULES AND REGULATIONS.

HISTORY. 1941 c. 495 s. 25.

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296.28 POWERS AND DUTIES IN RELATION TO INSPECTION OF OIL AND GASOLINE, AND THE IMPOSITION AND COLLECTION OF TAXES THEREON TRANSFERRED TO COMMISSIONER OF TAXATION.

HISTORY. 1875 c. 86; 1876 c. 90; 1877 cc. 71, 72; 1878 c. 37; G.S. 1878 c. 6 ss. 115 to 123; 1889 c. 246; 1893 c. 20 ss. 1, 2; G.S. 1894 ss. 447, 448; 1901 c. 123 s. 1; R.L. 1905 s. 1724; 1909 c. 502 s. 1; G.S. 1913 s. 3619; 1919 c. 520 s. 1; G.S. 1923 s. 3770; 1925 c. 426 art. 6 s. 1; 1925 c. 426 art. 12 s. 2; M.S. 1927 ss. 53-25, 53-27½a, 53-38, 3770; 1929 c. 403 ss. 1, 2; 1939 c. 431 art. 6 s. 4; M. Supp. s. 2362-4.

296.30 DEPUTY OIL INSPECTORS.

HISTORY. 1875 c. 86; 1876 c. 90; 1877 cc. 71, 72; 1878 c. 37; G.S. 1878 c. 6 ss. 115 to 123; 1889 c. 246; 1893 c. 20 s. 3; G.S. 1894 s. 449; 1901 c. 123 s. 2; 1905 c. 300 ss. 1 to 4; R.L. 1905 s. 1725; 1909 c. 502 s. 2; G.S. 1913 ss. 3620, 3635 to 3638; 1919 c. 520 s. 5; 1921 c. 480 s. 3; 1921 c. 495 s. 83; M.S. 1927 s. 3773-1.

Relator was not entitled to a writ of mandamus to enforce rights he claimed to have to a civil service status, by reason of his having lost his civil service status through enactment of Laws 1939, Chapter 441. *Reed v Trovatten*, 209 M 348, 296 NW 535.

296.31 TESTING STATIONS; TESTS; FEES.

HISTORY. 1923 c. 367 s. 9; M.S. 1927 s. 3783-1.

296.32 APPORTIONMENT OF FUNDS.

HISTORY. 1929 c. 283 s. 1; M. Supp. s. 2720-92a.

Gas tax money raised pursuant to Laws 1929, Chapter 283, cannot be transferred to the poor funds. OAG July 31, 1935 (107a-12).

Fifty per cent of the moneys apportioned to counties may be divided among the townships. 1940 OAG 130, June 9, 1939 (324d).

296.33 STATE AUDITOR, STATE TREASURER, AND STATE HIGHWAY COMMISSIONER TO APPORTION FUNDS.

HISTORY. 1929 c. 283 s. 2; M. Supp. s. 2720-92b; 1941 c. 160 s. 1; 1945 c. 168.

A county may issue warrants in anticipation of gasoline tax as estimated and apportioned by state officers. 1934 OAG 269, Sept. 23, 1933.

Explanation for the rule of municipal liability. 26 MLR 494.

296.34 STATE AUDITOR TO DRAW WARRANT.

HISTORY. 1929 c. 283 s. 3; M. Supp. s. 2720-92c.

Each county may draw up to 60 per cent of its one-mill road tax money for county aid roads, plus its apportionment of gas tax funds. 1934 OAG 218, June 29, 1933.

296.35 LIMITATION OF AMOUNT TO EACH COUNTY.

HISTORY. 1929 c. 283 s. 4; M. Supp. s. 2720-92d; 1941 c. 160 s. 2.

296.36 COUNTY BOARD TO DESIGNATE COUNTY AID ROADS.

HISTORY. 1929 c. 283 s. 5; Ex. 1934 c. 60 s. 1; M. Supp. s. 2720-92e.

Before a county aid road can be constructed there must be a designation thereof; and gas tax moneys are to be used only in aid of county aid roads. 1934 OAG 216, April 28, 1933 (380b-1).

The matter of designating county aid roads lies wholly in the discretion of the county board. 1934 OAG 457, Dec. 6, 1933 (380b-2).

The county board, with the consent of the commissioner of highways, abandon all state aid roads, and designate them as county aid roads; and change having

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been made, may continue the county tax levies, the fund to be used on the county aid roads. 1934 OAG 482, Nov. 14, 1933 (379e-11).

Where an abutting owner erects a sign that projects over a part of the street, he is within his rights unless the sign is an obstruction or is a menace to the safety of the public. 1934 OAG 490, July 31, 1933 (229a-9).

Tax fund allotments to the county must be spent on county aid roads, but there is no reason why the board in conference with the towns should not divide the funds equitably so as to furnish work for those needing employment, as suggested by the farmers holiday association. 1934 OAG 790, Sept. 11, 1933 (324n).

The board has power to redesignate a judicial county line road as a county aid road, and thereafter use tax aid funds on same. 1936 OAG 236, March 27, 1935 (337b-4).

Limitation and prohibition in the use of county aid funds on village or city streets. 1938 OAG 259, March 17, 1938.

Town board cannot alter or vacate a road designated as a county aid road. OAG May 1, 1935 (380b-2).

Materials and property (culvert) in a town road designated as a county aid road belongs to the county. OAG Nov. 7, 1936 (377b-4).

See as to maintenance of bridges. OAG May 23, 1944 (642a-9).

296.37 USE AND DISPOSITION OF GAS TAX.

HISTORY. 1929 c. 283 s. 6; 1933 c. 325 s. 1; 1935 c. 96; 1937 c. 111 s. 1; 1939 c. 366 s. 1; M. Supp. s. 2720-93; 1941 cc. 129, 339; 1945 c. 430.

Such part of the county highway engineer's salary as is in direct proportion to the part of his services on county aid roads may be paid out of the county aid fund. 1934 OAG 247, June 28, 1933; 1934 OAG 472, June 21, 1934.

Citizens may petition for the establishment of county aid roads, but the full power of designation is in the discretion of the board. 1934 OAG 457, Dec. 6, 1933.

Gasoline tax funds may be used only on county aid roads. 1934 OAG 793, April 4, 1934 (324d).

When a snow plow is purchased out of county aid funds, the plow must be used on county aid roads exclusively. OAG Nov. 3, 1933.

296.38 COUNTY BOARD MAY APPORTION FUNDS.

HISTORY. 1929 c. 283 s. 7; 1933 c. 325 s. 2; 1937 c. 366 s. 1; M. Supp. s. 2720-94. See annotations under section 296.37.

Gas tax funds may be used to construct a garage to house equipment used on county aid roads. OAG June 5, 1935 (107b-16).

As between Laws 1937, Chapter 111, and Laws 1937, Chapter 366, the latter law prevails. OAG Aug. 18, 1937 (388b-4).

Except in special instances controlled by statute, gasoline tax moneys cannot be used to aid village or city streets. OAG March 17, 1938 (377b-4).

296.39 APPORTIONMENT TO CITIES AND VILLAGES IN CERTAIN CASES.

HISTORY. 1935 c. 299 s. 1; M. Supp. s. 2720-94b.

296.40 DISTRIBUTION OF GASOLINE TAX BY COUNTY BOARDS TO TOWNS.

HISTORY. 1929 c. 283 s. 8; 1931 c. 221 s. 1; 1937 c. 366 s. 2; M. Supp. s. 2720-95.

Contributions by towns toward constructing county aid roads. 1934 OAG 456, April 1, 1933 (380b-4); 1934 OAG 455, June 6, 1934 (380b-4); 1936 OAG 250, March 27, 1935 (377b-3).

Laws 1931, Chapter 221, reduced the amount a town must contribute from their gasoline tax proportion from 30 per cent to 20 per cent, and when in error they contribute more, they may be reimbursed. 1936 OAG 369, Aug. 2, 1935.

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It is the duty of the county engineer to prepare plans for town roads, without compensation. 1938 OAG 129, June 6, 1938 (122b-5).

Construction of emergency measure Laws 1937, Chapter 366, as to the distribution of surplus moneys in county aid fund to towns. 1938 OAG 261, Aug. 18, 1937 (377b-4); 1938 OAG 262, Dec. 27, 1937. (377b-10h); 1938 OAG 418, Dec. 27, 1937 (324d).

Where a designation was made of a town road as a county aid road, an appropriation made for same, but no performance, a reconsideration must have a majority of all the voters of the election district, in order to carry. 1938 OAG 462, March 19, 1937 (434b-13a).

Distribution of gas tax money to towns is discretionary and the county may refuse to make division in any particular year. OAG June 9, 1939 (324d).

The county board exercises its own discretion in distribution to towns and the court will not disturb its action except on a clear showing of gross abuse. The board's action is not contingent on contribution by the towns. OAG June 14, 1939 (324d).

296.41 UNORGANIZED TOWNSHIPS.

HISTORY. 1929 c. 283 s. 9; M. Supp. s. 2720-96.

296.42 TO BE CREDITED TO COUNTY ROAD AND BRIDGE FUND IN CERTAIN COUNTIES.

HISTORY. 1929 c. 283 s. 10; M. Supp. s. 2720-97.

296.421 REVENUE PROVISIONS.

HISTORY. 1945 c. 412 s. 14.

296.43 DEFINITIONS.

HISTORY. 1939 c. 114 s. 1; M. Supp. s. 2720-100; 1941 c. 116 s. 1.

296.44 RULES AND REGULATIONS.

HISTORY. 1939 c. 114 s. 2; M. Supp. s. 2720-100a; 1941 c. 116 s. 2.

296.45 FARM TRACTOR FUELS INSPECTED.

HISTORY. 1939 c. 114 s. 3; M. Supp. s. 2720-100b; 1941 c. 116 s. 3.

296.46 FARM TRACTOR FUELS NOT SUBJECT TO TAX.

HISTORY. 1939 c. 114 s. 4; M. Supp. s. 2720-100c; 1941 c. 116 s. 4.

296.47 BLENDING PROHIBITED.

HISTORY. 1939 c. 114 s. 5; M. Supp. s. 2720-100d; 1941 c. 116 s. 5.

296.48 VIOLATIONS; PENALTIES.

HISTORY. 1939 c. 114 s. 6; M. Supp. s. 2720-100e; 1941 c. 116 s. 6.

296.49 SELLERS OF TRACTOR FUEL TO FILE MONTHLY STATEMENTS.

HISTORY. 1941 c. 116 s. 7.