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180

Original sponsor(s): SEN. COGRILL, Frank

1 IN THE SENATE

BY THE TRANSPORTATION COMMITTEE

2 CS FOR SENATE BILL NO. 180 (Transportation)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the exemptions from the motor
7 fuel tax, and extending the exemption from the re-
8 quirement of obtaining a certificate of use to fuel
9 used to generate electrical energy in public utility
10 power plants and to heat commercial premises; and
11 providing for an effective date."

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

13 * Section 1. AS 43.40 is amended by adding a new section to read:

14 Sec. 43.40.015. EXEMPTION FROM COLLECTION OF TAX. (a) A dealer
15 who has a reasonable belief at the time of sale or transfer that fuel
16 that is sold or transferred is not to be used as motor fuel need not
17 collect the motor fuel tax.

18 (b) If the tax is not collected, the dealer shall obtain a
19 certificate of use from the buyer or transferee stating that the fuel
20 that has been or will be purchased or received is not intended for use
21 as motor fuel. The department may not collect the motor fuel tax from
22 a dealer for fuel for which a certificate of use has been properly
23 obtained under this subsection. Except as provided in (c) of this
24 section, an annual certificate of use is required for exemptions
25 listed under AS 43.40.100(2). The dealer shall retain a copy of each
26 certificate of use obtained under this subsection for examination or
27 audit on request by the department. The form of a certificate of use
28 may be prescribed by regulation adopted by the department.

29 (c) A certificate of use is not required for fuel exempted

1 under

2 (1) AS 43.40.100(2)(C);

3 (2) AS 43.40.100(2)(F);

4 (3) AS 43.40.100(2)(J); or

5 (4) AS 43.40.100(2)(K) as determined by the department by

6 regulation.

7 * Sec. 2. AS 43.40.035(a) is amended to read:

8 (a) A person who resells fuel on which the tax under AS 43.40.-
9 010(a) or (b) was previously paid is entitled to a credit or refund of
10 the tax if (1) the resold fuel is not motor fuel and the requirements
11 of AS 43.40.015 [AS 43.40.010(1)] have been fulfilled; or (2) the
12 amount of tax previously paid exceeds the tax due on the resale. The
13 amount of the credit or refund under this section is equal to the
14 amount of tax previously paid on the resold fuel less the amount of
15 tax prescribed by AS 43.40.010(a) or (b).

16 * Sec. 3. AS 43.40.010(1) is repealed.

17 * Sec. 4. This Act takes effect July 1, 1990.
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Introduced: 2/17/89
Referred: Transportation and
Finance

6-0817E

1 IN THE SENATE

BY COGHILL AND FRANK

2 SENATE BILL NO. 180

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the exemptions from the motor
7 fuel tax, and extending the exemption from the re-
8 quirement of obtaining a certificate of use to fuel
9 used to heat commercial premises; and providing for
10 an effective date."

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Alaska Department of Revenue
PO Box SA
Juneau, Alaska 99811-0400

CERTIFICATE OF USE

Covering Purchases of Fuel Exempt from Motor Fuel Tax
AS 43.40.010

No. 62248

NAME OF SELLER	NAME OF PURCHASER
MAILING ADDRESS	MAILING ADDRESS
CITY, STATE, ZIP CODE	CITY, STATE, ZIP CODE

TYPE OF FUEL:

- | | | | |
|--|---|--|--|
| <input type="checkbox"/> Aviation Gasoline | <input type="checkbox"/> Highway Gasoline | <input type="checkbox"/> Marine Gasoline | <input type="checkbox"/> Gasoline Used for Heating |
| <input type="checkbox"/> Aviation Jet Fuel | <input type="checkbox"/> Highway Diesel | <input type="checkbox"/> Marine Diesel | <input type="checkbox"/> Diesel Used for Heating |

My purchases of fuel will not be subject to the Alaska Motor Fuel Tax because they will be for the following exempt use: (check one)

- | | |
|--|--|
| <input type="checkbox"/> 1. The federal government for official use. | <input type="checkbox"/> 6. A public utility plant or a non-profit power association. |
| <input type="checkbox"/> 2. A state or local government agency for official use. | <input type="checkbox"/> 7. A licensed Qualified Dealer. |
| <input type="checkbox"/> 3. An auxiliary military unit for official use. | <input type="checkbox"/> 8. Jet fuel for use in a direct flight to a foreign country, or into bulk storage tanks for both foreign and domestic uses. |
| <input type="checkbox"/> 4. A consumer for use to heat a commercial building or facility but not including fuel used in or on watercraft. (Complete reverse side.) | <input type="checkbox"/> 9. A charitable institution. |
| <input type="checkbox"/> 5. A consumer for use in a commercial stationary power plant of 100 kw or less. | <input type="checkbox"/> 10. Fuel exported as cargo. (Complete reverse side.) |

CAUTION: Generally, only the fuel uses listed above qualify for exemption. If you believe the fuel qualifies for an exemption not listed, contact the Alaska Department of Revenue.

The undersigned understands that the fraudulent use of this certificate will subject the undersigned and all guilty parties, upon conviction, to a fine not to exceed \$25,000 or by imprisonment for not more than three years, or both. The undersigned also understands that he must be prepared, upon request, to supply satisfactory evidence establishing the purpose for which the fuel was or will be used.

I declare under penalty of perjury that I have examined this certificate and to the best of my knowledge and belief it is a true, correct and complete statement showing the manner in which the fuel will be used. I also certify that this fuel will not be delivered to a common storage tank servicing both taxable and non-taxable uses except bulk purchases of jet fuel by a person who flies directly from Alaska to a foreign country.

SIGNATURE OF PURCHASER OR REPRESENTATIVE	DATE
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**DO NOT SEND THIS COPY TO THE DEPARTMENT OF REVENUE
UNLESS YOU ARE A RESELLER CLAIMING A REFUND.**

PRINTED BY ALASKA LITHO, INC.

REVENUE

04-536 (Rev. 10/87)

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 180
PUBLISH DATE: 2/17/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act relating to the
exemptions from the motor fuel tax
Sponsor: Coghill and Frank
Requestor: Transportation and Finance

Agency Affected: Revenue
BRU: Income & Excise Audit

Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: See attached.

Prepared By: Steven E. Kettel
Division: Income and Excise Audit

Phone: (907) 465-2320
Date: February 21, 1989

Approved by Commissioner: Hugh Malone Date: February 21, 1989
Agency: Department of Revenue

Distribution (by preparer):

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

Changes in CSB 180 (trsp)
have no fiscal impact. This
fiscal note is appropriate CM
Projections of no fiscal impact
would continue through 1996.

ANALYSIS

-- Section 1 of the bill amends AS 43.40 by adding a new section to generally provide that a dealer is not required to collect the motor fuel tax if a certificate of use is obtained from the buyer representing that the fuel is not for use as motor fuel. The certificate of use prohibits the department from trying to collect from the dealer in the event the fuel was taxable motor fuel.

-- The bill also provides that certificates of use need not be obtained in certain instances. A certificate of use need not be obtained by a dealer for fuel which is at least 10% alcohol, for fuel used to heat private or commercial buildings or facilities, and for fuel used for nontaxable purposes as determined by the department in regulations. A dealer only needs a reasonable belief that the fuel is not to be used as motor fuel in order to sell the motor fuel without collecting the tax. Reasonable belief is not defined.

The amendment essentially follows current law with one major exception. Current law provides that a certificate of use is not required for fuel for any domestic purpose in a single or multiple unit private dwelling or for fuel which is at least 10% alcohol. Therefore, the amendment extends the exemption from obtaining the certificate of use to all fuel for heating purposes.

Section 2 amends AS 43.40.035(a). This provision gives a credit or refund to a person who resells fuel previously taxed that is not motor fuel. The amendment will allow a dealer to obtain a refund of any taxes paid on fuel for which he has obtained a certificate of use or possesses a reasonable belief that the fuel is not to be used as motor fuel.

Section 3 repeals AS 43.40.010(1). The repealed section previously provided instances where the dealer was not required to obtain certificates of use.

Section 4 provides for a July 1, 1989 effective date.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 180
PUBLISH DATE: _____

FEB 07 1991

FISCAL NOTE

REQUEST:

Revision Date: February 2, 1990
Title: An act relating to the exemptions from the motor fuel tax
Sponsor: Coghill and Frank
Requestor: Transportation and Finance

Agency Affected: Revenue
BRU: Income & Excise Audit
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	88-440.0	88-440.0	88-440.0	88-440.0	88-440.0	88-440.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: See attached.

Prepared By: Steven E. Kettel *Steven E. Kettel* Phone: (907) 465-2320
Division: Income and Excise Audit Date: February 2, 1990

Approved by Commissioner: Hugh Malone *Hugh Malone* Date: February 2, 1990
Agency: Department of Revenue

Distribution (by preparer):

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

SB 180
February 2, 1990
Prepared by Income
and Excise Audit Division
Department of Revenue

Analysis

Section 1 of the bill amends AS 43.40 by adding a new section to generally provide that a dealer is not required to collect the motor fuel tax if a certificate of use is obtained from the buyer representing that the fuel is not for use as motor fuel. The certificate of use prohibits the department from trying to collect from the dealer in the event the fuel was taxable motor fuel. Paragraphs (a) and (b) are identical to AS 43.40.010(1) which is repealed in Section 3 of the bill.

Paragraph (c) provides that certificates of use need not be obtained in certain instances. A certificate of use need not be obtained by a dealer for fuel which is at least 10% alcohol, for fuel used to heat private or commercial buildings or facilities, and for fuel used for nontaxable purposes as determined by the department in regulations. A dealer only needs a reasonable belief that the fuel is not to be used as motor fuel in order to sell the motor fuel without collecting the tax. Reasonable belief is not defined.

The amendment essentially follows current law with one major exception. Current law provides that a certificate of use is not required for fuel for any domestic purpose in a single or multiple unit private dwelling or for fuel which is at least 10% alcohol. Therefore, the amendment extends the exemption from obtaining the certificate of use to all fuel for heating purposes.

Section 2 amends AS 43.40.035(a). This provision gives a credit or refund to a person who resells fuel previously taxed that is not motor fuel. The amendment will allow a dealer to obtain a refund of any taxes paid on fuel for which he has obtained a certificate of use or possesses a reasonable belief that the fuel is not be used as motor fuel.

Section 4 provides for a July 1, 1989 effective date which needs to be updated.

Comment

Prior to 1982, dealers were not required to collect motor fuel tax if they had a reasonable belief the fuel was to be used in a tax-free manner. Several dealers failed to collect tax in situations which the department and eventually the court held the dealer did not exercise reasonable care in determining whether tax should be collected. These decisions left dealers unprotected against customers that told a dealer they qualified to purchase fuel tax off yet used the fuel for a taxable purpose. To protect dealers, the certificate of use provisions were added to statutes in 1982. Dealers were no longer required to use their

SB 180 -
February 2, 1990
Prepared by Income
and Excise Audit Division
Department of Revenue

independent judgment to determine a sales taxability. By obtaining a certificate of use from their customer, the dealer effectively transferred responsibility for collection of the tax to the customer. This provision also assisted the Department in increasing compliance with the motor fuel tax law. Customers were not as willing to sign a statement under perjury that the fuel was to be used in a tax-exempt manner as they were in orally communicating it to the dealer.

In recent days heating fuel distributors in the interior have become reluctant to obtain certificates of use from their commercial heating fuel customers. It at times is an arduous task and in their minds a lot of unnecessary paperwork. The Department addressed the situation in 1989 with regulations which eased the certificate of use reporting burden. Under new rules, dealers were only required to obtain a certificate with the first purchase of heating fuel made by a customer. So long as that customer's operation did not change, i.e., the fuel continued to be used for heating purposes, additional certificates of use are not required to be obtained. The department believes the regulations have adequately responded to the dealers needs and that the bill will take us back to the problems we faced prior to 1982.

Fiscal Impact

Statewide, approximately 110 million gallons of tax exempt heating fuel are sold annually. It is unknown how much of this fuel may actually be converted to taxable use without the state receiving the revenues. We anticipate that between 0-5% of heating fuel may be converted to taxable use if the bill passes. Assuming that the majority of it is consumed in diesel engines on highway, the potential tax loss would be \$88,000 per 1% leakage.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 3-7-89
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER FIN

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

2/17/89

DATE TURNED INTO OFFICE 2-16-90

Mr. President:

TRSP

Committee considered

SB 180

exemptions from the motor fuel tax, and extending the exemption from the requirement of obtaining a certificate of use to fuel used to heat commercial premises; efd

and recommended:

replace with CS _____ same title

attached amendment(s) and new title

_____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) attached zero

appropriation no FN attached

fiscal impact

Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Handwritten signatures]

Not Lunched no rec

[Handwritten signature]
Chairman signature and recommendation

Committee backup attached

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 180
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LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
	0	0	0	0	0	0
REVENUE						
	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: See attached.

Prepared By: Steven E. Kettel *Steven E. Kettel* Phone: (907) 465-2320
Division: Income and Excise Audit Date: February 21, 1989

Approved by Commissioner: Hugh Malone *Hugh Malone* Date: February 21, 1989
Agency: Department of Revenue

Distribution (by preparer):

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

page ____ of ____

- Fiscal note -

6-0817H
Chenoweth
2/9/90

Original sponsor(s): SEN. COGHILL, Frank

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BY THE TRANSPORTATION COMMITTEE

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16 * Sec. 3. AS 43.40.010(1) is repealed.

17 * Sec. 4. This Act takes effect July 1, 1990.
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MAPCO ALASKA PETROLEUM INC.

A. L. Buki Wright, Jr.
VICE PRESIDENT — ALASKA
(907) 452-5318

JAN 2 1990

January 22, 1990

Senator Jack Coghill
P.O. Box V
Juneau, AK 99811

Dear Senator Coghill:

I fully support SB 180, exempting fuel dealers from obtaining a certificate of use for fuel oil sold to heat commercial facilities. Under SB 180, dealers would be relieved of the burden of collecting numerous certificates of use for sales which are obviously nontaxable. However, the use of certificates, for sales they feel are potentially taxable, would be preserved.

At the present time, fuel dealers are not required to charge the motor fuel tax for fuel sold to heat commercial or private facilities. A certificate of use must be obtained, however, for fuel sold to heat commercial buildings. That certificate is signed by the customer certifying that he is using the fuel for a tax exempt purpose.

Under AS 43.40.010(1), motor fuel tax does not have to be collected if a dealer believes at the time of the sale that the fuel will not be used for a taxable purpose. A dealer will usually know, by sight, how the purchaser will use the fuel.

Heating fuel is exempt from motor fuel tax and should also be exempt from the requirements of the certificate of use. If a dealer has doubts about the use of the fuel, he will obtain a certificate of use for protection against the liability of paying tax at a later date.

Sincerely,

A.L. Buki Wright, Jr.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3109
(907) 465-3991

March 16, 1989

MEMORANDUM

TO: Representative Bert Sharp

ATTN: Murray Tate

FROM: Tom McKenna *TM*
Legislative Analyst

RE: Fuel Tax Exemption Procedures in Other States
Research Request 89.289

You asked us to obtain information about the processes employed by other states to grant exemptions to fuel taxes when fuel is purchased for use in heating commercial buildings or other nonhighway purposes. Alaska Statutes require that a dealer must obtain a "certificate of use" from commercial buyers stating that fuel purchased is not intended for use as a motor fuel (AS 43.40.010). You wanted to know if other states require such a certificate.

In response to your questions, I contacted fuel tax administrators in six states.¹ Certificates of use are employed in two of the states contacted. The administration of fuel tax exemptions among all of these states involves combinations of several approaches. These approaches are outlined below.

- Certificates of use are required from oil suppliers and consumers who claim exemption from Pennsylvania's Oil Franchise Tax. Ohio's Department of Taxation encourages--but does not mandate--fuel oil distributors to obtain certificates from consumers who claim exemption from the fuel tax.
- Distributors may deliver fuel for heating commercial or residential buildings without collecting taxes or processing exemption forms in five of these states. In Washington, Minnesota and Ohio distributors are not required to obtain special tax exemption documentation for fuel delivered to tanks connected to heating equipment in either commercial or residential buildings. Oregon's motor fuels tax is collected at the time fuel enters over-the-road vehicles; heating oil distributors are not directly accountable for

¹The states are Massachusetts, Minnesota, Ohio, Oregon, Pennsylvania and Washington.

Representative Sharp
March 16, 1989
Page 2

fuel tax administration. In Massachusetts, distributors who sell only (tax-exempt) heating oil are licensed by local governments and are not included in the exemption process managed through the state licensing system.

- Most of the states regulate fuel tax exemptions through some combination of licensing requirements for dealers, bulk purchasers, and multiple use consumers. Licensed entities are required to submit tax reports to document the manner in which fuels are used. Minnesota, Ohio and Massachusetts reported audit processes as major components of the processes of administering fuel tax exemptions.
- All of the states have provisions for refunds for fuels taxed when purchased and used in exempt capacities.

Descriptions of the mechanisms for granting and accounting for fuel tax exemptions are summarized below.

MASSACHUSETTS

Fuel oil dealers that sell only heating fuel are licensed and regulated by local governments in Massachusetts as these sales are exempt from the fuel tax. All other dealers are classified as "suppliers" and must be licensed. Suppliers buy fuel in bulk without an applied tax, and pay taxes depending on the nature of fuel use. These dealers are required to file monthly returns documenting all taxable and nontaxable disposal of fuels. This information includes the names of the tax-exempt purchasers, although exemption certificates are not used. The Department of Revenue systematically audits licensed dealers.²

²Jack Frangiamone, assistant chief, Massachusetts Department of Revenue, Division of Excise, personal communication, March 15, 1989.

MINNESOTA

Although dealers who distribute fuel to tanks which commercial building owners use only for heating purposes are not required to collect taxes on the fuel or provide specific exemption documentation, they must retain invoices for audits conducted by the Department of Revenue. Minnesota licenses dealers and bulk purchasers who purchase diesel fuels for multipurpose uses. These entities must file monthly tax reports documenting the type of use for all fuel consumed. When fuel consumed for off-highway use is exempted from the 20 cents per gallon excise tax, it then becomes subject to Minnesota's six percent sales tax.³

OHIO

In the absence of statutory provisions for certificates of use, Ohio employs a system in which sellers may voluntarily obtain written documentation of the intended use of diesel fuels from purchasers. Without such statements, the Department of Taxation will hold a distributor liable for assessments if a consumer uses fuel for taxable purposes after purchasing the fuel for nontaxable uses. Distributors are ultimately responsible--through monthly tax returns--for documenting the disposition of fuels through all taxable and nontaxable sales. The Department of Taxation conducts audits on the basis of perceived accounting discrepancies.⁴

OREGON

There is relatively little regulation of special fuel use in Oregon. Although Oregon's fuel tax laws (Attachment A) contain licensing requirements and mandate monthly statements from dealers, special fuels such as diesel fuels are taxed only when they go into fuel tanks of vehicles which are used on highways. Those using special fuels for nontaxable off-highway use are thus not ordinarily taxed. The Department of Motor Vehicles is charged with fuel tax collection and audit responsibilities. According to Jay Morganson, fuel tax auditor for the Department of Motor Vehicles, the department is largely uninformed about the types of off-highway use for which special fuel sales are made, since fuel dealers (other than service stations) have no tax collecting responsibilities.

³Larry Tremble, Minnesota Petroleum Tax Office, personal communication, March 15, 1989.

⁴Jim Jarsabeck, Ohio Department of Taxation, Motor Fuels Division, personal communication, March 15, 1989.

PENNSYLVANIA

The state of Pennsylvania requires certificates of use for verification of exemptions from one of two elements of its tax structure that apply to heating fuels. The state imposes an Oil Franchise Tax on oil companies for the privilege of doing business in the state. Under this tax, oil companies are taxed for all fuel that is used to propel vehicles designed for highway use. Companies are entitled to obtain exemptions from taxation upon receipt of an exemption certificate from the purchaser of the fuel.⁵ The certificate must specify the type of use for which the fuel is intended. According to Paul Sload of the Pennsylvania Bureau of Motor Fuel Taxes, small distributors often elect to be classified as oil companies.⁶ These distributors may then purchase oil from larger companies without initially paying the franchise tax, and receive tax exemptions for fuel sold for nonhighway use. Consumers who use fuel sold by these companies for nonhighway uses (including commercial building heating) must file certificates of use to verify their intentions of off-highway fuel use.

The second element of the Pennsylvania tax structure is a Fuel Use Tax which is a more general tax applied to all fuel going into highway gas tanks. Any entity that makes bulk purchases of fuel intended for use in an over-the-road vehicle, must obtain a "fuel dealers' user's license." As in other states, licensees must file monthly reports describing the extent of taxable and nontaxable fuel use.

⁵The tax is structured to shift the burden of administering tax exemptions from government to the oil companies.

⁶According to Mr. Sload, most distributors elect to be classified as oil companies. Without oil company status, a distributor either has to guarantee that 100 percent of its product is sold for off-highway use, or pay tax on all fuel purchased.

Representative Sharp
March 16, 1989
Page 5

WASHINGTON

Except for dealers who deliver only into tanks connected to heating equipment, fuel oil dealers in Washington are required to be licensed. Licensed dealers are subject to audit by the state, and must retain invoices from fuel sold for non-taxable purposes. Consumers who regularly make bulk purchases of "special fuels" such as diesel (or heating fuel No. 2) for nonhighway uses must obtain a "special fuel user license" in order to be exempt from taxes at the time of purchase. All licensees must file reports with the Department of Licensing either quarterly or yearly, depending on the magnitude of their tax liabilities. These reports must document the quantity and purpose of all special fuel uses. Unlicensed entities may claim tax refunds for nonhighway use of special fuels by submitting a refund claim form. The law relating to Washington's Special Fuel Tax is provided in Attachment B.⁷

If you have questions, please call me.

Attachments

⁷Ildefonso L. Origenes, assistant administrator, Fuel Tax Section, Washington Department of Licensing, personal communication, March 7, 1989.

Representative Bert Sharp
Alaska State House of Representatives
Juneau, Alaska
February 5, 1990

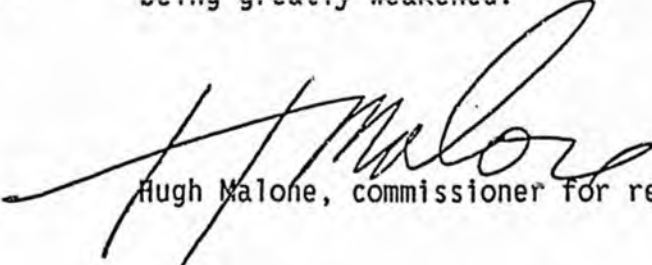
Dear Representative Sharp;

HB 183 would repeal the requirement that a motor fuel dealer obtain a certificate of use. This repeal would be effective in those cases where the dealer has a reasonable belief that the fuel will be used for non-taxable (exempt) uses.

I would urge you most strongly to delete that provision from the bill. If certificates of use are not obtained by the dealer, the state has essentially no way to determine whether the fuel was used for an exempt purpose. There would no longer be any "paper trail" that was certified to by the buyer of the fuel. As a practical matter, it would be impossible to audit or even determine the use of the fuel.

This would create a large "loophole" for dishonest fuel buyers to run through, and there would be no way to stop them. This would create powerful incentives for buyers who respect the law to follow suit, since they would be placed at a competitive disadvantage if they paid the tax and their competitors did not.

I strongly recommend that the certificate of use program be continued. I believe that repealing it will result in this revenue source being greatly weakened.



Hugh Malone, commissioner for revenue

cc Royce Weller
Steve Kettel
405q

Express FUELS

•• A DIVISION OF MAPCO ALASKA PETROLEUM

January 22, 1990

Senator Jack Coghill
PO Box V, Room 30C
Junuea, Alaska 99811

Dear Senator Coghill:

We would like to let you know of our support for SB #180, concerning Certificates of Use for heating oil sold to heat commercial facilities.

As you already know, motor fuel tax is not collected on heating oil if it is not to be used for taxable purposes. This is based upon the dealers belief of what the fuel will be used for. In almost every case, a dealer will know by sight what the purchaser will use the fuel for.

Therefore, we believe that fuel oil dealers should only be required to obtain a Certificate of Use if there is a doubt as to what the fuel will be used for.

SB #180 would relieve the dealers of the burden of collecting Certificates of Use for those sales which are obviously untaxable, yet would preserve the use of the Certificates for those sales which we feel could be potentially taxable.

We hope you will support this piece of legislation.

Sincerely,

Charlie Croan
Charlie Croan, *ab*
Operations Manager

CC/abh

NENANA FUEL CO.

P.O. Box 268
Nenana, Alaska 99760
Dial 832-5476

January 22, 1990

Senator Jack Coghill
PO Box V, Room 30C
Juneau, Alaska 99811

Dear Senator Coghill:

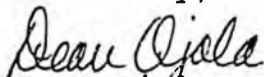
We would like to take this opportunity to express our support for SB180 exempting fuel oil dealers from obtaining a Certificate of Use for fuel oil sold to heat commercial facilities.

As it stands now, motor fuel tax need not be collected if a dealer has reasonable belief that at the time of the sale the fuel is not to be used for taxable purposes. Since heating fuel is exempt from the motor fuel tax, it should also be exempt from the requirements of the Certificate of Use.

SB180 would relieve fuel oil dealers of the burden of collecting Certificates of Use for those sales which are obviously untaxable.

We hope you will support this piece of legislation.

Sincerely,



Dean Ojala
Terminal Manager

DO/abh

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;

(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 43. Disaster Taxes.

Secs. 43.43.010 — 43.43.060. Disaster relief tax. [Repealed, § 1 ch 48 SLA 1969.]

Secs. 43.43.110 — 43.43.160. Disaster Severance tax. [Repealed, § 2 ch 247 SLA 1970.]

Chapter 45. School Tax.

[Repealed, § 3 ch 166 SLA 1976; § 2 ch 64 SLA 1980; § 46 ch 113 SLA 1980.]

Chapter 50. Tobacco Tax.

Article

1. Cigarette Tax Act (§§ 43.50.010 — 43.50.180)
2. Additional Cigarette Tax (§ 43.50.190)

Collateral references. — 51 Am. Jur. 2d, Licenses and Permits, §§ 5, 16; 71 Am. Jur. 2d, State and Local Taxation, § 615. 53 C.J.S., Licenses, § 30.

Senator John B. (Jack) Coghill

Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465-4797

Box 55028
North Pole, Alaska 99705
(907) 488-0862



MEMORANDUM

To: Senator Lloyd Jones

From: Senator Jack Coghill

Re: SB 180

Date: February 24, 1989

A handwritten signature in dark ink, appearing to read "Jack Coghill", written over the "From" line of the memorandum. The signature is stylized and includes a horizontal line underneath.

I would like to request you to schedule SB 180, "an Act relating to the exemptions from the motor fuel tax, and extending the exemption from the requirement of obtaining a certificate of use to fuel sold to heat commercial premises; and providing for an effective date" for a hearing in the Senate Transportation Committee as soon as possible.

Currently in statute, we have an exemption from the motor fuel tax for fuel used to heat private or commercial buildings or facilities (AS 43.40.100(2)(J)). However, in order for a fuel dealer to obtain the exemption for a commercial building, the dealer must obtain a certificate of use (AS 43.40.010(1)). Dealers do not have to obtain a certificate of use for fuel used to heat private residences, but they have to for fuel used to heat commercial buildings.

SB 180 eliminates the certificate of use requirement for fuel used to heat a commercial building. I have enclosed a copy of a memo from Legal Services, copies of the relevant statutes and regulations and a letter from Petro Star Inc. If you have any questions after reviewing the material, please feel free to contact me.

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 25, 1989

SUBJECT: SB 180: Motor fuel tax (AS 43.40) -
exemption relating to fuel used in commercial
premises

TO: Senator Jack Coghill

FROM: Jack Chenoweth
Legislative Counsel 

This bill is not easy to explain. Suffice to say that the net effect--the bottom line--is to respond to Walt Schlotfeldt's request by exempting from the certificate of use requirements fuel used to heat commercial premises.

There is a motor fuel tax (AS 43.40). There is an exemption from the tax for fuel used to heat "private or commercial buildings or facilities" (AS 43.40.100(2)(J)). The fuel dealer may claim the tax exemption for fuel required for heat in a private dwelling (AS 43.40.010(1) in current law), but in order to claim the exemption for a commercial building, the dealer must obtain a certificate of use (AS 43.40.010(1) in current law).

This bill eliminates the certificate of use requirement for fuel used to heat a commercial building.

The requirements and exceptions are all wrapped up together in AS 43.40.010(1) in current law. AS 43.40.010(1) is a drafter's nightmare. Rather than make it more complex, I decided to start over.

This bill (in bill section 3) repeals AS 43.40.010(1) and replaces the material in it with a new section, AS 43.40.015 (bill section 1). AS 43.40.015(a) and (b) merely repeat the substance of the repealed provisions in a tidier, less convoluted format. Note that AS 43.40.015(b) continues the certificate of use requirement. AS 43.40.015(c) sets out exemptions from obtaining a certificate of use in order to secure the tax exemption. The specific provisions iden-

- Sectional analysis -

Senator Jack Coghill

Page 2

February 25, 1989

tified in paragraphs (c)(1) and (c)(3) appear in current law: (c)(1) is a cross-reference to "fuel which is at least 10 percent alcohol by volume", and (c)(3) makes a reference to the exemption authorized by AS 43.40.100(2)(K). These are just merely carried forward without change from the existing law.

The exception addressed in AS 43.40.015(c)(2) of this bill is an exception from the certificate of use requirement for all "fuel to heat private or commercial buildings or facilities." In other words, if this bill is enacted as drafted, dealers like your constituent would no longer be required to secure a certificate of use to support a tax exemption claim for fuel used not only for private buildings, as authorized under current law, but also for fuel delivered to heat commercial buildings.

Bill section 4 gives the change a July 1, 1989 effective date, in other words, at the start of the next fiscal year.

Bill section 2 makes a technical change to account for the repeal of AS 43.40.010(1) and the substitution of AS 43.40.015.

If this memorandum or the bill prompts questions, please contact me.

JBC:kb
wkk2/1052

Enclosure

PETRO STAR INC.



Telephone (907) 488-0730
Telecopier (907) 488-9057
TELEX 36-686

P.O. Box 56239
North Pole, Alaska 99705
Walt Schlotfeldt
President

January 30, 1989

Honorable Jack Coghill
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear ^{Jack}~~Senator~~ Coghill:

The motor fuel tax regulations which we must live with (15 AAC 40) have two problems: (1) we must receive certificates of use for commercial buildings which will obviously use the fuel for heating; and (2) we also must receive certificates of use for commercially owned residential buildings.

These regulations need to be changed. We are not required to receive certificates of use (15 AAC 40.040(k)) for fuel sold to private residences, but we must for all commercial buildings including commercially owned residences. Contrary to this, the tax is not collected for any heating purposes (AS 40.43.40.010(1), and heating fuel is specifically not defined (AS 40.43.40.100(2)(j)) as a "motor fuel". If we are not to collect tax on any "fuel used to heat private or commercial buildings or facilities" (AS 40.43.40.100(2)(j)), why must we obtain certificates of use for fuel sold to heat commercial buildings or commercially owned private residences (15 AAC 40.030)?

In addition to requiring certificates of use for customers who purchase heating fuel, we must report monthly all non-taxable fuel sales (15 AAC 40.070(a)(5)), including heating fuel sales made during the month.

I would like to request that you not simply change the regulations which apply to certificates of use currently required for fuel used to heat buildings or facilities. Please take this one step further and simply take heating fuel completely out of the Motor Fuel Tax laws and regulations. Heating fuel is not taxable, nor should we or our customers have to report through certificates of use and monthly reports sales of heating fuel. Heating fuel is already precluded from the definition of "Motor Fuel" (AS 40.43.40.100), therefore, it should not even be dealt with in the statute or the accompanying regulations. Perhaps AS 40.43.40.010(1) should be amended to read: "If a dealer

Backup letter

has a reasonable belief at the time of sale or transfer that fuel that is sold or transferred is to be used as motor fuel..." Then the law would apply only to taxable fuels and not include heating fuel. We would then presumably do away with a lot of paperwork in the form of certificates of use and monthly reports of all tax-exempt sales of heating fuel.

Your assistance in this matter is appreciated.

Sincerely;



Walt Schlotfeldt

WPS:pm
W.90112-2

PETRO STAR INC.

Telephone (907) 400-0730
Teletypewriter (907) 400-9057
TELEX 200-6100

P.O. Box 56239
North Pole, Alaska 99705
Walt Schlotfeldt
President

March 6, 1989

Mr. Royce B. Weller
Special Assistant Commissioner
Department of Revenue
Box 8
Juneau, Alaska 99811

Dear Mr. Weller:

I am writing in regard to the certificates of use requirement for heating fuel for commercial facilities. Collection of a motor fuel tax on diesel fuel is the responsibility of the dealer, for he is the only one who can determine what the use of the fuel will be. No matter what auditing procedures are used, this will be the case. The person making the delivery, in almost every case, knows by sight what the fuel will be used for, therefore, if the dealer feels that the use of the fuel will be as prescribed by the motor fuel tax laws and that the tax should be collected, he will charge for the tax. If he does not charge the tax, he will surely get a certificate of use to protect himself from the liability of potentially paying the tax at a future time.

Since heating fuel is exempt from the tax, it should also be exempted from the requirements of the certificates of use. Certificates of use should only be used in those cases where the purchaser of the fuel could potentially use the fuel as a motor fuel. This, then, would protect the dealer and place the burden of future tax liability on the purchaser. To require the dealer to obtain a certificate of use from all heating fuel users is overkill, and is causing the dealers to incur additional administrative expense both in ensuring that all certificates are received from their customers and in corresponding with the customers about their certificates. Certificates of use are also not very popular with our customers, who already feel the burden of paperwork reporting requirements within their own businesses.

- Letter to Revenue -

Mr. Royce B. Weller
March 6, 1989
Page 2

If certificates of use were not required on commercial facilities, but only in the case where the dealer suspected use as diesel fuel, then the auditor would have a clear list of those individuals who may have used the fuel for taxable purposes and not paid the tax. As it is, auditors must review all sales to determine if there are those customers who perhaps should have paid the tax, and generally, for those who the dealer suspects are using the fuel for taxable reasons, we hold a certificate of use on file. Therefore, the certificates of use should only be required for those commercial customers who the dealer suspects are using the fuel for taxable purposes. This would ease the burden of the auditor in tracking sales in which the tax is uncollected. In order to ensure that the dealer is truly receiving certificates in those cases where he suspects the fuel is used for taxable reasons, the auditor could review the invoices, which generally have a high degree of description as to the customer's name, delivery location and tank size and other information including the customer's name. I have enclosed some copies of our delivery invoices for your perusal so that you can see what I mean. This is specifically what the auditors currently do to determine if the dealer has collected the tax or certificates of use from the appropriate customers.

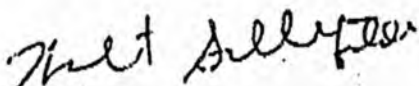
I think it is in the Department of Revenue's best interests to have dealers receive certificates of use only for those sales made which the dealer, who, again, is the only person who truly sees the use of the fuel, suspects is taxable.

We are not asking that our monthly reports of volume sold, taxable and untaxable under the various categories, be discontinued. These reports are, I believe, the basis for your reporting to the Federal Government. I believe that SB-180 and HB-183 would relieve us of the burden of collecting certificates of use for those sales which are obviously untaxable, yet would preserve the use of the certificates for those sales which we feel could potentially be taxable. If the same elimination of the requirement to obtain certificates of use can be accomplished through your regulations, that would be satisfactory to me, and would meet the needs which we have identified.

Mr. Royce B. Weller
March 6, 1989
Page 3

If I can provide any further information or answer any questions, please call me. In the event I am unavailable, you may wish to contact Bob Meath, Sourdough Fuel (456-7798), should you have any questions. I look forward to hearing from you.

Sincerely,



Walt Schlotfeldt
President

Enclosures

WPS:pm
W.90227-3

Sec. 43.35.140. Gambling not legalized. AS 43.35.100 — 43.35.150 do not legalize gambling. (§ 4 ch 116 SLA 1949; am § 1 ch 53 SLA 1951)

Cross references. — For limitations on authorized gaming activities, see AS 05.15.180.

Sec. 43.35.150. Violations and penalties. (a) It is unlawful for a person to (1) distribute in the state a punchboard for which the license tax provided in AS 43.35.100 — 43.35.150 is not paid; or (2) maintain for use, or permit the use of, in a place or premises occupied by the person a punchboard upon which the license stamp is not affixed.

(b) A person violating a provision of AS 43.35.100 — 43.35.150 is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$500. (§ 5 ch 116 SLA 1949; am § 1 ch 53 SLA 1951)

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

Section

- 60. Separate invoices
- 70. Refund warrants
- 80. Examination of books and records
- 85. Preservation of books and records
- 100. Definitions

Collateral references. — 71 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 consignor'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 inter-

state commerce 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

See subsection L 125
page 127

— AS 43.40.010

(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 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 liquefied 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 mobile 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

Effect of amendments. — The 1984 amendment changed the internal reference in the last sentence.

Chapter 35. Coin-Operated Devices and Punchboards.

Article

1. Coin-Operated Amusement and Gaming Devices (§ 43.35.030)

Article 1. Coin-Operated Amusement and Gaming Devices.

Section

30. Distributor fees

Sec. 43.35.030. Distributor fees. A distributor of coin-operated equipment shall

(1) pay an annual permit fee of \$50 to the department, to be deposited by it in the general fund; and

(2) file an affidavit that the distributor is a citizen of the United States, a bona fide resident of the state for at least one year, and has never been convicted of a felony; in the case of a corporation an affidavit is required from each stockholder and employee of the corporation. (§ 48-3-4 ACLA 1949; am § 4 ch 142 SLA 1960; am § 118 ch 6 SLA 1984)

Effect of amendments. — The 1984 amendment substituted "department" for "Department of Revenue" in paragraph (1) and "a bona fide resident of the state

for at least one year" for "and a bona fide resident of the state for more than three years" in paragraph (2).

Chapter 40. Motor Fuel Tax.

Section

35. Other refunds and credits

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(l) 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 the department. When an election is properly made under this subsection, the supplier may claim the credit or re-

fund 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)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

Chapter 50. Tobacco Tax.

Article

1. Cigarette Tax Act (§ 43.50.170)
2. Additional Cigarette Tax (§ 43.50.190)
3. Excise Tax on Certain Tobacco Products (§§ 43.50.300 — 43.50.390)

Article 1. Cigarette Tax Act.

Section

170. Definitions

Sec. 43.50.140. Disposition of proceeds.

NOTES TO DECISIONS

Distribution to particular recipients not required. — There is no express requirement in this section that school fund proceeds be distributed to any particular recipient and, in the view of the Alaska

Supreme Court, there are no grounds for implying such a requirement. *Southwest Rogion School Dist. v. Department of Educ.*, Sup. Ct. Op. No. 3099 (File No. S-1030), P.2d (1986).

Sec. 43.50.170. Definitions. In AS 43.50.010 — 43.50.190, unless the context otherwise requires,

(1) "buyer" means a person who imports or acquires cigarettes for the person's own consumption from any source other than a manufacturer, distributor, direct-buying retailer, or retailer;

(2) "cigarette" means a roll for smoking of any size or shape, made wholly or partly of tobacco, whether the tobacco is flavored, adulterated, or mixed with another ingredient, if the wrapper or cover of the roll is made of paper or a material other than tobacco;

(3) "direct-buying retailer" means a person who is engaged in the sale of cigarettes at retail in this state, and who brings or causes to be brought cigarettes into the state;

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;

(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;

Authority: AS 43.05.080 AS 43.35.070
AS 43.35.060 AS 43.35.110

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 — 15 AAC 40.110)
- 3. Tax Refunds and Credits for Final User (15 AAC 40.200 — 15 AAC 40.230)
- 4-8. (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, bulk sales, 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, Register 83; am 8/12/84, Register 92)

Authority: AS 43.05.080
AS 43.40.010

15 AAC 40.020. FUEL SUBJECT TO TAX, BULK SALES, 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 (c) 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.

- Related AAC -

(b) 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 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. A dealer who makes bulk sales of motor fuel shall collect and remit the tax in accordance with this chapter, except that if the sale is a sale of jet fuel to a person who flies directly from the state to a foreign country the tax may not be collected. However, if a portion of that jet fuel is used on a foreign flight that makes more than one stop in this state or makes a stop in another state, the user shall file a return as required by 15 AAC 40.010 and remit the amount of tax due for the jet fuel actually consumed over Alaska.

(c) 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 and facilities; *we want to include exemption for this*

(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 that operate exclusively in international waters and that 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.

(d) For purposes of (c)(1) and (2) of this section, "official use" does not include sales of fuel. (Eff. 7/19/82, Register 83; am 11/14/82, Register 84; am 8/12/84, Register 91; am 1/19/86, Register 97)

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(c) 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(c)(4), (6), (13), (15), and (16). *- does not include commercial buildings*

(c) In support of an exemption under 15 AAC 40.020(c)(5), the annual certificate of use must itemize and show the location of each tank or other facility that stores fuel used exclusively for heating commercial buildings and facilities. *Should not need certificate*

(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,