

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

97 SEP -4 PM 1:57

CLERK OF COUNTY CLERK

In the Matter of an Ordinance Imposing a	)	
Five Cent per Gallon Fuel License Tax:	)	
Providing a Formula for Distributing	)	ORDINANCE 632
Revenues to Cities; Providing an Effective	)	
Date; and Referring the Ordinance to the	)	
Voters.	)	

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business in special session on September 4, 1997, Commissioners Ted Lopuszynski and Robert Johnstone being present, Commissioner Bunn being excused.

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Section 1. FINDINGS.

The Board makes the following findings:

- A. Current funding is inadequate to address the growing need for funds to construct, reconstruct, improve, maintain, operate and use the roads of Yamhill County, including within cities. This has led to increased congestion and safety hazards which inconvenience and endanger residents of Yamhill County and the traveling public. In addition, failure to regularly maintain roads adequately leads to increased future costs.
- B. A tax on motor vehicle fuel constitutes a fair and equitable method for raising revenue devoted to road needs as it generally reflects usage by those benefiting from said roads.
- C. Under ORS 203.035(1), the electors of a county "may by ordinance exercise authority within the county over matters of county concern, to the fullest extent allowed by Constitutions and law of the United States and this state" as though the specific powers were listed in the statutes.

Section 2.

- A. The Board has received recommendations from staff and conducted one or more public hearings on this matter and is fully apprised of the issues. The Board finds that this is an appropriate exercise of its taxing power and further, should be referred to the electors for approval or rejection.
- B. Exhibit "A," attached and by this reference incorporated herein, hereby is adopted subject to referral as provided below.

Section 3.

- A. The Office of County Counsel is authorized to codify this ordinance and to make any technical non-substantive changes, as necessary to properly codify this ordinance.

B. A determination by a court of competent jurisdiction that any section, clause, phrase or word of this ordinance, or its application, is invalid or unenforceable for any reason shall not affect the validity of the remainder or its application and all portions not found invalid or unenforceable shall continue in full force and effect. In the event that the amount imposed is found to exceed the amount authorized by state law, the amount shall be reduced to the amount set by state law and not invalidated.

Section 4. REFERRAL OF ORDINANCE TO VOTERS.

This ordinance is referred to the voters of Yamhill County at the election to be held on November 4, 1997.

Section 5. EFFECTIVE DATE.

A. This ordinance shall become effective only if approved by the voters at the November 4, 1997 election, and, if approved, the effective date shall be on the date the county elections officer issues a certification of passage under ORS 254.545(2). Actual imposition of this tax shall be subject to filing with the Department of Transportation and execution of intergovernmental agreements as provided by State law. If this ordinance is not approved by the voters at the November 4, 1997 election, it shall not become effective and shall be null and void.

B. Notwithstanding paragraph A, the Board may by Resolution and Order delay imposition of the increase adopted herein until after the Board declares that either a designated County department, the Department of Transportation or private contractor is prepared to initiate administration and enforcement of its provisions.

ENACTED this 4th day of September, 1997, being the second reading and public hearing before the Board.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

CHARLES STEIN  
County Clerk

By [Signature]  
Deputy County Clerk

FORM APPROVED BY:

[Signature]  
JOHN C. PINKSTAFF  
Assistant County Counsel

[Signature]  
Chairman THOMAS E. EBUNN

[Signature]  
Commissioner TED LOPUSZYNSKI

[Signature]  
Commissioner ROBERT JOHSTONE

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Accepted by Yamhill County Board of Commissioners on 9-4-97 by Board Order # 97-655.

## EXHIBIT "A" to ORDINANCE 632

## MOTOR VEHICLE FUEL DEALER LICENSE TAX

Section 1. **Short Title.** This chapter shall be known as the "county motor vehicle fuel license tax ordinance" and may be so pleaded.

Section 2. **Definitions.** As used in this chapter, unless the context requires otherwise:

A. **"Aircraft fuel"** means any gasoline and any other inflammable or combustible gas liquid by whatever name such gasoline, gas or liquid is known or sold, usable as fuel for the operation of aircraft, except gas or liquid, the chief use of which, as determined by the county is for purposes other than the propulsion of aircraft.

B. **"County"** means Yamhill County, a political subdivision of the State of Oregon. "County" also includes a private party or another governmental agency, such as the Oregon Department of Transportation, which by agreement administers or enforces this ordinance for the county.

C. **"Dealer"** means any person who:

1. Imports or causes to be imported motor vehicle fuel for sale, use, or distribution in, and after the same reaches the county, but "dealer" does not include any person who imports into the county motor vehicle fuel in quantities of five hundred gallons or less purchased from a supplier who is licensed as a dealer hereunder and who assumes liability for the payment of the applicable license tax to the county; or

2. Produces, refines, manufactures or compounds motor vehicle fuels in the county for use, distribution or sale in the county; or

3. Acquires in the county for sale, use or distribution in the county motor vehicle fuels in respect to which there has been no county license tax previously incurred.

4. Acquires title to or possession of motor vehicle fuels in this county and exports the product out of this county.

D. **"Department"** means the Department of Transportation of the State of Oregon.

E. **"Distribution"** means, in addition to its ordinary meaning, the delivery of motor vehicle fuel by a dealer to any service station or into any tank, storage facility or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel is withdrawn directly for sale or for delivery into the fuel tanks of motor vehicles whether or not the service station, tank or storage facility is owned, operated or controlled by the dealer.

F. **"First sale, use or distribution of motor vehicle fuel"** means the first withdrawal, other than by bulk transfer, of motor vehicle fuel from terminal storage facilities for sale, use or distribution. "First sale, use or distribution of motor vehicle fuel" also means the first sale, use

or distribution of motor vehicle fuel after import into this state if the motor vehicle fuel or aircraft fuel is delivered other than to the terminal storage facilities of a licensed dealer.

G. "Highway" means every way, thoroughfare and place of whatever nature, open for use of the public for the purpose of vehicular travel.

H. "Motor vehicle" means all vehicles, engines or machines, movable or immovable, operated or propelled by the use of motor vehicle fuel.

I. "Motor vehicle fuel" means and includes gasoline and any other flammable or combustible gas or liquid, by whatever name such gasoline, gas or liquid is known or sold, usable as fuel for the operation of motor vehicles, except gas or liquid, the chief use of which, as determined by the county, is for purposes other than the propulsion of motor vehicles upon the highways. "Motor vehicle fuel" does not include diesel fuel.

J. "Person" includes every natural person, association, firm, partnership, corporation or the United States.

K. "Service station" means and includes any place operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

[see ORS 319.010]

**Section 3. Purpose of tax imposed; monthly payment of tax; delegation or contracting by county for administration and enforcement.**

It is the purpose of this ordinance to impose upon every dealer a business license tax, for the purpose of raising revenue devoted solely to the construction, reconstruction, improvement, operation, maintenance, and use of roads and streets within the county. The tax imposed shall be paid monthly to the county. The county may delegate to any department of the county or may contract with a private party or the State Department of Transportation for the administration and enforcement of any portion or all of this ordinance. In the case of delegation or contract, the department or private entity may be designated the agent of the county for purposes of administering the business license tax imposed by this ordinance and be authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection, and administration of tax.

[see ORS 319.020]

**Section 4. Monthly statement by dealer; license tax imposed.**

A. Subject to subsections B and C of this section, in addition to any fees or taxes otherwise provided for by law, every dealer in the dealer's own name, or in the name of others, in the first sale, use or distribution of motor vehicle fuel or withdrawal of motor vehicle fuel for sale, use or distribution within areas in the county within which the county lacks the power to tax the sale, use or distribution of motor vehicle fuel, shall:

1. Not later than the twenty-fifth day of each calendar month, render a statement to the county of all motor vehicle fuel sold, used, distributed or so withdrawn by the dealer in the county

as well as all such fuel sold, used or distributed in the county by a purchaser thereof upon which sale, use or distribution the dealer has assumed liability for the applicable license tax during the preceding calendar month.

2. Pay a license tax computed on the basis of five (5) cents per gallon on the first sale, use or distribution of such motor vehicle fuel so sold, used, distributed or withdrawn as shown by such statement in the manner and within the time provided in this chapter.

B. In lieu of claiming refund of the tax paid as to motor vehicle fuel consumed by the dealer in nonhighway uses as provided in Sections 22, 23, and 26 or of any prior erroneous payment of license tax made to the county by the dealer, the dealer may show such motor vehicle fuel as a credit or deduction on the monthly statement and payment of tax.

C. The license tax shall not be imposed wherever it is prohibited by the Constitution or laws of the United States.

[see ORS 319.020]

**Section 5. Exemption of export fuel .**

A. The license tax imposed by Sections 3 and 4 shall not be imposed on motor vehicle fuel:

1. Exported from the county by a dealer; or

2. Sold by a dealer in individual quantities of five hundred gallons or less for export by the purchaser to an area or areas outside the county in containers other than the fuel tank of a motor vehicle, but every dealer shall be required to report such exports and sales to the county in such detail as may be required.

B. In support of any exemption from license taxes claimed under this section other than in the case of stock transfers or deliveries in his own equipment, every dealer must execute and file with the county an export certificate in such form as shall be prescribed, prepared and furnished by the county, containing a statement, prepared and furnished by the county, containing a statement, made by some person having actual knowledge of the fact of such exportation, that the motor vehicle fuel has been exported from the county, and giving such details with reference to such shipment as the county may require. The county may demand of any dealer such additional data as is deemed necessary in support of any such certificate, and failure to supply such data will constitute a waiver of all right to exemption claimed by virtue of such certificate. The county may, in a case where it believes no useful purpose would be served by filing of an export certificate, waive the certificate.

C. Any motor vehicle fuel carried from the county in the fuel tank of a motor vehicle shall not be considered as exported from the county, except that a refund of the tax may be paid on such fuel as provided in Section 22.

D. No person shall, through false statement, trick, or device, or otherwise, obtain motor vehicle fuel for export as to which the county tax has not been paid and fail to export the same, or any portion thereof, or cause the motor vehicle fuel or any portion thereof not to be exported, or divert

or cause to be diverted the motor vehicle fuel or any portion thereof to be used, distributed or sold in the county and fail to notify the county and the dealer from whom the motor vehicle fuel was originally purchased of his act.

E. No dealer or other person shall conspire with any person to withhold from export, or divert from export or to return motor vehicle fuel to the county for sale or use as to avoid any of the fees imposed herein.

F. In support of any exemption from taxes on account of sales of motor vehicle fuel in individual quantities of five hundred gallons or less for export by the purchaser, the dealer shall retain in his files for at least three years an export certificate executed by the purchaser in such form and containing such information as is prescribed by the county. This certificate shall be prima facie evidence of the exportation of the motor vehicle fuel to which it applies only if accepted by the dealer in good faith.

[see ORS 319.240]

**Section 6. Certain sales to armed forces exempt; reports.**

The license tax imposed by Sections 3 and 4 shall not be imposed on any motor vehicle fuel sold to the Armed Forces of the United States for use in ships, aircraft or for export from the county; but every dealer shall be required to report such sales to the county in such detail as may be required. A certificate by an authorized officer of such Armed Forces shall be accepted by the dealer as sufficient proof that the sale is for the purpose specified in the certificate.

[see ORS 319.250]

**Section 7. Fuel in vehicles coming into or leaving county.**

Any person coming into or leaving the county in a motor vehicle may transport in the fuel tank of such vehicle motor vehicle fuel for the person's own use only and for the purpose of operating such motor vehicle without securing a license or paying the tax provided in Sections 3 and 4, or complying with any of the provisions imposed upon dealers herein, but if the motor vehicle fuel so brought into the county is removed from the fuel tank of the vehicle or used for any purpose other than the propulsion of the vehicle, the person so importing the fuel into the county shall be subject to all the provisions herein applying to dealers.

[see ORS 319.260]

**Section 8. Fuel sold or delivered to dealers.**

A. Notwithstanding Section 4, if the first sale, use or distribution of motor vehicle fuel is from one licensed dealer to another licensed dealer, the selling or distributing dealer is not required to pay the license tax imposed by Section 4. When the purchasing or receiving dealer first sells, uses or distributes the fuel, that dealer shall pay the license tax regardless of whether the sale, use or distribution is to another licensed dealer.

B. A dealer who renders monthly statements to the county as required by Sections 4 and 17 shall show separately the number of gallons of motor vehicle fuel sold or delivered to the dealers.

[see ORS 319.270]

**Section 9. License required to be dealer in motor vehicle fuel.**

No dealer shall sell, use, or distribute any motor vehicle fuel until he has secured a dealer's license as required herein.

[see ORS 319.030]

**Section 10. Application for and issuance of dealer's license.**

A. Every person, before becoming a dealer in motor vehicle fuel in this county, shall make an application to the county for a license authorizing such person to engage in business as a dealer.

B. Applications for the license must be made on forms prescribed, prepared and furnished by the county.

C. The applications shall be accompanied by a duly acknowledged certificate containing:

1. The business name under which the dealer is transacting business within the county;

2. The place of business and location of distributing stations in the county;

3. The name and address of the managing agent, the names and addresses of the several persons constituting the firm or partnership and, if a corporation, the corporate name under which it is authorized to transact business and the names and addresses of its principal officers and registered agent.

D. The application for a motor vehicle fuel dealer's license having been accepted for filing, the county shall issue to the dealer a license in such form as the county may prescribe to transact business in the county. The license so issued is not assignable, and is valid only for the dealer in whose name issued.

E. The county shall keep and file all applications with an alphabetical index thereof, together with a record of all licensed dealers.

[see ORS 319.040]

**Section 11. Immediate collection of taxes and interest when dealer fails to secure license; waiver; penalties.**

A. If any dealer sells, distributes, or uses any motor vehicle fuel without first filing the certificate and securing the license required by Section 9, the license tax shall immediately be due and payable on account of all motor vehicle fuel so sold, distributed, or used.

B. The county shall proceed forthwith to determine, from the best available sources, the amount of such tax, and it shall assess the tax and interest in the amount found due, together with a penalty

of one hundred percent of the tax, and shall make its certificate of such assignment and penalty. The county may waive all or part of a penalty imposed under this subsection if the county determines that a violation of the requirement, under this section to file the certificate and bond or to secure the license, was due to reasonable cause and without intent to avoid payment of the tax. In any suit or proceeding to collect such tax, interest and penalty, the certificate is prima facie evidence that the dealer therein named is indebted to the county in the amount of the tax, interest and penalty therein stated.

C. Any tax, interest or penalty so assessed may be collected in the manner prescribed in Section 16 with reference to delinquency in payment of the tax or by an action at law.

[see ORS 319.090]

**Section 12. Revocation of license.**

The county shall revoke the license of any dealer refusing or neglecting to comply with any provision of this chapter. The county shall mail by certified mail addressed to such dealer at the dealer's last known address appearing on the files of the county, a notice of intention to cancel. The notice shall give the reason for the cancellation. The cancellation shall become effective without further notice if within ten days from the mailing of the notice the dealer has not made good its default or delinquency.

[see ORS 319.100]

**Section 13. Change of ownership; cancellation of license.**

A licensed dealer who has a change of ownership shall notify the county immediately of the change. Upon notification, the county shall immediately cancel the motor vehicle fuel dealer license of the dealer. No license may be issued to any successor of the dealer until the successor completes an application. For purposes of this section:

A. In the case of a corporation with more than 100 stockholders, transfer of stock in normal trading is not considered a change in ownership.

B. In the case of a corporation with 100 or fewer stockholders, transfer of less than 50 percent of the stock in any period of 12 consecutive months is not considered a change in ownership.

[see ORS 319.125]

**Section 14. Cancellation of license on request of dealer or when licensee no longer a dealer.**

A. The county may, upon written request of a dealer, cancel any license issued to such dealer, the cancellation to become effective thirty days from the date of receipt of the written request.

B. If the county ascertains and finds that the person to whom a license has been issued is no longer engaged in the business of a dealer, the county may cancel the license of such dealer upon investigation after thirty days' notice has been mailed to the last known address of the dealer.

[see ORS 319.110]

**Section 15. Remedies cumulative.**

Except as otherwise provided in Sections 16 and 18, the remedies provided in Sections 11, 12, and 14 are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this chapter.

[see ORS 319.120]

**Section 16. Payment of tax; delinquency penalty; interest rates; collection of delinquent payments.**

A. The license tax imposed by Sections 3 and 4 shall be paid on or before the twenty-fifth day of each month to the county which, upon request, shall receipt the dealer therefor.

B. Except as provided in subsection E of this section, to any license tax not paid as required by subsection A of this section there shall be added a penalty of one percent of such license tax.

C. Except as provided in subsection E of this section, if the tax and penalty required by subsection B of this section are not received on or before the close of business on the last day of the month in which the payment is due, a further penalty of ten percent shall be paid in addition to the penalty provided for in subsection B of this section.

D. If the license tax imposed by this section is not paid as required by paragraph A of this section, interest shall be charged at the rate of .0329 percent per day until the tax and interest have been paid in full.

If the license tax imposed by this section is overpaid, the county may credit interest to the account of the taxpayer in the amount of .0329 percent per day up to a maximum amount that equals any interest assigned against the taxpayer under the paragraph about in any given audit period.

E. If the county determines that the delinquency was due to reasonable cause and without any intent to avoid payment, the penalties provided by subsections B and C of this section may be waived. Penalties imposed by this section shall not apply when the penalty provided in Section 11 has been assessed and paid.

F. If any person fails to pay the license tax or any penalty provided for by this chapter, the amounts thereof shall be collected from such person for the use of the county. The county shall commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

G. No dealer who incurs a tax liability as provided for herein, shall knowingly and willfully fail to report and pay the same to the county as required herein.

[see ORS 319.180]

**Section 17. Monthly statement of dealer; penalty.**

A. Every dealer in motor vehicle fuel shall render to the county on or before the twenty-fifth day of each month, on forms prescribed and furnished by the county, a signed statement of the number of gallons of motor vehicle fuel sold, distributed, or used by the dealer during the preceding calendar month. The statement shall be signed by one of the principal officers, or by an authorized agent in case of a corporation; or by the managing agent or owner in case of a firm or association.

B. The signed statement filed with the county as required by this section is a public record. All other documents, including supporting schedules and information received from other taxing jurisdictions and entities, shall be kept confidential and exempt from public inspection to the extent required by law, except that such information may be shared with tax collecting entities in other jurisdictions on the condition that the receiving jurisdiction agrees to keep such information confidential. If a statement is not received on or before the twenty-fifth day of each month, a penalty shall be assessed pursuant to 16 or, if the county determines that no tax is due, a penalty of \$25 shall be assessed.

[see ORS 319.190]

**Section 18. Assessing tax and penalty where dealer fails to report.**

If any dealer, except one subject to Section 11, fails to file the report required by Section 17, the county shall proceed forthwith to determine from the best available source the amount of motor vehicle fuel sold, distributed, or used by such for the period unreported, and such determination shall be prima facie evidence of the amount of such fuel sold, distributed, or used. The county immediately shall assess the license tax in the amount so determined, adding thereto a penalty of ten percent for failure to report. The penalty shall be cumulative to other penalties provided in this chapter. In any suit brought to enforce the rights of the county under this section, the certificate of the county showing the amount of tax, interest, penalties, and costs unpaid by any dealer and that the same are due and unpaid to the county is prima facie evidence of the facts as shown.

[see ORS 319.200]

**Section 19. Billing purchasers.**

Bills shall be rendered to all purchasers of motor vehicle fuel by dealers in motor vehicle fuel. The bills shall separately state and describe to the satisfaction of the county the different products shipped thereunder and shall be serially numbered except where other sales invoice controls acceptable to the county are maintained. The bills required hereunder may be the same as or incorporated in those required by the State of Oregon.

[see ORS 319.210]

**Section 20. Receipt, payment or sale of motor vehicle fuel without invoice or delivery tag prohibited.**

No person shall receive and accept any shipment of motor vehicle fuel from any dealer, or pay for the same, or sell or offer the shipment for sale, unless the shipment is accompanied by an invoice

or delivery tag showing the date upon which shipment was delivered and the name of the dealer in motor vehicle fuel.

[see ORS 319.220]

**Section 21.     Transporting motor vehicle fuel in bulk.**

Every person operating any conveyance for the purpose of hauling, transporting, or delivering motor vehicle fuel in bulk shall, before entering upon the public highways of the county with such conveyance, have and possess during the entire time of hauling or transporting such motor vehicle fuel an invoice, bill of sale or other written statement showing the number of gallons, the true name and address of the seller or consignor, and the true name and address of the buyer or consignee, if any, of the same. The person hauling such motor vehicle fuel shall, at the request of any sheriff, deputy sheriff, constable, State police or other officer authorized by law to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale, or other statement.

[see ORS 319.230]

**Section 22.     Refunds generally.**

A.     Any person who has paid any taxes on motor vehicle fuel imposed or directed to be paid hereunder either directly by the collection of the tax by the vendor from the consumer, or indirectly by adding the amount of the tax to the price of the fuel and paid by the consumer, shall be reimbursed and repaid the amount of such tax paid by such person, except as provided in Sections 23 and 26, if such person has:

1.     Purchased and used such fuel for the purpose of operating or propelling stationary gas engines, tractors, or motor boats if the motor boat is used for commercial purposes at any time during the period for which the refund is claimed; or
2.     Purchased and used such fuel for cleaning or dyeing or other commercial use, except when used in motor vehicles operated upon any highway; or
3.     Purchased and exported such fuel from the county, in containers other than fuel supply tanks of motor vehicles; or
4.     Purchased and exported such fuel in the fuel supply tank of a motor vehicle and has used such fuel to operate the vehicle upon the highways of another state, if the user has paid to the other state a similar motor vehicle fuel fee or tax on the same fuel, or has paid any other highway use tax the rate for which is increased because such fuel was not purchased in, and the fee or tax thereon paid, to such state.

B.     When a motor vehicle with auxiliary equipment uses fuel and there is no auxiliary motor for such equipment or separate tank for such a motor, a refund may be claimed and allowed as provided by subsection D of this section, except as otherwise provided by this subsection, without the necessity of furnishing proof of the amount of fuel used in the operation of the auxiliary equipment. The person claiming the refund may present to the county a statement of his claim and be allowed

a refund as follows:

1. For fuel used in pumping aircraft fuel, motor vehicle fuel, fuel or heating oils or other petroleum products by a power take-off unit on a delivery truck, refund shall be allowed claimant for the tax paid on fuel purchased at the rate of three-fourths of one gallon for each one thousand gallons of petroleum products delivered;

2. For fuel used in operating a power take-off unit on a cement mixer truck or on a garbage truck, claimant shall be allowed a refund of twenty-five percent of the tax paid on all fuel used in such a truck.

C. When a person purchases and uses motor vehicle fuel in a vehicle equipped with a power take-off unit, a refund may be claimed for fuel used to operate the power take-off unit provided the vehicle is equipped with a metering device approved by the county and designed to operate only while the vehicle is stationary and the parking brake is engaged; the quantity of fuel measured by the metering device shall be presumed to be the quantity of fuel consumed by the operation of the power take-off unit.

D. Before any such refund may be granted, the person claiming such refund must present to the county a statement, accompanied by copies of the original invoices or reasonable facsimiles approved by the county showing such purchases; provided that in lieu of such invoices or facsimiles, refunds submitted under subdivision 4 of subsection A of this section shall be accompanied by information showing source of fuel used and evidence of payment of fee or tax to the state in which the fuel was used. The county, upon the presentation of the statement and invoices or facsimile, or other required documents, shall cause to be repaid to the claimant from the taxes collected on motor vehicle fuel such taxes so paid by the claimant.

[see ORS 319.280]

**Section 23. Limitations on applications for refunds.**

Applications for refunds made under Sections 22, 26, and 27 must be filed with the county before the expiration of fifteen months from the date of purchase or invoice, except that unused fuel reported as an ending inventory on any claim may be included in a subsection claim if presented not later than fifteen months from the filing date of the claim which established the inventory. All applications for refunds based upon exportation of motor vehicle fuel from the county in the fuel supply tank of a motor vehicle must be filed with the county before the expiration of fifteen months from the last day of the month in which the fuel was used, or before the expiration of fifteen months from the date of an assessment for unpaid fee or tax by the state in which the fuel was used.

[see ORS 319.290]

**Section 24. Seller to give invoice for each purchase made by person entitled to refund.**

A. When motor vehicle fuel is sold to a person who claims to be entitled to a refund of the tax imposed, the seller of the motor vehicle fuel shall make and deliver at the time of the sale separate invoices for each purchase in such form and containing any information prescribed by the county.

B. The invoices shall be legibly written and shall be void if any corrections or erasures appear on the face thereof. Any person who alters any part of an invoice that will tend to give to the claimant an illegal gain shall have the entire claim invalidated. The seller shall for a period of at least eighteen months retain copies of all invoices and make them available to the county upon request.

C. The invoices required hereunder may be the same as or incorporated in those required under ORS 319.310 (1997 Replacement Part). [see ORS 319.300]

**Section 25. Claims for refunds may be required to be under oath; investigation of claims.**

A. The county may require any person who makes claim for refund of tax on motor vehicle fuel to furnish a statement, under oath, giving the claimant's occupation, description of the machines, or equipment in which the motor vehicle fuel was used, the place where used and such other information as the county may require.

B. The county may investigate claims and gather and compile such information in regard to the claims as it considers necessary to safeguard the county and prevent fraudulent practices in connection with tax refunds and evasions. The county may, in order to establish the validity of any claim, examine the books and records of the claimant for such purposes. The records shall be sufficient to substantiate the accuracy of the claim and shall be in such form and contain such information as the county may require. Failure of the claimant to maintain such records or to accede to the demand for such examination constitutes a waiver of all rights to the refund claimed on account of the transaction questioned.

[see ORS 319.310]

**Section 26. Refund of tax on fuel used in operation of vehicles over certain roads or private property.**

A. Upon compliance with subsections B or C of this section the county shall refund, in the manner provided in subsections B or C of this section, the tax on motor vehicle fuel that is used in the operation of a motor vehicle.

1. By any person on any road, thoroughfare, or property in private ownership;

2. By any person on any road, thoroughfare or property, other than a state highway, county road, or city street, for the removal of forest products, as defined in ORS 321.005, or the products of such forest products converted to a form other than logs at or near the harvesting site, or for the construction or maintenance of the road, thoroughfare or property, pursuant to a written agreement or permit authorizing the use, construction or maintenance of the road, thoroughfare or property, with or by:

- a. An agency of the United States or the State of Oregon;
- b. The State Board of Forestry;

- c. The State Forester; or
- d. A licensee of any agency named in paragraphs a, b, or c of this subsection;

3. By any agency of the United States or of the State of Oregon or of any county, city, or port of the State of Oregon on any road, thoroughfare or property, other than a state highway, county road or city street;

4. By any person on any county road for the removal of forest products, as defined in ORS 321.005, or the products of such forest products converted to a form other than logs at or near the harvesting site, if:

a. The use of the county road is pursuant to a written agreement entered into with, or to a permit issued by, the State Board of Forestry, the State Forester or agency of the United States, authorizing such person to use such road and requiring such person to pay for or to perform the construction or maintenance of the county road;

b. The board, officer, or agency that entered into the agreement or granted the permit, by contract with the county court or board of county commissioners, has assumed the responsibility for the construction or maintenance of such county road; and

c. Copies of the agreements or permits required by paragraphs a. and b. of this subsection are filed with the county.

B. Except for a farmer subject to subsection C of this section, the person or agency, as the case may be, who has paid any tax on such motor vehicle fuels imposed or directed to be paid, as provided herein, is entitled to claim a refund of the tax so paid on such fuels or for the proportionate part of the tax paid on fuels used in the operation of such vehicles, when part of the operations are over such road, thoroughfares or property. The proportionate part shall be based upon the number of miles traveled by any such vehicle over such roads, thoroughfares or property as compared with the total number of miles traveled by such vehicle. To be eligible to claim such refund the person or agency, as the case may be, shall first establish and maintain a complete record of the operations, miles traveled, gallons used and other information, in such form and in such detail as the county may prescribe and require, the source of supply of all fuels purchased or used, and the particular vehicles or equipment in which used. Whenever any such claim is received and approved by the county, it shall cause the refund of tax to be paid to the claimant in like manner as provided for paying of other refund claims.

C. A farmer who has paid any tax on motor vehicle fuels imposed or directed to be paid, as provided herein, is entitled to claim a refund of the tax paid on such fuels used in farming operations in the operation of any motor vehicle on any road, thoroughfare or property in private ownership. To be eligible to claim such refund a farmer shall maintain in such form and such detail as the county may prescribe and require, a record, supported by purchase invoices, of all such motor vehicle fuel purchased (including fuel purchased to operate any motor vehicle on the highway) and, for each and every motor vehicle operated on the highway, a record of all fuel used and of all miles traveled on the highway. Whenever any such claim is received and approved by the county, it shall cause the refund of tax to be paid to the claimant in like manner as provided for paying of other refund claims.

D. As used in subsections B and C of this section, "farmer" includes any person who manages or conducts a farm for the production of livestock or crops but does not include a person who manages or conducts a farm for the production of forest products, as defined in ORS 321.005, or the products of such forest converted to a form other than logs at or near the harvesting site, or of forest trees unless the production of such forest products or forest trees is only incidental to the primary purpose of the farming operation.

[see ORS 319.320]

**Section 27. Refunds to purchasers of fuel for aircraft.**

Whenever any statement and invoices are presented to the county showing that motor vehicle fuel has been purchased and used in operating aircraft engines and upon which the tax on motor vehicle fuel has been paid, the county shall refund the tax paid.

[see ORS 319.330]

**Section 28. Examinations and investigations; correcting reports and payments.**

The county, or its duly authorized agents, may make any examination of the accounts, records, stocks, facilities and equipment of dealers, service stations, and other persons engaged in storing, selling, or distributing motor vehicle fuel or other petroleum product or products within this county, and such other investigations as it considers necessary in carrying out the provisions of this chapter. If the examinations or investigations disclose that any reports of dealers, or other persons theretofore filed with the county pursuant to the requirements herein, have shown incorrectly the amount of gallonage of motor vehicle fuel distributed or the tax, penalty or interest accruing thereon, the county may make such changes in subsequent reports and payments of such dealers, or other persons, or may make such refunds, as may be necessary to correct the errors disclosed by its examinations or investigations.

[see ORS 319.370]

**Section 29. Limitation on credit for or refund of overpayment and on assessment of additional tax.**

A. Except as otherwise provided in this chapter, any credit for erroneous overpayment of tax made by a dealer taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a dealer must be so taken or filed within three years after the date on which the overpayment was made to the county.

B. Except in the case of a fraudulent report or neglect to make a report, every notice of additional tax proposed to be assessed under this chapter shall be served on dealers within three years from the date upon which such additional taxes become due.

[see ORS 319.375]

**Section 30 Examining books and accounts of carrier of motor vehicle fuel.**

The county or its duly authorized agents may at any time during normal business hours examine the books and accounts of any carrier of motor vehicle fuel operating within the county for the purpose

of checking shipments or use of motor vehicle fuel, detecting diversions thereof or evasion of taxes in enforcing the provisions of this chapter. [see ORS 319.380]

**Section 31. Records to be kept by dealers; inspection of records.**

Every dealer in motor vehicle fuel shall keep a record in such form as may be prescribed by the county of all purchases, receipts, sales and distribution of motor fuel. The records shall include copies of all invoices or bills of all such sales and shall at all times during the business hours of the day be subject to inspection by the county or its deputies or other officers duly authorized by the county.

[see ORS 319.390]

**Section 32. Records to be kept three years.**

Every dealer shall maintain and keep, for a period of three years, all records of motor vehicle fuel used, sold and distributed within the county by such dealer, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the county. In the event such records are not kept within the State of Oregon, the dealer shall reimburse the county for all travel, lodging, and related expenses incurred by the county in examining such records. The amount of such expenses shall be an additional tax imposed hereunder.

[see ORS 319.400]

**Section 33. Disposition of tax moneys.**

A. The board of commissioners and the board of commissioners' designated representatives shall be responsible for the disposition of the revenue from the tax imposed by this chapter in the manner provided by this section.

B. For the purposes of this section, "net revenue" means the revenue from the tax imposed by this chapter remaining after providing for the cost of administration and any refunds and credits authorized herein. If the county contracts for the administration and enforcement of this chapter, the county and the contractor shall agree from time to time upon the amounts that the contractor shall withhold from revenue to provide for the cost of administration and any refunds and credits authorized herein. The net revenue shall be distributed by the county, or if the department has agreed to administer and enforce this chapter, it may be distributed by the department, to the county and to cities in the proportions provided in subsection D of this section.

C. The net revenue shall be used only for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads and streets within the incorporated and unincorporated areas of the county and such other uses as may be allowed by Article X, Section 3a of the Oregon Constitution. The net revenue received by the county shall be credited to the county road fund for the purposes provided herein.

D. Unless a different distribution is agreed to between the county and the cities within the jurisdiction of the county, the net revenue shall be distributed as follows: sixty percent (60%) of the net revenues shall be distributed to the County and forty percent (40%) of the net revenues shall be

distributed to the incorporated cities within the county, with each city receiving such share of the net revenue as its population bears to the total population of the cities. Distributions shall occur no less than annually. "Population" means population as given in the latest determination of the State Board of Higher Education. In no event shall a city receive an amount in excess of that permitted by state law.

[see ORS 319.410 and ORS 366.805]

**Section 34. State motor fuel tax coordination.**

Nothing herein is intended or shall be construed as conflicting with any provision of the State motor vehicle fuel tax. Unless the express wording or context of this section requires otherwise, this ordinance shall be construed and administered so as to be consistent with the imposition, collection, and enforcement of the State motor fuel tax. The Board of Commissioners may by resolution and order adopt exemptions, authorize a refund or otherwise direct that the ordinance be applied so as to avoid such conflicts. Nothing herein shall authorize the Board to impose a new tax or increase the tax except as authorized by the voters of Yamhill County.

**Section 35 Faithful performance bond.**

A. At the time of filing the certificate and application for a dealer's license, the County must require the dealer to file with the department, in such form as shall be prepared by the county, a bond duly executed by the dealer as principal with a corporate surety authorized to transact business in this State. The bond shall be payable to Yamhill County conditioned upon faithful performance of all the requirements of this ordinance, including the payment of all taxes, penalties and other obligations of the dealer, arising out of this ordinance.

B. The total amount of the bond or bonds required of any dealer shall be fixed by the County and may be increased or reduced by the County at any time subject to the limitations provided in this section. The total amount of the bond or bonds required of any dealer shall be equivalent to twice the estimated monthly license tax, determined in the manner the County deems proper. However, the total amount of the bond or bonds required of any dealer shall never be less than \$1,000 nor more than \$100,000. Any bond given in connection with this ordinance shall be a continuing instrument and shall cover any and all periods of time including the first and all subsequent periods for which a license may be granted in consequence of the giving of the bond. The liability of the surety on the bond for the aggregate of all claims which arise thereunder shall not exceed the amount of the penalty of the bond. No recoveries on any bond or any execution of any new bond shall invalidate any bond, but the total recoveries under any one bond shall not exceed the amount of the bond.

[see ORS 319.050]

**Section 36. Deposit in lieu of bond.**

In lieu of the bond or bonds in total amount as fixed under Section 35, any dealer may deposit with the County Treasurer, under such terms and conditions as the Board of Commissioners for the County may prescribe, a like amount of lawful money of the United States or bonds or other obligations of the United States, the State of Oregon, or any county of this state, of an actual

market value not less than the amount so fixed by the County.

[see ORS 319.060]

**Section 37 Release of surety.**

Any surety on a bond furnished by a dealer as provided in Section 35 shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of 30 days from the date upon which the surety has lodged with the County Board of Commissioners a written request to be released and discharged, but this provision shall not operate to relieve, release or discharge the surety from any liability already accrued or which accrues before the expiration of the 30-day period. The County shall promptly, upon receiving the request, notify the dealer who furnished the bond, and unless the dealer, on or before the expiration of the 30-day period, files a new bond, or makes a deposit in accordance with the requirements of Sections 35 and 36, the County forthwith shall cancel the dealer's license.

[see ORS 319.070]

**Section 38. Additional bond or deposit.**

The County may require a dealer to give a new or additional surety bond or to deposit additional securities of the character specified in Section 36, if, in its opinion, the security of the surety bond theretofore filed by the dealer, or the market value of the properties deposited as security by the dealer, becomes impaired or inadequate. Upon failure of the dealer to give the new or additional surety bond or to deposit additional securities within 10 days after being requested so to do by the County, the County forthwith shall cancel the license of the dealer.

[see ORS 319.080]

**Section 39. Liability for taxes, interest and penalties when person importing fuel does not hold license.**

A. A person who is not a licensed dealer shall not accept or receive motor vehicle fuel in this county from a person who imports motor vehicle fuel who does not hold a valid motor vehicle fuel dealer license in this county. If a person who is not a licensed dealer accepts or receives motor vehicle fuel from a person who imports motor vehicle fuel and does not hold a valid motor vehicle fuel dealer license in this county, the purchaser or receiver shall be liable for all taxes, interest and penalties contained in this Ordinance.

B. A licensed dealer who accepts or receives motor vehicle fuel in this county from a person who imports motor vehicle fuel who does not hold a valid dealer license in this county shall pay the tax imposed by Section 4 to the County upon the first sale, use or distribution of the motor vehicle fuel.

[see ORS 319.275]

**Section 40. Agreements for refunds to Indian tribes.**

Notwithstanding any other provision of law, the County may enter into agreements with

the governing body of any Indian tribe residing on a reservation in the County to provide refunds to the tribe of state motor vehicle fuel taxes for fuel purchased on the reservation and used by tribal members on tribal reservation lands, other than for motor vehicle fuel used on state highways, county roads or city streets supported by the State Highway Fund.

[see ORS 319.382]

**Section 41. Tax reduction if State increases state motor vehicle fuel license tax**

If within two years of the effective date of this ordinance, the amount of the state motor vehicle fuel license tax under ORS 319.020 (1997 Edition) is increased, then the amount of the county motor vehicle fuel license tax hereunder shall be reduced by an amount equal to the state tax increase.

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