

## CHAPTER 296A

## TAX ON PETROLEUM AND OTHER FUELS

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**296A.01 DEFINITIONS.**

Subdivision 1. **Terms.** Unless the language or context clearly indicates that a different meaning is intended, the terms used in this chapter and sections 239.75 to 239.80 have the meanings given them in this section. The petroleum product definitions and specifications are intended to match the definitions and specifications in sections 41A.09 and 239.761.

Subd. 2. **Agricultural alcohol gasoline.** "Agricultural alcohol gasoline" means a gasoline-ethanol blend of up to ten percent agriculturally derived fermentation ethanol derived from agricultural products, such as potatoes, cereal, grains, cheese whey, sugar beets, forest products, or other renewable resources, that:

- (1) meets the specifications in ASTM specification D 4806-95b; and
- (2) is denatured as specified in Code of Federal Regulations, title 27, parts 20 and 21.

Subd. 3. **Aircraft.** "Aircraft" means any contrivance, now or hereafter invented, used or designed for navigation of or flight in the air.

Subd. 4. **Alternative fuel.** "Alternative fuel" means natural gas; liquefied petroleum gas; hydrogen; coal-derived liquefied fuels; electricity; methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more, or other percentage as may be set by regulation by Secretary of the United States Department of Energy, by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; fuels other than alcohol that are derived from biological materials; and other fuels that the Secretary of the United States Department of Energy determines by regulation to be an alternative fuel within the meaning of section 301(2) of the National Energy Policy Act of 1992 and intended for use in motor vehicles.

Subd. 5. **Alternative fuel vehicle.** "Alternative fuel vehicle" means a dedicated, flexible, or dual-fuel vehicle operated primarily on alternative fuel.

Subd. 6. **ASTM.** "ASTM" means the American Society for Testing and Materials, which is a private organization that utilizes committees of industry representatives and regulators to develop product quality standards and test methods to be used by industries, regulatory agencies, and purchasing agents.

Subd. 7. **Aviation gasoline.** "Aviation gasoline" means any gasoline that is capable of use for the purpose of producing or generating power for propelling internal combustion engine aircraft, that meets the specifications in ASTM specification D 910-96, and that either:

- (1) is invoiced and billed by a producer, manufacturer, refiner, or blender to a distributor or dealer, by a distributor to a dealer or consumer, or by a dealer to consumer, as "aviation gasoline"; or

(2) whether or not invoiced and billed as provided in clause (1), is received, sold, stored, or withdrawn from storage by any person, to be used for the purpose of producing or generating power for propelling internal combustion engine aircraft.

Subd. 8. **Aviation turbine fuel and jet fuel.** "Aviation turbine fuel" and "jet fuel" mean blends of hydrocarbons derived from crude petroleum, natural gasoline, and synthetic hydrocarbons, intended for use in aviation turbine engines, and that meet the specifications in ASTM specification D 1655-96c.

Subd. 9. **Bulk purchaser.** "Bulk purchaser" means any person not principally engaged in buying and selling petroleum products or combustible gases who receives special fuel for storage and subsequent delivery into the supply tank of an aircraft or a licensed motor vehicle operated by the person.

Subd. 10. **Casinghead, absorption, condensation, drip, or natural gasoline.** "Casinghead gasoline," "absorption gasoline," "condensation gasoline," "drip gasoline," and "natural gasoline" mean a low-octane, high-volatility, liquid hydrocarbon by-product of crude oil extraction and pumping, coal gasification, or shipping of natural gas through a pipeline.

Subd. 11. **Commissioner.** "Commissioner" means the commissioner of revenue.

Subd. 12. **Compressed natural gas or CNG.** "Compressed natural gas" or "CNG" means natural gas, primarily methane, condensed under high pressure and stored in specially designed storage tanks at between 2,000 and 3,600 pounds per square inch. For purposes of this chapter, the energy content of CNG is considered to be 1,000 BTUs per cubic foot.

Subd. 13. **Dealer.** "Dealer" means any person, except a distributor, engaged in the business of buying and selling gasoline and other petroleum products in this state.

Subd. 14. **Diesel fuel oil.** "Diesel fuel oil" means a petroleum distillate or blend of petroleum distillate and residual fuels, intended for use as a motor fuel in internal combustion diesel engines, that meets the specifications in ASTM specification D 975-96a. Diesel fuel includes number 1 and number 2 fuel oils. K-1 kerosene is not diesel fuel unless it is blended with diesel fuel for use in motor vehicles.

Subd. 15. **Distributor.** "Distributor" means any person who (1) receives petroleum products in this state for storage and subsequent distribution by tank car or tank truck or both, (2) produces, manufactures, or refines petroleum products in this state, or (3) imports petroleum products into this state via boat, barge, or pipeline for storage and subsequent delivery at or further transportation from boat, barge, or pipe line terminals in this state.

Subd. 16. **Dyed fuel.** "Dyed fuel" means diesel fuel to which indelible dye has been added, either before or upon withdrawal at a terminal or refinery rack, and which may be sold for exempt purposes. The dye may be either dye required to be added per the EPA or dye that meets other specifications required by the Internal Revenue Service or the commissioner.

Subd. 17. **EPA.** "EPA" means the United States Environmental Protection Agency.

Subd. 18. **ETBE.** "ETBE" means ethyl tertiary butyl ether, or the equivalent term tert-butyl ethyl ether. ETBE is a hydrocarbon compound approved by the EPA for use as an oxygenate in gasoline. ETBE is a liquid at normal atmospheric pressure and temperature. The chemical composition of ETBE is  $C_2H_5OC(CH_3)_3$ .

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.

Subd. 20. **Ethanol, denatured.** "Ethanol, denatured" means ethanol that is to be blended with gasoline, has been agriculturally derived, and complies with ASTM specification D 4806-95b. This includes the requirement that ethanol may be denatured only as specified in Code of Federal Regulations, title 27, parts 20 and 21.

Subd. 21. **For use in motor vehicles.** "For use in motor vehicles" means for use in producing or generating power for propelling motor vehicles on the public highways of this state or in machinery operated on the public highways of this state for the purpose of constructing, reconstructing, or maintaining those public highways. For purposes of this subdivision, "public highways" includes bridges.

Subd. 22. **Gas turbine fuel oil.** "Gas turbine fuel oil" means fuel that contains mixtures of hydrocarbon oils free of inorganic acid and excessive amounts of solid or fibrous foreign matter, intended for use in nonaviation gas turbine engines, and that meets the specifications in ASTM specification D 2880-96a.

Subd. 23. **Gasoline.** (a) "Gasoline" means:

(1) all products commonly or commercially known or sold as gasoline regardless of their classification or uses, except casinghead gasoline, absorption gasoline, condensation gasoline, drip gasoline, or natural gasoline that under the requirements of section 239.761, subdivision 3, must not be blended with gasoline that has been sold, transferred, or otherwise removed from a refinery or terminal; and

(2) any liquid prepared, advertised, offered for sale or sold for use as, or commonly and commercially used as, a fuel in spark-ignition, internal combustion engines, and that when tested by the weights and measures division meets the specifications in ASTM specification D 4814-96.

(b) Gasoline that is not blended with ethanol must not be contaminated with water or other impurities and must comply with both ASTM specification D 4814-96 and the volatility requirements in Code of Federal Regulations, title 40, part 80.

(c) After gasoline is sold, transferred, or otherwise removed from a refinery or terminal, a person responsible for the product:

(1) may blend the gasoline with agriculturally derived ethanol, as provided in subdivision 24;

(2) must not blend the gasoline with any oxygenate other than denatured, agriculturally derived ethanol;

(3) must not blend the gasoline with other petroleum products that are not gasoline or denatured, agriculturally derived ethanol;

(4) must not blend the gasoline with products commonly and commercially known as casinghead gasoline, absorption gasoline, condensation gasoline, drip gasoline, or natural gasoline; and

(5) may blend the gasoline with a detergent additive, an antiknock additive, or an additive designed to replace tetra-ethyl lead, that is registered by the EPA.

Subd. 24. **Gasoline blended with nonethanol oxygenate.** "Gasoline blended with nonethanol oxygenate" means gasoline blended with ETBE, MTBE, or other alcohol or ether, except denatured ethanol, that is approved as an oxygenate by the EPA, and that complies with ASTM specification D 4814-96. Oxygenates, other than denatured ethanol, must not be blended into gasoline after the gasoline has been sold, transferred, or otherwise removed from a refinery or terminal.

Subd. 25. **Gasoline blended with ethanol.** "Gasoline blended with ethanol" means gasoline blended with up to ten percent, by volume, agriculturally derived, denatured ethanol. The blend must comply with the volatility requirements in Code of Federal Regulations, title 40, part 80. The blend must also comply with ASTM specification D 4814-96, or the gasoline base stock from which a gasoline-ethanol blend was produced must comply with ASTM specification D 4814-96; and the gasoline-ethanol blend must not be blended with casinghead gasoline, absorption gasoline, condensation gasoline, drip gasoline, or natural gasoline after the gasoline-ethanol blend has been sold, transferred, or otherwise removed from a refinery or terminal. The blend need not comply with ASTM specification D 4814-96 if it is subjected to a standard distillation test. For a distillation test, a gasoline-ethanol blend is not required to comply with the temperature specification at the 50 percent liquid recovery point, if the gasoline from which the gasoline-ethanol blend was produced complies with all of the distillation specifications.

Subd. 26. **Heating fuel oil.** "Heating fuel oil" means a petroleum distillate, blend of petroleum distillates and residuals, or petroleum residual heating fuel that meets the specifications in ASTM specification D 396-96.

Subd. 27. **Highway.** "Highway" means the entire width between the boundary lines of every way publicly maintained when part of the way is open for the public.

Subd. 28. **Kerosene.** "Kerosene" means a refined petroleum distillate consisting of a homogeneous mixture of hydrocarbons essentially free of water, inorganic acidic and basic compounds, and excessive amounts of particulate contaminants and that meets the specifications in ASTM specification D 3699-96a.

Subd. 29. **Licensed motor vehicle.** "Licensed motor vehicle" means (1) any vehicle subject to a motor vehicle registration in which the power is produced with any fuel in an internal combustion engine, and (2) any motor vehicle not subject to a motor vehicle registration on which is mounted a corn shelling, feed grinding, well drilling, or sawing machine.

Subd. 30. **Liquefied natural gas or LNG.** "Liquefied natural gas" or "LNG" means natural gas, primarily methane, which has been condensed through a cryogenic cooling process and is stored in special pressurized and insulated storage tanks. For purposes of this chapter, the energy content of LNG will be considered to be 69,000 BTUs per gallon.

Subd. 31. **Liquefied petroleum gas, LPG, or propane.** "Liquefied petroleum gas," "LPG," or "propane" means a product made of short hydrocarbon chains and containing primarily propane and butane that is stored in specialized tanks at moderate pressure. For purposes of this chapter, the energy content of LPG or propane will be considered to be 86,000 BTUs per gallon.

Subd. 32. **Marine gasoline.** "Marine gasoline" means gasoline used in producing and generating power for propelling motorboats used on the waters of this state.

Subd. 33. **Motor fuel.** "Motor fuel" means a liquid, regardless of its composition or properties, used to propel a motor vehicle.

Subd. 34. **MTBE.** "MTBE" means methyl tertiary butyl ether, or the equivalent term tert-butyl methyl ether. MTBE is a hydrocarbon compound approved by the United States Environmental Protection Agency for use as an oxygenate in gasoline. MTBE is a liquid at normal atmospheric pressure and temperature. The chemical composition of MTBE is  $(CH_3)_3COCH_3$ .

Subd. 35. **M85.** "M85" means a petroleum product that is a liquid fuel blend of methanol and gasoline that contains at least 85 percent methanol by volume. For the purposes of this chapter, the energy content of M85 will be considered to be 65,000 BTUs per gallon. M85 produced for use as a motor fuel in alternative fuel vehicles, as defined in subdivision 5, must comply with ASTM specification D 5797-96.

Subd. 36. **Motor vehicle gasoline excise tax.** "Motor vehicle gasoline excise tax" means the tax imposed on gasoline used in producing and generating power for propelling motor vehicles used on the public highways of this state.

Subd. 37. **Motor vehicles used on public highways of this state.** "Motor vehicles used on public highways of this state" means every vehicle operated upon the highways of this state, the power for the operation of which is produced or generated in an internal combustion engine, but does not include tractors used solely for agricultural purposes.

Subd. 38. **Motorboat.** "Motorboat" means any contrivance used or designed for navigation on water other than a seaplane, propelled in any respect by machinery, including detachable motors.

Subd. 39. **Passenger snowmobile.** "Passenger snowmobile" means a self-propelled vehicle designed for travel on snow or ice, steered by skis or runners, with an enclosed passenger section that provides seating for not less than four nor more than 12 passengers.

Subd. 40. **Person.** "Person" means any individual, firm, trust, estate, partnership, association, cooperative association, joint stock company or corporation, public or

private, or any representative appointed by order of any court; or an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform any act prescribed by this chapter.

Subd. 41. **Petroleum distillate.** "Petroleum distillate" means a hydrocarbon or group of hydrocarbon compounds that have been extracted from petroleum crude oil by a distillation process involving evaporation by heating, and subsequent condensation by cooling.

Subd. 42. **Petroleum products.** "Petroleum products" means all of the products defined in subdivisions 2, 7, 8, 10, 14, 16, 19, 20, 22 to 26, 28, 32, and 35.

Subd. 43. **Petroleum residual.** "Petroleum residual" means a heavy hydrocarbon or group of heavy hydrocarbon compounds that do not evaporate during a distillation process.

Subd. 44. **Received.** (a) Except as otherwise provided in this subdivision, petroleum products brought into this state shall be deemed to be "received" in this state at the time and place they are unloaded in this state. When so unloaded such products shall be deemed to be received in this state by the person who is the owner immediately after such unloading; provided, however, that if such owner is not licensed as a distributor in this state and if such products were shipped or delivered into this state by a person who is licensed as a distributor, then such products shall be deemed to be received in this state by the licensed distributor by whom the same were so shipped or delivered.

(b) Petroleum products produced, manufactured, or refined, at a refinery in this state and stored there, or brought into the state by boat or barge or like form of transportation and delivered at a marine terminal in this state and stored there, or brought into the state by pipeline and delivered at a pipeline terminal in this state and stored there, shall not be considered received until they are withdrawn from such refinery or terminal for sale or use in this state or for delivery or shipment to points within this state.

(c) When withdrawn such products shall be deemed received by the person who was the owner immediately prior to withdrawal; unless (1) such products are withdrawn for shipment or delivery to another licensed distributor, in which case the licensed distributor to whom such shipment or delivery is made shall be deemed to have received such products in this state, or (2) such products are withdrawn for shipment or delivery to a person not licensed as a distributor, under one or more sale or exchange agreements by or between persons one or more of whom is a licensed distributor, in which case the last purchaser or exchangee under such agreement or agreements, who is licensed as a distributor, shall be deemed to have received such products in this state.

(d) Petroleum products produced in this state in any manner other than as covered in this subdivision shall be considered received by the producer at the time and place produced.

Subd. 45. **Refinery or terminal.** "Refinery" or "terminal" means any petroleum refinery, pipeline terminal, river terminal, storage facility, or other point of origin where petroleum products are manufactured, or imported by rail, truck, barge, or pipe; and held, stored, transferred, offered for distribution, distributed, offered for sale, or sold. For the purpose of restricting petroleum product blending, this definition includes all refineries and terminals within and outside of Minnesota. For the purpose of assessing fees, this definition does not include a licensed distributor's bulk storage facility that is used to store petroleum products for which the petroleum inspection fee charged under chapter 239 is either not due or has been paid.

Subd. 46. **Special fuel.** "Special fuel" means:

(1) all combustible gases and liquid petroleum products or substitutes including undyed diesel fuel, except gasoline, gasoline blended with ethanol, and agricultural alcohol gasoline which are delivered into the supply tank of a licensed motor vehicle or into storage tanks maintained by an owner or operator of a licensed motor vehicle as a source of supply for such vehicle;

(2) all combustible gases and liquid petroleum products or substitutes, except gasoline, gasoline blended with ethanol, and agricultural alcohol gasoline, when delivered to a licensed special fuel dealer or to the retail service station storage of a distributor who has elected to pay the special fuel excise tax as provided in this chapter;

(3) all combustible gases and liquid petroleum products or substitutes, except gasoline, which are used as aviation fuel; or

(4) dyed fuel that is being used illegally in a licensed motor vehicle.

Subd. 47. **Special fuel dealer.** "Special fuel dealer" means any person engaged in the business of selling and delivering special fuel into the supply tank of an aircraft or a licensed motor vehicle.

Subd. 48. **Use in licensed motor vehicles.** "Use in licensed motor vehicles" means use in producing or generating power for propelling licensed motor vehicles on the public highways of this state.

Subd. 49. **Waters of this state.** "Waters of this state" means any waters capable of substantial beneficial public use and any waters to which the public has access, which are within the territorial limits of this state including boundary waters.

Subd. 50. **Wet alcohol.** "Wet alcohol" means agriculturally derived fermentation ethyl alcohol having a purity of at least 50 percent but less than 99 percent.

**History:** 1998 c 299 s 1; 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.

Subd. 2. **Powers of commissioner.** The commissioner, or duly authorized agents, may conduct investigations, inquiries, and hearings under this chapter. In connection with such investigations, inquiries, and hearings, the commissioner and the duly authorized agents have all the powers conferred upon the commissioner and the commissioner's examiners by section 270.06, and the provisions of that section apply to all such investigations, inquiries, and hearings.

Subd. 3. **Rules; administration and enforcement.** The commissioner may adopt rules relating to the administration and enforcement of laws regulating the sale, distribution, and use of petroleum products and special fuel. The rules shall be reasonable and consistent with the law.

Subd. 4. **Application to foreign or interstate commerce.** No provision of this chapter shall apply to, or be construed to apply to, foreign or interstate commerce, except insofar as the same may be permitted under the constitution and the laws of the United States.

**History:** 1998 c 299 s 2; 1Sp2001 c 4 art 6 s 77

## 296A.03 DISTRIBUTOR'S LICENSE.

Subdivision 1. **General rule.** No person shall produce, manufacture, or refine petroleum products in this state, or receive, distribute, sell, or use in this state petroleum products which have not been received in this state by a licensed distributor, or in any manner act as a distributor as defined in section 296A.01 without having been licensed by the commissioner as a distributor.

Subd. 2. **Qualifications.** (a) A distributor's license shall be issued to any responsible person who applies and qualifies as a distributor.

(b) Upon application to the commissioner, the commissioner must issue a distributor's license to any person who:

(1) receives petroleum products in this state for bulk storage and subsequent distribution by tank truck;

(2) produces, manufactures, or refines petroleum products in this state;

(3) holds an unrevoked license as a distributor as of July 1, 1994;

(4) imports petroleum products into this state via boat, barge, or pipeline for storage and subsequent delivery at or further transportation from boat, barge, or pipeline terminals in this state; or

(5) holds a license and performs a function under the motor fuel tax law of an adjoining state equivalent to that of a distributor under this chapter, who desires to ship or deliver petroleum products from that state to persons in this state not licensed as distributors in this state and who agrees to assume with respect to all petroleum products so shipped or delivered the liabilities of a distributor receiving petroleum products in this state provided, however, that any such license shall be issued only for the purpose of permitting such person to receive in this state the petroleum products so shipped or delivered. Except as herein provided, all persons licensed as distributors under this clause shall have the same rights and privileges and be subject to the same duties, requirements, and penalties as other licensed distributors.

**Subd. 3. License fee.** An application for a distributor's license must be accompanied by an initial fee of \$25. Once licensed, a distributor must remit a \$25 fee annually to maintain the license.

**Subd. 4. Licensing period; expiration.** Each license period shall be for one year ending each June 30.

**Subd. 5. Form of application; bond.** (a) A written application shall be made in the form and manner prescribed by the commissioner.

(b) The commissioner shall also require the applicant or licensee to deposit with the state treasurer securities of the United States government or the state of Minnesota or to execute and file a bond, with a corporate surety approved by the commissioner, to the state of Minnesota in an amount to be determined by the commissioner and in a form to be fixed by the commissioner and approved by the attorney general, and which shall be conditioned for the payment when due of all excise taxes, fees, penalties, and accrued interest arising in the ordinary course of business or by reason of any delinquent money which may be due the state. The bond shall cover all places of business within the state where petroleum products are received by the licensee. The applicant or licensee shall designate and maintain an agent in this state upon whom service may be made for all purposes of this section.

(c) An initial applicant for a distributor's license shall furnish a bond in a minimum sum of \$3,000 for the first year.

(d) The commissioner, on reaching the opinion that the bond given by a licensee is inadequate in amount to fully protect the state, shall require an additional bond in such amount as the commissioner deems sufficient.

(e) A licensee who desires to be exempt from depositing securities or furnishing such bond shall furnish to the commissioner an itemized financial statement showing the assets and the liabilities of the applicant. If it appears to the commissioner, from the financial statement or otherwise, that the applicant is financially responsible, then the commissioner may exempt the applicant from depositing such securities or furnishing such bond until the commissioner otherwise orders.

(f) When the surety upon any bond issued under the provisions of this chapter have fulfilled the conditions of such bond and compensated the state for any loss occasioned by any act or omission of any licensee under this chapter, such surety shall be subrogated to all the rights of the state in connection with the transaction where such loss occurred.

**Subd. 6. Surrender of license.** When the licensee shall voluntarily or involuntarily sell, dispose of, or discontinue business during the term of a license, the licensee shall immediately notify the commissioner in writing and shall within ten days surrender the license at the commissioner's office in St. Paul, Minnesota.

**History:** 1998 c 299 s 3; 2000 c 490 art 13 s 13

**296A.04 SPECIAL FUEL DEALER'S LICENSE; REQUIREMENTS.**

Subdivision 1. **Application and fee.** No person, except a licensed distributor, shall engage in the business of selling or delivering special fuel, upon which no tax has been imposed, as a special fuel dealer without having applied for and secured from the commissioner a special fuel dealer's license. The application shall be made in a form and manner prescribed by the commissioner and shall be accompanied by the payment of a \$25 license fee. A special fuel dealer's license shall be issued to any responsible person qualifying as a special fuel dealer who makes proper application. The license shall be displayed in a conspicuous manner in the place of business and shall expire annually on November 30.

Subd. 2. **Bond.** The provisions of section 296A.03, subdivision 5, paragraphs (b), (d), (e), and (f), relating to bonds apply to special fuel dealers.

Subd. 3. **Sales ticket.** A sales ticket shall be issued for each delivery of special fuel to a special fuel dealer or bulk purchaser. A sales ticket shall also be issued for each delivery into the supply tank of an aircraft or a licensed motor vehicle, if so requested by the purchaser. The person who delivers the special fuel shall issue the sales ticket and shall show on the ticket the name and address of the purchaser, date of sale, number of gallons, price per gallon, amount of tax, and total amount of sale.

Subd. 4. **Accumulating meter.** Every special fuel dealer shall make all withdrawals of special fuel, except liquefied petroleum gas, through an accumulating meter in working order, which shall be provided by such dealer. Whenever a licensed special fuel dealer fails to comply with the provisions of this subdivision or any rules of the commissioner pertinent thereto, the license issued to such dealer under subdivision 1 may be revoked by the commissioner.

Subd. 5. **Surrender of license.** A special fuel dealer who discontinues, sells, or disposes of the business in any manner, at any time, shall surrender the special fuel dealer's license at the commissioner's office in St. Paul, Minnesota.

**History:** 1998 c 299 s 4

**296A.05 BULK PURCHASER'S LICENSE; REQUIREMENTS.**

Subdivision 1. **Application and fee.** No person shall receive special fuel, upon which no tax has been imposed, as a bulk purchaser without having applied for and secured from the commissioner a bulk purchaser's license. The application shall be made in a form and manner prescribed by the commissioner and shall be accompanied by the payment of a \$25 license fee. A bulk purchaser's license shall be issued to any responsible person qualifying as a bulk purchaser who makes proper application. The license shall be displayed in a conspicuous manner in the place of business and shall expire annually on November 30.

Subd. 2. **Bond.** The provisions of section 296A.03, subdivision 5, paragraphs (b), (d), (e), and (f), relating to bonds apply to bulk purchasers.

Subd. 3. **Surrender of license.** A bulk purchaser who discontinues, sells, or disposes of the business in any manner, at any time, shall surrender the bulk purchaser's license at the commissioner's office in St. Paul, Minnesota.

**History:** 1998 c 299 s 5

**296A.06 REVOCATION OF LICENSE, PERMIT, OR CERTIFICATE.**

If any person fails to comply with this chapter or the rules adopted under this chapter, without reasonable cause, the commissioner may give the person 30 days' notice in writing, specifying the violations, and stating that based upon such violations the commissioner intends to revoke the person's license, permit, or certificate. The notice shall also advise the person of the person's right to contest the revocation under this section and the general procedures for a contested case hearing under chapter 14. The notice may be served personally or by mail in the manner prescribed for service of an order of assessment. A license, permit, or certificate is revoked when the commissioner serves a notice of revocation upon the person after 30 days have passed

following the date of the notice of intent to revoke without the person requesting a hearing. If a hearing is timely requested and held, the license, permit, or certificate is revoked after the commissioner serves an order of revocation under section 14.62, subdivision 1.

**History:** 1998 c 299 s 6

#### 296A.07 GASOLINE TAX.

Subdivision 1. **Tax imposed.** There is imposed an excise tax on gasoline, gasoline blended with ethanol, and agricultural alcohol gasoline used in producing and generating power for propelling motor vehicles used on the public highways of this state. The tax is imposed on the first licensed distributor who received the product in Minnesota. For purposes of this section, gasoline is defined in section 296A.01, subdivisions 10, 18, 20, 23, 24, 25, 32, and 34. The tax is payable at the time and in the form and manner prescribed by the commissioner. The tax is payable at the rates specified in subdivision 3, subject to the exceptions and reductions specified in section 296A.17.

Subd. 2. **Tax imposed for marine use.** Subject to the provisions of section 296A.16, subdivision 2, there is imposed an excise tax, at the same rate per gallon as the gasoline excise tax, on all marine gasoline received, sold, stored, or withdrawn from storage in this state. This tax is payable at the times, in the manner, and by persons specified in this chapter.

Subd. 3. **Rate of tax.** The gasoline excise tax is imposed at the following rates:

- (1) E85 is taxed at the rate of 14.2 cents per gallon;
- (2) M85 is taxed at the rate of 11.4 cents per gallon; and
- (3) all other gasoline is taxed at the rate of 20 cents per gallon.

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:** 1998 c 299 s 7; 1Sp2001 c 5 art 13 s 5

#### 296A.08 SPECIAL FUEL TAX.

Subdivision 1. **Tax imposed.** There is imposed an excise tax on all special fuel at the rates specified in subdivision 2. For purposes of this section, "owner or operator" means the operation of licensed motor vehicles, whether loaded or empty, whether for compensation or not for compensation, and whether owned by or leased to the motor carrier who operates them or causes them to be operated.

(a) For undyed diesel fuel and undyed kerosene, the tax is imposed on the first licensed distributor who received the product in Minnesota.

(b) For dyed fuel being used illegally in a licensed motor vehicle, the tax is imposed on the owner or operator of the motor vehicle.

(c) For dyed fuel used in a motor vehicle but subject to a federal exemption, although no federal tax may be imposed, the owner or operator of the vehicle is liable for the state tax.

(d) For other fuels, including jet fuel, propane, and compressed natural gas, the tax is imposed on the distributor, special fuel dealer, or bulk purchaser.

(e) Any person delivering special fuel on which the excise tax has not previously been paid, into the supply tank of an aircraft or a licensed motor vehicle shall report such delivery and shall pay, or collect and pay the excise tax on the special fuel so delivered to the commissioner.

Subd. 2. **Rate of tax.** The special fuel excise tax is imposed at the following rates:

- (1) Liquefied petroleum gas or propane is taxed at the rate of 15 cents per gallon.
- (2) Liquefied natural gas is taxed at the rate of 12 cents per gallon.

(3) Compressed natural gas is taxed at the rate of \$1.739 per thousand cubic feet; or 20 cents per gasoline equivalent, as defined by the National Conference on Weights and Measures, which is 5.66 pounds of natural gas.

(4) All other special fuel is taxed at the same rate as the gasoline excise tax as specified in section 296A.07, subdivision 2. The tax is payable in the form and manner prescribed by the commissioner.

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.

Subd. 4. **Tax imposed on use.** If it is determined by the commissioner from an examination of any records pertaining to the operation of any licensed motor vehicle which uses special fuel, that the special fuel tax on the special fuel used in this state has not been paid to this state, or to any other state if purchased in such other state, there is hereby imposed an excise tax at the same rate per gallon as the gasoline tax, on all such special fuel. All assessments of tax made under this subdivision shall be paid by the user to the commissioner upon demand. For purposes of this subdivision, "special fuel" means any fuel other than gasoline used in a licensed motor vehicle in this state.

Subd. 5. **Intended use.** All special fuel except that used for aviation fuel shall be deemed to be intended for use in a licensed motor vehicle in this state at the time of sale or delivery.

Subd. 6. **Liability for failure to keep adequate records.** If adequate records are not kept, or if the sales are not adequately accounted for, then all sales of combustible gases and liquid petroleum products, except gasoline, are deemed to be sales of special fuel. In such cases, there is imposed an excise tax of the same rate per gallon as the gasoline excise tax on all such products, and the vendor is liable for the tax.

**History:** 1998 c 299 s 8; 1Sp2001 c 5 art 13 s 6

## 296A.09 AVIATION TAX.

Subdivision 1. **Gasoline tax imposed.** Subject to any refunds or credits there is imposed an excise tax, at the rate of five cents per gallon on all aviation gasoline received, sold, stored, or withdrawn from storage in this state. Aviation gasoline is defined in section 296A.01, subdivision 7.

Subd. 2. **Special fuel tax imposed.** There is imposed an excise tax of the same rate per gallon as the aviation gasoline on all jet fuel or special fuel received, sold, stored, or withdrawn from storage in this state, for use as substitutes for aviation gasoline and not otherwise taxed as gasoline. Jet fuel is defined in section 296A.01, subdivision 8.

Subd. 3. **Exception to tax for aviation use.** The provisions of subdivisions 1 and 2 do not apply to aviation gasoline or special fuel purchased and placed in the fuel tanks of an aircraft outside the state, even though the gasoline may be consumed within this state.

Subd. 4. **Manner of payment.** These taxes are payable in the form and manner prescribed by the commissioner.

Subd. 5. **Tax not on consumption.** The taxes imposed by subdivisions 1 and 2 are expressly declared not to be a tax upon consumption of aviation gasoline or special fuel by an aircraft.

**History:** 1998 c 299 s 9

## 296A.10 LIABILITY FOR UNPAID TAX.

Subdivision 1. **Unreported fuel.** It is the duty of every distributor, dealer, and person who sells or uses gasoline manufactured, produced, received, or stored by the distributor, dealer, or person, and of every person using gasoline in motor vehicles or special fuel in licensed motor vehicles to know whether the tax has been paid on the fuel. If the tax has not been reported or if the tax has not been paid, it is that person's

duty to report to the commissioner the quantity of the gasoline or special fuel sold or used and to pay the tax as provided in this chapter. All provisions of this chapter relating to the calculation, collections, and payment of the tax shall be applicable to any such person, dealer, or distributor.

**Subd. 2. Unreported aviation gasoline.** The provisions of subdivision 1 do not apply to aviation gasoline. It is the duty of every distributor, dealer, and person who receives, sells, stores, or withdraws from storage in this state aviation gasoline manufactured, produced, received, or stored by the distributor, dealer, or person to know whether the tax has been paid on the aviation gasoline. If the fuel has not been reported, or if the tax has not been paid to the commissioner, it is that person's duty to report to the commissioner the quantity of such gasoline so received, sold, stored, or withdrawn from storage. That person is also liable for the payment of the tax. All provisions of this chapter relating to the calculation, collections, and payment of the tax apply to any such person, dealer, or distributor.

**History:** 1998 c 299 s 10

#### **296A.11 SELLER MAY COLLECT TAX.**

A person who directly or indirectly pays a gasoline or special fuel tax as provided in this chapter and who does not in fact use the gasoline or special fuel in motor vehicles in this state or receive, store, or withdraw it from storage to be used personally for the purpose of producing or generating power for propelling aircraft, but sells or otherwise disposes of the same, except as provided in section 296A.16, subdivision 3, is hereby authorized to collect, from the person to whom the gasoline or special fuel is so sold or disposed of, the tax so paid, and is hereby required, upon request, to make, sign, and deliver to such person an invoice of such sale or disposition. The sums collected must be held as a special fund in trust for the state of Minnesota.

**History:** 1998 c 299 s 11

#### **296A.12 GASOLINE AND SPECIAL FUEL TAX IN LIEU OF OTHER TAXES.**

Gasoline and special fuel excise taxes shall be in lieu of all other taxes imposed upon the business of selling or dealing in gasoline or special fuel, whether imposed by the state or by any of its political subdivisions, but are in addition to all ad valorem taxes now imposed by law. Nothing in this chapter is construed as prohibiting the governing body of any city of this state from licensing and regulating such business where its authority is conferred by state law or city charter.

**History:** 1998 c 299 s 12

#### **296A.13 PERSONAL LIABILITY FOR TAX.**

Liability for payment of taxes under this chapter includes a responsible person or entity described in the personal liability provisions of section 270.101.

**History:** 1998 c 299 s 13

#### **296A.14 TAX AS PERSONAL DEBT OF FIDUCIARY.**

The tax imposed by this chapter, and interest and penalties, is a personal debt of the taxpayer from the time the liability arises, regardless of when the time for discharging the liability by payment occurs. The debt is, in the case of any fiduciary, that of the individual in the individual's official or fiduciary capacity only, unless the individual has voluntarily distributed the assets held in that capacity without reserving sufficient assets to pay the tax, interest, and penalties, in which event the individual is personally liable for the deficiency.

**History:** 1998 c 299 s 14

#### **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.

Subd. 2. **Petroleum tank release cleanup fee.** Persons required to pay a petroleum tank release cleanup fee under section 115C.08, subdivision 3, must file a report with the commissioner of revenue. Each report must include the amount of fees due on petroleum products. Reports must be filed in the form and manner prescribed by the commissioner. A written report is considered filed as required if postmarked on or before the 23rd day of the month in which the fee is payable.

Subd. 3. **Monthly special fuel report; shrinkage allowance.** On or before the 23rd day of each month, distributors, special fuel dealers, and bulk purchasers shall file a report in the form and manner prescribed by the commissioner. Reports shall contain information as follows:

(a) Distributors of undyed diesel fuel and undyed kerosene must file a monthly tax return with the department listing all purchases or receipts of undyed diesel fuel and undyed kerosene. Distributors may be allowed to take a credit or credits under section 296A.16, subdivision 1.

(b) Distributors and dealers of special fuel other than undyed diesel fuel or undyed kerosene shall report the total number of gallons delivered to them during the preceding calendar month and shall pay the special fuel excise tax due to the commissioner. The invoice must show the true and correct name and address of the purchaser, and the purchaser's signature. The report shall contain other information as the commissioner may require.

(c) Distributors and dealers of special fuel other than undyed diesel fuel or undyed kerosene must pay the special fuel excise tax on all special fuel delivered or sold into the supply tank of an aircraft or licensed motor vehicle and shall file a report with the commissioner. The report shall show the total number of gallons delivered or sold into the supply tank of an aircraft or licensed motor vehicle during the preceding calendar month and the special fuel excise tax due shall be paid to the commissioner. Any person delivering special fuel on which the excise tax has not previously been paid into the supply tank of an aircraft or a licensed motor vehicle shall report such delivery and shall pay or collect and pay to the commissioner the excise tax on the special fuel so delivered.

(d) Distributors and special fuel dealers may, subject to the approval of the commissioner, elect to pay to the commissioner the special fuel excise tax on all special fuel delivered or sold into the supply tank of an aircraft or licensed motor vehicle. Under this option, an invoice must be issued at the time of each delivery showing the name and address of the purchaser, date of sale, number of gallons, price per gallon, and total amount of sale. A separate sales ticket book shall be maintained for special fuel sales. The tax is also imposed on all special fuel held in storage on the effective date of this election.

(e) Bulk purchasers shall report and pay the special fuel excise tax on all special fuel, including alternative fuels, except undyed diesel fuel or undyed kerosene purchased by them for storage during the preceding calendar month. In such cases as the commissioner may permit, credit for the excise tax due or previously paid on special fuel not used in aircraft or licensed motor vehicles may be allowed in computing tax liability. The report shall contain other information as the commissioner may require.

(f) In computing the special fuel excise tax due, a deduction of one percent of the quantity of special fuel on which tax is due shall be made for evaporation and loss.

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

**Subd. 4. Failure to use or sell for intended purpose; report required.** (a) Any person who buys aviation gasoline or special fuel for aircraft use and who has paid the excise taxes due directly or indirectly through the amount of the tax being included in the price, or otherwise, and uses said gasoline or special fuel in motor vehicles or knowingly sells it to any person for use in motor vehicles shall, on or before the 23rd day of the month following that in which such gasoline or special fuel was so used or sold, report the fact of the use or sale to the commissioner in the form and manner prescribed by the commissioner.

(b) Any person who buys gasoline other than aviation gasoline and who has paid the motor vehicle gasoline excise tax directly or indirectly through the amount of the tax being included in the price of the gasoline, or otherwise, who knowingly sells such gasoline to any person to be used for the purpose of producing or generating power for propelling aircraft, or who receives, stores, or withdraws from storage gasoline to be used for that purpose, shall, on or before the 23rd day of the month following that in which such gasoline was so sold, stored, or withdrawn from storage, report the fact of the sale, storage, or withdrawal from storage to the commissioner in the form and manner prescribed by the commissioner.

**Subd. 5. On-farm bulk storage of gasoline or special fuel; ethanol for personal use.** Notwithstanding the provisions of this chapter, a farmer who uses gasoline or any special fuel on which a tax has not been paid shall report and pay the tax on all gasoline or special fuel delivered into the supply tank of a licensed motor vehicle during the preceding calendar year. The tax must be reported and paid in the form and manner prescribed by the commissioner together with any refund claim filed by the taxpayer under section 296A.16. If no refund claim is filed, the tax must be reported and paid annually by March 15 or more frequently, as the commissioner may prescribe. Any producer qualifying under this subdivision is exempt from the licensing requirements in section 296A.03, subdivision 1.

**Subd. 6. Inspection fee.** Persons required to pay an inspection fee under section 239.101 must file a report with the commissioner of revenue. Each report must include the amount of inspection fees due on petroleum products. Reports must be filed in the form and manner prescribed by the commissioner. A written report is considered filed as required if postmarked on or before the 23rd day of the month in which the fee is payable.

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

**Subd. 8. Electronically filed return or report; signature.** The commissioner may require that returns or reports be filed electronically. For purposes of this chapter, the name of the taxpayer, the name of the taxpayer's authorized agent, or the taxpayer's

identification number constitutes a signature when transmitted as part of the information on returns or reports filed by electronic means by the taxpayer or at the taxpayer's direction. "Electronic means" includes, but is not limited to, the use of a touch-tone telephone to transmit return or report information in a manner prescribed by the commissioner.

**History:** 1998 c 299 s 15; 1998 c 408 s 10; 1Sp2001 c 5 art 13 s 7; art 17 s 15

## 296A.16 REFUND OR CREDIT.

Subdivision 1. **Credit or refund of gasoline or special fuel tax paid.** The commissioner shall allow the distributor credit or refund of the tax paid on gasoline and special fuel:

- (1) exported or sold for export from the state, other than in the supply tank of a motor vehicle or of an aircraft;
- (2) sold to the United States government to be used exclusively in performing its governmental functions and activities or to any "cost plus a fixed fee" contractor employed by the United States government on any national defense project;
- (3) if the fuel is placed in a tank used exclusively for residential heating;
- (4) destroyed by accident while in the possession of the distributor;
- (5) in error;
- (6) in the case of gasoline only, sold for storage in an on-farm bulk storage tank; if the tax was not collected on the sale; and
- (7) in such other cases as the commissioner may permit, consistent with the provisions of this chapter and other laws relating to the gasoline and special fuel excise taxes.

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.

**Subd. 3. Destruction by accident; refund to dealer.** Notwithstanding the provisions of subdivision 1, the commissioner shall allow a dealer a refund of:

(1) the tax paid by the distributor on gasoline, undyed diesel fuel, or undyed kerosene destroyed by accident while in the possession of the dealer; or

(2) the tax paid by a distributor or special fuels dealer on other special fuels destroyed by accident while in the possession of the dealer.

**Subd. 4. Refrigerator units; refunds.** Notwithstanding the provisions of subdivision 1, the commissioner shall allow a special fuel dealer a refund of the tax paid on fuel sold directly into a supply tank of a refrigeration unit with a separate engine and used exclusively by that refrigeration unit. A claim for refund may be filed as provided in this section.

**Subd. 4a. Undyed kerosene; refunds.** Notwithstanding subdivision 1, the commissioner shall allow a refund of the tax paid on undyed kerosene used exclusively for a purpose other than as fuel for a motor vehicle using the streets and highways. To obtain a refund, the person making the sale to an end user must meet the Internal Revenue Service requirements for sales from a blocked pump. A claim for a refund may be filed as provided in this section.

**Subd. 4b. Racing gasoline; refunds.** Notwithstanding subdivision 1, the commissioner shall allow a licensed distributor a refund of the tax paid on leaded gasoline of 110 octane or more that does not meet ASTM specification D4814 for gasoline and that is sold in bulk for use in nonregistered motor vehicles. A claim for a refund may be filed as provided for in this section.

**Subd. 5. Qualifying service station credit.** Notwithstanding any other provision of law to the contrary, the tax imposed on gasoline, undyed diesel fuel, or undyed kerosene delivered to a qualified service station may not exceed, or must be reduced to, a rate not more than three cents per gallon above the state tax rate imposed on such products sold by a service station in a contiguous state located within the distance indicated in this subdivision. A distributor shall be allowed a credit or refund for the amount of reduction computed in accordance with this subdivision. For purposes of this subdivision, a "qualifying service station" means a service station located within 7.5 miles, measured by the shortest route by public road, from a service station selling like product in the contiguous state.

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

**Subd. 7. Civil penalty for filing false claim.** A person who violates section 296A.23, subdivision 1, shall forfeit the full amount of the claim. In addition, a person who is convicted under section 296A.23 for filing a false statement or claim shall, in addition to any criminal penalties imposed, be prohibited from filing with the commissioner any claim for refund upon gasoline purchased within six months after such conviction.

**Subd. 8. Appropriation.** There is appropriated to the persons entitled to refund or credit under this section, from the fund or account in the state treasury to which the money was credited, an amount sufficient to make the credit or refund.

**History:** 1998 c 299 s 16; 1999 c 243 art 7 s 2,3; 1Sp2001 c 5 art 7 s 46

**296A.17 AVIATION REFUND.**

Subdivision 1. **Aviation refund requirements.** Any person claiming to be entitled to any refund or credit provided for in subdivision 3 shall receive the refund or credit upon filing with the commissioner a claim in such form and manner prescribed by the commissioner. The claim shall set forth, among other things, the total number of gallons of aviation gasoline or special fuel for aircraft use upon which the claimant has directly or indirectly paid the excise tax provided for in this chapter, during the calendar year, which has been received, stored, or withdrawn from storage by the claimant in this state and not sold or otherwise disposed of to others. All claims for refunds under this subdivision shall be made on or before April 30 following the end of the calendar year for which the refund is claimed.

Subd. 2. **Claim for refund; aviation tax.** (a) Any person who buys aviation gasoline or special fuel for aircraft use and who has paid the excise taxes directly or indirectly through the amount of the tax being included in the price, or otherwise, who does not use it in motor vehicles or receive, sell, store, or withdraw it from storage for the purpose of producing or generating power for propelling aircraft, shall be reimbursed and repaid the amount of the tax paid upon filing with the commissioner a claim in the form and manner prescribed by the commissioner. The claim shall state the total amount of the aviation gasoline or special fuel for aircraft use purchased and used by the applicant, and shall state when and for what purpose it was used. On being satisfied that the claimant is entitled to payment, the commissioner shall approve the claim and transmit it to the commissioner of finance. The postmark on the envelope in which a written claim is mailed determines the date of filing.

(b) If a claim contains an error in preparation 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.

(c) An applicant who files a claim that is false or fraudulent, is subject to the penalties provided in section 296A.23 for knowingly and willfully making a false claim.

Subd. 3. **Refund on graduated basis.** Any person who has directly or indirectly paid the excise tax on aviation gasoline or special fuel for aircraft use provided for by this chapter, shall, as to all such aviation gasoline and special fuel received, stored, or withdrawn from storage by the person in this state in any calendar year and not sold or otherwise disposed of to others, or intended for sale or other disposition to others, on which such tax has been so paid, be entitled to the following graduated reductions in such tax for that calendar year, to be obtained by means of the following refunds:

(1) on each gallon of such aviation gasoline or special fuel up to 50,000 gallons, all but five cents per gallon;

(2) on each gallon of such aviation gasoline or special fuel above 50,000 gallons and not more than 150,000 gallons, all but two cents per gallon;

(3) on each gallon of such aviation gasoline or special fuel above 150,000 gallons and not more than 200,000 gallons, all but one cent per gallon;

(4) on each gallon of such aviation gasoline or special fuel above 200,000, all but one-half cent per gallon.

Subd. 4. **Aviation gasoline tax refund claim; civil penalty.** If any distributor or other person, with intent to unlawfully secure any refund provided for in subdivision 3, shall knowingly file a false or fraudulent claim, there is imposed upon the person a penalty in an amount equal to 50 percent of the amount of the refund unlawfully secured, in addition to that amount. The penalty imposed by this subdivision shall be collected as part of the tax.

Subd. 5. **Appropriation.** There is appropriated to the persons entitled to refund under this section, from the fund or account in the state treasury to which the money was credited, an amount sufficient to make the credit or refund. All money in excess of the amount the commissioner certifies is reasonably required for the refunds must be transferred by the commissioner of finance to the state airports fund.

**History:** 1998 c 299 s 17

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

Subdivision 1. **Intent; gasoline use.** All gasoline received in this state and all gasoline produced in or brought into this state except aviation gasoline and marine gasoline shall be determined to be intended for use in motor vehicles in this state.

Subd. 2. **Motorboat.** Approximately 1-1/2 percent of all gasoline received in this state and 1-1/2 percent of all gasoline produced or brought into this state, except gasoline used for aviation purposes, is being used as fuel for the operation of motorboats on the waters of this state and of the total revenue derived from the imposition of the gasoline fuel tax for uses other than for aviation purposes, 1-1/2 percent of such revenues is the amount of tax on fuel used in motorboats operated on the waters of this state. The amount of unrefunded tax paid on gasoline used for motor boat purposes as computed in this chapter shall be paid into the state treasury and credited to a water recreation account in the special revenue fund for acquisition, development, maintenance, and rehabilitation of sites for public access and boating facilities on public waters; lake and river improvement; state park development; and boat and water safety.

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.

Subd. 4. **All-terrain vehicle.** Approximately 0.15 of one percent of all gasoline received in or produced or brought into this state, except gasoline used for aviation purposes, is being used for the operation of all-terrain vehicles in this state, and of the total revenue derived from the imposition of the gasoline fuel tax, 0.15 of one percent is the amount of tax on fuel used in all-terrain vehicles operated in this state.

Subd. 5. **Off-highway motorcycles.** Approximately 0.046 of one percent of all gasoline received or produced in or brought into this state, except gasoline used for aviation purposes, is being used for the operation of off-highway motorcycles in this state, and of the total revenue derived from the imposition of the gasoline fuel tax for uses other than for aviation purposes, 0.046 of one percent is the amount of tax on fuel used in off-highway motorcycles operated in this state.

Subd. 6. **Off-road vehicle.** Approximately 0.164 of one percent of all gasoline received or produced in or brought into this state, except gasoline used for aviation purposes, is being used for the off-road operation of off-road vehicles, as defined in section 84.797, in this state, and of the total revenue derived from the imposition of the gasoline fuel tax for uses other than aviation purposes, 0.164 of one percent is the amount of tax on fuel used for off-road operation of off-road vehicles in this state.

Subd. 7. **Forest road.** Approximately 0.116 percent of the total annual unrefunded revenue from the gasoline fuel tax on all gasoline and special fuel received in, produced, or brought into this state, except gasoline and special fuel used for aviation purposes, is derived from the operation of motor vehicles on state forest roads and county forest access roads. This revenue is appropriated from the highway user tax distribution fund and must be transferred and credited in equal installments on July 1 and January 1 to the state forest road account established in section 89.70. Of this amount, 0.0605 percent is annually derived from motor vehicles operated on state forest roads and 0.0555 percent is annually derived from motor vehicles operated on county forest access roads in this state. An amount equal to 0.0555 percent of the unrefunded revenue must be annually transferred to counties for the management and maintenance of county forest roads.

Subd. 8. **Airports.** The revenues derived from the excise taxes on aviation gasoline and on special fuel received, sold, stored, or withdrawn from storage as substitutes for aviation gasoline, shall be paid into the state treasury and credited to the state airports fund. There is hereby appropriated such sums as are needed to carry out the provisions of this subdivision.

Subd. 9. **Computation of unrefunded tax.** The amount of unrefunded tax shall be a sum equal to 1-1/2 percent of all revenues derived from the excise taxes on gasoline, except on gasoline used for aviation purposes, together with interest thereon and penalties for delinquency in payment, paid or collected pursuant to the provisions of this chapter. The amount of such tax shall be computed for each six-month period and shall be paid into the state treasury on November 1 and June 1 following each six-month period.

**History:** 1998 c 299 s 18; 1999 c 238 art 2 s 68; 1Sp2001 c 8 art 2 s 62; 2002 c 377 art 10 s 23

## 296A.19 REQUIRED RECORDS.

Subdivision 1. **Retention.** All distributors, dealers, special fuel dealers, bulk purchasers, and all users of special fuel shall keep a true and accurate record of all purchases, transfers, sales, and use of petroleum products and special fuel, including copies of all sales tickets issued, in a form and manner approved by the commissioner, and shall retain all such records for 3-1/2 years.

Subd. 2. **Accessibility.** The books and records of all carriers of petroleum products, distributors, dealers, and persons selling or using special fuel shall be made accessible to the commissioner or an authorized representative.

Subd. 3. **Examination.** The commissioner shall make periodic examinations of all records kept by distributors, special fuel dealers, bulk purchasers, or other persons selling or using gasoline or special fuel.

**History:** 1998 c 299 s 19

## 296A.20 EXAMINATION AND AUDIT.

Subdivision 1. **Examination of taxpayer.** To determine the accuracy of a return or a report, or for the purpose of collection, or in fixing liability or verifying information under state tax law, the commissioner may make reasonable examinations or investigations of a taxpayer's place of business, tangible personal property, equipment, computer systems and facilities, pertinent books, records, papers, vouchers, computer printouts, accounts, and documents.

Subd. 2. **Access to records.** When conducting an investigation or an audit of a taxpayer, or for the purpose of collection, or in fixing liability or verifying information under state tax law, the commissioner or the commissioner's agent may examine, except where privileged by law, the relevant records and files of any person, business, institution, financial institution, state agency, agency of the United States government, or agency of any other state where permitted by statute, agreement, or reciprocity. The commissioner may compel production of these records by subpoena. A subpoena may be served directly by the commissioner.

Subd. 3. **Power to compel testimony.** In the administration of state tax law the commissioner may:

(1) administer oaths or affirmations and compel by subpoena the attendance of witnesses, testimony, and the production of a person's pertinent books, records, papers, and other data for inspection and copying;

(2) examine under oath or affirmation any person regarding the business of any taxpayer concerning any relevant matter incident to the administration of state tax law. The fees of witnesses required by the commissioner to attend a hearing are equal to those allowed to witnesses appearing before courts of this state. The fees must be paid in the manner provided for the payment of other expenses incident to the administration of state tax law; and

(3) in addition to other remedies that may be available, bring an action in equity by the state against a taxpayer for an injunction ordering the taxpayer to file a complete and proper return or amended return. The district courts of this state have jurisdiction over the action and disobedience of an injunction issued under this clause will be punished as a contempt of district court.

Subd. 4. **Third-party subpoena if taxpayer's identity known.** An investigation may extend to a person that the commissioner determines has access to information that may be relevant to the examination or investigation. When a subpoena requiring the production of records as described in this subdivision is served on a third-party recordkeeper, written notice of the subpoena must be mailed to the taxpayer and to any other person who is identified in the subpoena. The notices must be given within three days of the day on which the subpoena is served. Notice to the taxpayer required by this section is sufficient if it is mailed to the last address on record with the commissioner. The provisions of this subdivision relating to notice to the taxpayer or other parties identified in the subpoena do not apply if there is reasonable cause to believe that the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

Subd. 5. **Third-party subpoena if taxpayer's identity not known.** A subpoena that does not identify the person or persons whose tax liability is investigated may be served only if:

(1) the subpoena relates to the investigation of a particular person or an ascertainable group or class of persons;

(2) there is reasonable basis for believing that the person or group or class of persons may fail or may have failed to comply with the tax laws administered by the commissioner;

(3) the information sought to be obtained from the examination of the records, and the identity of the person or persons with respect to whose liability the subpoena is issued, is not readily available from other sources;

(4) the subpoena is clear and specific concerning the information sought to be obtained; and

(5) the information sought to be obtained is limited solely to the scope of the investigation.

The party served with a subpoena that does not identify the person or persons with respect to whose tax liability the subpoena is issued may, within 20 days after service of the subpoena, petition the district court in the judicial district in which that party is located for a determination concerning whether the commissioner has complied with all the requirements in clauses (1) to (5), and thus, whether the subpoena is enforceable. If no petition is made by the party served within the time prescribed, the subpoena has the effect of a court order.

Subd. 6. **Request by taxpayer for subpoena.** When the commissioner has the power to issue a subpoena for investigative or auditing purposes, the commissioner shall honor a reasonable request by the taxpayer to issue a subpoena on the taxpayer's behalf, if in connection with the investigation or audit.

Subd. 7. **Application to court for enforcement of subpoena.** Disobedience of subpoenas issued under this section shall be punished by the district court of the district in which the party served with the subpoena is located, in the same manner as contempt of the district court.

Subd. 8. **Cost of production of records.** The cost of producing records of a third-party required by a subpoena must be paid by the taxpayer, if the taxpayer requests the subpoena to be issued, or if the taxpayer has the records available but has refused to provide them to the commissioner. In other cases where the taxpayer cannot produce records and the commissioner then initiates a subpoena for third-party records, the commissioner shall pay the reasonable costs of producing the records. The commissioner may later assess the reasonable costs against the taxpayer if the records contribute to the determination of an assessment of tax against the taxpayer.

**History:** 1998 c 299 s 20

**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.

Subd. 2. **Collection.** No action shall be brought for the collection of delinquent taxes and fees under section 270.68 unless commenced within five years after the date of assessment of the taxes and fees.

Subd. 3. **False or fraudulent report.** In the case of a false or fraudulent report with intent to evade taxes or fees or of a failure to file a report, the taxes or fees may be assessed at any time, and a proceeding in court for their collection must be begun within five years after the assessment.

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.

Subd. 5. **Suspension of time; bankruptcy.** The period of time during which a tax or fee must be assessed under this chapter or collection proceedings commenced under subdivision 2 or 3 is suspended during the period from the date of filing of a petition in bankruptcy until 30 days after the commissioner of revenue receives notice that the bankruptcy proceedings have been closed or dismissed or the automatic stay has been terminated or has expired. The suspension of the statute of limitations under this subdivision applies to the person against whom the petition in bankruptcy is filed and all other persons who may also be wholly or partially liable for the tax under this chapter.

**History:** 1998 c 299 s 21; 2000 c 490 art 13 s 14,15; 1Sp2001 c 5 art 7 s 48,49

## 296A.22 NONPAYMENT OF TAX; CIVIL PENALTIES.

Subdivision 1. **Penalty for failure to pay tax, general rule.** Upon the failure of any person to pay any tax or fee when due, a penalty of one percent per day for the first ten days of delinquency shall accrue, and thereafter the tax, fees, and penalty shall bear interest at the rate specified in section 270.75.

Subd. 2. **Collection authority.** Upon such a failure to pay any tax or fees within the time provided by this chapter, all taxes and fees imposed by this chapter shall become immediately due and payable, and may be collected as provided in chapter 270.

Subd. 3. **Operating without license.** If any person operates as a distributor, special fuel dealer, bulk purchaser, or motor carrier without first securing the license required under this chapter, any tax or fee imposed by this chapter shall become immediately due and payable. A penalty of 25 percent is imposed upon the tax and fee due. The tax, fees, and penalty shall bear interest at the rate specified in section 270.75.

Subd. 4. **Unlawful use of dyed fuel.** (a) If any dyed fuel is sold or held for sale by a person for any use which the person knows or has reason to know is not a nontaxable use of the fuel; or if any dyed fuel is held for use or used in a licensed motor vehicle or for any other use by a person for a use other than a nontaxable use and the person knew, or had reason to know, that the fuel was so dyed; or if a person willfully alters, or attempts to alter, the strength or composition of any dye or marking in any dyed fuel, then the person shall pay a penalty in addition to the tax, if any.

(b) Except as provided in paragraph (c), the amount of penalty under paragraph (a) for each act is the greater of \$1,000, or \$10 for each gallon of dyed fuel involved.

(c) With regard to a multiple violation under paragraph (a), the penalty shall be applied by increasing the amount in paragraph (b) by the product of (1) such amount, and (2) the number of prior penalties, if any, imposed by this section on the person, or a related person, or any predecessor of the person or related person.

(d) If a penalty is imposed under this subdivision on a business entity, each officer, employee, or agent of the entity who willfully participated in any act giving rise to the penalty is jointly and severally liable with the entity for the penalty.

Subd. 5. **Receiver appointed.** In the event a suit is instituted as provided in subdivision 2, the court shall, upon application, appoint a receiver of the property and business of the delinquent defendant for the purpose of impounding the same as security for any judgment which has been or may be recovered.

Subd. 6. **Sale prohibited under certain conditions.** No petroleum product shall be unloaded or sold by any person or distributor whose tax and fees are the basis for collection action under subdivision 2.

Subd. 7. **Payment of penalties.** The penalties imposed by this section are collected and paid in the same manner as taxes.

Subd. 8. **Penalties are additional.** The civil penalties imposed by this section are in addition to the criminal penalties imposed by this chapter.

**History:** 1998 c 299 s 22; 2000 c 490 art 13 s 16

## 296A.23 CRIMINAL PENALTIES.

Subdivision 1. **Providing false information.** A person who knowingly provides false information, including, but not limited to, false odometer readings, or who knowingly makes a false statement in a report, record, claim, or sales ticket required by this chapter, is guilty of a gross misdemeanor.

Subd. 2. **Willful evasion.** A person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter, including, but not limited to, making and subscribing any false statement in any report, record, claim, or sales ticket required by this chapter; or making a false claim for a refund under section 296A.16, subdivision 2, is guilty of a felony.

Subd. 3. **Operation of vehicle without payment of tax.** A person who operates, or causes to be operated, a licensed motor vehicle on the public highways of this state on special fuel on which the excise tax provided by this chapter has not been paid, or the liability assumed by another person licensed under this chapter, is guilty of a misdemeanor.

Subd. 4. **Use of untaxed fuel in motor vehicle.** A person who uses gasoline, which has been delivered into an on-farm bulk storage tank, and on which no tax has been paid as provided in section 296A.15, subdivision 5, and who uses this gasoline for propelling a motor vehicle on the public highways of this state is guilty of a misdemeanor.

Subd. 5. **State employee; prohibition against acting as distributor.** An officer or employee of the state of Minnesota charged with the enforcement of a provision of this chapter who is employed by or who engages in business as a distributor or dealer in petroleum products is guilty of a misdemeanor.

Subd. 6. **Fiduciary relationship established.** A person other than the commissioner who is authorized to collect excise taxes on behalf of the state of Minnesota, establishes a fiduciary relationship, and whoever violates that relationship is guilty of a violation of this chapter, and of section 609.54, and may be punished accordingly.

Subd. 7. **Failure to obtain proper permit.** A minimum fine of \$200 shall be imposed on a person who fails to obtain a license or trip permit required under section 168D.05 or 168D.12.

Subd. 8. **Certain blending of gasoline prohibited.** The blending of gasoline on which the tax has been paid or the liability accrued, with any substance on which the tax has not been paid or the liability thereafter accrued, is prohibited.

This section does not preclude the addition of any of the various inhibitors which in total do not exceed one-half of one percent by volume of the product treated, nor the addition to fuel for two-cycle gasoline engines of a lubricant not exceeding five percent by volume or the product treated; nor does this subdivision preclude the

addition of fuel oil to gasoline for the purpose of generating power for the propulsion of farm tractors.

Subd. 9. **Other violation.** Any violation of this chapter, unless otherwise specified, is a gross misdemeanor.

Subd. 10. **Prosecution of violation.** Prosecutions under this section may be brought in the county in which the defendant resides or in Ramsey county. On request of the commissioner of revenue, the county attorney of a county in which the action is commenced shall prosecute violations of this chapter. Costs, fees, and expenses incurred by any county attorney in litigation in connection with the action may be paid from appropriations to the commissioner of revenue for the administration of this chapter.

Subd. 11. **Action for recovery; no bar to criminal prosecution.** No action or suit for recovery of one penalty shall be a bar to or affect the recovery of any other penalty or be a bar to any criminal prosecution against any licensee or any other person under the provisions of this chapter.

Subd. 12. **Statute of limitations.** Notwithstanding section 628.26, or any other provision of the criminal laws of this state, an indictment may be found and filed, or a complaint filed, upon a criminal offense named in this section, in the proper court within six years after the offense is committed.

**History:** 1998 c 299 s 23; 2002 c 371 art 2 s 22

## 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:** 1998 c 299 s 24; 1Sp2001 c 5 art 18 s 1,2

## 296A.25 ADMINISTRATIVE REVIEW.

Subdivision 1. **Taxpayer right to reconsideration.** A taxpayer may obtain reconsideration by the commissioner of an order assessing tax, a denial of a request for abatement of penalty, or a denial of a claim for refund by filing an administrative appeal under subdivision 3. A taxpayer cannot obtain reconsideration under this section if the action taken by the commissioner is the outcome of an administrative appeal.

Subd. 2. **Notice date.** For purposes of this section, the term "notice date" means the date of the order adjusting the tax or order denying a request for abatement, or, in the case of a denied refund, the date of the notice of denial.

Subd. 3. **Time and content for administrative appeal.** Within 60 days after the notice date, the taxpayer must file a written appeal with the commissioner. The appeal need not be in any particular form, but must contain the following information:

- (1) the name and address of the taxpayer;
- (2) if a corporation, the state of incorporation of the taxpayer, and the principal place of business of the corporation;
- (3) the Minnesota identification number or social security number of the taxpayer;
- (4) the type of tax involved;
- (5) the date;
- (6) the tax years or periods involved and the amount of tax involved for each year or period;
- (7) the findings in the notice that the taxpayer disputes;
- (8) a summary statement that the taxpayer relies on for each exception; and
- (9) the taxpayer's signature or signature of the taxpayer's duly authorized agent.

Subd. 4. **Extension.** When requested in writing and within the time allowed for filing an administrative appeal, the commissioner may extend the time for filing an appeal for a period of not more than 30 days from the expiration of the 60 days from the notice date.

Subd. 5. **Determination of appeal.** On the basis of applicable law and available information, the commissioner shall determine the validity, if any, in whole or part of the appeal and notify the taxpayer of the decision. This notice must be in writing and contain the basis for the determination.

Subd. 6. **Agreement determining tax liability.** When it appears to be in the best interests of the state, the commissioner may settle any taxes, penalties, or interest that

the commissioner has under consideration by virtue of an appeal filed under this section. An agreement must be in writing and signed by the commissioner and the taxpayer, or the taxpayer's representative authorized by the taxpayer to enter into an agreement. The agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, the case shall not be reopened as to the matters agreed upon.

**Subd. 7. Appeal of administrative determination.** Following the determination of an appeal and notwithstanding any period of limitations for making assessments or other determinations to the contrary, the commissioner must issue an order reflecting that disposition. If the statute of limitations for making assessments or other determinations would have expired before the issuance of this order, except for this section, the order is limited to issues or matters contained in the appealed determination. The order is appealable to the Minnesota tax court under section 271.06.

**Subd. 8. Appeal when no determination made.** If the commissioner does not make a determination within six months of the filing of an administrative appeal, the taxpayer may elect to appeal to tax court.

**Subd. 9. Inapplicability of Administrative Procedure Act.** An appeal under this section is not a contested case governed by chapter 14.

**History:** 1998 c 299 s 25

#### **296A.26 JUDICIAL REVIEW; APPEAL TO TAX COURT.**

In lieu of an administrative appeal under this chapter, any person aggrieved by an order of the commissioner fixing a tax, penalty, or interest under this chapter may, within 60 days from the date of the notice of the order, appeal to the tax court in the manner provided under section 271.06.

**History:** 1998 c 299 s 26

**296A.27** [Repealed, 2002 c 371 art 2 s 23]

**296A.28** [Repealed, 2002 c 371 art 2 s 23]