

## AB 75 Oil Company Profits Tax Provisions

**SECTION 604.** 20.566 (1) (u) of the statutes is amended to read:

20.566 (1) (u) *Motor fuel tax administration.* From the transportation fund, the amounts in the schedule to cover the costs, including data processing costs, incurred in administering the motor fuel tax law, except s. 341.45, and the oil company profits tax under subch. XIV of ch. 77.

**SECTION 676.** 25.40 (1) (bd) of the statutes is created to read:

25.40 (1) (bd) Oil company profits taxes under subch. XIV of ch. 77.

### SUBCHAPTER XIV

### OIL COMPANY PROFITS TAX

**77.998 Definitions.** In this subchapter:

- (1) “Annual gross receipts” means the gross receipts that correspond to the state’s fiscal year.
- (2) “Biodiesel fuel” means biodiesel fuel, as defined in s. 168.14 (2m) (a), that is not blended with any petroleum product.
- (3) “Department” means the department of revenue.
- (4) “Gross receipts” means all consideration received from the first sale of motor vehicle fuel received by a supplier for sale in this state, for sale for export to this state, or for export to this state, not including state or federal excise taxes, or petroleum inspection fees, collected from the purchaser. “Gross receipts” does not include consideration received from the first sale of motor vehicle fuel received by a supplier for sale in this state, for sale for export to this state, or for export to this state, if the motor vehicle fuel is biodiesel fuel, ethanol blended with gasoline consisting of at least 85 percent ethanol, or motor vehicle fuel specified under s. 78.01 (2) or (2m).
- (5) “Motor vehicle fuel” has the meaning given in s. 78.005 (13).
- (6) “Related party” means a person whose relationship with the supplier is described under section 267 (b) of the Internal Revenue Code.
- (7) “Supplier” has the meaning given in s. 78.005 (14).
- (8) “Terminal operator” has the meaning given in s. 78.005 (16).

**77.9981 Imposition.** (1) For the privilege of doing business in this state, there is imposed a tax on each supplier at the rate of the following percentages of the supplier’s annual gross receipts that are derived from the first sale in this state of motor vehicle fuel received by the supplier for sale in this state, for sale for export to this state, or for export to this state:

- (a) For the first \$15,000,000 of the supplier’s annual gross receipts, 0.0 percent.
- (b) For that portion of the supplier’s annual gross receipts that exceeds \$15,000,000, but not \$75,000,000, 0.5 percent.

(c) For that portion of the supplier's annual gross receipts that exceeds \$75,000,000, but not \$120,000,000, 1.5 percent.

(d) For that portion of the supplier's annual gross receipts that exceeds \$120,000,000, 3 percent.

(2) Any person, including a terminal operator, who is not a licensee under s. 78.09 and who either used any motor vehicle fuel in this state or has possession of any motor vehicle fuel, other than that contained in a motor vehicle's fuel tank, for which the tax under this subchapter has not been paid or for which no supplier has incurred liability for paying the tax, shall file a report, in the manner described by the department, and pay the tax based on the purchase price of the motor vehicle fuel.

**77.9982 Administration.** (1) The department shall administer the tax under this subchapter and may take any action, or conduct any proceeding as authorized by law, and impose interest and penalties, as provided under subch. XIII of ch. 71.

(2) The taxes imposed under this subchapter are due and payable as provided under s. 78.12 (5) and as provided by the department by rule.

(3) For purposes of determining the amount of the taxes imposed under this subchapter, income derived from the first sale in this state of the fuels described in s. 78.01 (2) and (2m) is not included in the supplier's annual gross receipts. For purposes of determining the amount of the tax imposed under this subchapter, with regard to a transfer of motor vehicle fuel from a supplier to a related party, the point of first sale in this state is the date of such transfer, and the annual gross receipts are calculated on a monthly basis using an index determined by rule by the department. For purposes of this subchapter, there is only one point of first sale in this state with regard to the sale of the same motor vehicle fuel.

(4) No person who is subject to the tax imposed under this subchapter shall increase the selling price of motor vehicle fuel in order to recover the amount of the tax. The person primarily responsible for increasing the selling price of motor vehicle fuel to recover the amount of the tax is subject to a penalty equal to the amount of the tax passed through to the purchaser. For purposes of this subsection, the person primarily responsible for increasing the selling price of motor vehicle fuel to recover the amount of the tax is the officer, employee, or other responsible person of a corporation or other form of business association or the partner, member, employee, or other responsible person of a partnership, limited liability company, or sole proprietorship who, as such officer, employee, partner, member, or other responsible person, has a duty to approve, confirm, ratify, or validate the selling price of motor vehicle fuel.

(5) At the secretary of revenue's request, the attorney general may represent this state, or assist a district attorney, in prosecuting any case arising under this subchapter.

(6) In addition to any other audits the department conducts to administer and enforce this subchapter, the department may audit any supplier who is subject to the tax imposed under this subchapter to determine whether the supplier has increased the selling price of motor vehicle fuel in order to recover the amount of the tax. Subject to the confidentiality provisions under s. 71.78 (1) to (4) and (5) to (8), as provided under sub. (7), annually, the department shall submit a report

to the governor and the legislature, as provided under s. 13.172 (2), that contains information on all audits conducted under this subsection in the previous year.

(7) Sections 71.74 (1) to (3), (5), (7), and (9) to (15), 71.75 (1), (2), (6), (7), and (9), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to (6), (8) to (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2. and (b) 1., 2., and 6., (2) (a) 1. to 3. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90, 71.91 (1) (a), (2), (3), and (4) to (7), 71.92, and 71.93 as they apply to the taxes under ch. 71 apply to the taxes under this subchapter.

(8) The department shall deposit all revenue collected under this subchapter into the transportation fund.

**SECTION 9143. Nonstatutory provisions; Revenue.**

(1) EMERGENCY RULES CONCERNING OIL COMPANY PROFITS TAX. The department of revenue may promulgate emergency rules under section 227.24 of the statutes implementing subchapter XIV of chapter 77 of the statutes, as created by this act. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department of revenue is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

**SECTION 9343. Initial applicability; Revenue.**

(6) OIL COMPANY PROFITS TAX. The treatment of section 25.40 (1) (bd), subchapter XIV of chapter 77, and chapter 77 (title) of the statutes first applies to the amounts reported on the first remittance after October 1, 2009.