

CHAPTER 203

TAXATION

HOUSE BILL 95-1154

BY REPRESENTATIVES Grampas, Epps, and Martin;
also SENATOR Rizzuto.

AN ACT

CONCERNING TAXES ON GASOLINE AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 39-27-101 (1), (4), and (5), Colorado Revised Statutes, 1994 Repl. Vol., are amended to read:

39-27-101. Definitions - construction. As used in this part 1, unless the context otherwise requires:

(1) "Distributor" means ~~every~~ A person ~~who has first received, as defined in subsection (4) of this section, THAT ACQUIRES gasoline in this state, and every person who sells gasoline in this state who is primarily liable for the gasoline tax on said fuel, and every person who first uses, sells, or offers for sale in this state gasoline imported into this state from any other state or country~~ FROM A REFINER OR FROM ANOTHER DISTRIBUTOR FOR STORAGE AND SUBSEQUENT SALE AND DISTRIBUTION BY TANK CARS, TANK TRUCKS, OR BOTH, BY THE PERSON OR FOR THE ACCOUNT OF ANOTHER DISTRIBUTOR.

(4) "Received", as applied to a distributor in this part 1, ~~shall be given its usual and customary meaning except:~~

~~(a) Gasoline produced, refined, prepared, distilled, manufactured, blended, or compounded at any refinery or other place in the state by any person shall be deemed to be "received" by such person thereat when the same has been loaded at such refinery or other place into tank cars, tank trucks, tank wagons, or other types of transportation equipment, containers, or facilities for ultimate destination within this~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~state or placed in any tank or other container from which any sales or deliveries not involving transportation are made directly, but not before. If such gasoline, when loaded into transportation equipment as provided, is shipped or delivered to another person holding an unrevoked license as a distributor under this part 1, then the distributor to whom such gasoline is so shipped or delivered shall be deemed to be the distributor first receiving such gasoline in this state; and, if such gasoline, when loaded into transportation equipment as provided, is shipped or delivered to another person for the account of a licensed distributor under this part 1, then the licensed distributor for whose account such gasoline is shipped or delivered shall be deemed the distributor first receiving such gasoline in this state.~~

~~(b) Gasoline imported into the state from any other state or territory by pipeline and delivered to any person by such pipeline or a connecting pipeline at a pipeline terminal or pipeline tank farm in the state of Colorado for storage shall be deemed to have been "received" by such person thereat when the same has been loaded into tank cars, tank trucks, tank wagons, or other types of transportation equipment, containers, or facilities at such pipeline terminal or tank farm for ultimate destination within this state or placed in any tank or other container from which any sales or deliveries not involving transportation are made directly, but not before. If such gasoline, when loaded into transportation equipment as provided, is shipped or delivered to another person holding an unrevoked license as a distributor under this part 1, then the distributor to whom such gasoline is so shipped or delivered shall be deemed to be the distributor first receiving such gasoline in this state; and, if such gasoline, when loaded into transportation equipment as provided, is shipped or delivered to another person for the account of a licensed distributor under this part 1, then the licensed distributor for whose account such gasoline is shipped or delivered shall be deemed the distributor first receiving such gasoline in this state.~~

~~(c) Any provision of this subsection (4) to the contrary notwithstanding, when gasoline is shipped or delivered by or for a licensed distributor from a refinery or pipeline terminal to a licensed distributor at another refinery or pipeline terminal and unloaded into storage at such other refinery or pipeline terminal, such gasoline shall not be deemed to have been "received" solely by reason of such transfer.~~

~~(5) "Refiner" means every A person producing, refining, preparing, distilling, manufacturing, or compounding gasoline THAT PRODUCES, REFINES, PREPARES, DISTILLS, OR MANUFACTURES GASOLINE in this state. A PERSON SHALL BE CONSIDERED A "REFINER" AND NOT A "DISTRIBUTOR" WHEN GASOLINE IS SHIPPED OR DELIVERED BY OR FOR A LICENSED DISTRIBUTOR FROM A REFINERY OR PIPELINE TERMINAL TO A LICENSED DISTRIBUTOR AT ANOTHER REFINERY OR PIPELINE TERMINAL AND UNLOADED INTO STORAGE AT THE OTHER REFINERY OR PIPELINE TERMINAL.~~

SECTION 2. 39-27-102 (1) (a) (I) and (1) (b), Colorado Revised Statutes, 1994 Repl. Vol., are amended to read:

39-27-102. Tax imposed - deposits - penalties. (1) (a) (I) Other than as provided in subparagraph (III) of this paragraph (a), an excise tax is imposed and shall be collected on all gasoline sold, offered for sale, or used in this state for any purpose whatsoever, but only one ~~such~~ tax shall be paid upon the same gasoline in this state. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBPARAGRAPH (I), NO MORE THAN THREE TAX-DEFERRED TRANSACTIONS SHALL TAKE PLACE AFTER THE GASOLINE

~~the distributor first receiving the gasoline in this state after it has left the refinery of its origin or a tank farm at or appurtenant to such THE refinery, either within or without this state. shall be primarily liable for payment of the tax imposed, unless the distributor is also the refiner, in which case the refiner shall be primarily liable. IF MORE THAN THREE DISTRIBUTORS ACQUIRE THE GASOLINE, THE THIRD DISTRIBUTOR SHALL BE LIABLE FOR PAYMENT OF THE TAX IMPOSED. NOTHING IN THIS PARAGRAPH (a) SHALL PRECLUDE PREVIOUS DISTRIBUTORS FROM PAYING THE TAX. A DISTRIBUTOR SHALL NOT BE REQUIRED TO PAY TAX ON GASOLINE THAT IS EXEMPT PURSUANT TO SECTION 39-27-103 (2). The tax imposed shall be computed upon the total amount of gasoline, measured in gallons, received ACQUIRED by each distributor in this state and shall be paid in the manner provided in this section.~~

(b) In the case of gasoline shipped to a distributor from a refinery, the amount of gasoline ~~received~~ ACQUIRED shall be deemed to be the amount shipped from the refinery, as shown by the refinery invoice; except that an allowance of two percent of the total amount of gasoline ~~received~~ ACQUIRED during any calendar month, as shown by ~~such~~ THE refinery invoices, shall be made to and deducted by the distributor to cover losses in transit and in unloading ~~such~~ THE gasoline and costs of collection and payment to the state of the tax imposed by this section, out of which allowance the distributor shall make to each retailer, "retailer" being defined as every person selling gasoline in this state at the retail level of trade, an allowance of one percent of the amount of gasoline delivered during each calendar month by the distributor to ~~such~~ THE retailer, as shown by delivery invoices signed by ~~such~~ THE retailer. When gasoline is transported by a distributor to any point outside this state and there disposed of, then, upon the distributor's filing with the executive director of the department of revenue a duplicate bill of lading or an affidavit showing the transaction, the tax imposed by this section shall not apply to ~~such~~ THE gasoline and, if already paid, shall be refunded to the distributor. The tax imposed by this section shall be exempted on each recorded and reported sale by a distributor to the United States, or any of its agencies, and to any town, city, county, city and county, special district, or school district when ~~such~~ THE sale involves a single delivery and the gasoline is used exclusively by the governmental entity in performing its governmental functions and activities.

SECTION 3. 39-27-104 (1) (a) and (2) (b), Colorado Revised Statutes, 1994 Repl. Vol., are amended to read:

39-27-104. License and deposit - exception. (1) (a) It is unlawful for any person to act as a refiner ~~of gasoline~~ or as a distributor ~~first receiving~~ OF gasoline in this state without having a license therefor, which shall be secured by application to the executive director of the department of revenue upon the blank furnished. ~~by him.~~

(2) (b) If at any time after issuance of the license the executive director finds that the licensee is ~~receiving~~ ACQUIRING gasoline in ~~such~~ A quantity ~~as~~ THAT makes ~~him~~ THE LICENSEE liable for payment of excise tax for the preceding and current month in an amount greater than the amount of ~~his~~ THE deposit, the executive director shall, by written notice to ~~such~~ THE licensee, demand an additional surety bond or negotiable certificate of deposit to be deposited in ~~such~~ AN amount ~~as he may determine~~ DETERMINED necessary to secure payment of ~~such~~ A greater amount of taxes, but the aggregate amount of deposit shall in no event exceed ~~one~~ TWO hundred thousand dollars. If the licensee fails or refuses within ten days after receipt of ~~such~~

THE written notice and demand to deposit an additional surety bond or negotiable certificate of deposit in the amount determined, the executive director may by written notice suspend or revoke the license held by the licensee. The requirements of this section relative to making a deposit shall apply only to distributors ~~and refiners~~ who are ~~primarily~~ liable to the state for payment of the tax imposed by section 39-27-102.

SECTION 4. The introductory portion to 39-27-105 (1) and 39-27-105 (1) (a), (1) (b), (1) (d), (1) (e), and (2), Colorado Revised Statutes, 1994 Repl. Vol., are amended, and the said 39-27-105 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

39-27-105. Tax collection. (1) Every distributor on or before the twenty-fifth day of each calendar month shall file with the executive director of the department of revenue, on forms prescribed and furnished by ~~him~~ THE DEPARTMENT, an itemized statement ~~under oath~~ MADE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, showing the following:

(a) The number of gallons of gasoline ~~received~~ ACQUIRED by ~~such~~ THE distributor in this state from any source whatsoever during the preceding calendar month;

(b) The quantity of the different kinds of gasoline so ~~received~~ ACQUIRED;

(d) The date of ~~receipt~~ ACQUISITION of each shipment of gasoline ~~received~~ ACQUIRED by the distributor, the name of the person from whom purchased or ~~received~~ ACQUIRED, the point of origin and point of destination of each shipment, the quantity in gallons of each of said purchases or shipments, the name of the carrier, the number of each tank car, its initial, and the number of invoiced gallons contained in each tank car if shipped by rail, and the name of the owner and the make, license number, and capacity in gallons of the tank truck or tank wagon if such transportation was used;

(e) ~~Such~~ Further information pertaining to the ~~receipts~~ ACQUISITION of gasoline and its disposition as the executive director may reasonably require. In the case of a distributor engaged in the business of blending products to make gasoline, ~~such~~ THE report shall show the amount and character of the unblended products and the blended products on hand on the last day of the preceding calendar month, the amount of unblended products ~~received~~ ACQUIRED and the amount of products blended during said calendar month, and any other information relative to the disposition of the blended products as the executive director may deem necessary or advisable for the correct determination of the amount of excise tax applicable to gasoline ~~received~~ ACQUIRED, used, or offered for sale by ~~such~~ THE distributor.

(f) THE INFORMATION REQUIRED FOR REPORTING ACQUISITION OR DISPOSITION OF GASOLINE PURSUANT TO THIS ARTICLE SHALL BE SUBMITTED ELECTRONICALLY IN THE MANNER PRESCRIBED BY THE DEPARTMENT BY RULE. THE DEPARTMENT, IN CONSULTATION WITH DISTRIBUTORS, SHALL PROMULGATE RULES REGARDING FILING OF INFORMATION THAT INCLUDES, BUT IS NOT LIMITED TO, THE DATA ELEMENTS, THE FORMAT OF THE DATA ELEMENTS, AND THE METHOD AND MEDIUM OF TRANSMISSION TO THE DEPARTMENT. THE DEPARTMENT SHALL NOT REQUIRE THE ELECTRONIC FILING OF INFORMATION PRIOR TO JANUARY 1, 1998.

(2) It is the duty of every distributor to compute the amount of tax payable on all gasoline ~~received by him~~ ACQUIRED during the preceding calendar month at the rate of tax per gallon imposed thereon in section 39-27-102 (1), and, in computing ~~such~~ THE amount of tax, the allowance of two percent provided for in section 39-27-102 (1) shall be taken into account. From the amount of tax so computed, the distributor shall deduct one-half of one percent to cover expenses of collection of the tax and bad debt losses and shall pay the remaining balance to the department of revenue at the time of filing the statement required to be filed by the provisions of this section. A penalty of thirty dollars or ten percent of the tax due, plus one-half of one percent per month from the date when due, not to exceed eighteen percent in the aggregate, whichever is greater, shall be imposed for failure to file any statement when due or pay the tax as provided in this section, in addition to any other penalties provided by this part 1.

SECTION 5. 39-27-108, Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

39-27-108. Penalty for failure of user to report. Any person who willfully fails or refuses to make the report or payment to the executive director of the department of revenue as provided in sections 39-27-105 to 39-27-108, for which no penalty is expressly provided, and any person who willfully makes any false report or statement as to the amount of gasoline ~~received~~ ACQUIRED, sold, or used ~~by him~~ or any false statement relative to the kind or character and the amount of the products received ~~by him~~ and required to be reported, with intent to evade the payment of the tax imposed in this part 1 on gasoline, shall be punished as provided by section 39-21-118. The making and filing of any ~~such~~ false statement shall be deemed prima facie evidence of intent to evade the payment of tax imposed in this part 1 on gasoline by that means.

SECTION 6. 39-27-110 (1), Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

39-27-110. Inspection of records. (1) Every distributor of gasoline shall keep a true and complete record of all purchases, ~~receipts~~ ACQUISITIONS, sales, and distribution of each kind of gasoline handled by ~~such~~ THE distributor, as to which a record of the total volume of sales and deliveries shall be kept for each calendar month. Every person carrying, transporting, importing, or delivering into or within this state gasoline shall keep true and correct records of ~~such~~ shipments of gasoline for each calendar month. Every blender shall keep true and accurate records of all blended gasoline on hand, ~~received~~ ACQUIRED, sold, used, or otherwise disposed of. All the books, records, papers, receipts, invoices, and equipment of every distributor, carrier, or blender ~~which~~ THAT pertain to the ~~receipt~~ ACQUISITION, sale, or shipment of gasoline shall be retained for a period of three years and shall be subject to inspection at any time during ordinary business hours by the executive director OR REPRESENTATIVES of the department of revenue. ~~or his representatives.~~ Any information gained by the executive director or ~~his~~ THE DIRECTOR'S representatives by ~~such~~ THE investigation shall be confidential, and any person divulging ~~such~~ THE information, except as such disclosure may be rendered necessary by law, shall be subject to penalties provided in this part 1.

SECTION 7. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the highway users tax fund not otherwise

appropriated, to the department of revenue, for the fiscal year beginning July 1, 1995, the sum of ten thousand thirty-five dollars (\$10,035), or so much thereof as may be necessary, for the implementation of this act.

SECTION 8. Effective date. This act shall take effect July 1, 1995.

SECTION 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 25, 1995