

No. 48, S.]

[Published May 16, 1949.]

**CHAPTER 100.**

AN ACT to repeal 78.16; to repeal and recreate 78.06 (1) and (2); to amend 78.20 (1) and to create 78.06 (5) of the statutes, relating to the motor fuel tax, and providing a penalty.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 78.06 (1) and (2) of the statutes are repealed and recreated to read:

78.06 FAILURE TO REPORT, PAY TAX. (1) CALENDAR MONTH REPORT AND TAX, PROCEDURE, PENALTIES. (a) If any wholesaler shall fail, neglect or refuse to file a motor fuel tax report for any calendar month when due as required by this chapter, the department shall send a written demand to file such report to the wholesaler by registered mail addressed to said wholesaler at the address of the principal place of business of said wholesaler within 10 days after the due filing date of said report. A penalty of \$10 is hereby imposed for failure, neglect or refusal to file such report when due and if such report is not filed and the penalty paid within 20 days from the date when such report was due the license of said wholesaler shall be automatically revoked.

(b) If any wholesaler shall fail, neglect or refuse to make tax payment for any calendar month when due as required by this chapter, the department shall send a written demand for payment to the wholesaler by registered mail addressed to said wholesaler at the address of the principal place of business of said wholesaler within 10 days after said payment was due. A penalty of \$15 is hereby imposed for the first failure, neglect or refusal within a calendar year to make such tax payment when due and a penalty of 10 per cent of the amount of tax due but not less than \$15 is hereby imposed for each successive failure, neglect or refusal to make such tax payment when due within the same calendar year. If tax remittance was made when due but by a defective bank check the department may waive the penalty if it appears to the department that the defect was not intentional and the defect is corrected promptly. If such tax and penalty are not paid within 20 days from the date when due the license of said wholesaler shall be automatically revoked and the department shall determine the amount of tax due and shall proceed to collect such tax and penalty in the manner provided in this chapter.

(2) INCORRECT OR INCOMPLETE REPORTS, UNPAID TAX, TAX ESTIMATED, PENALTIES. If any wholesaler makes and files any incorrect or incomplete report, or fails, neglects or refuses to pay all the tax for any calendar month, as required by this chapter, the department, upon discovering said incorrect or incomplete report or unpaid tax, shall estimate the motor fuel receipts or distributions of said wholesaler, based upon such information as is available in its office or elsewhere, and shall determine the amount of any motor fuel tax still due from said wholesaler and shall add to said amount a penalty of 15 per cent thereof for failure, neglect or refusal to pay said tax. The department may waive any penalty amounting to \$6 or less if it appears to be in the best interest of the state to do so but such waiver of penalty shall be voided if said tax is not paid within 2 months after the date of demand as provided for in this subsection. The amount so fixed shall be prima facie evidence of the correctness of said estimate. The department shall send a written demand for any amended report required and for payment of said tax and penalty to the wholesaler by mail addressed to said wholesaler at the address of the principal place of business of said wholesaler. If such amended report is not filed or if the tax and penalty due are not paid within 2 months from the date of said demand, the license of said wholesaler shall be automatically revoked and the department shall prepare such amended report and proceed to collect such motor fuel tax and penalty in the manner herein provided.

SECTION 2. 78.06 (5) of the statutes is created to read:

78.06 (5) Any penalties collected under the provision of this section shall be paid into the motor fuel tax fund and distributed as motor fuel taxes are paid in and distributed. The penalties provided in this section shall be in addition to the penalties and remedies provided in any other provision of this chapter, and not in lieu thereof.

SECTION 3. 78.16 of the statutes is repealed.

SECTION 4. 78.20 (1) of the statutes is amended to read:

78.20 (1) No wholesaler shall sell, distribute or offer for sale motor fuel, while in default of or delinquent in the payment of the whole or any part of such tax moneys, and in the event of the failure or refusal to pay such motor fuel tax moneys and the whole thereof, after demand made therefor by the department, such delinquent motor fuel tax

moneys together with the tax penalties provided for in \* \* \* *section 78.06* \* \* \* shall be recovered by and in the name of the state of Wisconsin, and the attorney-general or proper district attorney is authorized and directed to institute suit therefor in any court of competent jurisdiction against said wholesaler, or his surety, if any, or both. In the event such suit or attachment as hereinafter provided for is instituted, upon application made by the attorney-general or district attorney, the court may issue a writ of injunction, without requiring any bond, enjoining and restraining the defendant from selling, distributing or offering to sell any motor fuel subject to said motor fuel tax until any judgment and costs recovered in said suit or attachment has been paid, and the court shall, upon application by the attorney-general or district attorney, appoint a receiver of the property and business of the delinquent defendant for the purpose of impounding the same as security for any judgment which has been or may be recovered, and said motor fuel tax shall constitute a first and prior lien against the property of said wholesaler, including all property of whatsoever nature, belonging to him whether used in his business or otherwise, and which lien shall be paramount and superior to any other lien, of whatever nature, against said property, whether attaching prior or subsequent to the time when said tax became due.

Approved May 12, 1949.

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