

Secretary of State
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PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rules(s) adopted on November 9, 2010 by the
Date prior to or same as filing date.

Oregon Department of Transportation, Central Services Division
Agency and Division Administrative Rules Chapter Number
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to become effective January 1, 2011 Rulemaking Notice was published in the October 2010 Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Revision of Bulk Use Fuel Sales Reporting and Remittance of Tax
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION
List each rule number separately, 000-000-0000.

ADOPT: 735-176-0023
AMEND: 735-176-0000, 735-176-0010, 735-176-0017, 735-176-0021, 735-176-0022, 735-176-0030, 735-176-0040, 735-176-0045

REPEAL:

RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 184.616, 184.619, 319.840 None
Stats. Auth. Other Authority

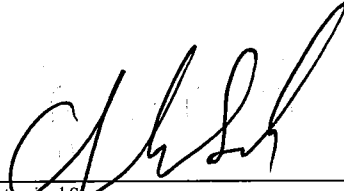
ORS 319.510 - 319.880, 319.990(4)
Stats. Implemented

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RULE SUMMARY

Several use fuel sellers were claiming four percent tax credit on bulk sales, which results in about \$80,000 of lost revenue for ODOT per year. The rule amendment clarifies that because the use fuel seller is paying the tax on behalf of the use fuel user(s), the four percent credit cannot be claimed on these sales. Rather, the four percent credit is available to licensed use fuel sellers when they are remitting tax for which they are responsible as sellers.

Further, use fuel users approached ODOT about simplifying their reporting requirements. To meet their request, the rule amendment 1) creates Use Fuel User Simplified Reporting, which allows use fuel users to report all fuel handled on one report on a monthly basis; 2) creates Third Party Payers (people or businesses who pay tax on behalf of use fuel users) to allow the Department to match user reports and supplier payments, should the user want the supplier to pay the tax for them and 3) defines Registered Bulk Fuel Distributors (people or businesses who sell bulk fuel to use fuel users, but are not licensed as use fuel sellers), to capture fuel handled information from bulk suppliers that are not licensed as use fuel sellers.


Authorized Signer Clyde K. Saiki 11/10/10
Printed Name Date

* With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.
** The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.
ARC 930-2005

DMV 21-2010

735-176-0000

Definitions

- (1) "Bulk Facility" means a fixed storage location for which the primary purpose is fuel distribution by truck to customers' locations. Dispensing fuel at the bulk facility into a vehicle or container is not prohibited, but may be subject to tax.
- (2) "Cardlock Statement" means the printed detail of customer purchases using a cardlock card. Each statement shall contain:
 - (a) The card issuer's name and address;
 - (b) The customer's name and address; and
 - (c) The transaction activity detailed by card number.
- (3) "Electronic Invoice" means the data captured when a cardlock card is used for a fuel purchase. The electronic invoice shall contain the same information as in "Invoice." Commonly, a series of electronic invoices will be printed in a periodic cardlock customer statement.
- (4) "Emblem" means the document issued by the Department, which allows the licensed user to purchase fuel with the Oregon use fuel tax deferred. Emblems are issued for a specific vehicle and renewed annually.
- (5) "Fleet Fueling" means a mobile retail fueling operation where the licensed seller places fuel into the tank of a vehicle or equipment at various locations. Any sales made without collecting Oregon tax are subject to invoice requirements in ORS 319.671.
- (6) "Incidentally Operated" means the vehicle or equipment is primarily designed to be operated off road but is allowed up to five (5) miles on-road travel starting from the location the vehicle was garaged or parked the previous day. If in excess of these miles, all on-road use is subject to tax.
- (7) "Invoice" means the receipt or other record of an individual transaction, completed at the time of the sale. An invoice shall contain the following:
 - (a) Seller's name and address;
 - (b) Full date of sale;
 - (c) Fuel types;
 - (d) Gallons sold;
 - (e) The amount of Oregon use fuel tax collected, if any (shown separately from total purchase amount);
 - (f) If tax was collected for fuel sold into the fuel tank of a vehicle over 26,000 pounds the invoice/receipt must contain:
 - (A) Oregon Motor Carrier Transportation Division issued plate number; or
 - (B) Oregon Motor Carrier Transportation Division weight receipt number; or
 - (C) Oregon Motor Carrier Transportation Division pass number; or
 - (D) Oregon Fuels Tax Group emblem number.
 - (g) If exempt, the reason for exemption as allowed by ORS 319.671.
- (8) "Non-retail Facility," as defined in ORS 319.520(11), means an unattended facility where use fuels are dispensed through a card activated fuel dispensing device to non-retail customers.
- (9) "ODOT Fuels Tax Group" or "Department" means the organizational unit within the Oregon Department of Transportation or its agent that is primarily charged by the Department with the administration of ORS 319.010 through 319.880 on behalf of the state of Oregon.
- (10) "Register" means to be entered into the Department's registry as a third party payer. This option allows a bulk facility that is not otherwise qualified as a use fuel seller (as defined by ORS 319.520 (9)), and therefore not licensed with the state of Oregon, to act as a third party

payer. By registering with the state of Oregon as a third party payer, the bulk facility receives a registry number, which enables the state of Oregon to track and record bulk sales information when the third party payer is operating in accordance with OAR 735-176-0023.

(11) "Registered Bulk Distributor" means an entity that sells bulk use fuel to a use fuel user and is not otherwise qualified as a use fuel seller (as defined by ORS 319.520 (9)), and is therefore not licensed with the state of Oregon. A Registered Bulk Distributor must comply with Administrative Rules chapter 735, section 176 in order to pay taxes on behalf of users as a third party payer.

(12) "Retail Facility" means a fueling operation that does not qualify as a non-retail facility. Unattended facilities that are not capable of generating an electronic invoice are considered retail facilities.

(13) "Simplified User Reporting" means a use fuel user who opts to pay tax on all gallons purchased on a monthly basis at bulk facilities, retail facilities, and non-retail facilities and report those purchases in a format determined by the Department.

(14) "Third Party Payer" means either a bulk facility that reports all bulk fuel sales, collects and remits the applicable tax to the state of Oregon on behalf of use fuel users, or a licensed use fuel seller who is collecting and remitting the applicable tax to the state of Oregon on behalf of use fuel users as part of its operation.

(15) "User" or "User of Fuel in a Motor Vehicle" as used in ORS 319.510 through 319.880 and OAR chapter 735, division 176, means a person as defined in ORS 319.520(12) who uses fuel in a motor vehicle as defined in ORS 319.520(15). "User" or "user of fuel in a motor vehicle" includes, but is not limited to, a lessor who allows a motor vehicle to operate on the highways of this state and allows the lessee to use fuel in that motor vehicle.

Stat. Auth.: ORS 184.616, 184.619 & 319.510 - 319.880

Stats. Implemented: ORS 319.510 - 319.880

735-176-0010

Use Fuel Seller Licensing Requirements

(1) Seller License. Persons who sell fuel for use in a motor vehicle are required to be licensed. They must maintain records of fuel manufactured, purchased, handled, and distributed or sold and must preserve them for three years from the filing due date. Persons who do not sell fuel for use in a motor vehicle are not required to be licensed. They must, however, maintain records of fuel manufactured, purchased, handled, and distributed or sold and must preserve them for three years from the date of sale and make them available to the Department upon request.

(2) Bond amounts for licensed sellers will be two times the estimated monthly tax liability as determined by the Department.

(a) For new licensees, the bond amount shall be determined by volume sold by prior owner or similar sellers in the area.

(b) In the event there is no reliable data on which to estimate the bond, the seller will post \$1,000 bond or deposit, subject to annual review and adjustment.

(3) If a deposit other than cash is made, the bond or security on deposit shall have the Department of Transportation listed as an owner.

Stat. Auth.: ORS 184.616, 184.619 & 319.510 - 319.880

Stats. Implemented: ORS 319.621, 319.665 & 319.697

735-176-0017

Use Fuel Seller Reporting Requirements

- (1) Fuel is presumed to be used on road when sold. Failure to account for non-taxed sales with accurate documentation completed at the time of sale, may result in the assessment of tax on the gallons of fuel and penalty and interest on the tax that has not been reported and remitted.
- (2) Every seller must prepare a tax report that completely summarizes use fuel gallons sold, distributed, or used during the report period. Schedules are required for each type of operation. Total taxable gallons from each schedule will be carried to the appropriate line on the front page of the seller report for computation of the tax, penalty and interest as applicable.
- (3) Bulk fuel sales, both tax paid and tax exempt, must be reported on the forms prescribed by the Department and submitted not later than the 20th day of the succeeding calendar month.
- (4) "Shall report and remit" means a complete seller report, with all required schedules on forms prescribed by the Department and full remittance of tax must be received by the Department or its designated agent, not later than the 20th of the succeeding calendar month.
 - (a) Receipt will be considered the date evidenced by a legible United States Postal Service cancellation stamp, certified mail receipt or other third party official certification.
 - (b) When an official cancellation stamp certification is not present, the date that the report and payment is actually received by the Department (or its designee) will be used to determine timeliness.
 - (c) When the due date falls on a Saturday, a Sunday, or any recognized state or federal holiday, receipt of the report and payment must be received by the Department on or before the next business day.
 - (d) A credit of 4% of the tax is available to a licensed use fuel seller based on the seller's tax liability, which is supported by schedules showing the fuel was placed into the fuel tank of motor vehicles. The 4% credit of tax is not applicable to bulk fuel sales.
 - (e) The full tax amount will be charged when a failure to file assessment is made.
 - (f) A seller will be deemed to have failed to file a report when:
 - (A) The report has not been filed by the next report due date if the seller is a monthly filer; or within 45 days of the due date if the seller is a quarterly or annual filer; or
 - (B) The Department has requested that a report be filed by a specified date and the report is not received by the specified date.
- (5) An agent may sign on an individual's behalf when a valid power of attorney or guardianship is in effect.
- (6) Collecting Tax on Sales.
 - (a) Persons who sell fuel and place it into the fuel tank of motor vehicles, except for sellers at non-retail facilities as defined in ORS 319.520(11), shall collect the Oregon tax at the time of sale except for sales into:
 - (A) Vehicles displaying a valid ODOT Motor Carrier Transportation Division weight receipt or pass;
 - (i) An invoice is required for sales into the fuel tank of motor vehicles with a combined weight in excess of 26,000 pounds where the tax was collected at the time of sale.
 - (ii) Invoice must contain information described in 735-176-0000 (7).
 - (B) Vehicles displaying a valid use fuel vehicle emblem issued by the Department;
 - (C) Vehicles displaying a United States government license plate or the registration plate for state or local government owned vehicle issued registration pursuant to ORS 805.040 or a school bus or school activity vehicle issued registration pursuant to ORS 805.050;
 - (D) Farm tractors or other agricultural implements only incidentally operated on the highway as defined in ORS 319.520(10); and

- (E) Cans, barrels, or containers other than the fuel supply tank of a motor vehicle.
- (b) If the tax is not collected, pursuant to the exception under subsection (6)(a) of this rule, the seller shall show on the sales invoice:
 - (A) The United States government plate number.
 - (B) The registration plate number for a government owned vehicle issued registration pursuant to ORS 805.040 or a school bus or school activity vehicle issued registration pursuant to ORS 805.050;
 - (C) The ODOT Motor Carrier Transportation Division weight receipt or pass number;
 - (D) ODOT use fuel emblem number; or
 - (E) Description of equipment or container when delivered into farm equipment, can or barrel.
- (c) Suppliers may collect tax on deliveries into the bulk tank of an end user at the customer's request, provided the supplier is registered as a third party payer or is a licensed use fuel seller.
- (A) Collection of tax may not occur when the purchaser will be subsequently selling the fuel into the fuel receptacle of a motor vehicle that propels the vehicle on the roads.
- (B) Collection of tax at a user's request does not necessarily relieve the user of the need to be licensed and report.
- (C) Taxes collected by a third party payer must be reported and remitted to the Department, in accordance with OAR 735-176-0023, on a monthly basis in a format determined by the Department
- (D) The 4% credit available to use fuel sellers is not applicable to bulk fuel sales.
- (7) A seller, as defined by ORS 319.520(13)(b), who sells fuel at non-retail facilities in Oregon and does not collect the tax from a purchaser whose account is owned by the seller, must retain written certification signed by the purchaser on forms provided by the Department that the use of the fuel is tax deferred or exempt from the tax imposed under ORS 319.530.
- (a) "Certifies to the Seller" means the customer completes and signs the "Certification of Oregon Use Fuel Exempt Tax Status" form as provided by the Department. The seller is responsible for collecting and remitting the tax until the signed and dated exemption certificate is received from the customer. The form will contain:
 - (A) The name and address of the seller;
 - (B) The name, address, account number and signature of the purchaser;
 - (C) The reason that the use fuel tax should not be collected by the seller;
 - (D) A list of vehicles and cards; and
 - (E) A statement from the purchaser that for all use fuel purchased at Oregon non-retail facilities on account with the seller, such fuel will be used only for purposes that are tax deferred or exempt from use fuel taxation under ORS 319.510 through 319.880.
- (b) A seller may not sell use fuel without the tax until a valid exemption certificate is completed, signed and returned to the seller; and
- (c) The customer provides the identifying information for each cardlock card to qualify the tax deferred status.
- (8) Sellers, as defined by ORS 319.520(13), who do not operate non-retail facilities in Oregon but who own the accounts of purchasers who purchase fuel at Oregon non-retail facilities, must be licensed with the Department and are required to comply with all of the provisions of ORS 319.510 through 319.880 and this rule.
- (9) When a cardlock card is used at a retail facility, the retail operator may deduct those sales from the taxable sales. The owner of the card reader will provide the retail operator with the network statement verifying both the taxed and non-taxed gallons sold through the reader.

(10) A seller, as defined by ORS 319.520(13), who sells at non-retail facilities in Oregon and does not collect the tax from a purchaser whose account is not owned by the seller, must provide, upon request of the Department, the purchaser's account number and the name and address of the non-retail seller who owns the account.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880

Stats. Implemented: ORS 319.510 - 319.990

735-176-0019

Use Fuel Seller Record Keeping Requirements

(1) Record Requirements. Every seller of fuel for use in a motor vehicle shall maintain and keep records for a period of three years from the due date of the report or three years from the date the report is filed, whichever is later, as follows:

(a) A purchase journal or other record of fuel received supported by purchase invoices and bills of lading showing delivery location for all use fuel purchases;

(b) A record of all bulk fuel sales, and transfers;

(c) A physical inventory of bulk fuel storage shall be recorded by the end of business on the last day of each calendar month and preserved for audit purposes. Tank inventory readings may be electronic tank monitor readings or physical stick inventory readings;

(d) Pump meter readings shall be taken by the end of business on the last day of the month and retained for audit purposes. Physical pump meter readings (or non-resettable electronic readings) will be taken for all dispensers of use fuel operated by the Seller at a location;

(e) Invoices upon which tax collections are recorded shall be kept separate from other sales invoices;

(f) Source documents for tank inventory and pump meter readings for audit purposes (whether manual or electronic readings);

(g) Copies of customer invoices, whether paper or electronic, shall be kept for audit purposes. If tax is collected from use fuel users at the time of sale, fuel invoices must clearly show the amount of use fuel tax collected. Non-retail sellers will also retain fuel network statements to support customer invoices; and

(h) Copies of exemption certificates that include a list of cards and vehicles if cardlock cards are issued.

(2) Required records will be summarized by calendar month and must be centralized in the state of Oregon at the office where the periodic tax audit is to be made.

(3) The Department may determine, at its sole discretion, when the auditor for the state must travel outside the state of Oregon to examine the licensee's records. At any time such travel is determined necessary the licensee must reimburse the state for all travel expenses incurred, including transportation, meals and lodging costs.

(4) Sellers must make documentation readily available to the Department upon request by the Department by the date prescribed by the Department.

(5) Sellers who fail to provide records for review are subject to assessment based on "best available information" collection action, and possible license suspension and revocation.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880

Stats. Implemented: ORS 319.510 - 319.990

735-176-0020

Use Fuel User Licensing Requirements

(1) License Requirements.

- (a) Persons who use fuel as defined in ORS 319.520(12) in a motor vehicle, except those excluded in ORS 319.550, must first apply for and obtain a user license and a vehicle emblem for each vehicle;
- (b) User licenses are subject to bonding as specified in subsection (4) of this section;
- (c) Emblems are issued for specific vehicles on an annual basis; and
- (d) ORS 319.611(1) imposes a penalty of 25 percent of the tax for using fuel without first obtaining a valid license and vehicle emblem.
- (2) Other users required to be licensed and report vehicle operations and fuel usage include:
 - (a) Users of vehicles over 26,000 Gross Vehicle Weight Rating when any of the miles operated in Oregon are not subject to weight mile tax;
 - (b) Oregon state agencies;
 - (c) Oregon counties;
 - (d) Oregon cities;
 - (e) Rural fire protection districts;
 - (f) School districts;
 - (g) Special districts; and
 - (h) Other users as notified by the Department.
- (3) Nonresidents in this state a total of 30 days or less during the calendar year are not required to be licensed if, for all fuel used in a motor vehicle in this state, the nonresident pays to a seller, at the time of the sale, the tax provided in ORS 319.530.
- (4) Bond amounts are limited as shown in ORS 319.570. Bonds for licensed users will be two times the estimated monthly tax liability as determined by the Department. The estimated tax liability is not reduced by tax-paid fuel purchases.
 - (a) In the event there is no reliable data on which to estimate the bond, the user will post \$100 bond or deposit, subject to annual review and adjustment.
 - (b) If a deposit other than cash is made, the bond or security on deposit shall have the Department of Transportation listed as an owner.
- (5) An emblem is required to be displayed on the vehicle for which it was issued when purchasing fuel for the vehicle. An emblem is considered to be displayed in a conspicuous place if it is readily accessible and presented to the station attendant at the time of fueling, or the cardlock card issuer upon request and at the time the account is set up, or when requested by the supplier. Emblems are not required when a licensed user fuels only from a bulk tank, owned by the licensed user.
- (6) The Department may refuse to cancel a user license when such cancellation is requested by the user, if the user is required to report. Effective cancellation dates may be set by the Department if the user does not return emblems. If emblem(s) is not returned at the request of the Department, then the user shall file reports throughout the year in which the emblem will expire.
- (7) Responsibilities of the User:
 - (a) List all use fuel vehicles on application and user report;
 - (b) Retain emblem with the vehicle;
 - (c) Retain fueling and mileage records by vehicle;
 - (d) Notify the Department of any changes in vehicles;
 - (e) Cancel license in writing if the license is no longer needed; and
 - (f) Return emblems when license is canceled or revoked.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880

Stats. Implemented: ORS 319.550 - 319.690

735-176-0021

Use Fuel User Record Keeping Requirements

- (1) Record Requirements. Every user of fuel must maintain and keep the following records:
- (a) A purchase journal or other record of fuel received supported by purchase invoices. If Oregon tax is included in the purchase price, a copy of the invoice must be provided with the user report to receive tax-paid fuel credit;
 - (b) A record of the number of miles traveled over Oregon highways. In the absence of affirmative evidence all fuel will be presumed to have been used on Oregon roads;
 - (c) If fuel is purchased in bulk, a stock summary of fuel handled during each month with an analysis as to inventories, receipts, sales, use, and transfers;
 - (d) If tax is paid to a third party payer at the time of sale, fuel invoices must clearly show the amount of use fuel tax collected;
 - (e) If fuel is stored in bulk, a physical inventory shall be taken at the end of each month and preserved for audit purposes. Consumption records will be retained by the user and made available to the Department upon request by the Department;
 - (f) All required records shall be kept within the state of Oregon and preserved for a period of three years from the due date of the report or three years from the date the report is filed, whichever is later, and provided to the Department as required for examination; and
 - (g) A user with one use fuel vehicle with a light weight of less than 8,000 pounds, as verified by a method approved by the Department, may, in lieu of the requirements detailed in section (1)(a) through (1)(f) of this rule, keep an accurate record of Oregon miles driven. Tax for this user is calculated using a reasonable mile per gallon (as determined by the Department using industry standards) applied to Oregon miles traveled.
- (2) Required records will be summarized by calendar month and must be centralized in the state of Oregon at the office where the periodic tax audit is to be made.
- (3) At the discretion of the Department, if at any time the auditor for the state travels outside the state of Oregon to examine company records, the company must reimburse the state for travel expenses, including transportation, meals, and lodging costs incurred by the auditor, based on actual cost to the state.
- (4) Users must make documentation readily available to the Department upon request of the Department by the date prescribed by the Department.
- (5) A user who fails to provide records for review is subject to assessment based on "best available information," collection action, and possible license suspension and revocation.
- Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.550, 319.690, 319.692, 319.697

735-176-0022

Use Fuel User Reporting Requirements

- (1) Every user of fuel, except for users described in 735-176-0022(3)(a)(A) must prepare a tax report which completely summarizes the miles driven and fuel used during the report period. Schedules must be included with the tax report as well as remittance for tax due.
- (2) "Shall file with the Department" means a complete user report with all required schedules and full remittance are received by the Department or its designated agent, on or before the 20th of the month following the end of the reporting period. If the 20th falls on a Saturday, a Sunday or a recognized state or federal holiday, the report will be considered timely filed if received by the next business day.
- (3) Tax Reports:

- (a) Every licensed user of fuel who operates a vehicle which is subject to the Use Fuel Tax Law is required to file a monthly report of miles operated and fuel used, except that:
 - (A) Licensed users who operate one vehicle of less than 8,000 pounds light weight may file an annual report provided they do not operate any other use fuel vehicles. This report is due by March 1, of the year following the year of report; or
 - (B) Users with a monthly tax obligation of less than \$300 may be authorized by the Department to file quarterly reports, unless the tax is paid to the third party payer at the time of sale, which requires monthly reporting.
- (b) Tax report due dates are as follows:
 - (A) Monthly reports are due on 20th day of the next calendar month;
 - (B) Quarterly tax reports:
 - (i) First calendar quarter reports are due April 20
 - (ii) Second calendar quarter reports are due July 20
 - (iii) Third calendar quarter reports are due October 20
 - (iv) Fourth calendar quarter reports are due January 20
 - (C) Annual reports are due January 20 of the following year.
 - (D) User simplified reporting is due on the 20th day of the next calendar month in a format determined by the Department.
- (c) A vehicle operations schedule will be completed for miles driven for each vehicle. A deduction is allowed for the following:
 - (A) Miles reported to Motor Carrier Transportation Division on which weight mile tax was paid;
 - (B) Miles driven outside Oregon. Retain mileage records;
 - (C) Miles driven off-road. Retain mileage records; and
 - (D) For qualifying school districts and education service districts, bus miles driven to transport students, and in support of student transportation, such as driver training, fueling, maintenance and similar activities as approved by the Department are tax refundable. Bus charter miles driven and school district vehicles not used to transport students are subject to tax.
- (d) A schedule of fuel purchases and usage will be completed for fuel used during the report period, from all sources. If the fuel source includes bulk fuel, a stock summary of fuel handled must be maintained.
- (e) Licensed users who have paid any Oregon tax on fuel purchased from Oregon sellers of fuel must detail such purchases in the fuel schedule of the tax report form and treat such transactions as credits against their total tax liability. Credit may be taken for tax paid on gallons up to the amount of gallons used in Oregon during the report period.
- (f) Users who do not provide vehicle specific mileage and consumption records are not eligible for refunds or credits of tax paid on fuel used in a non-taxable manner.
- (4) Payment of tax to third party payer does not relieve the user of tax liability or reporting requirements. If the third party payer does not remit the tax, or the Department is unable to verify the tax was paid, an assessment of tax, penalty and interest will be sent to the user.
- (5) Users opting for simplified reporting will not be able to claim any tax-exempt usage for fuel. All gallons purchased must be tax paid, regardless of the type of facility (bulk, retail, and/or non-retail) from where the fuel was purchased.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880

Stats. Implemented: ORS 319.550, 319.690, 319.692, 319.697, 319.831, 319.820

735-176-0023

User Payment of Tax Through Third Party Payer

(1) A user may choose to pay the tax on use fuel bulk purchases to a bulk facility, from which the fuel is purchased, by entering into an arrangement with a bulk facility. The bulk facility must be either registered with the Fuels Tax Group to operate as a third party payer, or be a licensed seller that also operates as a third party payer. A licensed seller acting in such capacity is not required to also be registered as a third party payer, but will report bulk sales on the third party payer forms as prescribed by the Department.

(a) The third party payer must maintain records of fuel manufactured, purchased, handled, and distributed or sold and any taxes collected, and must preserve them for three years from the due date of the tax report, which is required to be filed with the tax payments made on behalf of licensed use fuel users who have opted for simplified reporting.

(b) Bulk fuel sales will be recorded on forms prescribed by the Department.

(2) Third party payers must report in a format determined by the Department and remit the tax collected on behalf of use fuel users. Regardless of tax liability, third party payers must report and remit use fuel tax on a monthly basis.

(a) Reports are due on the 20th of the month following the end of the calendar month being reported.

(b) The third party payer will retain proof of tax paid to the state of Oregon and filed tax reports for all tax collected on bulk sales for three years.

(3) The third party payer option is an accommodation to users. The user is ultimately responsible for the tax reporting and liability. If a third party payer fails to report, provide schedules or pay tax, in accordance with OAR Chapter 735, Division 176, the user will be responsible for the tax owed, but not paid, as well as any penalty and interest. The user will also be responsible for tax amounts deducted when a third party payer takes the 4% credit on bulk fuels, where prohibited by OAR 735-176-0017.

(4) A third party payer's failure to report, provide schedules or pay all of the bulk fuel tax collected will result in cancellation of the registration and the inability of any user to have that third party payer make payments on their behalf. Users that make payments through a third party payer that has had their registration cancelled will be notified by the Department, but users remain responsible for all tax payments regardless of whether or not notified by the Department.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880

Stats. Implemented: ORS 319.550, 319.690, 319.692, 319.697, 319.831, 319.820

735-176-0030

Use Fuel Tax Waiver of Late Payment Penalties

(1) ORS 319.694(2) allows the Department to waive penalties for late payment of use fuel tax.

(2) An entity or a person may submit a written request for waiver of late payment penalties to the Department.

(3) The penalty under ORS 319.694 may be waived if the taxpayer shows reasonable cause for delay in filing the report or paying the tax.

(a) A taxpayer who wishes to apply for waiver of the penalty established by ORS 319.694(2) for failure to file a report or pay a tax must make an affirmative showing of all facts alleged as a reasonable cause for the failure to file the report or pay the tax on time in a written statement containing a declaration that it is made under penalty of perjury. The statement should be filed with the report or filed with the Department as soon as possible thereafter.

(b) Circumstances that may constitute reasonable cause include, but are not limited to, the following:

- (A) War, riot, rebellion, acts of God or other disaster which rendered it impossible to make the filing or payment or which made delay unavoidable in making the filing or payment; or
- (B) Acts or omissions by a third party which were beyond the control of the person making the filing or payment and which made delay unavoidable in making the filing or payment; or
- (C) The person took in good faith all steps and precautions reasonably necessary to ensure the timeliness of the filing or payment, and
- (D) Any other criteria the Department may find to be informative and appropriate.
- (c) The calculation of the penalty will be shown on all adjustments. If the person requests a waiver and it is granted, the amount waived will also be shown.
- (d) The following reasons are not acceptable for granting penalty waiver:
 - (A) Employee incompetence or inexperience;
 - (B) Employee turnover;
 - (C) Misunderstanding or ignorance of law;
 - (D) Computer failure or error that is not the result of a natural disaster;
 - (E) Changeover to new accounting processes, software or upgrades;
 - (F) Change in company operations; or
 - (G) Reliance on, or errors made by third party payers, suppliers or customers.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880

Stats. Implemented: ORS 319.694

735-176-0040

Use Fuel Tax Credit of Interest on Tax Overpayments

- (1) The Department may allow interest credit for overpayments of use fuel tax up to the amount of interest paid for underpayments of tax during any given audit period.
- (2) For purpose of ORS 319.694(3)(b) and this rule, "any given audit period" means the time period from the last day of the immediate prior audit period up to the present. If there is no prior audit, "any given audit period" shall mean a period not to exceed three years prior to the current date.
- (3) Any interest payments made on underpayments of tax from a prior audit period shall not be:
 - (a) Considered as interest on overpayments in the current audit period; or
 - (b) Subject to credit under ORS 319.694(3)(b).

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880

Stats. Implemented: ORS 319.694

735-176-0045

Refunds and Credits of Use Fuel Tax

- (1) Refunds of use fuel tax are allowed in the following circumstances:
 - (a) Fuel is used in another state and is also taxed by that state (proof of payment of tax to other state is required);
 - (b) Fuel is used off-road in a licensed vehicle (mileage records are required);
 - (c) Fuel is used in a qualifying government vehicle (federal, state, county, city);
 - (d) Fuel is used in qualifying student transportation;
 - (e) Fuel is used by a rural fire district;
 - (f) Fuel is used by a qualifying special district; and
 - (g) Refunds are limited to fuel purchased within 15 months of the date of the claim; application for refund is made on the form prescribed by the Department.

(2) Use fuel users who pay their taxes through a third party payer or opt for simplified reporting are not eligible for refunds or credits.

(3) An erroneous collection occurs when the seller has the information to correctly and completely document a tax deferred sale at the time of the transaction, but the seller collected the tax in error.

(a) Erroneous collection claims are filed with the fuel supplier/seller and must be made within three years of the date of purchase.

(b) Erroneous collections may occur in non-retail sales.

(c) Erroneous collections do not occur in retail sales with the exception of fleet fueling operations.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880

Stats. Implemented: ORS 319.694