

Date referred: (5/12)

FURTHER REFERRALS:

(Transportation waived 5/12)

DATE: 5-12-86

The FINANCE Committee has considered CSSB 387(Fin) "An Act relating to taxation of watercraft motor fuel."

and recommends:

- [ ] do pass
[ ] do not pass
[ ] do pass with attached amendment(s)
[X] no recommendation
[ ] replace with [ ] same title [ ] new title

and recommends

[ ] further referral to the Committee

- and attaches: [ ] letter of intent
[ ] first fiscal note
[X] ~~new~~ fiscal note same
[ ] zero fiscal note

SIGNING DO PASS:

Handwritten signatures for 'SIGNING DO PASS' including names like John... and Ronald Z....

SIGNING OTHER RECOMMENDATIONS:

Handwritten signatures for 'SIGNING OTHER RECOMMENDATIONS' including names like Robert H. ... and Chairman.

STATE OF MICHIGAN 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : SB 387  
 Title : An Act Relating to Taxation  
of Watercraft Motor Fuel  
 Sponsor : Sen. Bennett  
 Requestor : Senate Finance  
 Date of Request : March 1986

**FISCAL DETAIL**

Agency Affected : Revenue  
 BRU : \_\_\_\_\_  
 Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>						
<b>CAPITAL</b>						
<b>REVENUE</b>	<b>(1,000.0)</b>	<b>(3,000.0)</b>	<b>(3,000.0)</b>	<b>(3,000.0)</b>	<b>(3,000.0)</b>	<b>(3,000.0)</b>

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Attached

Prepared by : David Tonkovich JRT  
 Division : Revenue/Research

Phone : 465-2173  
 Date : March 3, 1986

Approved by Commissioner : *Shirley A. Sturdick*  
 Agency : \_\_\_\_\_

Date : 3/5/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Analysis:

This note estimates marine fuel tax potentially collectable on fuel purchased out-of-state but used in Alaska waters. These estimates have not been built into official revenue estimates as many returns for this usage are in appeal status.

The estimate contained in this note was prepared by dividing potential collections into two parts:

1. Revenues from users whose tax liability could be estimated from data on the number of trips, average fuel consumption and time in Alaska waters. Also, for several of these users a full year return was available. This part of the estimate covered these major users:

Tankers into and out of Valdez

Cruiseships in Southeast Alaska

Several large common carriers serving Southcentral Alaska

Several carriers distributing petroleum products for local use.

Our estimate for these users is \$2 million annually.

2. Revenues for remaining users. This tax liability is more difficult to estimate because of the diversity of users and the fact that available returns cover only part of the year. This estimate would cover many of the common and contract carriers, freighters hauling raw materials and semi-finished products such as LNG, fish processors and a variety of other users.

Our estimate for these users is \$1 million. Because of the number of users involved this estimate is probably conservative.

Note: The relatively low return in FY 86 reflects the fact that many returns are in appeal and may not be resolved this fiscal year.

Offered: 3/20/86  
Referred: Rules

Original sponsor: Bennett by Request

1 IN THE SENATE BY THE FINANCE COMMITTEE  
2 CS FOR SENATE BILL NO. 387 (Finance)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FOURTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to taxation of watercraft motor  
7 fuel."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 43.40.100 is amended to read:

10 Sec. 43.40.100. DEFINITIONS. In this chapter

11 (1) "dealer" means a person who sells or otherwise trans-  
12 fers in this state motor fuel upon which the taxes imposed by this  
13 chapter have not been paid;

14 (2) "motor fuel" means fuel used in an engine for the  
15 propulsion of a motor vehicle or aircraft, and fuel used in and on  
16 watercraft for any purpose, or in a stationary engine, machine or  
17 mechanical contrivance that [WHICH] is run by an internal combustion  
18 motor; "motor fuel" does not include fuel

19 (A) [FUEL] consigned to foreign countries;

20 (B) [FUEL] sold for use in jet propulsion aircraft  
21 operating in flights to foreign countries;

22 (C) [FUEL] used in stationary power plants operating  
23 as public utility plants and generating electrical energy for  
24 sale to the general public;

25 (D) [FUEL] used by nonprofit power associations or  
26 corporations for generating electric energy for resale;

27 (E) [FUEL] used by charitable institutions;

28 (F) that [FUEL WHICH] is at least 10 percent alcohol  
29 by volume;

1 (G) [FUEL] sold or transferred between qualified deal-  
2 ers;

3 (H) [FUEL] sold to federal, state, and local govern-  
4 ment agencies for official use;

5 (I) [FUEL] used in stationary power plants that gener-  
6 ate electrical energy for private residential consumption;

7 (J) [FUEL] used to heat private or commercial build-  
8 ings or facilities;

9 (K) [FUEL] used for other nontaxable purposes as pre-  
10 scribed by regulations adopted by the department; [OR]

11 (L) [FUEL] used in stationary power plants of 100 kw  
12 or less that generate electrical power for commercial enterprises  
13 not for resale; or

14 (M) originating outside of the jurisdiction of the  
15 state that is brought into the state in fuel storage tanks on a  
16 watercraft for the purpose of operating that watercraft, one or  
17 more auxiliary engines on the watercraft, or the auxiliary water-  
18 craft carried by the watercraft;

19 (3) "qualified dealer" means a person who (A) refines, (B)  
20 imports, (C) manufactures, (D) produces, (E) compounds, or (F) whole-  
21 sales motor fuel, who satisfies criteria for qualified dealers estab-  
22 lished by the department by regulation and who obtains a qualified  
23 dealer's license from the department;

24 (4) "user" means a person consuming or using motor fuel,  
25 who either

26 (A) purchases the fuel out of the state and ships it  
27 into the state for personal use in the state;

28 (B) manufactures the fuel in the state; or

29 (C) purchases or receives fuel in the state that is

1 not taxed at the time of purchase or receipt or is taxed at a  
2 rate that is less than the rate prescribed by AS 43.40.010.

Introduced: 2/6/86  
Referred: Finance

1 IN THE SENATE

BY BENNETT BY REQUEST

2

SENATE BILL NO. 387

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to taxation of watercraft motor  
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15 propulsion of a motor vehicle or aircraft, and fuel used in and on  
16 watercraft for any purpose, or in a stationary engine, machine or  
17 mechanical contrivance that [WHICH] is run by an internal combustion  
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8 buildings or facilities;

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12 or less that generate electrical power for commercial enterprises  
13 not for resale; or

14 (M) that is brought into the state in fuel storage  
15 tanks on a watercraft for the purpose of operating the water-  
16 craft, one or more auxiliary engines on the watercraft, or the  
17 auxiliary watercraft carried by the watercraft;

18 (3) "qualified dealer" means a person who (A) refines, (B)  
19 imports, (C) manufactures, (D) produces, (E) compounds, or (F) whole-  
20 sales motor fuel, who satisfies criteria for qualified dealers estab-  
21 lished by the department by regulation and who obtains a qualified  
22 dealer's license from the department;

23 (4) "user" means a person consuming or using motor fuel,  
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25 (A) purchases the fuel out of the state and ships it  
26 into the state for personal use in the state;

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28 (C) purchases or receives fuel in the state that is  
29 not taxed at the time of purchase or receipt or is taxed at a

1 rate that is less than the rate prescribed by AS 43.40.010.

COMMITTEE REPORT  
SENATE

FURTHER:

2/6/86

Date 3/20/86

Mr. President

The Committee on FINANCE considered SB 387  
relating to taxation of watercraft motor fuel.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 387 (Finance)
- new title
- same title and recommends \_\_\_\_\_
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation *Revenue*
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

\_\_\_\_\_  
\_\_\_\_\_  
Paul Frick  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS

~~Do not pass~~  
Rich Halford NO REC  
Bill [unclear] NO REC  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Paul Frick  
Co-Chairman  
do pass  
Chairman recommendation

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : SF 387  
 Title : An Act Relating to Taxation  
of Watercraft Motor Fuel  
 \_\_\_\_\_  
 Sponsor : Sen. Bennett  
 Requestor : Senate Finance  
 Date of Request : March 1986

**FISCAL DETAIL**

Agency Affected : Revenue  
 BRU : \_\_\_\_\_  
 \_\_\_\_\_  
 Components : \_\_\_\_\_  
 \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>						

CAPITAL						
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REVENUE	(1,000.0)	(3,000.0)	(3,000.0)	(3,000.0)	(3,000.0)	(3,000.0)
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**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Attached

Prepared by : David Tonkovich  
 Division : Revenue/Research

Phone : 465-2173  
 Date : March 3, 1986

Approved by Commissioner : *Jerry A. Nordale*  
 Agency : \_\_\_\_\_

Date : 3/5/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
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- Impacted Agency(ies)

Analysis:

This note estimates marine fuel tax potentially collectable on fuel purchased out-of-state but used in Alaska waters. These estimates have not been built into official revenue estimates as many returns for this usage are in appeal status.

The estimate contained in this note was prepared by dividing potential collections into two parts:

1. Revenues from users whose tax liability could be estimated from data on the number of trips, average fuel consumption and time in Alaska waters. Also, for several of these users a full year return was available. This part of the estimate covered these major users:

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Several carriers distributing petroleum products for local use.

Our estimate for these users is \$2 million annually.

2. Revenues for remaining users. This tax liability is more difficult to estimate because of the diversity of users and the fact that available returns cover only part of the year. This estimate would cover many of the common and contract carriers, freighters hauling raw materials and semi-finished products such as LNG, fish processors and a variety of other users.

Our estimate for these users is \$1 million. Because of the number of users involved this estimate is probably conservative.

Note: The relatively low return in FY 86 reflects the fact that many returns are in appeal and may not be resolved this fiscal year.

Introduced: 2/6/86  
Referred: Finance

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BY BENNETT BY REQUEST

2

SENATE BILL NO. 387 (Finance)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to taxation of watercraft motor fuel."

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16 ~~craft, one or more auxiliary engines on the watercraft, or the~~  
17 ~~auxiliary watercraft carried by the watercraft;~~

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1

rate that is less than the rate prescribed by AS 43.40.010.

ANALYSIS FOR SENATE BILL 387

An Act relating to taxation of watercraft motor fuel

Under current law, a tax of ~~5 cents a gallon~~ is levied on motor fuel used in and on watercraft of all descriptions. This bill amends that section of the law which defines "motor fuel". It would exempt any fuel that is brought into the state in fuel storage tanks on watercraft for the purpose of operating the watercraft. It would also exempt fuel to power one or more auxiliary engines of the watercraft or other auxiliary watercraft carried by the watercraft.

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

March 20, 1986

342-36  
3/20/86  
BILL SHEFFIELD, GOVERNOR

P.O. BOX 5  
JUNEAU, ALASKA 99811-0400  
PHONE: (907) 465-2300

The Honorable Jan Faiks  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

RE: SB 387 Position Paper

Dear Senator Faiks:

At the March 4, 1986 Finance Committee meeting you requested this Department to provide the Committee with the Department's position concerning SB 387. As drafted, this legislation will amend AS 43.40 to exempt from tax any motor fuel imported into this state in a fuel storage tank on watercraft when the fuel is to be used by the watercraft.

I. The Department of Revenue recommends the committee reconsider the need for SB 387 in light of the following factors:

- 1) The bill will further erode the state's tax base. We estimate as many as three hundred businesses will be relieved from paying their tax, which is estimated to aggregate \$3 million annually;
- 2) Alaska currently taxes the motor fuel actually consumed while a vessel is in the state's taxing jurisdiction. Although our tax law differs from those imposed by California, Oregon, Washington, and Hawaii, each state uniformly exempts from tax any fuel consumed outside their taxing jurisdiction. There is no need to amend our law to ensure that double taxation is avoided among the states. Further information concerning these state's motor fuel tax laws is included in Addendum "A" to this memorandum;
- 3) Passage of SB 387 would in many instances provide a competitive edge to out-of-state businesses over Alaska based marine transportation companies. For instance, local barge lines providing freight transportation service to Southeastern Alaska communities and purchasing fuel in-state will be required to pay the five-cent Alaska tax, while a barge line providing essentially the same service but with connection to Washington will, under SB 387, be totally exempt from tax on motor fuel purchased in Washington and used in Alaska;

- 4) As drafted, the bill may be construed to allow fishermen, fish processors, drilling rig operators and others to fuel their vessels in Alaska, transport the fuel outside the state while fishing, processing or drilling and then bring the remaining fuel back into the state, thereby creating the exemption contemplated by SB 387;
- 5) Finally, current Alaska tax law appears to be constitutionally sound. States are permitted to tax businesses engaged in interstate commerce provided four tests are met. First, the business must have sufficient contact with the state. Secondly, the tax must be fairly apportioned between the states. Third, the tax cannot discriminate against interstate commerce. Fourth, the tax must be related to services provided by the state. The motor fuel tax law as currently drafted and administered passes these four tests.

II. During the hearing, the Committee requested the Department's interpretation of how the statute and regulations work to permit the taxation of the motor fuel and industries in question.

The Alaska statutes levy a tax on motor fuel sold or transferred within Alaska, or alternatively consumed by a user in the state, at various rates. The tax is collected by a dealer upon sale or transfer and is remitted to the Department, as is the case with the tax upon fuel consumed by a user, by the last day of the succeeding month. A dealer is defined as a person who sells or transfers in Alaska previously untaxed fuel. A user is defined, in part, as a person consuming motor fuel who purchased it outside Alaska and shipped it into the state for personal use. AS 43.40.010; AS 43.40.100.

The definition of "user" includes a person consuming motor fuel in transit to Alaska. Fuel consumed in transit is considered to be shipped into the state for personal use. Distinctions concerning whether the fuel entered Alaska in the cargo hold or in the bunker are not material since the statute is designed to tax personal use in the state. The tax result should be identical in each case since fuel is consumed in the state.

The references to "sale" and "use" indicate that the statute imposes a combination motor fuel sales or use tax. The initial focus is upon sales or transfers of motor fuel within Alaska which give rise to a motor fuel sales tax liability. Alternatively, motor fuel not sold or transferred within Alaska but rather purchased outside the state and then consumed here produces a motor fuel use tax liability.

The Honorable Jan Faiks  
March 20, 1986  
Page 3

The Commerce Clause of the United States Constitution imposes the requirement that a state tax applied to interstate and foreign commerce be fairly apportioned and non-discriminatory. Therefore, the Alaska statute envisions an interstate or foreign commerce deduction or refund be allowed for all fuel sold or transferred in Alaska and consumed outside the state. This absence of a sales tax liability results in a use tax liability where the tax is determined by reference to the actual fuel used or consumed within the jurisdiction of the state.

The imposition of the tax on both motor fuel dealers and motor fuel users has been incorporated in the statute since 1946. Although the cruiseship and tankership industries were nonexistent at that time, the primary method of travel and transportation within and between Alaska and the contiguous United States was by water. With that in mind, we believe the drafters of these provisions were aware that the marine transportation industry would be subject to the law and a major payer of the tax, especially given the lack of roads and highways in the state at that time.

The Alaska tax system differs somewhat from that of other states. For instance, the states of Washington, Oregon, California and Hawaii do not apply a motor fuel tax to bunker fuel taken aboard watercraft. Motor fuel tax in these states is imposed only on fuel used in motor vehicles traveling upon state highways. Economic considerations involving direct competition between the ports of the states for increased traffic may have resulted in relief from the motor fuel tax on watercraft as a form of tax incentive. The states are not disadvantaged, however, since the states have comprehensive and well developed highway systems which attract substantial highway fuel tax revenues from the increased port activity in addition to the inherent advantages of having border states and connecting highway systems.

This is in strong contrast to Alaska and the fact that the waterways of this state are the basic means for the movement of commerce to and from the state. In essence, water and air transportation in Alaska substitute for highways. Other states have the ability to forego fuel taxes on watercraft because of the highway revenues. Alaska does not possess that flexibility nor the inclination to discriminate against Alaska residents purchasing and using fuel and who, but for the tax statute, would otherwise be solely responsible for the tax burden.

III. The Committee also requested that we determine if any past legislative intent could be found which might shed light on this area. Thus far we have been unable to locate comments, committee notes, transcripts or tapes of any kind which would reveal a legislative intent to tax fuel imported for use, rather than sale, in the state.

The Honorable Jan Faiks  
March 20, 1986  
Page 4

IV. The Committee requested information concerning the Department's activities to date with respect to taxing motor fuel used on watercraft.

Beginning in 1973 the Department of Revenue began development of its field audit staff. It determined its highest priority to be the corporate net income tax and in particular the administration of the multistate corporate income tax, sometimes referred to as the "unitary" tax. Little audit activity was conducted in any other tax type (with the exception of oil and gas related taxes) until 1980. At that time the Department began a systematic review of all its tax types and conducted compliance related projects on all of them.

In 1980 we began comprehensive review of all in-state motor fuel dealers and out-of-state suppliers to determine if effective compliance was being met. Based on the review it became apparent that statutory amendments and regulations were needed to take care of claim for refund problems related to exempt purchases of fuel. This review and the statutory changes made were unrelated to the tax on imported fuel used on watercraft. With the statutes and regulations in place, and based upon extensive audits of the major oil companies selling at the wholesale level in the state, by 1984 we were confident that the in-state motor fuel industry was in compliance with the law.

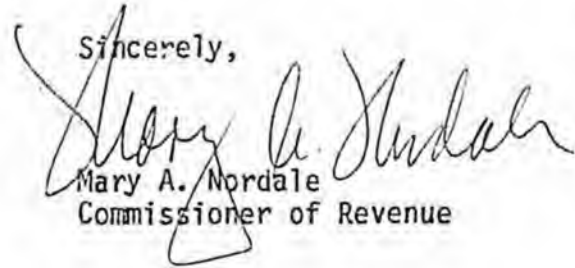
During our review of the major importers of wholesale motor fuel, our audit staff discovered that the interstate water transportation industry was not purchasing its fuel from these wholesale importers. This fact indicated substantial revenues were being lost to the state because of a history of substantial compliance with the motor fuel tax law by the air transportation industry under the same provisions of the law. This discovery led to phase II of our motor fuel compliance project.

This project began in early 1985. We began by obtaining information from various state and federal agencies as well as from the maritime industry itself. On June 3, 1985 we mailed information request letters to all motor fuel users identified by the project. As of today eighty tax returns have been received along with approximately \$800,000 tax. The Department is proceeding with taxpayer appeals through the administrative process to resolve some of the questions raised regarding the interpretation of the statute.

The Honorable Jan Faiks  
March 20, 1986  
Page 5

Enclosed for your review is a copy of the letter and attendant enclosures which were originally sent to the marine transportation industry.

Sincerely,



Mary A. Nordale  
Commissioner of Revenue

MAN:m11  
86-68

Enclosures

cc: Members of the Senate Finance Committee

ADDENDUM A

<u>STATE</u>	<u>DESCRIPTION OF MOTOR FUEL TAX LEVY</u>
Washington	6.5¢/gallon use tax with optional county add on of 1.6¢/gallon for watercraft fuel. Exemption certificates given for fuel to be used outside the state.
California	7.0¢/gallon sales/use tax on <u>gasoline</u> used in watercraft. No diesel tax. Export certificates given for fuel to be used outside the state.
Oregon	No motor fuel taxes applicable to watercraft.
Hawaii	1¢/gallon use tax on diesel used by watercraft.

Prepared by:  
Department of Revenue  
Division of Audit  
March 20, 1986

# MOTOR FUEL TAX RETURN

AS 43.40.010

This return is due on or before the last day of the month following the month in which the motor fuel was sold or delivered.

COMPANY NAME AND MAILING ADDRESS  Example Marine Motor Fuel User	FOR THE MONTH OF:	YEAR
	January	1986
	ALASKA BUSINESS LOCATION	
FEDERAL EMPLOYER IDENTIFICATION NUMBER		

	(a) AVIATION GASOLINE	(b) AVIATION JET FUEL	(c) MARINE GASOLINE	(d) MARINE DIESEL	(e) OTHER GASOLINE	(f) OTHER DIESEL
<b>GROSS DISTRIBUTIONS (Report all fuel in gallons or fractions of gallons)</b>						
1. Total fuel sold within Alaska						
2. Total fuel you used				1,000,000		
3. Other distributions (Attach explanation)						
4. Total gross distributions (Add lines 1-3 in each column)				1,000,000		
<b>EXEMPT DISTRIBUTIONS (Attach schedules 04-543 for all exempt sales except sales for heating use. See instruction "B" on back.)</b>						
5. Qualified dealers						
6. Sold for heating use						
7. Federal government						
8. State/local government						
9. Charitable institution						
10. Pub. util./non-profit power assoc.						
11. Exempt power plant						
12. Jet fuel - foreign flights						
13. Bonded jet fuel						
14. Consigned to foreign countries						
15. Exported as cargo						
16. Gasohol						
17. Losses (Attach explanation)						
18. Other (Attach explanation)						
19. Total exempt distributions (Add lines 5-18 in each column)						
<b>TAXABLE DISTRIBUTIONS (For each column (a) through (f), subtract line 19 from line 4 and enter difference on line 20 below.)</b>						
20. Total taxable distributions				1,000,000		
21. Aviation gasoline tax @ 4¢ per gallon	\$					
22. Aviation jet fuel tax @ 2½¢ per gallon		\$				
23. Marine fuel tax @ 5¢ per gallon			\$	\$ 50,000		
24. Other fuel tax @ 8¢ per gallon					\$	\$

TOTAL TAX (Add amounts from lines 21-24 above) .....	\$ 50,000
DEDUCTION FOR TIMELY FILING (Enter lesser of \$100 or 1% of total tax) .....	\$ < 100 >
PENALTY .....	\$ 0
INTEREST .....	\$ 0
TOTAL AMOUNT .....	\$ 49,900
CREDIT (See instructions on back) .....	\$ < >
<b>NET AMOUNT .....</b>	<b>\$</b>

I declare under penalty of perjury that I have examined this return, and to the best of my knowledge and belief it is a true and correct return of all fuel sold or delivered during the month specified.

SIGNATURE	DATE
X	
TITLE (Please Print)	

# CLAIM FOR REFUND OF MOTOR FUEL TAX

**DUE DATE:** All claims must be filed within one year from the date the fuel was purchased. (AS 43.40.050)


Send Refund To: (Name and Address)  <p style="text-align: center;">Example Marine Motor Fuel User</p>	Business or Occupation  <hr/> Business Location (City and State)	Fuel on which refund is claimed was purchased: (dates)  From: <u>3/30/85</u>  Through: <u>2/28/86</u>
-----------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------

**INSTRUCTIONS:**

1. Complete Form 04-545 Invoice Listing.
3. Complete sections I and II below.
2. Detach and complete Schedule A Statement of Motor Fuel Use Upon Which Refund is Claimed. This Schedule is part 3 of this form.
4. Sign and date the claim. Please note that a fraudulent claim is a felony punishable by a maximum fine of \$25,000.00 or three years imprisonment, or both.

I. SUMMARY OF GALLONS PURCHASED AND USED	APPLICANT'S USE	REVENUE USE ONLY
a. Total gallons purchased as reported on Form 04-545 Invoice Listing .....	50,000	
b. Total gallons used in or in conjunction with a licensed vehicle, no matter where operated in Alaska, and marine fuel used in or on watercraft .....	7,530	
c. Net gallons used upon which a refund is claimed. (Subtract line (b) from line (a). This figure must equal the total gallonage reported on Schedule A.) .....	42,470	

**II. SUMMARY OF AMOUNTS CLAIMED FOR REFUND.** Enter the gallons claimed at each refund rate as reported on Form 04-545 Invoice Listing. Check the box to indicate the type of fuel. Multiply the Gallons Claimed by the Refund Rate and enter the result in the Refund Claimed column.

	GALLONS CLAIMED	GASOLINE	DIESEL	REFUND RATE	REFUND CLAIMED	REVENUE USE ONLY
NOTE: The total gallons claimed in (g) below must equal the total gallonage reported on Schedule A.	a. 42,470	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	5 c	\$ 2,123.50	\$
	b. _____			c	\$	\$
	c. _____			c	\$	\$
	d. _____			c	\$	\$
	e. _____			c	\$	\$
	f. _____			c	\$	\$
g. Total Gallons Claimed Add lines a-f .....						
h. Total Refund Claimed. Add lines a-f .....					\$ 2,123.50	\$
REVENUE USE ONLY						
Adjustments .....						
Net Amount of Refund .....						
Claim Paid: ____/____/____		Warrant Number: _____			Warrant Amount: \$ _____	

**III. SIGNATURE**

I declare under penalty of perjury that I have examined this claim, and to the best of my knowledge and belief the fuel was purchased on the dates and in the amounts shown on each invoice, that the fuel was used in the manner set forth and that none of the fuel on which a tax refund is claimed was used for operating an internal combustion engine in, or in conjunction with, a motor vehicle licensed to be operated on public ways and that no part of the tax refund claimed has already been paid.

Signature	Printed Name of Person Who Signed	Title	Date
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Revenue Use Only	Audited By:
	Approved:

**REMEMBER TO ATTACH FORM 04-545 INVOICE LISTING, ORIGINAL INVOICES, AND SCHEDULE A.**

## Alaska Claim for Refund of Motor Fuel Tax

### INVOICE LISTING

GASOLINE AND DIESEL GALLONS MUST BE LISTED SEPARATELY FOR THE VARIOUS RATES CLAIMED.  
 Please read the instructions on back before completing this form.

Name of Applicant: Marine Motor Fuel User Date: \_\_\_\_\_

DATE 19____	NAME OF DISTRIBUTOR	INVOICE NUMBER	GALLONAGE			
			Diesel @ c	@ c	@ c	@ c
3/30/85			10,000			
12/30/85			10,000			
2/15/86			10,000			
2/28/86			20,000			
<b>TOTAL GALLONS</b>			50,000			

EXAMPLE OF FUEL CONSUMPTION INFORMATION IN ALASKAN WATERS FOR  
THE CLAIM FOR REFUND OF MOTOR FUEL TAX BY A MARINE USER:

From March 30, 1985 to February 28, 1986 we had five trips in and out of port and 38 days total tie-up time in port. Each trip into or out of port is 1.5 hours on the main engine.

Each 398 Cat. main engine uses approximately 53 gallons/hour at full speed but cruising at 950 r.p.m. running to and from port the fuel consumption rate is approximately 23 gallons/hour.

The 3304 auxiliary engine consumes between 7 and 8 gallons for power while in port.

Summary of gallonage used in Alaskan waters (3 mile limit):

Gallonage used running in and out of port:

5 trips x 3 hours x 23 gallons/hour x two engines= 690 gallons.

Auxiliary engine while in port gallonage:

38 days x 24 hours x 7.5 gallons/hour=6840

Total fuel use inside the 3 mile limit for this claim period:

690 gallons running + 6840 gallons in port= 7530 gallons



(3) the tax on all aviation fuel other than gasoline is two and one-half cents a gallon.

(c) Every dealer who sells or otherwise transfers motor fuel in the state shall collect the tax at the time of sale, and remit the total tax collected during each calendar month of each year to the Department of Revenue by the last day of each succeeding month. Every user shall likewise remit the tax accrued on motor fuel actually used by him during each month. If the monthly return is timely filed, one percent of the total monthly tax due, limited to a maximum of \$100, can be deducted and retained to cover the expense of accounting and filing the monthly tax return. At the time the remittance is made, each dealer or user shall submit a statement to the Department of Revenue showing all fuel which he has distributed or used during the month. (Emphasis added)

This tax is a user tax. The fuel purchased out of state and used or consumed within Alaska waters on watercraft is subject to the Alaska Motor Fuel tax. Every user is required to remit the tax accrued on motor fuel imported into the State and used during each month. Based on our information, we believe you are required to file a monthly tax return with the Department of Revenue.

I have enclosed Alaska Statutes and regulations governing motor fuel taxes. Also enclosed are motor fuel tax returns (04-541) with instructions on how to prepare these returns. We request that you file these returns for the periods that you have been using motor fuel within Alaska waters. If you need additional returns or information please contact this office.

If you feel that you are not liable for these taxes or have any questions, please contact me within thirty (30) days from the date of this letter. Failure to respond to this request within thirty (30) days from the date of this letter may result in taxes, applicable penalties and interest being assessed accordingly, based on information available.

Direct all correspondence to this office at the above address.

Sincerely,

John Hansen  
Revenue Auditor IV  
Audit Division  
(907) 465-2343

JH:gf

Enclosures

# ALASKA DEPARTMENT OF REVENUE

AUDIT DIVISION

ALASKA STATUTES AND REGULATIONS  
GOVERNING

## MOTOR FUEL TAX



November 1984

## ARTICLE 8.

(Reserved)

## ARTICLE 9

### GENERAL PROVISIONS

Section  
900. Definition

#### 15 AAC 40.900. Definitions. In this chapter

(1) "charitable institution" means an organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;

(2) "dealer" means a person who sells or otherwise transfers in this state motor fuel upon which the taxes imposed by AS 43.40 have not been paid;

(3) "department" means the Department of Revenue;

(4) "fuel reseller" means a person who sells or otherwise transfers in this state fuel upon which the taxes imposed by AS 43.40 have been paid;

(5) "shrinkage" means loss of volume as a result of temperature changes;

(6) "user" means a person consuming or using motor fuel who purchases the fuel out of state or ships it into the state for personal use in the state, who manufactures the fuel in the state, or who purchases or receives in the state fuel that is not taxed at the time of purchase or receipt or is taxed at a rate that is less than the rate prescribed by AS 43.40.010;

(7) "timely filed" means received by the department or postmarked on or before the last day of the month following the month motor fuel is sold, transferred, or used;

(8) "watercraft" means a ship, boat, vessel, or other structure that is capable of being moved in or on water either under its own propulsion or propelled by another, craft, including a floating fish-processor, a transportation barge, a drilling ship, and a semi-submersible drilling rig;

(9) "commercial buildings and facilities" means all buildings and facilities other than single and multiple unit private dwellings and mobile homes but does not include watercraft;

(10) "person" means an individual, firm, partnership, joint venture, government or military agency, association, corporation, estate trust, business trust, receiver, or any group or combination acting as a unit. (Eff. 4/8/82, Reg. 82; am 8/1/82, Reg. 83; am 7/19/82, Reg. 83; am 11/14/82, Reg. 84; am 8/12/84, Reg. 91)

AS 43.05.080	AS 43.40.060
AS 43.40.010	AS 43.40.080
AS 43.40.030	AS 43.40.085
AS 43.40.035	AS 43.40.100
AS 43.40.050	AS 43.40.240

## Chapter 40. Motor Fuel Tax.

Section  
10. Tax on transfers or consumption of motor fuel and expenditure of proceeds  
30. Refund for nonhighway use  
35. Other refunds and credits  
50. Refund claim by affidavit  
60. Separate invoices

Section  
70. Refund warrants  
80. Examination of books and records  
85. Preservation of books and records  
100. Definitions

*Collateral references.* — Am. Jur. 2d, State and Local Taxation, §§ 616 — 634; 53 Am. Jur. 2d, Licenses, §§ 30, 46 — 58.

State tax on or in respect of goods shipped in interstate commerce to consignee for sale on consignee's account without previous sale or order for purchase, 4 ALR2d 244.

Loading or unloading interstate freight in performance of obligation resting upon one other than interstate carrier as interstate com-

merce as regards local taxation, 10 ALR2d 651.

State taxation of motor carriers as affected by commerce clause, 17 ALR2d 421.

Power of legislature to remit, release, or compromise tax claim, 28 ALR2d 1425.

Financial hardship or inability to pay taxes as rendering inapplicable statutes denying remedy by injunction against assessment or collection of tax, 65, ALR2d 550.

**Sec. 43.40.010. Tax on transfers or consumption of motor fuel and expenditure of proceeds.** (a) There is levied a tax of eight cents a gallon on all motor fuel sold or otherwise transferred within the state except that

(1) the tax on aviation gasoline is four cents a gallon,

(2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon, and

(3) the tax on all aviation fuel other than gasoline is two and one-half cents a gallon.

(b) There is levied a tax of eight cents a gallon on all motor fuel consumed by a user, except that

(1) the tax on aviation gasoline consumed is four cents a gallon,

(2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon, and

(3) the tax on all aviation fuel other than gasoline is two and one-half cents a gallon.

(c) Every dealer who sells or otherwise transfers motor fuel in the state shall collect the tax at the time of sale, and remit the total tax collected during each calendar month of each year to the department by the last day of each succeeding month. Every user shall likewise remit the tax accrued on motor fuel actually used by the user during each month. If the monthly tax return is timely filed, one percent of the total monthly tax due, limited to a maximum of \$100, may be deducted and retained to cover the expense of accounting and filing the monthly tax return. At the time the remittance is made, each dealer or user shall submit a statement to the department showing all fuel which the dealer or user has distributed or used during the month.

(d) [Repealed, § 3 ch 166 SLA 1976.]

(e) Sixty per cent of the proceeds of the revenue from

the taxes on aviation fuel, excluding the amount determined to have been spent by the state in its collection, shall be refunded to a municipality owning and operating or leasing and operating an airport in the proportion that the revenue was collected at the municipal airport. All other proceeds of the taxes on aviation fuel shall be paid into a special aviation fuel tax account in the state general fund. The legislature may appropriate funds from this account for aviation facilities.

(f) The proceeds from the revenue from the tax on motor fuel used in boats and watercraft of all descriptions shall be deposited in a special watercraft fuel tax account in the general fund. The legislature may appropriate from this account for water and harbor facilities.

(g) The proceeds of the revenue from the tax on all motor fuels, except as provided in (e), (f) and (j) of this section, shall be deposited in a special highway fuel tax account in the state general fund. The legislature may appropriate funds from it for expenditure by the Department of Transportation and Public Facilities directly or as matched with available federal-aid highway money for maintenance of highways, construction of highway projects and ferries included in the program provided for in AS 19.10.150, including approaches, appurtenances and related facilities and acquisition of rights-of-way or easements, and other highway costs including surveys, administration, and related matters. All departments of the state government authorized to spend funds collected from taxes imposed by this chapter shall perform when feasible, all construction or reconstruction projects by contract after the projects have been advertised for competitive bids, except that, when feasible, arrangements shall be made with political subdivisions to carry out the construction or reconstruction projects. If it is not feasible for the work to be performed by state engineering forces, the commissioner of transportation and public facilities may contract on a professional basis with private engineering firms for road design, bridge design, and services in connection with surveys. If more than one private engineering firm is available for the work the contracts shall be entered into on a negotiated basis.

(h) All motor fuel tax receipts shall be paid into the general fund and distributed to the proper accounts in the general fund. Valid motor fuel tax refund claims shall be paid from the highway fuel tax account in the general fund.

(i) Within 30 days after the legislature convenes the Department of Transportation and Public Facilities shall submit an annual budget covering anticipated revenues and their expenditure, for the consideration and approval by the legislature. The budget shall cover all money collected or anticipated to be collected under this chapter for the year following the adjournment of each regular session of the legislature.

(j) The proceeds from the tax on motor fuel used in snow vehicles and, unless a tax refund is applied for under AS 43.40.040, other internal combustion engines not used in or in conjunction with a motor vehicle licensed to

**15 AAC 40.220. Recovery of Erroneous Refunds.** The department will, in its discretion, recover any refund or portion of any refund which is erroneously made and any credit or portion of any credit which is erroneously allowed. (Eff. 7/19/82, Reg. 83).

Authority: AS 43.05.080  
AS 43.10.032  
AS 43.40.080

**15 AAC 40.230. Records.** (a) A person filing a claim for a motor fuel tax refund must keep a complete record in gallons showing

(1) all moto. fuel inventories on hand at the beginning and closing of the claim period;

(2) all motor fuel purchased or received, showing the name of the seller and the date of each purchase,

(3) all motor fuel transferred into the fuel supply tanks of an internal combustion engine that is used in or in conjunction with a motor vehicle licensed to be operated on public ways;

(4) all motor fuel transferred into the fuel supply tanks of an internal combustion engine that is not used in or in conjunction with a motor vehicle licensed to be operated on public ways, showing the purpose for which it is used; and

(5) all motor fuel used for exempt purposes under 15 AAC 40.020(b) with documentation of the specific purpose for which the fuel is used.

(b) A person claiming a motor fuel tax refund must preserve for three years from the date of filing a claim, books and records pertaining to all acquisitions and uses of motor fuel.

(c) Failure to maintain records required by (a) and (b) of this section for a period necessary to substantiate any claim filed for that period may be cause for denial of a refund or for recovery of a refund paid on a claim. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84)

Authority: AS 43.05.080  
AS 43.40.050  
AS 43.40.080  
AS 43.40.085

**ARTICLE 4.**  
(Reserved)

**ARTICLE 5.**  
(Reserved)

**ARTICLE 6.**  
(Reserved)

**ARTICLE 7.**  
(Reserved)

The Civil Air Patrol is exempt from taxation under the Alaska Motor Fuel Oil Tax Act because it is an instrumentality of the federal government, but volunteer members of Civil Air Patrol are not exempt. 1961 Op. Att'y Gen., No. 26.

**Sec. 43.40.020. Penalty for violation.** [Repealed, § 46 ch 113 SLA 1980. For criminal penalties, see AS 43.05.290.]

**Sec. 43.40.030. Refund for nonhighway use.** (a) Except as specified in AS 43.40.010(j), a person who uses motor fuel to operate an internal combustion engine is entitled to a refund of six cents a gallon if

(1) the tax on the motor fuel has been paid;

(2) the motor fuel is not aviation fuel, or motor fuel used in or on watercraft; and

(3) the internal combustion engine is not used in or in conjunction with a motor vehicle licensed to be operated on public ways.

(b) The entire tax levied by this chapter shall be refunded to the purchaser on that part of the motor fuel used in a foreign country on which the tax has been paid when the fuel is sold and delivered in the state for nonhighway use in a foreign country.

(c) The department shall establish the necessary regulations and prescribe the appropriate forms to prove that the motor fuel is taken to and used in foreign countries.

(d) If a person obtains motor fuel on which the tax levied by this chapter has been paid and the motor fuel is exempt from the tax, the person is entitled to a refund of the tax paid. (§ 2 ch 47 SLA 1955; am § 3 ch 27 SLA 1957; am § 2 ch 136 SLA 1961; am § 4 ch 158 SLA 1970; am § 3 ch 124 SLA 1971; am § 4 ch 125 SLA 1971; am § 4 ch 116 SLA 1977; am §§ 35, 36 ch 113 SLA 1980; am § 5 ch 82 SLA 1982)

**Effect of amendments.** — The 1980 amendment substituted a reference to this chapter in subsection (b), and added subsection (d).

The 1982 amendment substituted "the tax has been" for "duty is" in subsection (b).

**Sec. 43.40.035. Other refunds and credits.** (a) A person who resells fuel on which the tax under AS 43.40.010(a) or (b) was previously paid is entitled to a credit or refund of the tax if (1) the resold fuel is not motor fuel and the requirements of AS 43.40.010(1) have been fulfilled; or (2) the amount of tax previously paid exceeds the tax due on the resale. The amount of the credit or refund under this section is equal to the amount of tax previously paid on the resold fuel less the amount of tax prescribed by AS 43.40.010(a) or (b).

(b) A reseller may elect, with the express written consent of the supplier of the reseller, to receive the credit or refund under this section directly from the supplier rather than by filing a claim for the credit or refund with

signed in quadruplicate by the fuel reseller and by the supplier. The fuel reseller and the supplier must each file one copy of the election, with original signatures, with the department. The fuel reseller and the supplier must each retain a copy of the election, with original signatures, for audit review by the department. If an election is made under this section, it may not be revoked without the express written consent of the supplier.

(d) A claim for refund or credit must be filed within one year after the date of the sale as shown on the invoice issued by the claimant. Failure to file within the one-year period waives the right to a refund or credit. The claim must include the name, address, and occupation of the applicant, the nature of the business of the applicant, and a description sufficient to identify the basis for the refund or credit. A claim for refund must be supported by copies of the original invoices issued to the claimant and copies of certificates of use obtained under 15 AAC 40.030. A claimant qualifying as a charitable institution under 15 AAC 40.900(1) must submit with its initial claim for refund a copy of its Internal Revenue Service Determination Letter. A claimant that has had its tax-exempt status denied by the Internal Revenue Service is not eligible for a motor fuel tax refund as a charitable institution. (Eff. 4/8/82, Reg. 82; am 8/1/82, Reg. 83; am 7/19/82, Reg. 83; am 11/14/82, Reg. 84; am 8/12/84, Reg. 91)

AS 43.05.080 AS 43.40.035

AS 43.40.010 AS 43.40.050

AS 43.40.030 AS 43.40.060

**15 AAC 40.110. Additional Tax Due for Sales of Diesel Fuel Not Used for Heating Purposes.** Repealed 11/14/82.

### ARTICLE 3. TAX REFUNDS AND CREDITS FOR FINAL USER

Section	Section
200. Refunds on certain uses of motor fuel	220. Recovery of erroneous refunds
210. Requirements for filing claims for refund of motor fuel tax	230. Records

**15 AAC 40.200. Refunds on Certain Uses of Motor Fuel.** (a) If a person uses motor fuel in an internal combustion engine and the motor fuel tax of eight cents a gallon has been paid but that fuel is not used in, or in conjunction with, a licensed motor vehicle, as aviation fuel, or in or on watercraft, that person is entitled to a refund of six cents a gallon.

(b) If a person purchases fuel upon which the motor fuel tax has been paid and uses the fuel for tax-exempt purposes as described in 15 AAC 40.020(b), that person is entitled to a refund of the full amount of tax paid if that person has not signed a certificate of use stating that the fuel that was purchased was not intended for use as motor fuel.

(c) If a person purchases motor fuel upon which the amount of tax paid exceeds the tax imposed by AS

43.40.010 for the manner in which the motor fuel is used, that person is entitled to a refund equal to the amount of tax paid, less the amount of tax prescribed by AS 43.40.010.

(d) If a person purchases motor fuel upon which marine fuel tax or aviation fuel tax has been paid and uses the fuel in a land-based internal combustion engine that is not used in or in conjunction with a licensed vehicle, that person is entitled to a refund equal to the amount of tax paid, less the amount of two cents per gallon. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84)

Authority: AS 43.05.080 AS 43.40.050  
AS 43.40.010 AS 43.40.100  
AS 43.40.030

**15 AAC 40.210. Requirements for Filing Claims for Refund of Motor Fuel Tax.** (a) A claim for refund of motor fuel tax under 15 AAC 40.200 must include the following information for the period covered by the claim:

(1) a schedule indicating by type of fuel (e.g. gasoline, diesel, etc.), the following:

(A) total gallons of motor fuel purchased during the period;

(B) total gallons of motor fuel used during the period;

(C) total gallons of fuel used for tax exempt purposes, as described in 15 AAC 40.020(b); and

(D) total gallons of motor fuel used that are eligible for refund, as described in 15 AAC 40.200;

(2) if fuel was used for tax-exempt purposes, a clear complete explanation of that use, including the category of exempt use under 15 AAC 40.020(b); and

(3) a schedule indicating by type of equipment, the gallons used that are eligible for refund.

(b) The first claim filed during each calendar year must include a list of the final user's equipment, including license and serial numbers.

(c) The original invoices issued to the final user at the time the motor fuel was purchased must be submitted to substantiate any claim for refund. Corrected invoices will be accepted only if the original incorrect invoice is also submitted. The department will, in its discretion, accept copies of original invoices if the refund applicant

(1) explains in writing why original invoices are not being submitted;

(2) obtains a statement from the vendor indicating that the copies are true copies showing invoice numbers, dates and amounts; and

(3) signs an affidavit on a form prescribed by the department certifying that no other refund has or will be claimed on the same motor fuel. (Eff. 7/19/82, Reg. 83; am 8/12/84, Reg. 91)

Authority: AS 43.05.080  
AS 43.40.030  
AS 43.40.050  
As 43.40.060

be operated on public ways shall be deposited in a special nonpublic highway use account in the general fund. The legislature may appropriate from this account to the Department of Transportation and Public Facilities for trail staking and shelter construction and maintenance.

(k) The tax on the transfer or consumption of motor fuel provided for in this section does not apply to liquified petroleum gas.

(l) If a dealer has a reasonable belief at the time of sale or transfer that fuel that is sold or transferred is not to be used as motor fuel, the dealer need not collect the motor fuel tax. If the tax is not collected, the dealer shall obtain a certificate of use from the buyer or transferee stating that the fuel that has been or will be purchased or received is not intended for use as motor fuel. The department may not collect the motor fuel tax from a dealer for fuel for which a certificate of use has been properly obtained under this subsection. A certificate of use is not required for fuel for any domestic purpose in a single or multiple unit private dwelling, including motor homes, or for fuel which is at least 10 percent alcohol by volume. An annual certificate of use is required for all other exemptions listed under AS 43.40.100(2), except certificate of use needs under AS 43.40.100(2)(K) will be determined by the department. The dealer shall retain a copy of each certificate of use obtained under this subsection for examination or audit on request by the department. The form of a certificate of use may be prescribed by regulation adopted by the department. (§ 48-5-2 ACIA 1949; am § 1 ch 80 SLA 1951; am § ch 47 SLA 1955; am §§ 1, 2 ch 27 SLA 1957; am § 1 ch 134 SLA 1957; am § 1 art VI title II ch 152 SLA 1957; am § 2 art V title III ch 152 SLA 1957; am § 2 ch 124 SLA 1959; am §§ 1, 2 ch 20 SLA 1960; am § 1 ch 150 SLA 1960; am § 1 ch 110 SLA 1961; am § 1 ch 136 SLA 1961; am §§ 1 — 3 ch 131 SLA 1962; am § 1 ch 130 SLA 1968; am § 10 ch 143 SLA 1968; am §§ 1, 2 ch 216 SLA 1968; am §§ 1 — 3 ch 158 SLA 1970; am § 3 ch 58 SLA 1971; am §§ 1, 2 ch 124 SLA 1971; am §§ 2, 3, ch 125 SLA 1971; am §§ 1 — 3 ch 153 SLA 1972; am § 3 ch 166 SLA 1976; am §§ 1, 2 ch 116 SLA 1977; am § 4 ch 82 SLA 1982; am §§ 1, 2 ch 87 SLA 1983)

**Cross references.** — For civil penalty imposed for failure to file a return or report, or pay the full amount of a tax, or a portion or a deficiency of the tax, see AS 43.05.220.

**Effect of amendments.** — The 1982 amendment added subsection (l).

The 1983 amendment, in subsection (c), added the present third sentence and deleted "motor" preceding "fuel" in the last sentence, and in subsection (l), added the present fourth and fifth sentences.

## OPINIONS OF ATTORNEY GENERAL

The purpose of the dedication of the taxes on motor fuels contained in subsection (g) of this section is public highways. 1959 Op. Att'y Gen., No. 9.

A proposed alteration going to the geographical area of expenditure rather than to the special purpose of a dedication, does not contravene the constitution. 1959 Op. Att'y Gen., No. 9.

end of the present third sentence.

The 1982 amendment substituted "under AS 43.40.030" for "as provided in AS 43.40.010 — 43.40.100" and "the claim for the refund" for "his claim" in the first sentence of subsection (a), substituted "the commissioner" for "he"

and "this subsection" for "AS 43.40.010 — 43.40.100" in the last sentence of subsection (a), inserted "under AS 43.40.030 or 43.40.032" in the first sentence of subsection (b), and added subsection (c).

Collateral references. — 53 C.J.S., Licenses, § 62.

**Sec. 43.40.060. Separate invoices.** The department may require the issuance of separate invoices for fuel sold, distributed, or transferred when the invoices will be the basis for a refund claim. (§ 6 ch 47 SLA 1955)

**Sec. 43.40.070. Refund warrants.** Upon approval of a refund claim by the department, a warrant shall be drawn on the highway fuel tax account in the general fund in favor of the applicant in the amount of the claim. (§ 7 ch 47 SLA 1955; am § 5 ch 131 SLA 1962)

**Sec. 43.40.080. Examination of books and records.** (a) To determine the validity of a claim for refund, the department may examine the books and records of the claimant and the books and records of a distributor of motor fuel. The department may cancel the refund permit of the claimant relying upon a fraudulent invoice for a period of not more than one year.

(b) [*Repealed, § 46 ch 113 SLA 1980.*] (§ 5 ch 47 SLA 1955; am § 46 ch 113 SLA 1980)

Effect of amendments. — The 1980 amendment repealed subsection (b).

**Sec. 43.40.085. Preservation of books and records.** Dealers and users shall preserve for three years all books and records pertaining to sales, transfers, and uses of motor fuel which are taxed under this chapter. (§ 5 ch 158 SLA 1970)

**Sec. 43.40.090. Criminal violation.** [*Repealed, § 46 ch 113 SLA 1980.*]

**Sec. 43.40.100. Definitions.** In this chapter

(1) "dealer" means a person who sells or otherwise transfers in this state motor fuel upon which the taxes imposed by this chapter have not been paid;

(2) "motor fuel" means fuel used in an engine for the propulsion of a motor vehicle or aircraft, and fuel used in and on watercraft for any purpose, or in a stationary engine, machine or mechanical contrivance which is run by an internal combustion motor; "motor fuel" does not include

(A) fuel consigned to foreign countries;

(B) fuel sold for use in jet propulsion aircraft operating in flights to foreign countries;

(C) fuel used in stationary power plants operating as public utility plants and generating electrical energy for sale to the general public;

(D) fuel used by nonprofit power associations or corporations for generating electric energy for resale;

**15 AAC 40.050. Bonding Requirement for Qualified Dealer License.** (a) An applicant for a qualified dealer license must file with the department a bond made payable to the department in an amount equal to twice the average monthly motor fuel tax remittance or in the amount of \$5,000, whichever is greater. The department will, in its discretion, accept a cash deposit or a bank letter of credit in the appropriate amount in lieu of a bond.

(b) In lieu of the requirements of (a) of this section, an applicant for a qualified dealer license may file a sworn statement in affidavit form stating that the applicant owns real property in the state equal in value to at least twice the average monthly motor fuel tax remittance, on which the motor fuel tax may become a first lien, and describing the property and the fair market value of the applicant's interest in the property. (Eff. 7/19/82, Reg. 83)

Authority: AS 43.05.080  
AS 43.40.100

**15 AAC 40.060. Revocation of Qualified Dealer License.** (a) The department will, in its discretion, revoke a license issued under 15 AAC 40.040 if a licensee fails to comply with the requirements of AS 43.40.010 — 43.40.100 or this chapter.

(b) If the department determines a license should be revoked for failure to comply with the requirements of AS 43.40.010 — 43.40.100 or this chapter it will give the licensee 30 days' notice of a proposed revocation. If the basis for revocation still exists on the 30th day, the department will, upon notice of revocation to the licensee, revoke the license, unless an appeal under (d) of this section has been timely filed by the licensee.

(c) When a license is revoked under this section, the licensee may not apply for a new license until 60 days after the date of revocation. The date of revocation is the date on which the notice of revocation is issued.

(d) A person may appeal a notice of proposed revocation to the department. The appeal must be submitted to the department in person or by mail within 10 days of the date of issuance of the notice of proposed revocation. The department will hold a formal hearing on the appeal as prescribed by 15 AAC 05.030. The hearing officer will issue a written decision, and, if appropriate, a notice of revocation will be issued by the department. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84)

Authority: AS 43.05.080  
AS 43.40.100  
AS 43.40.240

**15 AAC 40.070. Records.** (a) Each dealer, fuel reseller and user must keep a complete record by gallons showing

(1) all motor fuel inventories on hand at the first of each month;

(2) all motor fuel refined during each month;

(3) all motor fuel purchased, received or produced during each month, showing the name of the seller and the date of each purchase or receipt;

(4) all motor fuel sold, transferred or used during each month, the date of sale, transfer, or use, and the names of all purchasers and transferees;

(5) all nontaxable fuel sales or transfers made during each month; and

(6) all motor fuel inventories on hand at the end of each month.

(b) Each dealer, fuel reseller and user must keep a complete record showing all amounts received from a supplier or the department for exempt sales or transfers and for credits or refunds for taxes paid.

(c) Each dealer, fuel reseller and user must preserve for three years from the due date, or the date the return was filed, whichever is later, all books and records required under this section. (Eff. 7/19/82, Reg. 83; am 11/14/82, g. 84)

Authority: AS 43.05.080 AS 43.40.050  
AS 43.40.010 AS 43.40.085  
AS 43.40.030 AS 43.40.100

## ARTICLE 2. TAX REFUNDS AND CREDITS FOR FUEL RESELLERS

### Section

100. Refunds and credits on certain sales or transfers of motor fuel  
110. (Repealed)

**15 AAC 40.100. Refunds and Credits on Certain Sales or Transfers of Motor Fuel.** (a) If a fuel reseller makes a sale or transfer of motor fuel that is exempt under 15 AAC 40.020(b) and upon which motor fuel tax has been previously paid, the fuel reseller is entitled to a refund equal to the amount of tax previously paid on the resold fuel from the department. To receive a refund the fuel reseller must have on file a certificate of use from the buyer if a certificate of use is required by 15 AAC 40.030.

(b) If a fuel reseller makes a sale or transfer of motor fuel upon which the motor fuel tax has been previously paid and the tax paid exceeds the tax due on resale, the fuel reseller is entitled to a refund equal to the amount of tax previously paid less the amount of tax prescribed by AS 43.40.010.

(c) Instead of claiming a refund directly from the department, a fuel reseller who sells or transfers fuel that is exempt or is subject to a lesser tax on resale than that previously paid may elect with the express written consent of the supplier, to receive the refund or credit directly from the supplier. A claim for refund or credit must be supported by copies of the original invoices issued by the reseller and copies of certificates of use obtained under 15 AAC 40.030. When an election is made under this section, the supplier may claim the credit or refund from the department by adjusting the motor fuel tax return accordingly. To be effective, an election under this section must be submitted on a form prescribed by the department and

the department. When an election is properly made under this subsection, the supplier may claim the credit or refund from the department. To be effective an election under this subsection must be signed in quadruplicate by the reseller and by the supplier. The reseller and the supplier shall each file one copy of the election, with original signatures, with the department. The reseller and supplier shall each retain a copy of the election with original signatures for audit review by the department. If an election is made under this subsection, it may not be revoked without the express written consent of the supplier. (§ 6 ch 82 SLA 1982; am § 3 ch 87 SLA 1983)

**Effect of amendments.** — The 1983 amendment substituted "the requirements of AS 43.40.010(l) have been fulfilled" for "a certi-

cate of use is acquired under AS 43.40.010(l)" in the first sentence of subsection (n).

**Sec. 43.40.040. Applications and permits for refund.** [Repealed, § 45 ch 113 SLA 1980. For current law, see AS 43.40.050(a).]

**Sec. 43.40.050. Refund claim by affidavit.** (a) A person who claims a refund under AS 43.40.030 shall present the claim for the refund to the commissioner of revenue by affidavit upon a form provided by the commissioner. The claim shall include the name, address and occupation of the applicant, the nature of the business of the applicant, and a description sufficient to identify the machinery or equipment in which the motor fuel for which the refund is claimed was used. The claim shall be accompanied by each invoice issued to the claimant at the time the motor fuel was purchased. The commissioner may require any additional information which the commissioner considers necessary for the administration of this subsection.

(b) A claim for refund under AS 43.40.030 or 43.40.035 shall be filed within one year from the date of the purchase of the motor fuel as indicated on the invoice, and failure to file within the one-year period is a waiver of the right to the refund. A claim is considered to be filed when the claim is mailed or personally presented to an office of the department.

(c) A reseller who claims a refund or credit under AS 43.40.035 shall present the refund claim to the department or to the supplier of that reseller by affidavit on a form provided by the department. The claim shall include the name, address, and occupation of the applicant, the nature of the business of the applicant, and a description sufficient to identify the reason for the refund or credit. The claim shall be supported by documentation required by the department. (§ 4 ch 47 SLA 1955; am § 1 ch 139 SLA 1960; am § 37 ch 113 SLA 1980; am §§ 7 — 9 ch 82 SLA 1982)

**Effect of amendments.** — The 1980 amendment in subsection (a), changed a reference to this chapter at the beginning and at the end of the subsection, substituted the pre-

sent second sentence for the former material, which read: "with the information the commissioner requires"; and substituted "w. s" for "is" preceding "purchase" at the

6. (Reserved)
7. (Reserved)
8. (Reserved)
9. General Provisions (15 AAC 40.900)

## ARTICLE 1. APPLICATION OF TAX

Section	Section
10. Tax return filing requirements	40. Qualified dealer license
20. Fuel subject to tax and exemptions	50. Bonding requirement for qualified dealer license
30. Certificate requirements for certain sales	60. Revocation of qualified dealer license
	70. Records

**15 AAC 40.010. Tax Return Filing Requirements.** Each dealer and each user must submit monthly to the department a return showing all motor fuel sold or transferred by the dealer or consumed by the user in the state, including all tax-exempt sales, transfers and uses. The return must be signed by the dealer or user under penalty of perjury and must show to whom fuel was sold or transferred and the reasons for any tax exemption. The return, supporting documentation, and the tax collected or accrued must be remitted by the last day of the month following the month the motor fuel was sold, transferred or used. One percent of the total monthly tax due and remitted, up to \$100, may be deducted and retained if the return is timely filed. (Eff. 7/19/82, Reg. 83; am 8/12/84, Reg. 91)

Authority: AS 43.05.080  
AS 40.40.010

**15 AAC 40.020. Fuel Subject to Tax and Exemptions.**

(a) All motor fuel sold or transferred in the state or consumed by a user in the state is subject to the motor fuel tax under AS 43.40.010 — 43.40.100, unless exempted under (b) of this section. For purposes of AS 43.40.010 — 43.40.100 and this chapter, "motor fuel" is fuel used in an engine for the propulsion of a motor vehicle or aircraft, and fuel used in and on watercraft for any purpose, or in a stationary engine, machine or mechanical contrivance which is run by an internal combustion motor, including bulk or other transfers of fuel between producing, refining, importing or exporting companies and gasoline separated from a mixture of gasoline and alcohol that was not taxed in its combined state. All bulk sales of fuel to a person who uses a common storage tank servicing both taxable and nontaxable uses, except bulk sales of jet fuel to a person who exclusively flies directly from the state to a foreign country, are subject to the motor fuel tax under AS 43.40.010 — 43.40.100, but the portion actually used for nontaxable purposes is eligible for a tax refund upon application to the department.

(b) Fuel meeting the following requirements is exempt from the motor fuel tax under AS 43.40.010 — 43.40.100:

(1) fuel sold to, transferred to, or used by United States, Alaska, or local government agencies for official use, except motor fuel sold to a contractor who purchases motor fuel either for its own account or as the agent of a government agency for use in the performance of a contract with that agency;

(2) fuel sold to, transferred to, or used by auxiliary military units for official use, not including fuel purchased by a volunteer member of an auxiliary unit for use in a private vehicle;

(3) fuel used in stationary power plants operating as public utility plants and generating electrical energy for sale to the general public;

(4) fuel used exclusively for a domestic purpose in single or multiple unit private dwellings including mobile homes, but not including watercraft;

(5) fuel sold exclusively for use for heating commercial buildings or facilities;

(6) fuel used in stationary power plants that generate electrical energy exclusively for private residential consumption;

(7) fuel used in stationary commercial power plants of 100 kw or less;

(8) fuel used by nonprofit power associations or corporations for generating electrical energy for resale;

(9) fuel used by charitable institutions;

(10) refined fuel transported as cargo out of the state into international waters if the fuel is sold or otherwise transferred to watercraft which operate exclusively in international waters and which do not enter state territorial waters, ports, or facilities;

(11) refined fuel transported as cargo out of the state on a vessel from a port in this state to a port outside this state, unless the fuel is purchased for use within state territorial waters;

(12) fuel consigned to foreign countries;

(13) fuel sold to, transferred to, or used on jet propulsion aircraft operating flights from the state to a foreign country, except flights to a foreign country, with intermediate stops within the United States;

(14) fuel which is at least 10 percent alcohol by volume;

(15) fuel sold to or transferred between licensed qualified dealers;

(16) actual losses of volume which occur during handling, transporting or storing motor fuel, including shrinkage and losses from fire and other accidents;

(17) additives that are used for improving existing characteristics of fuel, not including blended fuels; and

(18) fuel used for any other purpose which the department determines is not motor fuel as defined by AS 43.40.100(2) if the purpose is fully disclosed on the monthly motor fuel tax return.

(c) For purposes of (b)(1) and (2) of this section, "official use" does not include sales of fuel. (Eff. 7/19/82, Reg. 83; am 11/14/84, Reg. 84; am 8/12/84, Reg. 91)

Authority: AS 43.05.080  
AS 43.40.010  
AS 43.40.100

**15 AAC 40.030. Certificate Requirements for Certain Sales.** (a) Except as provided by (b) of this section, a dealer or fuel reseller who sells or transfers fuel that is exempt under 15 AAC 40.020(b) shall obtain an annual certificate of use from the buyer or transferee at the time of the first sale in each calendar year stating that the fuel that is purchased or received is not intended for use as motor fuel subject to tax under AS 43.40.010. A dealer or fuel reseller may use a certificate-of-use form prescribed or approved by the department.

(b) A certificate of use under (a) of this section is not required in support of an exemption under 15 AAC 40.020(b)(4), (6), (13) (15), and (16).

(c) In support of an exemption under 15 AAC 40.020(b)(5), the annual certificate of use must itemize and show the location of each tank or other facility which stores fuel used exclusively for heating commercial buildings and facilities.

(d) If a purchaser certifies in writing on a certificate of use that the use of the fuel purchased is for an exempt use and the purchaser subsequently uses the fuel for taxable purposes, that purchaser is liable for payment of the motor fuel tax.

(e) A certificate of use under this section must be signed by the purchaser or his or her representative. The certificate remains in effect unless revoked by the department or in writing by the purchaser, dealer, or fuel reseller. The dealer, fuel reseller, or user must retain a copy of each certificate of use required under this section for three years. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84; am 8/12/84, Reg. 91)

Authority: AS 43.05.080 AS 43.40.050  
AS 43.40.010 AS 43.40.085  
AS 43.40.035

**15 AAC 40.040. Qualified Dealer License.** (a) In order to purchase or sell tax-exempt fuel as a qualified dealer under 15 AAC 40.020(b)(15), a person must apply for and obtain a qualified dealer license from the department.

(b) A person is eligible for a qualified dealer license if that person

(1) refines, imports, manufactures, produces, or blends motor fuel; or

(2) sells fuel at least 20 percent of which is for resale or for residential heating purposes or for a combination of these purposes.

(c) A license issued under (a) of this section is in addition to any other license required by law.

(d) The department will not issue a license to a person described in (a) of this section if there is reasonable cause to believe that the applicant has wilfully withheld information necessary to determine eligibility for a license or if there is reasonable cause to believe that information submitted in the application is false or misleading. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84; am 8/12/84, Reg. 91)

Authority: AS 43.05.080 AS 43.40.100

(E) fuel used by charitable institutions;  
(F) fuel which is at least 10 percent alcohol by volume;  
(G) fuel sold or transferred between qualified dealers;  
(H) fuel sold to federal, state, and local government agencies for official use;

(I) fuel used in stationary power plants that generate electrical energy for private residential consumption;

(J) fuel used to heat private or commercial buildings or facilities;

(K) fuel used for other nontaxable purposes as prescribed by regulations adopted by the department; or

(L) fuel used in stationary power plants of 100 kw or less that generate electrical power for commercial enterprises not for resale;

(3) "qualified dealer" means a person who (A) refines, (B) imports, (C) manufactures, (D) produces, (E) compounds, or (F) wholesales motor fuel, who satisfies criteria for qualified dealers established by the department by regulation and who obtains a qualified dealer's license from the department;

(4) "user" means a person consuming or using motor fuel, who either

(A) purchases the fuel out of the state and ships it into the state for personal use in the state;

(B) manufactures the fuel in the state; or

(C) purchases or receives fuel in the state that is not taxed at the time of purchase or receipt or is taxed at a rate that is less than the rate prescribed by AS 43.40.010. (§ 48-5-1 ACLA 1949; am § 1 ch 56 SLA 1949; am § 9 ch 47 SLA 1955; am § 26 ch 70 SLA 1964; am §§ 6, 7 ch 158 SLA 1970; am § 1 ch 74 SLA 1972; am § 5 ch 116 SLA 1977; am § 10 ch 83 SLA 1980; am §§ 10 — 12 ch 82 SLA 1982; am § 4 ch 87 SLA 1983)

Revisor's notes. — Paragraphs (3) and (4) were renumbered in 1983 to achieve alphabetical order.

Effect of amendments. — The 1980 amendment added subparagraph (F) in paragraph (2).

The 1982 amendment, in paragraph (2), added subparagraphs (G)-(K); in paragraph (3) added the subparagraphs (A) and (B) designations, substituted "personal use" for "his own use" and deleted "or" from the end, in subparagraph (A), added "or" to the end of subparagraph (B), and added subparagraph (C); and added paragraph (4).

The 1983 amendment added paragraph (2)(L).

**Secs. 43.40.110 — 43.40.120. Additional tax levy on transfers or consumption of motor fuel. [Repealed, § 8 ch 158 SLA 1970.]**

## Chapter 40. Motor Fuel Tax.

### Article

1. Application of Tax  
(15 AAC 40.010 — 15 AAC 40.070)
2. Tax Refunds and Credits for Fuel Resellers  
(15 AAC 40.100)
3. Tax Refunds and Credits for Final User  
(15 AAC 40.200 — 15 AAC 40.230)
4. (Reserved)
5. (Reserved)

**04-544**

**Claim for Refund of Motor Fuel Tax  
(By a Final User)**

This form is to be completed by a person who consumes fuel upon which the tax has been paid and uses it in a manner other than as motor fuel, or who has paid the tax of eight cents per gallon and consumes the fuel in or on watercraft. This claim can also be filed if a person purchases fuel upon which the tax has been paid and uses it in a land based internal combustion engine that is not used in or in conjunction with a licensed motor vehicle. In that case the person is eligible for a refund equal to the amount of tax paid less the amount of two cents per gallon.

**04-545**

**Claim for Refund of Motor Fuel Tax  
— Invoice Listing Sheet**

This form is to be completed and submitted with the Claim for Refund of Motor Fuel Tax (by a Final User).

**04-533**

**Affidavit to Certify Copy of  
Original Invoice**

Original invoices must be attached to the Claim for Refund of Motor Fuel Tax — Invoice Listing Sheet, form 04-545. The Affidavit is to be completed and notarized when submitting a copy instead of the original invoice.

**Alaska  
Motor Fuel  
Excise Tax**

**FORMS GUIDE**



**State of Alaska  
Department of Revenue  
Pouch SA  
Juneau, Alaska 99811**

## Need Forms?

All motor fuel excise tax forms listed in this pamphlet are available for pickup at the public service counters in the following Department of Revenue offices:

- Anchorage  
201 E. Ninth Avenue
- Fairbanks  
675 Seventh Avenue, Section G
- Juneau  
1111 W. Eighth Street

If you want forms mailed to you, or need further information about the motor fuel excise tax, please write or call:

Department of Revenue  
Audit Division Excise Tax  
Pouch SA  
Juneau, Alaska 99811  
(907) 465-2322

## Motor Fuel Tax Forms

Following is a listing of the numbers, titles and descriptions of all motor fuel tax forms to be used by the taxpayer and/or the motor fuel user in compliance with AS 43.40 and 15 AAC 40.010-.230.

### 04-541

#### Motor Fuel Tax Return

This form is to be completed by all persons selling fuel upon which the motor fuel tax has not been previously collected. The return is due by the last day of the month following the month in which the motor fuel was sold or transferred.

### 04-543

#### Supporting Schedule of Exempt Sales

This form is to be attached to and made a part of the Motor Fuel Tax Return if any non-taxable or use-conversion sales have been made during the reporting month. A supporting schedule is not required for sales of fuel for heating purposes. However, a list of all heating fuel accounts, except residential accounts, must accompany the last Motor Fuel Tax Return for each calendar year.

### 04-535

#### Claim for Refund of Motor Fuel Tax by a Reseller

This form is to be filed by any person who paid the tax on fuel they purchased, and then resold the fuel, tax free, to an exempt organization or for a use other than motor fuel. This claim is also to be filed for any use-conversion sales.

### 04-536

#### Claim for Refund by a Reseller Supporting Schedule

This form is to be attached to and made a part of the Claim for Refund of Motor Fuel Tax by a Reseller to substantiate the sales of fuel which are eligible for a refund. A supporting schedule is not required for sales of fuel for heating purposes. However, a list of all heating fuel accounts except residential accounts must be submitted with the Claim for Refund of Motor Fuel Tax by a Reseller form 04-535.

### 04-537

#### Election to Receive Credit or Refund from the Fuel Supplier

This form is to be completed by any reseller of fuel who wishes to receive the tax refund or credit directly from their fuel supplier for fuel purchases upon

which the reseller has paid the tax prior to selling the fuel, tax free, to an exempt organization or for use other than motor fuel. This also includes use-conversion sales. The election is subject to the fuel supplier's approval.

### 04-538

#### Certificate of Use

This certificate is an annual form which must be completed by the purchaser at the time of the first fuel purchase of the calendar year upon which the motor fuel tax is not paid. However, a certificate is not required for sales of fuel to a consumer for heating single or multiple unit private dwellings including mobile homes but not including watercraft, or for sales of fuel which is at least ten percent alcohol by volume. Both purchaser and seller must retain a copy of the Certificate of Use for three years for possible audit by the Alaska Department of Revenue.

### 04-407

#### Qualified Motor Fuel Dealer License Application

This form may be completed by a person who refines, imports, manufactures, produces or compounds motor fuel, or a person who in the regular course of business sells at least twenty percent of his or her fuel for resale or for residential heating purposes or for a combination of these purposes. A person who is issued a Qualified Dealer's License can receive all of their fuel tax free from their supplier.

### 04-408

#### Affidavit of Motor Fuel Excise Taxes Due

This form must accompany the Qualified Motor Fuel Dealer License Application.

*Alaska Department of  
Revenue*



*Motor Fuel Tax*

*Questions and Answers  
May 1985*

# STATE OF ALASKA

DEPARTMENT OF REVENUE

BILL SHEFFIELD, GOVERNOR

ELEVENTH FLOOR  
STATE OFFICE BUILDING  
POUCH SA  
JUNEAU, ALASKA 99811

May 1, 1985

Dear Motor Fuel Taxpayer:

Included in this booklet are a composite of questions concerning motor fuel most asked of this Department. We hope the answers will help clarify the motor fuel law and regulations for you.

You may have further questions. If so, or if you have some suggestions for inclusion in subsequent informational booklets, please do not hesitate to contact us.

Excise Tax  
Audit Division  
Department of Revenue  
Pouch SA  
Juneau, AK 99811

465-2322  
465-4661

Definition of Motor Fuel

Motor Fuel is: 1) fuel used in an engine for the propulsion of a motor vehicle or aircraft, or 2) fuel used in and on watercraft for any purpose, or, 3) fuel used in a stationary engine, machine or mechanical contrivance which is run by an internal combustion engine. 43.40.100(A)-(L)

1. Q. What fuel or uses of fuel are exempt from the Alaska motor fuel tax?

- A. The following uses of fuel are exempt from the motor fuel tax:
- a. Fuel sold to, transferred to, or used by the United States, Alaska, or local government agencies for official use. Motor fuel sold to a contractor who purchases motor fuel either for his own account or as the agent of a government agency for use in the performance of a contract with that agency is not exempt;
  - b. Fuel sold to, transferred to, or used by auxiliary military units for official use. Fuel purchased by a volunteer member of an auxiliary unit for use in a private vehicle is not exempt;
  - c. Fuel used in stationary power plants operating as public utility plants and generating electrical energy for sale to the general public;
  - d. Fuel used exclusively for a domestic purpose in single or multiple unit private dwellings including mobile homes. This does not include fuel used in or on a watercraft for any purpose;
  - e. Fuel sold exclusively for use as heating fuel for commercial buildings and facilities;
  - f. Fuel used in stationary power plants that generate electrical energy exclusively for private residential consumption;
  - g. Fuel used in stationary commercial power plants of 100 kw or less;
  - h. Fuel used by non-profit power associations or corporations for generating electrical energy for resale;
  - i. Fuel used by charitable institutions. Charitable institution means an organization that is exempt from taxation under Section 501(c) (3) of the Internal Revenue Code;
  - j. Refined fuel transported as cargo out of the state into international waters if the fuel is sold or otherwise transferred to watercraft which operate exclusively in international waters and which do not enter state territorial waters, ports or facilities.

- k. Refined fuel transported as cargo out of the State on a vessel from a port in this state to a port outside this state. This does not include fuel purchased in the state for use in the exploration for and development of subsoil and seabed resources in and upon the adjacent outer continental shelf of the state;
- l. Fuel consigned to foreign countries;
- m. Fuel sold to, transferred to, or used on jet propulsion aircraft operating flights from the state to a foreign country. This does not include flights to a foreign country, with intermediate stops within the United States;
- n. Fuel which is at least 10 percent alcohol by volume;
- o. Fuel sold to or transferred between licensed qualified dealers;
- p. Actual losses of volume which occur during handling, transporting or storing motor fuel, including shrinkage and losses from fire and other accidents;
- q. Additives that are used for improving existing characteristics of fuel, not including blended fuel;
- r. Fuel used for any other purpose which the Department determines is not motor fuel as defined by AS 43.40.100(2) if the purpose is fully disclosed on the monthly motor fuel tax return.

Qualified Dealer License

2. Q. How do I become a licensed qualified dealer so I can purchase motor fuel tax exempt?

- A. A person is eligible to become a qualified dealer if he:
  - a. Refines, imports, manufactures, produces, or compounds fuel; or
  - b. sells fuel at least 20 percent of which is for resale or residential heating purposes or for a combination of these purposes.

License application form 04-407 must be completed and accompanied by affidavit form 04-408 which requires security for the motor fuel tax. Alternatives for the security are:

- a. A surety bond equal to twice the average monthly tax but not less than \$5,000.
- b. A letter of credit, CD or cash equal to twice the average monthly tax but not less than \$5,000.

A. Dealer-certified copies of original invoices are allowed (with the following attachments):

- 1) The taxpayer must furnish an acceptable explanation why originals are not being submitted.
- 2) The taxpayer must obtain a statement from the vendor that copies submitted are true copies (with invoice numbers, dates and amounts).

42. Q. I am a fuel supplier. In addition to paying tax by filing the monthly return, I also file a claim for refund. May I deduct the refund due from the tax I must pay?

A. Yes. If you file a monthly Motor Fuel Tax return and also have a refundable amount due, that amount can be deducted from the tax due on the return and you pay the net difference. However, the refund claim, and supporting documents, must be attached to the return.

43. Q. I am a retail fuel dealer and pay tax on all fuel when purchased. On occasion, I make exempt sales to government agencies or charitable organizations. May I recover the tax paid as I am not able to pass it along to the customer?

A. Yes. You should file a Claim for Refund of Motor Fuel Tax by a Reseller, form no. 04-535. Your claim must include copies of the original invoices issued to the claimant of each exempt sale, and the certificate of use signed by the customer.

44. Q. Where can I get more information on motor fuel tax if I have additional questions?

A. Alaska Department of Revenue  
Excise/Claims Unit  
Pouch SA  
Juneau, AK 99811  
(907) 465-2322

- A. No. The classification of "shore-based" for fisheries business tax purposes has no effect on the motor fuel statute. Your vessel is a "watercraft", subject to a tax of .05 a gallon on all fuel used in and on watercraft.
36. Q. A petroleum production company has platforms and drill rigs working outside Alaska waters. These platforms are serviced by a rig tender which takes on the fuel as cargo in Seward, the tender's usual berth. Is this fuel taxable?
- A. Since the fuel used on the offshore rigs and platform is being used outside the Alaska jurisdiction and was transported there as cargo, the fuel is exempt from the Alaska tax. The fuel consumed by the rig tender is subject to the .05 per gallon fuel tax on marine fuel.
37. Q. The same company as in Q. 36 also operates a production platform that lies inside the 3-mile limit (inside Alaska's jurisdictional waters). The well itself is in international waters. Is fuel used in this case taxable?
- A. In this case, the fuel used is subject to the tax. However, the fuel used would be eligible for a .06 per gallon refund (highway) or .03 per gallon refund (marine).
38. Q. A towing and barge company based in Seattle serves portions of Southeast Alaska. Fuel is purchased in Alaska prior to the southbound trip. Is the fuel subject to the Alaska tax on marine fuel?
- A. Yes, however the company may apply for a refund for the portion of fuel used outside Alaskan waters.
39. Q. Should we collect the marine fuel tax of 5¢ per gallon on fuel delivered into the operating fuel tanks of foreign vessels which are in port for infrequent fill-ups and then either fish exclusively outside the three (3) mile limit of Alaska or are bound for foreign ports?
- A. Yes, however a refund may be claimed on that portion of fuel used outside Alaskan waters.

#### Refunds

40. Q. For each calendar year, when filing a claim for refund of motor fuel for fuel used in unlicensed equipment, I must submit a list of all my equipment, including all licenses and serial numbers. Does this mean the first claim filed during each calendar year, even though it is on fuel used the previous year?
- A. Yes. File your list of equipment with the first claim filed after the first of the calendar year, regardless of when the fuel was used.
41. Q. Must claims for refund be accompanied by original fuel invoices? Sometimes original invoices are lost or accidentally destroyed. May dealer-certified copies of the original invoices be allowed when originals are not available?

c. Real property in the applicant's name, or interest therein equal to twice the average monthly tax.

3. Q. As a dealer do I have to obtain a qualified dealer license in order to obtain fuel tax free?
- A. Yes. A dealer must pay the tax at the time of purchase unless he has a qualified dealer license.
4. Q. Is it to my advantage to become a qualified dealer?
- A. If a dealer makes a large number of exempt sales and few taxable sales each month, it may be advantageous to purchase fuel tax free and report monthly to the Department his small proportion of taxable sales. If a dealer makes very few exempt sales to customers, it may be more advantageous to pay all the tax up front and then claim a refund from the supplier or department for all exempt sales made. A dealer would avoid having to file a monthly tax return this way. A heating fuel dealer should find it advantageous to become a qualified dealer. The decision whether or not to become a qualified dealer will depend on each situation.
5. Q. If I do purchase my gasoline, tax paid, and then sell some to an exempt government agency, can I claim credit for this on my monthly motor fuel tax return?
- A. Yes. You must account for the exempt sale by attaching a Claim for Refund by a Reseller to your motor fuel tax return.
6. Q. I own a gas station and purchase all my gasoline and diesel fuel tax paid. I have a separate tank for diesel fuel that I sell to customers to heat residential and commercial buildings. I am not eligible to be a qualified dealer. Do I have to buy this "heating fuel" tax paid even though it is in a separate tank?
- A. If you are not a licensed qualified dealer all fuel must be purchased tax paid.
7. Q. The regulation states that a qualified dealer is not required to sign a certificate of use. Does a dealer have the responsibility to determine if a customer actually is a qualified dealer? Does the responsibility for tax fall on the dealer or the customer if it is found later that the customer was not a qualified dealer?
- A. If dealers are not sure a customer is a qualified dealer, they may ask the customer to sign a certificate of use to protect themselves. In any case, the responsibility for the tax lies with the customer since the law does not require a certificate of use when a qualified dealer sells to another qualified dealer. A list of qualified dealers may be obtained from the Department of Revenue upon request.

8. Q. Over 40% of the fuel we purchase is used in an exempt manner. Does this meet the requirements for obtaining a qualified dealer's license?
- A. No. The qualified dealer license is intended for dealers in motor fuel, not users of fuel. To meet the requirements for a qualified dealer license, your fuel purchases must be for resale as residential heating fuel or for sale to a reseller.

9. Q. How long does my qualified dealer license remain in effect? Does it have to be renewed annually?

A. The qualified dealer license remains in effect indefinitely until:

- 1) The business ceases or,
- 2) The 20% quota of yearly sales made for resale or for residential heating purposes is no longer met or,
- 3) The license is revoked by the Department of Revenue.

The license itself does not have to be renewed annually, but an affidavit of security for motor fuel tax due, form 94-408, must be completed annually on or before September 1 of each year.

#### Motor Fuel Tax Return & Supporting Schedule

10. Q. Who must file a motor fuel tax return?
- A. Every dealer who sells or otherwise transfers motor fuel in the state shall collect the tax at the time of the sale and remit the tax collected to the Department of Revenue. Also, every user of motor fuel who has not paid the tax shall do so.
11. Q. When is the Alaska motor fuel tax return due?
- A. The return is due on or before the last day of the month following the month in which the motor fuel was sold, delivered or used.
12. Q. As a qualified dealer, do I have to file a monthly motor fuel tax return with supporting schedules if I have no monthly tax liability, and all my sales are tax exempt heating fuel sales?
- A. Yes, the Department of Revenue needs to know the final exempt use of the fuel for the federal government report. The department does not know the nature of your exempt heating fuel sales because your supplier reports the sales of fuel to you as sales to a qualified dealer on our forms. If all your sales are exempt, the monthly reporting is very simple. No supporting schedules are required for sales of fuel for heating purposes. You do not have to prepare schedules of your commercial or residential heating fuel sales each month. However, an annual list of all commercial heating fuel accounts is required.
13. Q. Do I need supporting schedules showing names of customers and fuel gallons sold if all my sales are taxable sales?

30. Q. I operate a portable drilling rig. The actual drilling operation is powered by a take-off from the transport vehicle's engine. Can I claim the .06 per gallon refund for fuel used in the off-highway drilling?

A. The critical issue is whether the transport vehicle is licensed. If it is licensed, the fuel used is not subject to refund, even though used off-highway, because the fuel is being used in conjunction with a licensed vehicle. If it is unlicensed, the fuel is subject to the .06 per gallon refund.

31. Q. How can I determine the amount of shrinkage that I am allowed to deduct as a result of the new regulations?

A. A dealer should keep records, through his inventory reconciliation of fuel temperature shrinkage and expansion, tank filling losses, and loading and unloading losses of fuel; and submit them to the Department.

#### Marine Fuel

32. Q. Is motor fuel consumed in watercraft while operating in international waters subject to the Alaska motor fuel tax?

A. The motor fuel tax is a use tax and not a sales tax. Qualified dealers must in all cases collect the tax on motor fuel sold for use on watercraft. The motor fuel user may seek a refund for tax on any fuel subsequently used outside Alaska's three mile tax jurisdiction.

33. Q. I operate a crab boiler aboard my processing vessel. Will I be allowed to purchase the fuel tax exempt since it is not consumed in an internal combustion engine?

A. No. The law states all fuel used in or on board watercraft is subject to a tax of .05 per gallon.

34. Q. I am a fuel dealer. A customer wishes to purchase bulk marine fuel. This customer wishes to transport this fuel as cargo out of the state into international waters to bunker a fishing fleet at sea. Will I be allowed to sell this fuel without tax added on?

A. Yes. The fuel may be purchased tax free if it is to be transported as cargo into international waters. A certificate of use, with its export provision, must be properly signed by the customer. If the vessels being fueled in international waters use a portion of that fuel to come into an Alaskan port, the portion consumed in Alaska waters becomes taxable. The user must file a motor fuel tax return and pay the tax to the Department of Revenue.

35. Q. Since my fish processing vessel is classified as a "shore-based" processor, will I be allowed to purchase fuel for crab boilers and retorts tax exempt; and will I be allowed a .03 per gallon refund on other fuel, such as generator fuel?

- A. The fuel is subject to tax as you use it. Tax on the fuel actually used during a calendar month should be remitted to the Department by the last day of the month following the month the fuel was used.
24. Q. Is fuel exempt from tax when used in off-highway vehicles and equipment?
- A. No. Fuel used in any equipment with an internal combustion engine is motor fuel and is taxed at 8¢ per gallon. However, the law provides a 6¢ per gallon refund when the internal combustion engine is not used in or in conjunction with a motor vehicle licensed to be operated on public ways. No refund is allowed when the fuel is used in or in conjunction with a licensed motor vehicle, including off-highway use.
25. Q. As a placer miner, I do not operate any of my vehicles on the highway system, nor are they licensed. Will I be allowed to purchase fuel exempt from tax?
- A. No. Fuel used in mining activities is subject to the 8¢ tax. You must purchase the fuel and pay the .08 per gallon. As you use the fuel, you may file refund claims for .06 a gallon refund.
26. Q. Is agricultural fuel exempt from tax?
- A. No. Agricultural fuel is subject to the initial .08 per gallon tax. The farmer may apply for a .06 per gallon refund on the fuel used in unlicensed equipment. Additionally, if a separate tank is maintained, the farmer may purchase fuel used for heating purposes tax exempt by signing a certificate of use.
27. Q. As an operator of an asphalt plant, may I sign a certificate of use and purchase the fuel used to operate the plant tax free?
- A. Yes, if the fuel is held in a "dedicated" tank and not stored in common with taxable fuel.
28. Q. The total combined output of our generators is 200 KW. Does this mean we cannot qualify for the exemption regarding generators of 100 KW or less?
- A. Not necessarily. If your total output was from a 150KW and a 50KW generator, the fuel consumed by the 50KW generator would be exempt. Or, if the two generators were 100KW each, then all the fuel used by the generators would be exempt, as long as they were stationary.
29. Q. Are contractors performing on federal or state contracts exempt from the motor fuel tax?
- A. No. Fuel purchased by a contractor either for his own account or as the agent of a government agency for use in the performance of a contract with that agency is subject to the motor fuel tax.

- A. No. Supporting schedules are required for tax exempt fuel only.
14. Q. Can I substitute a computer printout of my sales of fuel in lieu of manually preparing the supporting schedules?
- A. Yes, if the same data required on the supporting schedule is shown on the printout.

#### Certificate of Use

The certificate of use allows a purchaser to buy fuel tax free under one of the motor fuel tax exemptions. If a customer does not sign a certificate of use, he must pay the tax on the fuel purchased. A dealer must pay to the state the tax on fuel sold for which a certificate of use is not received.

15. Q. How does a fuel dealer know when the motor fuel tax is to be collected?
- A. Motor fuel tax is collected when a dealer sells or otherwise transfers motor fuel in Alaska unless a dealer has a reasonable belief at the time of sale or transfer that the fuel sold or transferred is not to be used as motor fuel. If the tax is not collected, the dealer shall obtain a certificate of use from the buyer or transferee stating that the fuel that has been or will be purchased or received is not intended for use as motor fuel.
16. Q. Which exempt uses of fuel do not have to be supported by a certificate of use?
- A. A certificate of use is not required for the following 5 exemptions:
- a. Fuel used exclusively for heating single or multiple unit private dwellings, including mobile homes. This does not include fuel used in or on a watercraft used as a private dwelling.
- If heating fuel is not delivered into a heating fuel tank, but is purchased by the can or drum, a dealer may ask his customer to sign a certificate of use to protect himself, in the event it is later found that the fuel was used in a taxable manner;
- b. Fuel used in stationary power plants that generate electrical energy exclusively for private residential consumption;
  - c. Fuel sold to, transferred to, or used on jet propulsion aircraft operating flights from the state to a foreign country, except flights to a foreign country with intermediate stops within the United States;

- d. Fuel sold to or transferred between licensed qualified dealers;
- e. Actual losses of volume which occur during handling, transporting or storing motor fuel, including shrinkage and losses from fire and other accidents.

17. Q. When are annual certificates of use required?

- A. An annual certificate of use is required for the following sales:
  - a. Fuel sold to, transferred to, or used by United States, Alaska, or local government agencies for official use. This does not include fuel sold to contractors who purchase motor fuel either for their own account or as the agent of a government agency for use in the performance of a contract with that agency;
  - b. Fuel sold to, transferred to, or used by auxiliary military units for official use. This does not include fuel purchased by a volunteer member of an auxiliary unit for use in a private vehicle;
  - c. Fuel used in stationary power plants operating as public utility plants and generating electrical energy for sale to the general public;
  - d. Fuel sold exclusively for use for heating commercial buildings, or facilities, not including fuel used in or on watercraft;
  - e. Fuel used in stationary commercial power plants of 100 kw or less;
  - f. Fuel used by non-profit power associations or corporations for generating electrical energy for resale;
  - g. Fuel used by charitable institutions;
  - h. Refined fuel transported as cargo out of the state into international waters if the fuel is sold or otherwise transferred to watercraft which operate exclusively in international waters and which do not enter state territorial waters, ports or facilities;
  - i. Refined fuel transported as cargo out of the state on a vessel from a port in this state to a port outside this state, except fuel purchased in the state for use in the exploration for and development of subsoil and seabed resources in and upon the adjacent outer continental shelf of the state;
  - j. Fuel consigned to foreign countries;
  - k. Fuel which is at least 10 percent alcohol by volume;
  - l. Additives that are used for improving existing characteristics of fuel, not including blended fuel;

- m. Fuel used for any other purpose which the department determines is not motor fuel as defined by AS 43.40.100(2) if the purpose is fully disclosed on the monthly motor fuel tax return.
- n. Jet fuel sold to commercial air carriers which transport passengers or freight between Alaska and a foreign country.

18. Q. May a dealer or seller use his own form of a certificate of use?

A. Yes, if it has been approved by the department prior to its use.

19. Q. I have several customers possessing large fuel storage tanks on their trucks. Others come in and purchase 4 to 6 drums of diesel. The customers sign certificates of use stating that the fuel is for heating purposes. In some cases I know the customers have diesel powered equipment in their businesses. Am I liable for the tax if I make an exempt sale to these customers?

A. Not if you obtain a signed certificate of use at each sale. The ultimate liability is on the customer if an audit reveals tax due.

20. Q. We are a logging company working at a remote site and our vehicles are not licensed. We store fuel used for the trucks and other heavy equipment, our camp generators and camp heaters, in one main tank. Will I be allowed to purchase the heating fuel tax exempt if I sign a certificate of use?

A. No. To purchase your heating fuel tax exempt you must store the exempt fuel in a separate tank. Exempt fuel cannot be stored in a "common" storage tank with fuel subject to tax.

21. Q. What is the responsibility of a fuel dealer if a "common storage tank" exists? As an example, Dealer A sells fuel to Customer B, a construction company, and B signs a certificate of use stating that the fuel will be used exclusively for heating purposes. Does A have to determine that B does, in fact, maintain separate storage?

A. The responsibility in such a case is upon B, the customer signing the certificate, and the ultimate liability is upon B if an audit should reveal tax due.

#### General Questions

22. Q. What is the current tax rate on motor fuel?

A. The tax on motor fuel transferred or consumed is 8¢ per gallon except that tax on aviation gasoline is 4¢ per gallon, the tax on motor fuel used in and on watercraft is 3¢ per gallon, and the tax on aviation fuel other than gasoline is 2 1/2¢ per gallon.

23. Q. If I import fuel into Alaska, or I refine fuel in Alaska for my own use, at what point do I become liable for the tax?

Alaska Department of Revenue  
Audit Division  
Pouch SA  
Juneau, Alaska 99811

# MOTOR FUEL TAX RETURN

AS 43.40.010

Parts 1 and 2 - To Revenue  
Part 3 - Your Files

This return is due on or before the last day of the month following the month in which the motor fuel was sold or delivered.

COMPANY NAME AND MAILING ADDRESS	FOR THE MONTH OF:	YEAR
	ALASKA BUSINESS LOCATION	
	FEDERAL EMPLOYER IDENTIFICATION NUMBER	

	(a) AVIATION GASOLINE	(b) AVIATION JET FUEL	(c) MARINE GASOLINE	(d) MARINE DIESEL	(e) OTHER GASOLINE	(f) OTHER DIESEL
<b>GROSS DISTRIBUTIONS</b> (Report all fuel in gallons or fractions of gallons)						
1. Total fuel sold within Alaska						
2. Total fuel you used						
3. Other distributions (Attach explanation)						
4. Total gross distributions (Add lines 1-3 in each column)						
<b>EXEMPT DISTRIBUTIONS</b> (Attach schedules 04-543 for all exempt sales except sales for heating use. See instruction "B" on back.)						
5. Qualified dealers						
6. Sold for heating use						
7. Federal government						
8. State/local government						
9. Charitable institution						
10. Pub. util./non-profit power assoc.						
11. Exempt power plant						
12. Jet fuel - foreign flights						
13. Bonded jet fuel						
14. Consigned to foreign countries						
15. Exported as cargo						
16. Gasohol						
17. Losses (Attach explanation)						
18. Other (Attach explanation)						
19. Total exempt distributions (Add lines 5-18 in each column)						
<b>TAXABLE DISTRIBUTIONS</b> (For each column (a) through (f), subtract line 19 from line 4 and enter difference on line 20 below.)						
20. Total taxable distributions						
21. Aviation gasoline tax @ 4¢ per gallon	\$					
22. Aviation jet fuel tax @ 2½¢ per gallon		\$				
23. Marine fuel tax @ 5¢ per gallon			\$	\$		
24. Other fuel tax @ 8¢ per gallon					\$	\$

I declare under penalty of perjury that I have examined this return, and to the best of my knowledge and belief it is a true and correct return of all fuel sold or delivered during the month specified.

SIGNATURE	DATE
X	
TITLE (Please Print)	

TOTAL TAX (Add amounts from lines 21-24 above) .....	\$
DEDUCTION FOR TIMELY FILING (Enter lesser of \$100 or 1% of total tax) .	\$ < >
PENALTY .....	\$
INTEREST .....	\$
TOTAL AMOUNT .....	\$
CREDIT (See instructions on back) .....	\$ < >
<b>NET AMOUNT</b> .....	<b>\$</b>

# CLAIM FOR REFUND OF MOTOR FUEL TAX

**DUE DATE:** All claims must be filed within one year from the date the fuel was purchased. (AS 43.40.050)

Send Refund To: (Name and Address)	Business or Occupation	Fuel on which refund is claimed was purchased: (dates)
	Business Location (City and State)	From: _____ Through: _____

**INSTRUCTIONS:**

1. Complete Form 04-545 Invoice Listing.
2. Detach and complete Schedule A Statement of Motor Fuel Use Upon Which Refund is Claimed. This Schedule is part 3 of this form.
3. Complete sections I and II below.
4. Sign and date the claim. Please note that a fraudulent claim is a felony punishable by a maximum fine of \$25,000.00 or three years imprisonment, or both.

I. SUMMARY OF GALLONS PURCHASED AND USED	APPLICANT'S USE	REVENUE USE ONLY
a. Total gallons purchased as reported on Form 04-545 Invoice Listing .....		
b. Total gallons used in or in conjunction with a licensed vehicle, no matter where operated in Alaska, and marine fuel used in or on watercraft .....		
c. Net gallons used upon which a refund is claimed. (Subtract line (b) from line (a). This figure must equal the total gallonage reported on Schedule A.) .....		

**II. SUMMARY OF AMOUNTS CLAIMED FOR REFUND.** Enter the gallons claimed at each refund rate as reported on Form 04-545 Invoice Listing. Check the box to indicate the type of fuel. Multiply the Gallons Claimed by the Refund Rate and enter the result in the Refund Claimed column.

NOTE: The total gallons claimed in (g) below must equal the total gallonage reported on Schedule A.	GALLONS CLAIMED	GASOLINE	DIESEL	REFUND RATE	REFUND CLAIMED	REVENUE USE ONLY
	a.		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	c	\$
b.				c	\$	\$
c.				c	\$	\$
d.				c	\$	\$
e.				c	\$	\$
f.				c	\$	\$
g. Total Gallons Claimed Add lines a-f .....		1217682951 20857841				
h. Total Refund Claimed. Add lines a-f .....					\$	\$
<b>REVENUE USE ONLY</b>						
		Adjustments .....				
		Net Amount of Refund .....				
Claim Paid: ____/____/____		Warrant Number: _____		Warrant Amount: \$ _____		

**III. SIGNATURE**

I declare under penalty of perjury that I have examined this claim, and to the best of my knowledge and belief the fuel was purchased on the dates and in the amounts shown on each invoice, that the fuel was used in the manner set forth and that none of the fuel on which a tax refund is claimed was used for operating an internal combustion engine in, or in conjunction with, a motor vehicle licensed to be operated on public ways and that no part of the tax refund claimed has already been paid.

Signature	Printed Name of Person Who Signed	Title	Date
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Revenue Use Only	Audited By:
	Approved:

**REMEMBER TO ATTACH FORM 04-545 INVOICE LISTING, ORIGINAL INVOICES, AND SCHEDULE A.**

**CHAPTER 40.  
MOTOR FUEL TAX**

**Article**

1. Application of Tax  
(15 AAC 40.010—15 AAC 40.070)
2. Tax Refunds and Credits for Fuel Resellers (15 AAC 40.100)
3. Tax Refunds and Credits for Final User  
(15 AAC 40.200—15 AAC 40.230)
4. (Reserved)
5. (Reserved)
6. (Reserved)
7. (Reserved)
8. (Reserved)
9. General Provisions (15 AAC 40.900)

**ARTICLE 1.  
APPLICATION OF TAX**

**Section**

10. Tax return filing requirements
20. Fuel subject to tax and exemptions
30. Certificate requirements for certain sales
40. Qualified dealer license
50. Bonding requirement for qualified dealer license
60. Revocation of qualified dealer license
70. Records

**15 AAC 40.010. TAX RETURN FILING REQUIREMENTS.** Each dealer and each user must submit monthly to the department a return showing all motor fuel sold or transferred by the dealer or consumed by the user in the state, including all tax-exempt sales, transfers and uses. The return must be signed by the dealer or user under penalty of perjury and must show to whom fuel was sold or transferred and the reasons for any tax exemption. The return, supporting documentation, and the tax collected or accrued must be remitted by the last day of the month following the month the motor fuel was sold, transferred or used. (Eff. 7/19/82, Reg. 83)

Authority: AS 43.05.080  
AS 43.40.010

**15 AAC 40.020. FUEL SUBJECT TO TAX AND EXEMPTIONS.** (a) All motor fuel sold or transferred in the state or consumed by a user in the state is subject to the motor fuel

tax under AS 43.40.010 — 43.40.100, unless exempted under (b) of this section. For purposes of AS 43.40.010 — 43.40.100 and this chapter, "motor fuel" is fuel used in an engine for the propulsion of a motor vehicle or aircraft, and fuel used in and on watercraft for any purpose, or in a stationary engine, machine or mechanical contrivance which is run by an internal combustion motor, including bulk or other transfers of fuel between producing, refining, importing or exporting companies and gasoline separated from a mixture of gasoline and alcohol that was not taxed in its combined state. All bulk sales of fuel to a person who uses a common storage tank servicing both taxable and nontaxable uses, except bulk sales of jet fuel to a person who exclusively flies directly from the state to a foreign country, are subject to the motor fuel tax under AS 43.40.010 — 43.40.100, but the portion actually used for nontaxable purposes is eligible for a tax refund upon application to the department.

(b) Fuel meeting the following requirements is exempt from the motor fuel tax under AS 43.40.010 — 43.40.100:

(1) fuel sold to, transferred to, or used by United States, Alaska, or local government agencies for official use, except motor fuel sold to a contractor who purchases motor fuel either for its own account or as the agent of a government agency for use in the performance of a contract with that agency;

(2) fuel sold to, transferred to, or used by auxiliary military units for official use, not including fuel purchased by a volunteer member of an auxiliary unit for use in a private vehicle;

(3) fuel used in stationary power plants operating as public utility plants and generating electrical energy for sale to the general public;

(4) fuel used exclusively for use in heating private residential buildings;

(5) fuel sold exclusively for use for heating commercial buildings or facilities, not including fuel used in or on watercraft;

(6) fuel used in stationary power plants that generate electrical energy exclusively for private residential consumption;

(7) fuel used by nonprofit power associations or corporations for generating electrical energy for resale;

(8) fuel used by charitable institutions;

(9) refined fuel transported as cargo out of the state on a vessel from a port in this state to a port outside this state, except fuel purchased in the state for use in the exploration for and development of subsoil and seabed resources in and upon the adjacent outer continental shelf of the state;

(10) fuel consigned to foreign countries;

(11) fuel sold to, transferred to, or used on jet propulsion aircraft operating flights from the state to a foreign country, except flights to a foreign country, with intermediate stops within the United States;

(12) fuel which is at least 10 percent alcohol by volume;

(13) fuel sold to or transferred between licensed qualified dealers;

(14) actual losses of volume which occur during handling, transporting or storing motor fuel, including shrinkage and losses from fire and other accidents;

(15) additives that are used for improving existing characteristics of fuel, not including blended fuels; and

(16) fuel used for any other purpose which the department determines is not motor fuel as defined by AS 43.40.100(2) if the purpose is fully disclosed on the monthly motor fuel tax return. (Eff. 7/19/82. Reg. 83; am 11/14/82. Reg. 84)

Authority: AS 43.05.080  
AS 43.40.010  
AS 43.40.100

15 AAC 40.030. CERTIFICATE REQUIREMENTS FOR CERTAIN SALES. (a) In support of an exemption under 15 AAC 40.020(b)(3), (5), (7), (8), (10), (11), (12), and (16), the dealer or the fuel reseller shall obtain a certificate of use from the buyer or transferee at the time of each sale stating that the fuel that is

purchased or received is not intended for use as motor fuel subject to tax under AS 43.40.010 - 43.40.100.

(b) In support of an exemption under 15 AAC 40.020(b)(1), (2), (4), (6) and (13), the dealer or the fuel reseller shall obtain a certificate of use at the time of the first sale in each calendar year from a person purchasing fuel for one of these exempt uses.

(c) In support of an exemption under 15 AAC 40.020(b)(9) for transportation of refined fuel out of the state, a dealer, fuel reseller or user must submit to the department proof of that use on a form prescribed by the department by the last day of the month following the month the fuel was transported out of the state.

(d) If a purchaser certifies in writing on a certificate of use that the use of the fuel purchased is for an exempt use and the purchaser subsequently uses the fuel for taxable purposes, that purchaser is liable for payment of the motor fuel tax.

(e) A certificate of use under this section must be signed by the purchaser or his or her representative. The certificate remains in effect unless revoked by the department or in writing by the purchaser, dealer or fuel reseller. The dealer, fuel reseller or user must retain a copy of each certificate of use or form required under this section for three years. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84)

Authority: AS 43.05.080 AS 43.40.050  
AS 43.40.010 AS 43.40.085  
AS 43.40.035

**15 AAC 40.040. QUALIFIED DEALER LICENSE.** (a) A person who in the regular course of business sells at least 20 percent of his or her fuel to another party for resale or for residential heating purposes or for a combination of those purposes may apply for and obtain a license from the department.

(b) The department will, in its discretion, refuse to issue a license to a person described in (a) of this section if there is reasonable cause to believe that the applicant has willfully withheld information necessary to determine eligibility for a license or if there is reasonable cause to believe that information submitted in the application is false or misleading.

(c) A license issued under (a) of this section is in addition to any other license required by law. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84)

Authority: AS 43.05.080  
AS 43.40.100

**15 AAC 40.050. BONDING REQUIREMENT FOR QUALIFIED DEALER LICENSE.** (a) An applicant for a qualified dealer license must file with the department a bond made payable to the department in an amount equal to twice the average monthly motor fuel tax remittance or in the amount of \$5,000, whichever is greater. The department will, in its discretion, accept a cash deposit or a bank letter of credit in the appropriate amount in lieu of a bond.

(b) In lieu of the requirements of (a) of this section, an applicant for a qualified dealer license may file a sworn statement in affidavit form stating that the applicant owns real property in the state equal in value to at least twice the average monthly motor fuel tax remittance, on which the motor fuel tax may become a first lien, and describing the property and the fair market value of the applicant's interest in the property. (Eff. 7/19/82, Reg. 83)

Authority: AS 43.05.080  
AS 43.40.100

**15 AAC 40.060. REVOCATION OF QUALIFIED DEALER LICENSE.** (a) The department will, in its discretion, revoke a license issued under 15 AAC 40.040 if a licensee fails to comply with the requirements of AS 43.40.010 - 43.40.100 or this chapter.

(b) If the department determines a license should be revoked for failure to comply with the requirements of AS 43.40.010 - 43.40.100 or this chapter it will give the licensee 30 days' notice of a proposed revocation. If the basis for revocation still exists on the 30th day, the department will, upon notice of revocation to the licensee, revoke the license, unless an appeal under (d) of this section has been timely filed by the licensee.

(c) When a license is revoked under this section, the licensee may not apply for a new license until 60 days after the date of revocation. The date of revocation is the date on which the notice of revocation is issued.

(d) A person may appeal a notice of proposed revocation to the department. The appeal must be submitted to the department in person or by mail within 10 days of the date of issuance of the notice of proposed revocation. The department will hold a formal hearing on the appeal as prescribed by 15 AAC 05.030. The hearing officer will issue a written decision, and, if appropriate, a notice of revocation will be issued by the department. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84)

Authority: AS 43.05.080  
AS 43.40.100  
AS 43.40.240

**15 AAC 40.070. RECORDS.** (a) Each dealer, fuel reseller and user must keep a complete record by gallons showing

(1) all motor fuel inventories on hand at the first of each month;

(2) all motor fuel refined during each month;

(3) all motor fuel purchased, received or produced during each month, showing the name of the seller and the date of each purchase or receipt;

(4) all motor fuel sold, transferred or used during each month, the date of sale, transfer, or use, and the names of all purchasers and transferees;

(5) all nontaxable fuel sales or transfers made during each month; and

(6) all motor fuel inventories on hand at the end of each month.

(b) Each dealer, fuel reseller and user must keep a complete record showing all amounts received from a supplier or the department for exempt sales or transfers and for credits or refunds for taxes paid.

(c) Each dealer, fuel reseller and user must preserve for three years from the due date, or the date the return was filed, whichever is later, all books and records required under this section. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84)

Authority: AS 43.05.080 AS 43.40.050  
AS 43.40.010 AS 43.40.085  
AS 43.40.030 AS 43.40.100

## ARTICLE 2. TAX REFUNDS AND CREDITS FOR FUEL RESELLERS

### Section

100. Refunds and credits on certain sales or transfers of motor fuel

110. (Repealed)

**15 AAC 40.100. REFUNDS AND CREDITS ON CERTAIN SALES OR TRANSFERS OF MOTOR FUEL.** (a) If a fuel reseller makes a sale or transfer of motor fuel that is exempt under 15 AAC 40.020(b) and upon which motor fuel tax has been previously paid, the fuel reseller is entitled to a refund equal to the amount of tax previously paid on the resold fuel from the department. To receive a refund the fuel reseller must have on file a certificate of use from the buyer.

(b) If a fuel reseller makes a sale or transfer of motor fuel upon which the motor fuel tax has been previously paid and the tax paid exceeds the tax due on resale, the fuel reseller is entitled to a refund equal to the amount of tax previously paid less the amount of tax prescribed by AS 43.40.010.

(c) In lieu of claiming a refund directly from the department, a fuel reseller who sells or transfers fuel that is exempt or is subject to a lesser tax on resale than that previously paid may elect, with the express written consent of the supplier, to receive the refund or credit directly from the supplier. A claim for refund or credit must be supported by copies of the original invoices issued by the claimant and copies of the certificate of use obtained. When an election is made under this section, the supplier may claim the credit or refund from the department by adjusting the motor fuel tax return accordingly. To be effective, an election under this section must be submitted on a form prescribed by the department and signed in quadruplicate by the fuel reseller and by the supplier. The fuel reseller and the supplier must each file one copy of the election, with original signatures, with the department. The fuel reseller and the supplier must each retain a copy of the election, with original signatures, for audit review by the department. If an election is made under this section, it may not be revoked without the express written consent of the supplier.

(d) A claim for refund or credit under (a), (b) or (c) of this section must be filed within one year from the date of the sale as shown on the invoice issued by the claimant. Failure to file within the one-year period waives the right to a refund or credit. The claim must include the name, address and occupation of the applicant, the nature of the business of the applicant, and a description sufficient to identify the basis for the refund or credit. A claim for refund must be supported by copies of the original invoices issued by the claimant and copies of the certificates of use obtained. (Eff. 4/8/82, Reg. 82; am 8/1/82, Reg. 83; am 7/19/82, Reg. 83; am 11/14/82, Reg. 84)

Authority: AS 43.05.080            AS 43.40.035  
                 AS 43.40.010            AS 43.40.050  
                 AS 43.40.030            AS 43.40.060

15 AAC 40.110.  
Repealed 11/14/82.

ARTICLE 3.  
TAX REFUNDS AND CREDITS  
FOR FINAL USER

- Section
- 200. Refunds on certain uses of motor fuel
- 210. Requirements for filing claims for refund of motor fuel tax
- 220. Recovery of erroneous refunds
- 230. Records

15 AAC 40.200. REFUNDS ON CERTAIN USES OF MOTOR FUEL. (a) If a person uses motor fuel in an internal combustion engine and the motor fuel tax of eight cents a gallon has been paid but that fuel is not used in, or in conjunction with, a licensed motor vehicle, as aviation fuel, or in or on watercraft, that person is entitled to a refund of six cents a gallon.

(b) If a person purchases fuel upon which the motor fuel tax has been paid and uses the fuel for tax-exempt purposes as described in 15 AAC 40.020(b), that person is entitled to a refund of the full amount of tax paid if that person has not signed a certificate of use stating that the fuel that was purchased was not intended for use as motor fuel.

(c) If a person purchases motor fuel upon which the amount of tax paid exceeds the tax imposed by AS 43.40.010 for the manner in

which the motor fuel is used, that person is entitled to a refund equal to the amount of tax paid, less the amount of tax prescribed by AS 43.40.010.

(d) If a person purchases motor fuel upon which marine fuel tax or aviation fuel tax has been paid and uses the fuel in a land-based internal combustion engine that is not used in or in conjunction with a licensed vehicle, that person is entitled to a refund equal to the amount of tax paid, less the amount of two cents per gallon. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84)

Authority: AS 43.05.080            AS 43.40.050  
                 AS 43.40.010            AS 43.40.100  
                 AS 43.40.030

15 AAC 40.210. REQUIREMENTS FOR FILING CLAIMS FOR REFUND OF MOTOR FUEL TAX. (a) A claim for refund of motor fuel tax under 15 AAC 40.200 must include the following information for the period covered by the claim:

(1) a schedule indicating by type of fuel (e.g. gasoline, diesel, etc.), the following:

(A) total gallons of motor fuel purchased during the period;

(B) total gallons of motor fuel used during the period;

(C) total gallons of fuel used for tax-exempt purposes, as described in 15 AAC 40.020(b); and

(D) total gallons of motor fuel used that are eligible for refund, as described in 15 AAC 40.200;

(2) if fuel was used for tax-exempt purposes, a clear, complete explanation of that use, including the category of exempt use under 15 AAC 40.020(b); and

(3) a schedule indicating by type of equipment, the gallons used that are eligible for refund.

(b) The first claim filed during each calendar year must include a list of the person's equipment, including license and serial numbers.

(c) Original invoices must be submitted to substantiate any claim for refund. Corrected invoices will be accepted only if the original incorrect invoice is also submitted. (Eff. 7/19/82, Reg. 83)

Authority: AS 43.05.080 AS 43.40.050  
AS 43.40.030 AS 43.40.060

**15 AAC 40.220. RECOVERY OF ERRONEOUS REFUNDS.** The department will, in its discretion, recover any refund or portion of any refund which is erroneously made and any credit or portion of any credit which is erroneously allowed. (Eff. 7/19/82, Reg. 83)

Authority: AS 43.05.080  
AS 43.10.032  
AS 43.40.080

**15 AAC 40.230. RECORDS.** (a) A person filing a claim for a motor fuel tax refund must keep a complete record in gallons showing

(1) all motor fuel inventories on hand at the beginning and closing of the claim period;

(2) all motor fuel purchased or received, showing the name of the seller and the date of each purchase;

(3) all motor fuel transferred into the fuel supply tanks of an internal combustion engine that is used in or in conjunction with a motor vehicle licensed to be operated on public ways;

(4) all motor fuel transferred into the fuel supply tanks of an internal combustion engine that is not used in or in conjunction with a motor vehicle licensed to be operated on public ways, showing the purpose for which it is used; and

(5) all motor fuel used for exempt purposes under 15 AAC 40.020(b) with documentation of the specific purpose for which the fuel is used.

(b) A person claiming a motor fuel tax refund must preserve for three years from the date of filing a claim, books and records pertaining to all acquisitions and uses of motor fuel.

(c) Failure to maintain records required by (a) and (b) of this section for a period necessary to substantiate any claim filed for that period may

be cause for denial of a refund or for recovery of a refund paid on a claim. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84)

Authority: AS 43.05.080 AS 43.40.080  
AS 43.40.050 AS 43.40.085

ARTICLE 4.  
(Reserved)

ARTICLE 5.  
(Reserved)

ARTICLE 6.  
(Reserved)

ARTICLE 7.  
(Reserved)

ARTICLE 8.  
(Reserved)

#### ARTICLE 9. GENERAL PROVISIONS

Section  
900. Definitions.

**15 AAC 40.900. DEFINITIONS.** In this chapter

(1) "charitable institution" means a non-profit association, corporation, society or other entity which is organized or incorporated in the state for the relief of poverty or distress;

(2) "dealer" means a person who sells or otherwise transfers in this state motor fuel upon which the taxes imposed by AS 43.40 have not been paid;

(3) "department" means the Department of Revenue;

(4) "fuel reseller" means a person who sells or otherwise transfers in this state fuel upon which the taxes imposed by AS 43.40 have been paid;

(5) "shrinkage" means loss of volume as a result of temperature changes;

(6) "user" means a person consuming or using motor fuel who purchases the fuel out of state or ships it into the state for personal use in

# MEMORANDUM

# State of Alaska

TO: James R. Ayres  
Director of Legislative Relations  
Office of the Governor

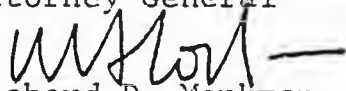
DATE: March 17, 1986

FILE NO:

TELEPHONE NO: 465-3600

FROM: Harold M. Brown  
Attorney General

SUBJECT: SB 387 (Marine  
fuel use tax)

By:   
Richard D. Monkman  
Assistant Attorney General

At your request, we have reviewed AS 43.40.010(b) in the context of SB 387. The statute provides:

(b) There is levied a tax of eight cents a gallon on all motor fuel consumed by a user, except that

.....

(2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon .....

AS 43.40.010 (emphasis supplied).

This tax is a "use" tax, meaning that it is imposed upon the use or consumption of fuel. This is a well-established type of tax, used in many jurisdictions. It is different from a "sales" or "transaction" tax, in that the purchase of the fuel in Alaska does not trigger the tax. \*/ A barge fueling up in Seattle for a trip to Anchorage, for example, would be liable to pay the tax for fuel used or consumed while in Alaska territorial waters, even though the fuel was bought in Washington state.

As we understand the situation, the Department of Revenue has been systematically reviewing in-state motor fuel dealers and out-of-state fuel suppliers to determine if this tax has been in compliance with the law. As part of their review,

---

\*/ A "sales" tax on motor fuel used by watercraft is provided in AS 43.40.010(a). This tax focuses on sales and transfers of fuel within Alaska. The combination of these two sections provides a comprehensive, coherent taxing system for marine motor fuels. Alaska's statute is similar to use taxes imposed by California, Kansas, New Mexico, Oklahoma, Utah, Washington and Wyoming.

James R. Ayres, Director  
Legislative Relations  
Office of the Governor  
Re: SB 387

March 17, 1986  
Page 2

it was discovered that the interstate freight transportation industry (e.g., TOTE) was not paying the tax. Hence, the department has been notifying delinquent taxpayers and assessing the tax.

This is not a change in policy. Instead it is an effective application of the Department of Revenue's long-standing policy of collecting taxes in a full and fair manner. The taxes being assessed against these interstate carriers are squarely within the statute. The taxpayer's main complaint seems to be that they have finally been caught up with, and are now being required to pay the taxes due.

The Department of Revenue estimates that SB 387 will reduce tax receipts by an estimated \$3,000,000. In these times of fiscal crisis, it does not appear to be wise policy to reduce the State of Alaska tax base by such a large amount.

HMB:RDM:cck

cc: The Hon. Mary Nordale  
Commissioner  
Department of Revenue

# MEMORANDUM

# State of Alaska

TO: James R. Ayres  
Director of Legislative Relations  
Office of the Governor

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March 17, 1986

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TELEPHONE NO:

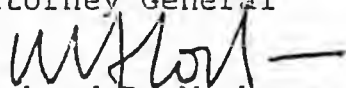
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Re: SB 387

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HMB:RDM:cck

cc: The Hon. Mary Nordale  
Commissioner  
Department of Revenue

POSITION STATEMENT BY THE UNITED STATES FLAG CARRIERS  
AND FOREIGN FLAG CARRIERS

The Department of Revenue of the State of Alaska by letter dated June 10, 1985 has advised numerous foreign and domestic shipping lines engaged in foreign and interstate commerce that they are subject to the Motor Fuel Tax (AS 43.40.010) of five cents per gallon. This would be cover all fuel consumed in propelling the vessels in Alaskan waters. The tax is imposed although the fuel is purchased out-of-state, does not come to rest in Alaska and may have been previously taxed when purchased out of state.

Alaska imposes a tax on transfer of motor fuel and on consumption of motor fuel by statutorily defined "users". "Users" is defined as follows:

AS 43.40010 (1983)

- (4) "user" means a person consuming or using motor fuel, who either
- (A) purchases the fuel out of the state and ships it into the state for personal use in the state
  - (B) manufactures the fuel in the state;  
or
  - (C) purchases or receives fuel in the state that is not taxed at the time of purchase or receipt or is taxed at a rate that is less than the rate prescribed by AS 43.40.010.

The Department construes the phrase "ships . . . into" the state as equivalent to "carried into" the state. Blacks Law Dictionary definition of the verb "to ship" is:

"to place goods on board a vessel for the purchaser or consignee, to be transported at his risk".

Since the common meaning of the verb "to ship" is to transport cargo, and no contrary definition is provided in the motor fuel tax statute, fuel taxable under AS 43.40.100 (4) (A) must be transported as cargo not as fuel tank fuel for use in propelling a vessel.

Under the Department's interpretation, the tax would apply on its face to fuel tank fuel of trucks and automobiles

entering the state. Enforcement of a tax on fuel tank fuel against marine shipping, but not against motor vehicle users, would be discriminatory. The enforcement problems inherent with the Department's position weighs heavily against its interpretation and is strong evidence of the legislative intent not to impose the tax on fuel tank fuel.

A number of court cases support the position that it is an unconstitutional burden on interstate and foreign commerce for a state to tax the mere consumption of fuel used in providing the motive power of vessels sailing in its waters.

Other states have expressly rejected the Department's position of imposing a tax on fuel purchased out of state by non-residents and consumed in propulsion of vessels, aircraft or motor vehicles, thereby eliminating the possibility of multiple taxation of the same event.

Washington's administrative code specifically excludes taxing any part of consumable goods, including bunker fuel which is used in Washington but was placed aboard outside the state.

California, by regulation, prevents the application of its use tax to fuel purchased for use and used in interstate or foreign commerce prior to its entry into California and thereafter used continuously in such commerce both within and without California and not exclusively in California.

Oregon does not tax bunker fuel purchased out of state and consumed while propelling a vessel in interstate or foreign commerce within the state.

Hawaii by statute prohibits taxing the use of goods imported into the state by the owner of a vessel engaged in interstate or foreign commerce and held for and used only as ships stores for the vessel. Bunker fuel is considered by the Hawaii Department of Taxation to be part of ships stores.

The Alaska Department of Revenue determined that fuel which is consumed in propelling a vessel in interstate or in foreign commerce is considered an import once it reaches Alaskan waters. The United States Supreme Court has clearly rejected such an interpretation in Swain and Finch Company v. United States.

The obvious purpose of the statute is to prevent an Alaska resident from purchasing non-taxed fuel outside of the state and then bringing in into Alaska and storing it for future use, thereby avoiding the Alaska Motor Fuel Tax. The purpose is not to tax fuel consumed which provides the motive power of a vehicle, vessel or aircraft which has

taken fuel on outside Alaska and thereafter enter Alaska as part of an interstate or foreign journey.

The tax cannot have been intended to apply to mere consumption of fuel in Alaska waters and must have been intended to apply to fuel both stored and consumed in Alaska.

The motor fuel tax, as interpreted by the Department, poses the enhanced risk of multiple taxation and discriminates against interstate commerce under the Equal Protection and Commerce Clause of the United States Constitution.

The tax would increase the operating costs of cruise ships and tug and barge operators which would be passed on to consumers, resulting in higher costs for everything that Alaskans buy. Many carriers cannot absorb any additional costs and remain viable competitors and would therefore be forced to consider curtailing service or even discontinuing service.

The tax discriminates against the Port of Anchorage as the tax applies to fuel consumed in Alaskan waters. Because the approach to Anchorage through Cook Inlet passes through more Alaskan waters than, for example, the approach to Seward, the tax consequence is greater for a vessel to call at Anchorage than to call at another port.

TESTIMONY OF  
MICHAEL G. RANTA  
PACIFIC DIVISION TAX MANAGER  
CROWLEY MARITIME CORPORATION

BEFORE

ALASKA STATE SENATE  
FINANCE COMMITTEE

ON

SENATE BILL 387

MARCH 4, 1986

Testimony of  
Michael G. Ranta  
on Senate Bill 387

Madam Chairwoman, Mr. Chairman, members of the committee, my name is Michael G. Ranta, Tax Manager for the Pacific Division of Crowley Maritime Corporation. We wish to express our support of Senate Bill 387 and point out that administrative and economic burdens placed on the taxpayer under the current ruling are excessive in relationship to the amount of tax collected.

Tracking and calculating time spent and fuel consumed in Alaska waters on a regular scheduled route such as our year-round Alaska Hydro-Train operation which carries freight into Whittier from Seattle once a week is a relative easy task.

However, Crowley Maritime also has freight operations to westward Alaska, which do not have regular routes and/or ports of call. These operations have voyages in the spring and summer months which have a duration of anywhere from 40 to 90 days, calling on various ports many of which are shallow and cannot facilitate large tugs and barges.

When calling on these shallow water ports, freight must be lightered to shore via shallow draft tugs and barges, from the main freight barges anchored or jogging anywhere from 1 to 12 miles offshore, depending on location, tide and weather.

March 3, 1986

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Trying to track each entry and exit from the Alaska 3 mile limit places additional navigation calculations on vessel Captains when their main objective is to safely deliver their cargos and safeguard the vessel and crew.

We also deliver specialized modules, equipment and general cargo to oil companies at Prudhoe Bay, Alaska. This operation is extremely hazardous, due to the ice flows encountered in navigating the waters of the Arctic Ocean. Requiring Captains to calculate whether or not they have entered or exited the 3 mile limit at this critical time of the voyage would not be practical.

Due to the remote locations and length of voyages to western Alaska and Prudhoe Bay, it is very difficult to get tug logs to the Seattle office on a regular basis to permit analysis for filing of timely and accurate motor fuel tax returns.

Motor fuel tax returns are due to the Department of Revenue by the end of the month following consumption. Taxpayers are allowed a \$100 deduction for prompt filing of the returns. However, a penalty of 5% per month and

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March 3, 1986

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interest of 12% per annum on the unpaid taxes are changed if returns are filed late.

Given these facts, this taxpayer would be forced to file a return with estimated consumption figures. This would put us into a penalty situation of one sort or another and also require us to file amended returns and possible requests for refund, i.e., if the consumption was under estimated we would be required to file an amended return, pay the additional tax plus penalties and interest. On the other hand, if the consumption was over estimated, we would have to file an amended return and also file for a refund, for the amount of the overpayment.

The crux here is that although the state charges penalties and interest on late filings, there is no provision for paying interest to the taxpayer on any overpayments.

To accurately track, calculate and file the returns for this tax would force us to add a person to our staff at an estimated annual cost of approximately \$30,000.

March 3, 1986

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March 3, 1986

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Using as a base the return filed in October 1985 where we paid approximately \$12,900 in taxes, our annual tax liability would be estimated at \$150,000. To force the taxpayer to add an additional cost of \$30,000 for additional staff plus additional return filings, penalty and interest payments and loss of use of funds in the case of overpayments seems to be an extremely harsh burden for the taxpayer to bear.

I would also like to point out that Crowley's Alaska Hydro-Train operation sails the inside route through southeastern Alaska on its weekly trips to and from Whittier. Although it extends our sailing time by approximately one day over the more risky outside route, it is for safety reasons that we, and I assume other carriers, use the inside route, exposing ourselves to the fuel use tax interpretation held by the Department of Revenue. If SB 387 is not passed and the tax upheld, we would not change our route, however, a more marginal carrier might change his sailing to the outside route to avoid the tax, thus increasing the risk to safe arrival of cargo, crew and equipment.

March 3, 1986

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At any rate, if SB 387 fails, increased costs will be passed on to the shippers, eventually affecting the cost of goods purchased by the ultimate consumer, the permanent residents of the State of Alaska.

I wish to thank the committee on behalf of Crowley Maritime Corporation and myself for allowing the time to express the views of a person who is intimately involved in administrating compliance and encourage your support of Senate Bill 387.

TESTIMONY OF TOTEM OCEAN TRAILER EXPRESS, INC. (TOTE)  
BY EVERETT TROUT, VICE PRESIDENT OF OPERATIONS  
BEFORE THE ALASKA SENATE FINANCE COMMITTEE  
IN SUPPORT OF SENATE BILL NO. 387  
MARCH 4, 1986

Madam Chairperson, Mr. Chairman, members of the Committee, TOTE is testifying today on our own behalf and on behalf of other ocean carriers shipping between the states of Alaska and Washington. We wish to express our support of Senate Bill 387, which was introduced to clarify the original intent of the legislature for the Alaska Motor Fuel Tax Act, and to eliminate any ambiguity in that act in relation to fuel brought into the state in the fuel storage tanks of watercraft.

The Motor Fuel Tax Act was passed as law by the territorial legislature in ~~1949~~<sup>1946</sup>. We believe that the legislature intended to tax fuel sold in Alaska and bulk fuel shipped as cargo into Alaska for personal use in the state. The legislature intended to prevent the shipping of un-taxed bulk fuel into Alaska. The legislature did not intend to tax fuel brought into the state in fuel storage tanks on a watercraft for the purpose of operating the watercraft.

Alaska followed this legislative intent until June of 1985. No tax was asserted or collected on fuel brought into the state in fuel storage tanks on a watercraft for the purpose of operating the watercraft. In June of 1985, the Department of Revenue arbitrarily determined to redefine the legislative intent and to collect a tax on this bunker fuel. We strongly disagree with this radical new interpretation and believe that, in attempting to reinterpret the law and impose a new tax, the Department violated the intent of the legislature as expressed in both the Motor Fuel Tax Act and the Alaska Administrative Procedure Act.

The Department has asserted this tax is a user tax. The concept of a user tax is to pay for a service. The State of Alaska itself provides virtually no service for our industry. Aids to navigation, dredging, safety at sea, inspections, and vessel safety are covered by the federal government. TOTE's port and dockside facilities are paid for by dockage fees and rental payments to the Port of Anchorage, which were approximately \$1.5 million in 1985. In addition, TOTE is an Alaska Corporation and pays substantial taxes to the State of Alaska, including income, property and payroll taxes.

A tax on bunker fuel consumed in Alaska waters encourages carriers to avoid travel within the three-mile limit. Ports such as Anchorage, which lie farther within Alaska waters, would be discriminated against, as would carriers serving those ports. TOTE serves the Port of Anchorage, only, in our service to Alaska. Our ships cruise six hours in each direction through Cook Inlet. If a tax is imposed on bunker fuel, most of TOTE's tax would result from sailing through Cook Inlet to Anchorage.

Any increase in taxes will increase costs to the Alaska consumer. The past two years have been unprofitable for many carriers in our industry, and several operators have been forced from the business as a result. The next two years are also expected to be difficult. Any new taxes would worsen the condition of the industry and this ultimately increases costs to the Alaska consumer.

Our industry has filed appeals with the Department of Revenue contesting this new tax. Our attorneys have filed a legal brief documenting the impropriety of the Department's imposition of a new tax. Although we expect to ultimately prevail in this matter, this arduous and expensive process can be avoided by clarifying the Act through Senate Bill 387.

In Summary, Senate Bill 387 was introduced to clarify the original intent of the legislature for the Alaska Motor Fuel Tax Act, and to eliminate any ambiguity in that act in relation to fuel brought into the state in the fuel storage tanks of watercraft. This bill will relieve the industry and the Department of Revenue from an expensive appeal and litigation process resulting from the Department's radical new interpretation of the Act. Finally, this bill will remove a burden from water carriers and consumers in Alaska.

I thank you for this opportunity to express the views of TOTE and of our industry. We encourage your support of Senate Bill 387 and will answer any questions you have at this time.

LEGAL ANALYSIS OF THE ALASKA MOTOR FUEL TAX  
AS APPLIED TO FUEL PURCHASED OUTSIDE THE STATE  
AND CONSUMED IN ALASKAN WATERS

SUBMITTED ON BEHALF OF U.S. FLAG CARRIERS

BY: THE LAW OFFICES OF WILLIAM H. GRADY  
1505 NORTON BUILDING  
SEATTLE, WA 98104  
(206) 622-4067

DATED: SEPTEMBER 18, 1985

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LEGAL ANALYSIS OF THE ALASKA MOTOR FUEL TAX AS APPLIED TO  
FUEL PURCHASED OUTSIDE THE STATE AND CONSUMED IN ALASKAN WATERS

I. INTRODUCTION

The Department of Revenue of the State of Alaska by letter dated June 10, 1985 has advised numerous foreign and domestic shipping lines engaged in foreign and interstate commerce that they are subject to the Motor Fuel Tax (AS 43.40.010) of five cents per gallon on all fuel consumed in propelling the vessels in Alaskan waters. The tax is imposed although the fuel is purchased out-of-state and does not come to rest in Alaska.

This matter concerns subsections of the statute as interpreted, administered, and enforced by the Audit Division whereby it claims the tax is applicable on motor fuel used (consumed) in and on watercraft of all descriptions. Alaska Statute 43.40.010 (b)(2) and (c) are at issue. Subsection (a) of the statute involving tax of five cents a gallon on the sale or transfer of such fuel in Alaska is not in dispute.

Sec. 43.40.010. Tax on transfers or consumption of motor fuel and expenditure of proceeds.

(b) There is levied a tax of eight cents a gallon on all motor fuel consumed by a user, except that

(2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon, \*\*\*

(c) \*\*\* Every user shall likewise remit the tax accrued on motor fuel actually used by the user during each month.

Sec. 43.40.100. Definitions.

(2) "Motor Fuel" means fuel used in an engine for the propulsion of a motor vehicle or aircraft, and fuel used in and on watercraft for any purpose, . . . \*\*\*

(4) "User" means a person consuming or using motor fuel, who either

(A) purchases the fuel out of the state and ships it into the state for personal use in the state;

The Department of Revenue has interpreted the subsections in the following manner:

"This tax is a user tax. The fuel purchased out of state and used or consumed within Alaska waters on watercraft is subject to the Alaska Motor Fuel tax. Every user is required to remit the tax accrued on motor fuel imported into the State and used during each month." [Emphasis added]. Letter of June 10, 1985 from John Hanson, Revenue Auditor.

## II. ISSUE

Whether the Audit Division's interpretation of the motor fuel tax statute is correct and constitutional.

## III. ARGUMENT

### A. UNCONSTITUTIONAL BURDEN ON COMMERCE

1. The Motor Fuel Tax as administered by the Audit Division is an unconstitutional burden on interstate and foreign commerce because it is impermissible for a state to tax the mere consumption of fuel used in providing the motive power of vessels sailing in its waters. Helson v. Kentucky, 279 U.S. 245, 73 L.Ed. 683, 49 S.Ct. 279 (1929). Helson was reaffirmed by the Supreme Court in United Airlines v. Mahin, 410 U.S. 623, 35 L.Ed.2d 545, 93 S.Ct. 1186 (1973). The court in United Airlines re-emphasized the validity of the distinction of why it is permissible for a state to tax storage of fuel before loading, but not mere consumption of it. At 35 L.Ed.2d 552-553:

Retaining the line at this point minimizes the danger of double taxation and yet provides a source of revenue having a relation to the event taxed. Double taxation is minimized because the fuel cannot be taxed by States through which it is transported, under Michigan-Wisconsin Pipe Line Co. v. Clavert, 347 US 157, 98 L Ed 583, 74 S Ct 396 (1954), nor by the State in which it is merely consumed, under Helson. A fair result is achieved because a State in which preloading storage

facilities are maintained is likely to provide substantial services to those facilities, including police protection and the maintenance of public access roads.

The court further stated at 544:

Multiple taxation and tax windfalls are avoided because only one State--the State of storage before loading--has a local event upon which a tax is imposed. Under Helson, States over which the planes fly will be unable to impose a tax on mere consumption.

See Midwestern Gas v. Wisconsin Department of Revenue, 267 N.W.2d 253, 84 Wis.2d 261 (Wis. 1978) cert. denied 439 U.S. 997 where attempts by the Wisconsin Department of Revenue to apply a use tax on the portion of natural gas flowing through an interstate pipeline and consumed at compressor stations to power the engines therein was held invalid because it violated the rule of Helson. The court further found an insufficient nexus between the state and the taxed event. See also Midcontinent Broadcasting, etc. v. Wisconsin Department of Revenue, 297 N.W.2d 191, 198-202, 98 Wis.2d 379 (1980). Both of the Wisconsin cases affirmed the rule of Helson in light of the Complete Auto Transit test, infra.

## 2. COMPLETE AUTO TRANSIT TEST

In 1977 the U.S. Supreme Court adopted a four prong test to determine the validity of a state tax on activity in interstate commerce. Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 51 L. Ed.2d 326, 97 S. Ct. 1076. Under the test a state tax does not offend the Commerce Clause if it (1) is applied to an activity with a substantial nexus with the taxing state, (2) is fairly apportioned, (3) does not discriminate against interstate commerce and (4) is fairly related to services provided by the state. 51 L. Ed.2d at 331.

(a) UNCONSTITUTIONAL DISCRIMINATION

The Alaska Motor Fuel Tax in addition to clearly violating the rule of Helson and United Airlines fails the test of Complete Auto Transit. A non-resident vessel which purchases its bunker or diesel fuel for propulsion in interstate or foreign commerce at a foreign or out-of-state port most often pays a tax on the fuel there. When it subsequently enters Alaskan waters it is charged the user tax on the same fuel. However, if the fuel is purchased in Alaska the taxpayer is charged only one tax of five cents a gallon. AS 43.40.010(a)(2). Thus the Alaska taxpayer purchasing fuel in Alaska is not charged the additional five cents a gallon for the use by consumption of the fuel in the manner which the out-of-state purchaser is taxed. When one considers the out-of-state tax and the Alaska user tax together, discrimination against interstate commerce persists because fuel purchased outside of Alaska and consumed in Alaskan waters while in interstate or foreign commerce is subject to multiple taxation. Whereas fuel sold to vessels in Alaska is taxed only once. Montgomery Ward & Co. v. State Board of Equalization, 272 Cal.App.2d 728, 78 Cal Rptr 373, 391-394 (1969) cert. denied 396 U.S. 1040 (1970). The reason for the unequal treatment of non-resident taxpayers is the application of the Alaska user tax placed upon fuel which they purchase out of Alaska.

A similar situation, although not involving a fuel tax, was found unconstitutional in Armco, Inc. v. Hardesty, 81 L.Ed.2d 546, 104 S.Ct. 2620 (1984) where the U.S. Supreme court voided a West Virginia tax on out-of-state wholesalers doing business in

West Virginia which was not imposed on resident wholesalers. The discriminatory treatment was evident when the West Virginia tax was added to taxes of the home states of the non-resident wholesalers resulting in the cumulative burden not imposed on West Virginia residents:

"If Ohio or any of the other 48 States imposes a like tax on its manufacturers - which they have every right to do - then Armco and others from out-of-state will pay both a manufacturing tax and a wholesale tax while sellers resident in West Virginia will pay only the manufacturing tax."

31 L.Ed.2d at 546. The court in Armco at 545 also held:

"[i]t long has been established that the Commerce Clause of its own force protects free trade among the states. \*\*\* That is, a State may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State".

As applied by the Audit Division the Alaska tax appears to have just this effect. The tax provides that two vessels traveling through Alaskan waters will be treated differently by the state depending on whether the taxpayer purchases its fuel in Alaska or outside of it. For Alaska tax purposes fuel purchased out of Alaska and subject to the user tax will be treated the same as fuel purchased in Alaska, subject to the fuel sales tax, only when the non-resident purchaser pays no tax on its out-of-state purchase. With other states and scores of foreign countries, like Alaska having power to tax the sale of fuel within their own jurisdictions, non-Alaska purchases do not receive equal tax treatment by Alaska because of its user tax, which is added onto any other out-of-state taxes.

The effect of this tax is to promote in an unconstitutional manner the local sale of fuel to vessels operating in Alaskan waters and other intrastate commerce by discriminating against interstate and foreign commerce with multiple taxation of the same event. See Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450, 79 S.Ct. 357, 3 L.Ed.2d 421, 427 (1959). This tax policy provides a direct commercial advantage to local fuel businesses and resident vessels at the expense of out-of-state fuel dealers as well as non-resident vessels which purchase their fuel out-of-state, resulting in the destruction of the free trade which the Commerce Clause protects. Boston Stock Exchange v. State Tax Comm'n, 429 U.S. 318, 97 S.Ct. 599, 50 L.Ed.2d 514 at 528 (1977), Maryland v. Louisiana, 451 U.S. 725, 101 S.Ct. 2114, 68 L.Ed.2d 576, 600-604 (1981), Halliburton Oil Well Company v. Reily, 373 U.S. 64, 83 S.Ct. 1201, 10 L.Ed.2d 202 at 208 (1963), National Meat Ass'n v. Deukmejian, 743 F.2d 656, 659, 661 (9th Cir. 1984).

A state "may no more use discriminatory taxes to assure that non-residents direct their commerce to businesses within the state than to assure that residents trade only in intrastate commerce." Boston Stock Exchange, at 50 L.Ed.2d 527. Furthermore, a state may not tax in a manner that discriminates between two types of interstate transactions in order to favor local commercial interest over out-of-state businesses. Id. at 528.

Taken to its logical conclusion, Alaska's application of the user fuel tax if employed by other states would have an even greater burdensome effect on interstate and foreign commerce than

now exists - exactly what the Commerce Clause is intended to prevent. The Supreme Court in Freeman v. Hewit, 329 U.S. 249, 67 S.Ct. 274, 91 L.Ed. 265, 274 (1946) stated "[i]f another state has taxed the same interstate transaction, the burdensome consequences to interstate trade are undeniable." Fortunately for purposes of interstate commerce other states have expressly rejected the Audit Division's position of imposing a tax on fuel purchased out-of-state by non-residents and consumed in propulsion of vessels, aircraft or motor vehicles, thereby eliminating the possibility of multiple taxation of the same event. For example, Washington's Administrative Code § 458-20-175 specifically excludes taxing any part of consumable goods, including bunker fuel, which is used on watercraft in Washington but was placed aboard outside the state. California has a similar regulation, Revenue and Taxation § 1620(b)(2)(B) which prevents the application of its use tax to fuel purchased for use and used in interstate or foreign commerce prior to its entry into California and thereafter used continuously in such commerce both within and without California and not exclusively in California. Likewise, Oregon does not tax bunker fuel purchased out-of-state and consumed while propelling a vessel in interstate or foreign commerce within the state. Significantly under both statute and regulation, fuel brought into Oregon in the fuel tank of a truck, aircraft or other vehicle and ultimately used only as fuel for propulsion of the vehicle or aircraft is not taxed, see § 319.260, OR AD Rule 735-11-005(5). Hawaii by statute, Chapter 233 Use Tax Law, prohibits taxing the use of goods imported into

the state by the owner of a vessel engaged in interstate or foreign commerce and held for and used only as ship stores for the vessel. See § 238-1(4). Bunker fuel is considered by the Hawaii Department of Taxation to be part of ship stores.

Finally, the Supreme court in Armco, supra, held that the taxpayer is not required to prove actual discriminatory impact on it by pointing to states that impose similar taxes which would result in a total burden higher than that imposed by the subject state. At 81 L.Ed.2d 546-547. Thus, the taxpayers herein do not need to prove that other states tax the entire amount of fuel sold there to vessels regardless of where they may sail. However, Hawaii does, General Excise Tax Chapter 237, and California taxes the amount of fuel sold which is consumed to the first out-of-state destination, Revenue and Taxation Code, Section 6385(b), (c) and Revenue and Taxation Regulation, Section 1621(c). Thus, fuel taxed in Hawaii upon its sale is also taxed in Alaska when a ship reaches Alaskan waters and fuel taxed in California is again taxed when Alaska is the first destination point for the vessel.

(b) APPORTIONMENT

Another requirement of Complete Auto Transit is that the state tax must be fairly apportioned. The only apportionment, if any at all, which Alaska attempts is not to tax fuel consumed outside its territorial waters. That policy by itself does not alleviate the problem of multiple taxation for fuel consumed within its waters which has been taxed previously by another state which sold the fuel.

(c) TAX IS NOT FAIRLY RELATED TO SERVICES

This prong of the Complete Auto Transit test, explained in Commonwealth Edison Co. v. Montana, 453 U.S. 609, 101 S.Ct. 2946, 69 L.Ed.2d 384, 900 (1981) as meaning that the "measure" of the tax must be reasonably related to the extent of the contact between a taxpayer and the state, since it is the activities or presence of the taxpayer in the state that may be made to bear a just share of the tax. The incidence of the tax as well as its measure must be tied to the earnings which the state made possible. At 69 L.Ed.2d 902 the court continued by stating that when the measure of a tax bears no relationship to the taxpayers' presence or activity in the state then the tax is an undue burden on interstate commerce.

The Alaska tax does not meet the requirements of this prong. The tax is imposed merely if the ship is sailing in Alaskan waters. It is imposed even if the vessel has no other activities in Alaska. A vessel traveling in Alaskan waters which does no business and makes no stops at any port or location there and has no earnings from the state is still subject to the tax. In such a situation, neither the incidence nor measure of the tax is fairly related to any services provided by the state.

Furthermore, those vessels which do stop at ports in Alaska already pay substantial fees and taxes to the various ports and harbor authorities for use of harbor facilities. Payments of fees and taxes for the use of such facilities or for fuel purchased in Alaska or imported for storage and later use there admittedly are fairly related to services provided by the state.

But the state offers no comparable services to vessels in transit whether or not bound to or from Alaskan points which would justify a tax on the amount of fuel consumed for motive power which was purchased elsewhere. See Midwestern Gas, supra.

#### B. DENIAL OF EQUAL PROTECTION

As shown above, the Alaska tax discriminates in favor of in-state purchasers and against out-of-state ones by adding five cents a gallon on each gallon of out-of-state fuel consumed in Alaskan waters. The Alaska statute fails to provide a credit for taxes paid to other states. The U.S. Supreme Court in Williams v. Vermont, 472 U.S. \_\_\_, 105 S.Ct. \_\_\_, 86 L.Ed.2d 11 (1985) declined to determine whether a state constitutionally is required to provide such a credit. It did cite Montgomery Ward and Company v. State Board of Equalization, supra, which held that such a requirement does exist. However the Supreme Court's comments in Williams v. Vermont and other cases demonstrate that the Alaska Motor Fuel Tax as applied by the Department of Revenue does not pass scrutiny. Although the Alaska tax is a motor fuel tax, its principle features include a tax on the sale or transfer of fuel within the state and a tax on fuel purchased out of state and shipped into the state for personal use. In effect, there exists a sales tax and a complementary use tax on motor fuel.

The Supreme Court in National Geographic, supra, at 51 L.Ed.2d 636 explained such taxes in the following manner:

"All states that impose sales taxes also impose a corollary use tax on tangible property bought out-of-state to protect sales tax revenues and put local retailers subject to the sales tax on a competitive parity with out-of-state retailers exempt from the sales tax."

The court also commented on sales and use taxes in Boston Stock Exchange, supra, at 50 L.Ed.2d 520 where it stated:

"In all the use-tax cases, an individual faced with the choice of an in State or out of State purchase could make that choice without regard to the tax consequences. If he purchased in State, he paid a sales tax; if he purchased out of State but carried the article back for use in State, he paid a use tax on the same amount. The taxes treated both transactions in the same manner."

Most recently the court said in Williams v. Vermont, at 86 L.Ed.2d 19 ". . . the use tax base cannot be broader than the sales tax base, . . . ." The Alaska Motor Fuel User Tax is, as the Vermont tax was, over-inclusive because it applies to fuel purchased by non-residents and taxed by other states. The Alaska user tax, like Vermont's, exceeds the usual justification for such a tax. That justification is that it exists only to compensate equally a state for its lost sales. The court in Williams v. Vermont, at 86 L.Ed.2d 20 stated:

"This customary rationale for the use tax has no application to purchases made out-of-State by those who were not residents of the taxing State at the time of purchase. These home-state transactions cannot be seen as lost Vermont sales, and are certainly not ones lost as a result of Vermont's sales tax."

Likewise, imposition of the Alaska use tax on non-residents who purchase their fuel out-of-state cannot be seen as a justification for lost Alaska sales. Alaska's user tax goes too far because its base is broader than the sales tax base, i.e. it taxes out-of-state fuel purchases by non-residents. It does not limit the tax to Alaska residents who purchase non-taxed fuel in other states and bring it into Alaska for subsequent use. This

tax results in an unequal treatment of non-resident vessel operators and is in violation of the Equal Protection Clause of the Fourteenth Amendment.

### C. STATUTORY INTERPRETATION

The statute by its terms applies only to fuel "consumed by a user". As relevant hereto, "user" is defined as "a person consuming or using motor fuel, who . . . purchases the fuel out of the state and ships it into the state for personal use in the state." AS 43.40.100(4)(A). "To ship" means "to deliver to a carrier (public or private) for transportation", Black's Law Dictionary, 1234 (5th Edition 1979). "Transportation" is defined in 49 USC § 10102(23)(A) as including a " . . . vessel . . . related to the movement of passengers or property or both, . . . ." Alaska law is consistent with the definition "to ship", AS §§ 45.02.319(a)(1), 504(a), 509(a). By viewing consumption of the fuel to be the sole requirement which invokes the application of the tax, the Audit Division's interpretation ignores the "ships it into the State" portion of the statute. However, the use of the wording by the legislature was not superfluous. Every word in a statute has meaning and a purpose. Alaska Transp. Com'n. v. Airpac, Inc., 685 P.2d 1248, 1253 (Alaska 1984). The tax therefore applies only to fuel both "consumed" and "shipped", i.e. transported as cargo, into the state, not fuel merely consumed in state waters.

In its letter of June 10, 1985 the Audit Division stated "every user is required to remit a tax accrued on motor fuel imported into the State and used during each month." [Emphasis

added]. Thus, the Division has determined that fuel which is consumed in propelling a vessel in interstate or foreign commerce is considered an import once it reaches Alaskan waters. The U.S. Supreme Court has clearly rejected such an interpretation in Swan & Finch Company v. United States, 190 U.S. 143, 47 L.Ed. 984, 986 (1903), wherein it ruled that lubricating oil placed on board vessels as cargo was considered an "export" but the same types of oil which were placed on board for use and consumed on the vessels during the same voyages could not be deemed exported. The reasoning in Swan & Finch would apply here as well. Fuel consumed in a voyage to Alaska could neither be considered an export by one state or nation nor an import by Alaska because it is not cargo. It can not be said that the fuel consumed during the voyage was "shipped" (imported or exported) to Alaska.

The obvious purpose of the statute is to prevent an Alaska resident from purchasing non-taxed fuel outside of the state and then bringing it into Alaska and storing it for future use, thereby avoiding the Alaska Motor Fuel Tax. The purpose is not to tax fuel consumed which provides the motive power of a vehicle, vessel, or aircraft which has taken fuel on outside Alaska and thereafter enters Alaska as part of an interstate or foreign journey.

Because of the foregoing reasons there is considerable doubt as to the interpretation of the statute employed by the Department of Revenue. The U.S. Supreme Court in Hasset v. Welch, 303 U.S. 303, 314, 82 L.Ed. 858, 867 (1938) and the Alaska Supreme Court in Union Oil Co. of California v. Department of Revenue,

560 P.2d 21, 23 (Alaska 1977) have declared if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer.

**D. STATUTE NOT INTENDED TO APPLY TO MERE CONSUMPTION**

When the statute was enacted in 1949, states were clearly prohibited from taxing mere consumption of fuel by vessels in interstate commerce, Helson v. Kentucky, supra. As noted above Helson was affirmed in 1973 in United Airlines, Inc. v. Mahin, supra, where it found valid reasons to prohibit taxes on mere consumption of fuel. The Alaska Motor Fuel Tax statute when enacted in 1949 must have been intended to be within these constitutional limits. Therefore, the tax cannot have been intended to apply to mere consumption of fuel in Alaskan waters, and must have been intended to apply to fuel both stored and consumed in Alaska.

**E. THE DEPARTMENT HAS VIOLATED THE ALASKA ADMINISTRATIVE PROCEDURE ACT**

The Department's interpretation and application of the statute violates the Alaska Administrative Procedure Act, AS 44.62.010 through 44.62.650. The Department's interpretation and instructions to taxpayers, including its letter of June 10, 1985, constitute a "regulation" under AS 44.62. 640(3), Kenai Pen. Fisherman's Co-op Ass'n v. State, 628 P.2d 997, 904-906 (Alaska 1981). The Department's regulation as constituted by the letter announcing the policy of taxing previously un-taxed fuel consumed in propelling the vessels in question was not adopted in accordance with the procedures set forth in AS 44.62.180 through

44.62.290. Further, it was not submitted, filed and published in accordance with the procedures set forth in AS 44.623.040 through 44.62.170. Because the regulation was not adopted properly it is invalid for not following the APA procedures, Coghill v. Boucher, 511 P.2d 1297, 1304-1305 (Alaska 1972).

Because the agency does not have power on its own to adopt, administer or enforce a regulation, the Department's action is unauthorized under AS 44.62.020. Whereas the Department has interpreted the provisions of the motor fuel tax inconsistently with the language and intent of the act, the Department's actions are invalid and of no effect per AS 44.62.030.

Even assuming a regulation was validly adopted by the Department, it would have prospective effect only, and could not be applied retroactively because the Department's previous interpretation of the statute is inconsistent with its present interpretation, AS 44.62.240. Furthermore, retroactive application of the Department's novel interpretation of the statute, adopted without notice or opportunity to comment, would violate procedural due process rights as required by the Fourteenth Amendment.

#### F. ECONOMIC IMPLICATIONS OF THE TAX

The tax would eliminate jobs in the cruise ship and tourism industries in Alaska. By driving up the cost of operating a cruise ship, the tax would force operators to raise their prices and so fewer visitors would vacation in Alaska. Alaskans would lose the money that the visitors spend and the jobs in restaurants and shops that the visitors frequent.

The cost of the tax will have to be passed on to consumers, which will result in higher prices for everything that Alaskans buy. Many carriers are already losing money and cannot absorb any additional costs and remain viable competitors.

The tax discriminates against the Port of Anchorage. Because the tax applies to fuel consumed in Alaskan waters, and because the approach to Anchorage through Cook Inlet passes through more Alaskan waters than, for example, the approach to Seward, the tax makes it more expensive for a vessel to call at Anchorage than to call at another port.

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September 9, 1985

Hon. Mary A. Nordale  
Commissioner of Revenue  
Department of Revenue  
Pouch SE  
Juneau, Alaska 99811

Re: Motor Fuel Tax

Dear Commissioner Nordale:

The purpose of this letter is to present, on behalf of the Alaska Oil and Gas Association ("AOGA"), the oil industry's views on the applicability of the motor fuel tax to tanker operations in Alaskan waters. For the reasons set forth below, AOGA believes that the position of the Audit Division of the Department of Revenue overstates the reach of the motor fuel tax. We appreciate this opportunity to present our views and hope that the Department will reconsider the Audit Division's position in light of the factors discussed in this letter.

Alaska imposes a tax on transfers of motor fuel and on consumption of motor fuel by statutorily defined "users". Alaska Stat. § 43.40.010 (1983). "User" is defined as follows:

(4) "user" means a person consuming or using motor fuel, who either

(A) purchases the fuel out of the state and ships it into the state for personal use in the state;

(B) manufactures the fuel in the state; or

(C) purchases or receives fuel in the state that is not taxed at the time of purchase or receipt or is taxed at a rate that is less than the rate prescribed by AS 43.40.010.

Alaska Stat. § 43.40.100(4)(A) (1983). (Emphasis added.)

The Audit Division's position that liability as a "user" is triggered by consumption in Alaska of fuel purchased outside the state and carried into Alaska in vessel fuel tanks ("fuel-tank fuel") rests on its interpretation of Alaska Stat. § 43.40.100(4)(A) (1983).

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Specifically, the Audit Division construes the phrase "ships . . . into" the state as equivalent to "carried into" the state. The Association believes the correct construction of the "ships into" language is "transported as cargo into" the state. The difference this distinction makes is that consumption in Alaska of fuel-tank fuel purchased outside the state does not trigger "user" status under the "transport as cargo" interpretation.

The Association's interpretation of Alaska Stat. § 43.40.100(4) (A) is supported by four principles of statutory construction. First, the Alaska Supreme Court has held that every word, sentence or provision in a statute has a useful purpose, with force and effect of its own, and that no superfluous words or provisions are used. Alaska Transp. Com'n. v. Airpac, Inc., 685 P.2d 1248, 1253 (Alaska 1984). It follows that the "ships into" language must add something to the "user" definition; the meaning of Alaska Stat. § 43.40.100(4)(A) has to be different from the meaning it would have had if the legislature had omitted the "ships into" requirement.

The Audit Division's interpretation of "ships into" as equivalent to "carries into" renders the "ships into" language superfluous; in practice, the "user" definition would remain unchanged if the "ships into" language were eliminated. A tax on imported fuel "carried into" the state and consumed there would reach the same fuel as a tax on all imported fuel consumed in the state, whether or not a "shipment" occurred. In contrast, a tax on imported fuel "transported as cargo" into the state and consumed there would not reach imported fuel consumed on interstate voyages. Thus, construction of the "ships into" language as a requirement that the fuel be "transported as cargo" into Alaska gives independent meaning to each word and phrase in the statute, unlike the construction adopted by the Audit Division.

Second, the Alaska courts construe words within statutes in accordance with their common meaning unless a peculiar meaning has arisen through statutory definition or judicial construction. State, Department of Rev. v. Debenham Electric Supply Co., 612 P.2d 1001, 1002 (Alaska 1980). The dictionary definition of the verb "to ship" is: "to place goods on board a vessel for the purchaser or consignee, to be transported at his risk." BLACK'S LAW DICTIONARY 1234 (5th Ed. 1979). "Transportation" is the movement of goods or persons from one place to another, by a carrier. Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, 203 (1881). The terms "to ship" and "shipment" as used in Alaska's Uniform Commercial Code have precisely this meaning. See Alaska Stat. §§ 45.02.319(a)(1), .504(a), .509(a) (1980). "Shipment" of a commodity implies that the entire volume tendered for transportation will be delivered to the consignee at the destination. Since the common meaning of the verb

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"to ship" is "to transport as cargo," and no contrary definition is provided in the motor fuel tax statute, fuel taxable under Alaska Stat. 43.40.100(4)(A) must be transported as cargo.

Third, the enforcement problems inherent in the Audit Division's interpretation are strong evidence of the legislature's intention not to impose the motor fuel tax on fuel-tank fuel. Under the Audit Division's interpretation, the tax would apply on its face to fuel-tank fuel of trucks and automobiles entering the state. Enforcement of a tax on fuel-tank fuel against marine shipping, but not against motor vehicle users, would constitute "a deliberate and intentional plan to discriminate" in violation of the Equal Protection clauses of the Alaska and United States Constitutions. State v. Reefer King Co., 559 P.2d 56, 65 (Alaska 1976), modified on other grounds, 565 P.2d 702 (Alaska 1977). However, it is apparent that nondiscriminatory enforcement of the Audit Division interpretation would, in practice, be extremely burdensome. Under Union Oil Company of California v. Department of Revenue, 560 P.2d 21, 24 (Alaska 1977), the courts consider the implications of collection procedures in reviewing the Department's interpretation of tax statutes. The enforcement problems inherent in the Audit Division's position would weigh heavily against its interpretation.

Fourth, as applied by the Audit Division, the motor fuel tax discriminates against interstate commerce in violation of the Commerce Clause of the United States Constitution. The tax on motor fuel consumption is a form of "compensating" use tax since, in contrast to a stand-alone consumption tax, in-state consumption is taxed only if the underlying purchase escaped tax under Alaska Stat. § 43.40.010(a). Compensating use taxes burden only use or consumption of items or commodities that have moved in interstate commerce. Such taxes have withstood challenge under the Commerce Clause only because they have been analyzed as components of a unified sales and use tax scheme which placed out-of-state and in-state sellers on an even footing. Henneford v. Silas Mason Co., 300 U.S. 577 (1937). However, if no use tax credit is granted for sales taxes paid in the state of purchase, a sales and use tax scheme benefits in-state sellers at the expense of out-of-state sellers by exposing interstate transactions to double taxation. Montgomery Ward v. State Board of Equalization, 78 Cal. Rptr. 373, 394 (Cal. App. 1969) cert. denied, 396 U.S. 1040 (1970) (invalidating under Commerce Clause a provision of California use tax that failed to extend credit for sales tax paid other states).

The motor fuel tax provides no credit for sales taxes imposed on motor fuel in the state of sale. As a result, fuel-tank fuel consumed in Alaska is subject to tax once when purchased in Alaska but twice when purchased outside the state. This is precisely the

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result prohibited by the United States Supreme Court in Armco, Inc. v. Hardesty, 104 S.Ct. 2620 (1984), reh'g denied, 105 S.Ct. 285 (1984) when it held that states "may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the state."

Armco put to rest the argument that taxpayers arguing discrimination must prove actual multiple taxation. The Court noted that "taxes must have what might be called internal consistency -- that is, the [tax] must be such that, if applied by every jurisdiction, 'there would be no impermissible interference with free trade.'" Armco, 104 S. Ct. at 2624, quoting Container Corp. of America v. Franchise Tax Board 463 U.S. 159. If the Audit Division's interpretation of the motor fuel tax were applied by California, all bunkers purchased in California would be taxed at five cents per gallon and the portion of those bunkers consumed in Alaska would be taxed an additional five cents per gallon. In contrast, bunkers purchased and consumed in Alaska would be taxed at only five cents per gallon. It follows that the motor fuel tax, at least under the Audit Division's interpretation, discriminates against interstate commerce in violation of the Commerce Clause.

Moreover, under the same analysis, imposition of the tax on fuel-tank fuel purchased outside the United States and consumed by tankers engaged in international commerce (specifically, the transportation of LNG to Japan) would pose the "enhanced risk of multiple taxation" expressly prohibited by Japan Lines, Ltd. v. County of Los Angeles, 441 U.S. 434, 446 (1979).

Finally, where possible, doubts concerning the construction of tax statutes should be resolved in the taxpayer's favor. Union Oil Company of California v. Department of Revenue, 560 P.2d 21, 23 (Alaska, 1977). In light of the analysis set forth above, this general rule of construction applicable to tax statutes requires rejection of the Audit Division's interpretation.

In summary, Alaska Stat. § 43.40.100(A)(4) (1983) does not authorize the Department to impose motor fuel tax on fuel-tank fuel purchased outside the state. The Audit Division's contrary position renders an entire phrase of the statute superfluous, construes the verb "to ship" contrary to its common meaning and would, in practice, make the tax unconstitutional in operation under the Equal Protection and Commerce Clauses of the United States Constitution. Given the conflict between this analysis and the Audit Division's position, the requirement that doubts concerning the construction of tax statutes be resolved in favor of taxpayers is necessarily applicable.

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We appreciate the opportunity to have presented our views on this issue. We would like to discuss this matter further with the Department, hopefully prior to the October 1 filing deadline.

Very truly yours,



E. W. Tanner  
Chairman, Tax Committee  
Alaska Oil and Gas Association

EWT/BMG:sma(klr)/pb  
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cc: Bruce Botelho, Deputy Commissioner  
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August 15, 1985

Mr. Bill Lawrence  
Transportation Institute  
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Seattle, WA 98119

Re: Alaska Motor Fuel Tax

Dear Bill:

I gathered the following information concerning taxes on fuel by several different states. As you know, each state has its own taxing scheme with some states applying sales and use taxes while others employ motor fuel taxes. This letter does not represent the final word as to the status of taxes in each state. In some instances I did not have access to administrative regulations which enhance the wording of the governing statutes. Also, I don't know what the actual tax rates are for the various states which Governor Sheffield claims to be in his letter. Possibly a few telephone calls from you to your connections in the industry can fill these information gaps as to the how the statutes and regulations are actually administered in the field. I have included New York in the sampling because the Exxon attorney in Anchorage suggested to me that New York has been administering its tax laws on fuel similar to the manner of Alaska. After reviewing it, I think the New York tax can be distinguished.

WASHINGTON: Department of Licensing Fuel Tax Division, Olympia (Richard Dietrich 753-5575). The department applies the sales tax RCW 92.08.020 to the sale of bunker fuel. The complementary use tax for fuel is governed by RCW 82.12.020. The applicable regulation is WAC 458-20-175. For bunker fuel which is sold in Washington and delivered on board an interstate or foreign commerce carrier for consumption while both within and without territorial boundaries of Washington, the amount of use tax imposed is applicable only to that portion of the fuel sold which will be consumed in Washington.

The significant difference in the administration of the use tax by Washington and the motor fuel tax by Alaska is contained in the Washington use tax regulation concerning "consumable goods" which includes "bunker fuel": "The tax does not apply upon the use within this state of any part of consumable goods for use on carrier property and placed aboard outside this state." The term "carrier property" includes "water craft" in its meaning.

Finally the Washington Business and Occupation Tax RCW 82.04 as you know, has a new exemption effective July 1, 1985 per S.B. 4228: "In computing tax there may be deducted from the measure of tax amounts derived from sales of fuel for consumption outside the territorial waters of the United States by vessels used primarily in foreign commerce."

CALIFORNIA: Section 6385 Revenue and Taxation Code was recently amended by S.B. 310. The bill, apparently enacted, exempts from the sales and use tax the gross receipts from the

sale of fuel to a water common carrier engaged in interstate or foreign commerce for immediate shipment outside California for consumption, not storage, in the conduct of its business after the first out of state destination is reached. The supporting sales tax regulation 1621(c) contains the same theme that tax on fuel sold in California to vessels is applicable only to the first destination outside of California. Its complementary use tax regulation 1620(b)(2)(B), like Washington, differs significantly from Alaska's administration of its motor fuel tax. The California regulation states:

Use tax does not apply to property purchased for use and used in interstate or foreign commerce prior to its entry into this state, and thereafter used continuously in interstate or foreign commerce both within and without California and not exclusively in California.

It would appear by this regulation that California does not tax fuel used for propulsion purchased out of state and used in interstate and foreign commerce. You mentioned that California may grant a credit to fuel brought into the state in a vessel's tank. It would probably be helpful if we talked with Michael Murphy to clarify the practices used there.

OREGON: The tax status here is not entirely certain to me. Possibly a phone call would help to clarify the matter of whether there is a tax on bunker fuel or not. I talked with the Department of Revenue. The person there was not aware of such a tax. She suggested that I talk to the State Marine Board which in turn disclaimed any knowledge of and connection to tax collection and vessel fuel. I next tried the motor vehicle division, fuels tax branch, which administers taxes on motor vehicle and aircraft

fuel but not on vessel fuel. The fellow there was unaware of which department, if any, would control that area.

Oregon does not have a general sales tax. It does have a motor vehicle and aircraft fuel tax, Section 319.020 et seq. and supporting administrative rules 735-11-005 et seq. and 735-12-010 et seq. Significantly under both statute and regulation, fuel brought into Oregon in the fuel tank of a truck, aircraft or other vehicle and ultimately used only as fuel for propulsion of the vehicle or aircraft is not taxed. See Section 319.260, OR AD rules 735-11-005(5). Also a refund is available if the fuel for a motor vehicle is used in another state and the user is required to pay other additional taxes on the same fuel. 735-11-706(3), 735-12-041(1)(a). The aircraft fuel use tax is refundable only if the aircraft flies directly from Oregon to a foreign country with no stops in other states. Section 735-11-706(3).

HAWAII: At this time I do not have complete information on Hawaii. A telephone call to your sources might be helpful as to how that state administers its taxes. I wrote a letter to the tax collector with questions concerning the administration of tax laws for vessel fuel and requested a copy of tax regulations. Talking by telephone to them was not much help. I was told that fuel that was sold in their foreign trade zone is not taxed. I do not know if that is accurate, or if it is, whether interstate vessel fuel sold is also exempt or if it is taxable under the following statute.

Hawaii does have a fuel tax law applying license taxes, Chapter 243 et seq., governing the sale of diesel fuel at one

cent per gallon, aviation fuel at one cent per gallon and liquid fuel other than diesel and aviation fuel which is taxed at a higher rate, Section 243-4. I do not know whether bunker fuel is considered to be a liquid fuel other than diesel and aviation fuel and therefore taxed. The statute does have a disclaimer to taxation of sales of fuel in Section 243-7 where it states that ". . . the payment of license fees shall not be held or construed to apply to fuel imported into the State in interstate or foreign commerce while and so long as such fuel is beyond the taxing power of the State, . . . ."

More importantly, Hawaii also has a use tax law, Chapter 238, subjecting imports to a use tax. However Section 238-3, also disclaiming any right to tax property or its use which cannot legally be taxed by federal law, credits the taxpayer for out of state taxes paid on property:

"(i) Each taxpayer liable for the tax imposed by this Chapter on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same transaction and property to another state. . . ."

Section 238-1 defining terms in the use tax law for imposition of the tax significantly states that the term "use" shall not include:

"(4) Use of goods imported into the State by the owner of a vessel or vessels engaged in interstate or foreign commerce and held for and used only as ship stores for the vessels."

The statute does not define "ship stores". However the U.S. Supreme Court in a New York tax case McGoldrick v. Gulf Oil Company, 84 L.Ed. 840, 845 (1939) defined bunker fuel oil as

"ships' stores for consumption as fuel in propelling [vessels] . . . ." Assuming that the term ship stores in the industry also includes bunker fuel it appears that Hawaii by statute expressly rejects Alaska's method of taxing bunker fuel which is used in propelling the vessels where that fuel was purchased out of state. This interpretation may become more certain if and when we receive a response from the Hawaii tax collector.

NEW YORK: This State does have a sales tax, Article 28 Section 1105 and a use tax, Section 1110. However Section 1115(a)(8) states that use and sale of fuel for interstate and foreign vessels are exempt from the sale and use taxes. New York also has a motor fuel tax, Article 12-A Section 282 which provides, like Oregon, that motor fuel brought into the state in the ordinary fuel tank of a motor vehicle, motor boat, aeroplane, or other conveyance propelled by use of motor fuel and to be used only in operation thereof is not deemed imported for tax purposes. New York, however, does not refund taxes paid on motor fuel or diesel motor fuel taken out of New York in a fuel tank connected with an engine of the motor vehicle and consumed outside of New York.

New York also has a gross receipts tax on the petroleum business. Article 13-A Section 300 et seq. Exxon naturally is concerned with this because it is in the petroleum business. An annual tax is imposed (1) upon the gross receipts of every petroleum business from sales of petroleum where shipments are made to points within the state and (2) upon the consideration given by said business for petroleum which is imported into the state for

consumption by it in the state (Section 301). A notable exception is that petroleum brought into the state in the ordinary fuel tank of a motor vehicle used to propel the vehicle is not deemed imported for consumption in the state. Section 300(c). The statute does not state whether motor vehicle also includes airplanes or vessels.

Section 303(c)(3) does provide that aviation fuel imported into New York for consideration and consumed in the state during intrastate flights and during the take-off portion of interstate and foreign flights is taxable. But, where only the point of arrival of the flight involves New York or where a flight neither lands in nor departs from New York then none of the fuel consumed during such a flight is treated as consumed in New York.

I do not have regulations supporting this statute but it appears that New York is merely taxing the petroleum business for fuel which it sells for importation into New York and that which the petroleum business purchases for importation into New York to be consumed there. I think the tax can be distinguished first of all because the shipping lines are not in the petroleum business. Second, the dispute in Alaska does not involve fuel imported there in the conventional sense of storage, withdrawal for later use, or sale of it as the New York gross receipts tax on the petroleum business would seem to apply. Third, fuel purchased out of state and used in the vehicle solely for motive power within New York is exempt from taxation. Arguably this exemption would extend to vessels as well as motor vehicles.

Thus far I have not found any state which is interpreting its tax laws as Alaska is. As noted above, several of the states are expressly rejecting the imposition of a tax on fuel consumed in their waters while part of an interstate or foreign movement.

Very truly yours,

*David*

David M. De Luca

DMD/lm