

CHAPTER 296A

TAX ON PETROLEUM AND OTHER FUELS

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296A.01 DEFINITIONS.

[For text of subs 1 to 18, see M.S.2000]

Subd. 19. **E85.** "E85" means a petroleum product that is a blend of agriculturally derived denatured ethanol and gasoline or natural gasoline that typically contains 85 percent ethanol by volume, but at a minimum must contain 60 percent ethanol by volume. For the purposes of this chapter, the energy content of E85 will be considered to be 82,000 BTUs per gallon. E85 produced for use as a motor fuel in alternative fuel vehicles as defined in subdivision 5 must comply with ASTM specification D 5798-96.

[For text of subs 20 to 50, see M.S.2000]

History: *1Sp2001 c 2 s 145*

296A.02 ADMINISTRATION.

Subdivision 1. **Enforcement responsibility.** The commissioner of revenue shall enforce and administer the provisions of this chapter with the assistance of the commissioners of public safety, commerce, and transportation.

[For text of subs 2 to 4, see M.S.2000]

History: *1Sp2001 c 4 art 6 s 77*

296A.07 GASOLINE TAX.

[For text of subs 1 to 3, see M.S.2000]

Subd. 4. **Exemptions.** The provisions of subdivision 1 do not apply to gasoline purchased by:

- (1) a transit system or transit provider receiving financial assistance or reimbursement under section 174.24, 256B.0625, subdivision 17, or 473.384; or
- (2) an ambulance service licensed under chapter 144E.

History: *1Sp2001 c 5 art 13 s 5*

296A.08 SPECIAL FUEL TAX.

[For text of subs 1 and 2, see M.S.2000]

Subd. 3. **Exemptions.** The provisions of subdivisions 1 and 2 do not apply to special fuel or alternative fuels purchased by:

- (1) a transit system or transit provider receiving financial assistance or reimbursement under section 174.24, 256B.0625, subdivision 17, or 473.384; or
- (2) an ambulance service licensed under chapter 144E.

[For text of subs 4 to 6, see M.S.2000]

History: *1Sp2001 c 5 art 13 s 6*

296A.15 PAYMENT OF TAX.

Subdivision 1. **Monthly gasoline report; shrinkage allowance.** (a) Except as provided in paragraph (e), on or before the 23rd day of each month, every person who is required to pay a gasoline tax shall file with the commissioner a report, in the form and manner prescribed by the commissioner, showing the number of gallons of petroleum products received by the reporter during the preceding calendar month, and other information the commissioner may require. A written report is deemed to have been filed as required in this subdivision if postmarked on or before the 23rd day of the month in which the tax is payable.

(b) The number of gallons of gasoline must be reported in United States standard liquid gallons, 231 cubic inches, except that the commissioner may upon written application and for cause shown permit the distributor to report the number of gallons of gasoline as corrected to a temperature of 60-degrees Fahrenheit. If the application is granted, all gasoline covered in the application and allowed by the commissioner must continue to be reported by the distributor on the adjusted basis for a period of one year from the date of the granting of the application. The number of gallons of petroleum products other than gasoline must be reported as originally invoiced. Each report must show separately the number of gallons of aviation gasoline received by the reporter during each calendar month.

(c) Each report must also include the amount of gasoline tax on gasoline received by the reporter during the preceding month. In computing the tax a deduction of 2.5 percent of the quantity of gasoline received by a distributor shall be made for evaporation and loss. At the time of reporting, the reporter shall submit satisfactory evidence that one-third of the 2.5 percent deduction has been credited or paid to dealers on quantities sold to them.

(d) Each report shall contain a confession of judgment for the amount of the tax shown due to the extent not timely paid.

(e) Under certain circumstances and with the approval of the commissioner, taxpayers may be allowed to file reports annually.

[For text of subs 2 to 6, see M.S.2000]

Subd. 7. **Electronic payment required.** All remittances must be made by electronic means.

[For text of subd 8, see M.S.2000]

History: 1Sp2001 c 5 art 13 s 7; art 17 s 15

296A.16 REFUND OR CREDIT.

[For text of subd 1, see M.S.2000]

Subd. 2. **Fuel used in other vehicle; claim for refund.** Any person who buys and uses gasoline for a qualifying purpose other than use in motor vehicles, snowmobiles except as provided in clause (2), or motorboats, or special fuel for a qualifying purpose other than use in licensed motor vehicles, and who paid the tax directly or indirectly through the amount of the tax being included in the price of the gasoline or special fuel, or otherwise, shall be reimbursed and repaid the amount of the tax paid upon filing with the commissioner a claim for refund in the form and manner prescribed by the commissioner, and containing the information the commissioner shall require. By signing any such claim which is false or fraudulent, the applicant shall be subject to the penalties provided in this chapter for knowingly making a false claim. The claim shall set forth the total amount of the gasoline so purchased and used by the applicant other than in motor vehicles, or special fuel purchased and used by the applicant other than in licensed motor vehicles, and shall state when and for what purpose it was used. When a claim contains an error in computation or preparation, the commissioner is authorized to adjust the claim in accordance with the evidence shown on the claim or other information available to the commissioner. The commissioner, on being satisfied

that the claimant is entitled to the payments, shall approve the claim and transmit it to the commissioner of finance. The words "gasoline" or "special fuel" as used in this subdivision do not include aviation gasoline or special fuel for aircraft. Gasoline or special fuel bought and used for a "qualifying purpose" means:

(1) Gasoline or special fuel used in carrying on a trade or business, used on a farm situated in Minnesota, and used for a farming purpose. "Farm" and "farming purpose" have the meanings given them in section 6420(c)(2), (3), and (4) of the Internal Revenue Code of 1986, as amended through December 31, 1997.

(2) Gasoline or special fuel used for off-highway business use.

(i) "Off-highway business use" means any use off the public highway by a person in that person's trade, business, or activity for the production of income.

(ii) Off-highway business use includes use of a passenger snowmobile off the public highways as part of the operations of a resort as defined in section 157.15, subdivision 11; and use of gasoline or special fuel to operate a power takeoff unit on a vehicle, but not including fuel consumed during idling time.

(iii) Off-highway business use does not include use as a fuel in a motor vehicle which, at the time of use, is registered or is required to be registered for highway use under the laws of any state or foreign country; or use of a licensed motor vehicle fuel tank in lieu of a separate storage tank for storing fuel to be used for a qualifying purpose, as defined in this section. Fuel purchased to be used for a qualifying purpose cannot be placed in the fuel tank of a licensed motor vehicle and must be stored in a separate supply tank.

(3) Gasoline or special fuel placed in the fuel tanks of new motor vehicles, manufactured in Minnesota, and shipped by interstate carrier to destinations in other states or foreign countries.

[For text of subs 3 to 5, see M.S.2000]

Subd. 6. [Repealed, 1Sp2001 c 5 art 7 s 66]

[For text of subs 7 and 8, see M.S.2000]

History: 1Sp2001 c 5 art 7 s 46

296A.18 APPORTIONMENT OF TAX; DEPOSIT OF PROCEEDS.

[For text of subs 1 and 2, see M.S.2000]

Subd. 3. **Snowmobile.** Approximately one percent of all gasoline received in and produced or brought into this state, except gasoline used for aviation purposes, is being used as fuel for the operation of snowmobiles in this state, and of the total revenue derived from the imposition of the gasoline fuel tax for uses other than for aviation purposes, one percent of such revenues is the amount of tax on fuel used in snowmobiles operated in this state.

[For text of subs 4 to 9, see M.S.2000]

History: 1Sp2001 c 8 art 2 s 62

296A.201 ASSESSMENTS.

Subdivision 1. **General rule.** The commissioner may make determinations, corrections, and assessments with respect to any tax or fee under this chapter, including interest, additions to taxes and fees, and assessable penalties.

Subd. 2. **Commissioner filed returns.** If a taxpayer fails to file a required return, the commissioner, from information in the commissioner's possession or obtainable by the commissioner, may make a return for the taxpayer. The return is prima facie correct and valid. The commissioner may use statistical or other sampling techniques consistent with generally accepted auditing standards in examining returns or records and making assessments.

Subd. 3. **Order of assessment; notice and demand to taxpayer.** (a) If a return has been filed and the commissioner determines that the tax or fee disclosed by the return

is different than the tax or fee determined by the examination, the commissioner shall send an order of assessment to the taxpayer. If no return has been filed, the commissioner may make a return for the taxpayer under subdivision 2 or may send an order of assessment under this subdivision. The order must explain the basis for the assessment and must explain the taxpayer's appeal rights. An order of assessment is final when made but may be reconsidered by the commissioner under section 296A.25.

(b) Penalties under this chapter are not imposed and no collection action can be taken, including the filing of liens under section 270.69, if the amount shown on the order is paid to the commissioner:

(1) within 60 days after notice of the amount and demand for its payment have been mailed to the taxpayer by the commissioner; or

(2) if an administrative appeal is filed under this chapter, or a tax court appeal is filed under chapter 271, within 60 days following final determination of the appeal if the appeal is based upon a constitutional challenge to the tax or fee, and if not, when the decision of the tax court is made.

Subd. 4. **Erroneous refunds.** An erroneous refund is considered an underpayment of tax or fee on the date made. An assessment of a deficiency arising out of an erroneous refund may be made at any time within two years from the making of the refund. If part of the refund was induced by fraud or misrepresentation of a material fact, the assessment may be made at any time.

Subd. 5. **Assessment presumed valid.** A return or assessment of tax or fee made by the commissioner is prima facie correct and valid. The taxpayer has the burden of establishing its incorrectness or invalidity in any related action or proceeding.

Subd. 6. **Aggregate refund or assessment.** The commissioner, on examining returns of a taxpayer for more than one year or period, may issue one order covering the period under examination that reflects the aggregate refund or additional tax or fee due.

Subd. 7. **Sufficiency of notice.** An order of assessment, sent postage prepaid by United States mail to the taxpayer at the taxpayer's last known address, is sufficient even if the taxpayer is deceased or is under a legal disability, or, in the case of a corporation, even if the corporation has terminated its existence, unless the department has been provided with a new address by a party authorized to receive notices of assessment.

History: *1Sp2001 c 5 art 7 s 47*

296A.21 STATUTE OF LIMITATIONS.

Subdivision 1. **General rules.** (a) The commissioner shall make determinations, corrections, assessments, and refunds with respect to taxes and fees under this chapter, including interest, additions to taxes, and assessable penalties. Except as otherwise provided in this section, the amount of taxes assessable must be assessed within 3-1/2 years after the date the return is filed.

(b) A claim for a refund of an overpayment of state tax or fees must be filed within 3-1/2 years from the date prescribed for filing the return, plus any extension of time granted for filing the return, but only if filed within the extended time; or the claim must be filed within one year from the date of an order assessing tax or fees, or from the date of a return filed by the commissioner, upon payment in full of the tax, fees, penalties, and interest shown on the order or return, whichever period expires later.

[For text of subds 2 and 3, see M.S.2000]

Subd. 4. **Time limit for certain refunds.** Notwithstanding subdivision 1, paragraph (b), no refund under section 296A.16, subdivision 2, shall be made unless the claim for refund and invoice are filed with the commissioner within one year from the date of purchase.

[For text of subd 5, see M.S.2000]

History: *1Sp2001 c 5 art 7 s 48,49*

296A.24 CONTRABAND.

Subdivision 1. **Seizure.** The commissioner or authorized agents may seize gasoline or special fuel being transported for delivery in violation of section 296A.03, subdivision 1, and any vehicle or other method of conveyance used for transporting the gasoline or special fuel. 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 motor vehicle fuel, along with the transporting vehicle, brought into the state of Minnesota by a transporter for use, distribution, storage, or sale that is not supported by a manifest, bill of lading, or invoice, reflecting the licensed distributor responsible for the tax and/or fees is subject to seizure by the Minnesota department of revenue. Property seized under this subdivision is subject to forfeiture as provided in subdivision 2.

Subd. 2. **Forfeiture.** (a) Within ten days after the seizure, the person making the seizure shall serve by certified mail an inventory of the vehicle or property seized on the person from whom the seizure was made, if known, and on any person known or believed to have any right, title, interest, or lien on the vehicle or property, at the last known address, and file a copy with the commissioner. The notice must include an explanation of the right to demand a judicial forfeiture determination.

(b) Within 60 days after the date of service of the inventory, which is the date of mailing, the person from whom the vehicle or property was seized or any person claiming an interest in it may file a demand for a judicial determination of whether the vehicle or property was lawfully subject to seizure and forfeiture. The demand must be in the form of a civil complaint and must be filed with the court administrator in the county in which the seizure occurred, together with proof of service of a copy of the complaint on the commissioner of revenue, and the standard filing fee for civil actions unless the petitioner has the right to sue in forma pauperis under section 563.01. If the value of the seized property or vehicle is \$7,500 or less, the claimant may file an action in conciliation court for its recovery. If the value of the seized property or vehicle is less than \$500, the claimant does not have to pay the conciliation court filing fee.

(c) The complaint must be captioned in the name of the claimant as plaintiff and the seized property or vehicle as defendant, and must state with specificity the grounds on which the claimant alleges the property or vehicle was improperly seized and the plaintiff's interest in the property or vehicle seized. No responsive pleading is required of the commissioner and no court fees may be charged for the commissioner's appearance in the matter. The proceedings are governed by the Rules of Civil Procedure. Notwithstanding any law to the contrary, an action for the return of property or a vehicle seized under this section may not be maintained by or on behalf of any person who has been served with an inventory unless the person has complied with this subdivision. The court shall hear the action without a jury and shall try and determine the issues of fact and law involved.

(d) When a judgment of forfeiture is entered, the commissioner may, unless the judgment is stayed pending an appeal, either:

(1) cause the forfeited gasoline or special fuel to be destroyed; or

(2) cause the forfeited property in clause (1) or vehicle to be sold at public auction as provided by law. After deducting the expense of keeping the property and vehicle and the costs of the sale, the commissioner shall pay from the funds collected all liens according to their priority, which are established as being bona fide and as existing without the lienor having any notice or knowledge that the property or vehicle was being used or was intended to be used for or in connection with any violation, and shall pay the balance of the proceeds into the general fund.

(e) If no demand for judicial determination is made, the property or vehicle seized must be considered forfeited to the state by operation of law and may be disposed of by the commissioner as provided where there has been a judgment of forfeiture.

Subd. 3. [Repealed, 1Sp2001 c 5 art 18 s 11]

History: 1Sp2001 c 5 art 18 s 1,2