

Chapter Trans 152

WISCONSIN INTERSTATE FUEL TAX AND INTERNATIONAL REGISTRATION PROGRAM

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Trans 152.01 Introduction. (1) **PURPOSE.** This chapter creates rules which shall be used in the collection of:

(a) Motor fuel and alternative fuel use taxes for fuel that is purchased in Wisconsin and other jurisdictions and consumed by qualified motor vehicles operating on the highways of this state.

(b) Registration fees paid to Wisconsin and other jurisdictions by persons who purchase IRP registration credentials from the department and operate apportionable vehicles on the highways of this state.

(2) **SCOPE.** This chapter applies to persons who operate qualified motor vehicles or apportionable motor vehicles, or both, on the highways of this state.

History: Cr. Register, August, 1993, No. 452, eff. 9-1-93; am. (1) and (2), renum. (3) to be Trans 152.03, Register, May, 1997, No. 497, eff. 6-1-97.

Trans 152.02 Definitions. The words and phrases defined in ss. 340.01 and 341.45 (1), Stats., have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

(1) “Applicant” means a person in whose name the application for licensing is filed for the purpose of motor fuel or special fuel tax reporting under the provisions of s. 341.45, Stats.

(2) “Apportionable vehicle” has the same meaning as defined in the international registration plan, article II, s. 204.

Note: The International Registration Plan, Article II, s. 204 defines “apportionable vehicle” as any vehicle, except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, buses used in transportation of chartered parties, and government-owned vehicles, used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and is used for the transportation of persons for hire or designed, used or maintained primarily for the transportation of property and:

1. is a power unit having two axles and a gross vehicle weight or registered gross vehicle weight in excess of 26,000 pounds; or
2. is a power unit having three or more axles, regardless of weight; or
3. is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

Trucks and truck tractors, and combinations of vehicles having a gross vehicle weight of 26,000 pounds or less and buses used in transportation of chartered parties may be proportionally registered at the option of the registrant.

(3) “Audit” means a physical examination of the records and source documents supporting the licensee’s fuel use reports or the registrant’s IRP reports, or both, conducted pursuant to s. 341.43, Stats., and ch. 78, Stats.

(4) “Authorized representative” means the person commissioned to serve as attorney in fact on behalf of a person pursuant to a power-of-attorney designation.

(5) “Base jurisdiction” means the international fuel tax agreement or IRP member jurisdiction:

(a) Where qualified motor vehicles are based for vehicle registration purposes;

(b) Where the operational control and operational records of the licensee’s qualified motor vehicles are maintained or can be made available; and

(c) Where some distance is accrued by qualified motor vehicles within the fleet.

(6) “Cancellation” means the annulment of a license and its provisions by either the licensing jurisdiction or the licensee.

(7) “Distance” means miles or kilometers.

(7m) “Established place of business” means a physical structure owned, leased or rented by the fleet registrant. The physical structure shall be designated by a street number or road location, be open during normal business hours, and have located within it all of the following:

(a) A telephone or telephones publicly listed in the name of the fleet registrant.

(b) A person or persons conducting the fleet registrant’s business.

(c) The operational records of the fleet, unless the records can be made available in accordance with the provisions of section 1602 of the international registration plan.

(8) “Fleet” means one or more qualified motor vehicles grouped together for fuel tax reporting purposes.

(9) “Fuel supply tank” means the container for holding, transporting or storing motor fuel or special fuel.

(10) “Highways of this state” means “highways” as defined in s. 340.01 (22), Stats., within the boundaries of this state as defined in article II, section 1, Wisconsin Constitution.

(11) “International fuel tax agreement” or “IFTA” means an agreement between certain member jurisdictions which allows for the collection of fuel taxes owed to all member jurisdictions by the member jurisdiction in which a person is based.

(12) “International registration plan” or “IRP” means an agreement among states and provinces to simplify the payment of registration fees by interstate motor carriers.

(13) “Jurisdiction” means a state, territory or possession of the United States, the District of Columbia, or a state, province or territory of another country.

(14) “Lessee” means a person who has the legal possession and control of a vehicle owned by another under terms of a lease or rental agreement.

(15) “Lessor” means a person who, under the terms of a lease or rental agreement, grants the legal right of possession, control

of and responsibility for the operations of the vehicle to another person.

(16) "License" means an international fuel tax agreement license.

(17) "Licensee" means a person who holds a valid fuel tax license issued by the department.

(18) "Operate" has the meaning specified in s. 346.63 (3) (b), Stats.

(19) "Person" includes any individual, public or private corporation, body politic, including any unit or division, joint venture, joint stock company, partnership, association, trust, receiver, executor, administrator, any other fiduciary or any other entity.

(20) "Qualified motor vehicle" means a motor vehicle other than a recreational vehicle used, designed or maintained for transportation of persons or property that meets any of the following:

(a) Having 2 axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms.

(b) Having 3 or more axles regardless of weight.

(c) Is used in combination when the weight of such combination exceeds 26,000 pounds or 11,797 kilograms gross vehicle or registered gross vehicle weight.

(21) "Reciprocal agreement" means an agreement the department enters with another state under s. 341.45 (2), Stats., under which the department may waive all or any part of the requirements of s. 341.45, Stats., upon those who use motor vehicle or alternative fuels.

(22) "Reciprocity agreement" means an agreement that the department enters with another state under s. 341.41, Stats., or with an Indian tribe or band under s. 341.409, Stats., under which the department may exempt vehicles from certain registration requirements.

(23) "Recreational vehicle" means vehicles such as motor homes, pickup trucks with attached campers and buses, when used exclusively for personal pleasure by an individual. In order to qualify as a recreational vehicle, the vehicle shall not be used in connection with any business endeavor.

(24) "Registrant" means a person, firm or corporation in whose name or names a vehicle is properly registered for IRP purposes.

(25) "Registration" means the qualification of motor vehicles normally associated with a prepayment of licensing fees for the privilege of using the highway and the issuance of license plate and a registration card or temporary registration containing owner and vehicle data.

(26) "Related business" means any of the following:

(a) A person who directly or indirectly owns, controls or holds with power to vote 20% or more of the outstanding voting securities of the licensee, other than the person who holds the securities:

1. As a fiduciary or agent without sole discretionary power to vote the securities.
2. Solely to secure a debt, if the person has not in fact exercised the power to vote.

(b) A corporation 20% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote, by a licensee who directly or indirectly owns, controls or holds power to vote, 20% or more of the outstanding securities of the licensee, other than a person who holds the securities:

1. As a fiduciary or agent without sole discretionary power to vote the securities.
2. Solely to secure a debt, if that person has not in fact exercised the power to vote.

(c) A person whose business is operated by the licensee under a lease or other agreement, or a person substantially all of whose assets are controlled by the licensee.

(d) A person who operates the licensee's business under a lease or other agreement or controls substantially all of the licensee's assets.

(e) There is a rebuttable presumption that the licensee's spouse, domestic partner, relative within the 3rd degree of kinship or the relative within the 3rd degree of kinship of a spouse or domestic partner operating the licensee's business are controlled by the licensee.

(27) "Reporting period" means, under IFTA, a period of time consistent with the calendar quarterly period of January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Under IRP, "reporting period" means the July 1 through June 30 immediately preceding the commencement of the registration year.

(28) "Revocation" means the withdrawal of fuel tax license or IRP registration and operating privileges by the department.

(29) "Suspension" means the temporary removal of privileges granted to the licensee or registrant by the department.

(30) "Total distance" means all miles or kilometers traveled during the reporting period by every qualified motor vehicle or apportionable vehicle in the licensee's fleet regardless of whether the miles or kilometers are considered taxable or nontaxable.

History: Cr. Register, August, 1993, No. 452, eff. 9-1-93; renum. (2) to (25) to be (3) to (11), (13), (14) to (20), (23), (25) to (30) and am. (3), (5) (intro.), (11), (13), (16), (20) (a) to (c), (28), (29) and (30), cr. (2), (12), (21), (22) and (24), Register, May, 1997, No. 497, eff. 6-1-97; CR 04-004: cr. (7m), am. (16) and (27) Register December 2004 No. 588, eff. 1-1-05; correction in (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register December 2004 No. 588.

Trans 152.025 Applications for motor carrier credentials. (1) An application for motor carrier interjurisdictional credentials within this chapter shall require the applicant's established place of business in Wisconsin for IRP and IFTA.

(2) An owner operator who cannot meet the requirements in sub. (1) may satisfy the requirement for registration in Wisconsin if the owner operator can verify a Wisconsin connection. He or she shall provide all of the following:

- (a) A phone bill with a Wisconsin phone number and Wisconsin geographical address.
- (b) A valid Wisconsin drivers license.
- (c) A copy of his or her most recent Wisconsin income tax return.

History: CR 04-004: cr. Register December 2004 No. 588, eff. 1-1-05.

Trans 152.03 International fuel tax agreement.

Under the authority of s. 341.45 (4), Stats., Wisconsin became a member of the international fuel tax agreement. The IFTA is an agreement among states and provinces to simplify the reporting of fuel use taxes by interstate motor carriers. The IFTA reduces the paperwork and compliance burdens for fuel tax reporting. The IFTA does not impose taxes but allows interstate motor carriers to report their fuel use taxes to a base state on a uniform basis. The provisions of the international fuel tax agreement in effect on January 1, 1997 and those subsequently ratified by this state are incorporated by reference. If any provisions of this subchapter are inconsistent with the provisions in the international fuel tax agreement, the provisions of the international fuel tax agreement apply for applicants licensed under the international fuel tax agreement and these provisions apply to persons not licensed under the international fuel tax agreement.

Note: Wisconsin became a member of the international fuel tax agreement effective July 1, 1989. A copy of the agreement may be ordered from the Wisconsin Department of Transportation, Motor Carrier Taxes and Permits Section, P.O. Box 7979, Madison, Wisconsin 53707-7979.

History: Cr. Register, August, 1993, No. 452, eff. 9-1-93; renum. from Trans 152.01 (3) and am., Register, May, 1997, No. 497, eff. 6-1-97.

Subchapter I — IFTA

Trans 152.04 Imposition of tax. (1) **GENERAL.** Any person who purchases or obtains motor fuel or special fuel outside this state and operates any qualified motor vehicle in this state

upon a highway and transports motor fuel or special fuel in an attached or unattached fuel supply tank for the sole purpose of operating the qualified motor vehicle shall pay the Wisconsin fuel tax on the gallons consumed by the qualified motor vehicle while operated on the highways of this state. The person shall pay the tax in the following manner:

(a) By purchasing tax paid motor fuel or special fuel within this state in an amount equivalent to the gallonage consumed while operating the qualified motor vehicles on the highways of this state, or

(b) By remitting the tax directly to the department as provided by this chapter, or

(c) By remitting the tax to licensee's base jurisdiction if that jurisdiction is party to the international fuel tax agreement. This state has adopted the international fuel tax agreement.

(2) TAX EXEMPT MILES. This state does not impose a use tax on the fuel consumed for either of the following:

(a) When the motor vehicle is being operated under a fuel trip permit.

(b) When the fuel is consumed while operating on private roads or driveways located in this state.

(3) COMPLIANCE. Any person operating a qualified motor vehicle in Wisconsin is required to comply with this chapter. Qualified motor vehicles which are not in compliance with the requirements of this section shall be subject to the penalties provided by s. 341.45, Stats., except those licensed under IFTA will be subject to the penalties provided for under that agreement.

Note: obligations on a trip-by-trip basis in lieu of motor fuel tax licensing is available as specified in ch. Trans 146.

History: Cr. Register, August, 1993, No. 452, eff. 9-1-93; renum. from Trans 152.03 and am. (1), Register, May, 1997, No. 497, eff. 6-1-97.

Trans 152.05 Licensing. (1) LICENSE REQUIRED. No person who purchases or obtains motor fuel or alternative fuel outside this state may operate a qualified motor vehicle in this state unless the person holds a valid Wisconsin interstate fuel tax license, a valid license issued under the international fuel tax agreement, a valid temporary fuel tax trip permit or has the requirement waived under a reciprocal agreement, or is entering or leaving Wisconsin to have or after having had special equipment, or a body constructed or installed, or for repair.

(2) LICENSE APPLICATION. A person shall file an application for licensing in the name of the licensee with the department on forms specified by the department. The application shall contain the following:

(a) For a U.S. applicant, the federal employer identification number, or in the case of a sole proprietorship, the social security number. For a Canadian-based applicant, the department shall assign account numbers according to a uniform numbering system.

(b) Owner's, partner's or corporate name.

(c) Legal business name if different than par. (b).

(d) Geographical address of the registrant's established place of business in Wisconsin or the alternative Wisconsin location under s. Trans 152.025 (1) or (2).

(e) Mailing address of the business.

(f) Signature of licensee or authorized representative or attorney in fact.

(g) Number of decals required by licensee.

(h) Application fee of \$15.00.

(i) License fee of \$3.00.

(j) Decal fee of \$2.00.

(k) Statement of existence of bulk storage in Wisconsin and other international fuel tax agreement member jurisdictions.

(L) Name, address and social security number of the preparer.

(m) Indication of whether a person is applying for an international fuel tax agreement license or a Wisconsin interstate fuel tax license.

(n) The person's start operation date.

(o) United States department of transportation census number.

(p) Number of qualified motor vehicles in a fleet.

Note: A license application form MV2667 may be ordered from the Wisconsin Department of Transportation, Motor Carrier Taxes and Permits Section, P.O. Box 7979, Madison, Wisconsin 53707-7979.

(3) ACCOUNT IDENTIFICATION. The department shall assign an account number to its licensees according to an account numbering system which shall contain an alphabetic designation of the state of Wisconsin and the federal employer identification number of the licensee issued by the internal revenue service.

(4) PREVIOUS PROBLEMS. No license may be issued to an applicant or to any related business if that license is currently cancelled, suspended or revoked in Wisconsin or an international fuel tax agreement jurisdiction.

(5) BONDING. (a) *General.* The department may require an applicant to post a surety bond or an irrevocable letter of credit as a condition of obtaining or retaining a license when an applicant has failed to file timely reports, when the fuel tax has not been remitted or when an audit indicates that a bond is required to protect the interests of the department. If a person fails to post a bond within the time required by the department, the department may refuse to issue a license or may revoke a license.

(b) *Factors for the department's consideration.* In determining whether or not a bond will be required, the department may consider all relevant factors including the following:

1. The person's evidence of adequate financial security.

2. The person's prior record of filing tax reports and paying taxes and fees of any kind.

3. The person's type of business.

4. The person's form of business.

(c) *Determination of amount.* If a bond is required to be posted, the amount shall be equal to the licensee average quarterly use tax liability or projected liability plus any outstanding delinquency increased to the next even \$100 amount.

(d) *Return of bond.* If the licensee complies with all the requirements of this section for 24 consecutive months, the bond may be returned to the licensee.

(6) DECAL. Each licensee shall display 2 current fuel decals issued by the department for each qualified motor vehicle in its fleet. A fuel decal shall be placed on the exterior portion of the cab's passenger side and driver's side. In the case of transporters, manufacturers, dealers or driveaway operations, the decals need not be permanently affixed but may be temporarily displayed in a visible manner on the cab's passenger side and driver's side.

(7) LICENSE DISPLAY. A licensee shall display a copy of the license in every qualified motor vehicle that the licensee operates under the IFTA license.

(9) CANCELLATION. A license shall be cancelled at the written request of the licensee.

(10) LEASED VEHICLES. A lessor of vehicles that is regularly engaged in the business of leasing or renting motor vehicles without drivers may be issued a license.

(11) FLEETS. No licensee may be issued more than one license per fleet. The licensee shall make legible copies of the license and one copy shall be carried in each qualified motor vehicle. No qualified motor vehicle may be operated in the state of Wisconsin without a copy of the licensee's fleet license.

(12) REPLACEMENT LICENSE OR DECAL. If a license or an IFTA decal is lost prior to expiration, the department may issue a replacement license for \$3.00 or IFTA decal for \$2.00 after the

holder sends in a signed statement stating that the prior decal is lost.

History: Cr. Register, August, 1993, No. 452, eff. 9-1-93; renum. from Trans 152.04 and am. (1), Register, May, 1997, No. 497, eff. 6-1-97; CR 04-004: r. and recr. (2) (d), am. (3) (a), (7) and (12), r. (3) (b) and (c) and (8) Register December 2004 No. 588, eff. 1-1-05.

Trans 152.06 Tax paid purchases. No person may be allowed a credit under s. 341.45 (2), Stats., unless the person maintains the records required by this section and s. Trans 152.07 for fuel tax paid.

(1) RECEIPT DOCUMENTATION. Licensees shall retain all receipts and invoices, credit card receipts, or microfilm or microfiche copies of the records showing evidence of purchases and whether tax was paid for a period of 4 years from the due date of the tax report, unless the required tax report is not filed. If a tax report is not filed, the licensee shall retain the required records until the department otherwise authorizes. Facsimiles of receipts may be retained by using other types of technology with authorization from the department.

(2) RECEIPT CONTENT. An acceptable receipt or invoice for tax paid purchases credited against motor fuel tax liability must include the following:

- (a) Date of purchase.
- (b) Seller's name and address.
- (c) Number of units purchased.
- (d) Fuel type.
- (e) Price per unit or total amount of sale.
- (f) Vehicle unit numbers.
- (g) *Purchaser's name.* In the case of an agreement between a lessor and a lessee, receipts will be accepted in either name, provided a legal connection can be made to the reporting party.

(3) BULK STORAGE. In the case of fuel withdrawals from licensee owned, tax paid bulk storage, credit may be obtained under s. 341.45 (2), Stats., only if the following detailed records are maintained for each withdrawal of fuel:

- (a) Date of withdrawal.
- (b) Number of units.
- (c) Fuel type.
- (d) Vehicle unit numbers.
- (e) Purchase and inventory records to substantiate that tax was paid on all bulk purchases.

History: Cr. Register, August, 1993, No. 452, eff. 9-1-93; renum. from Trans 152.05, Register, May, 1997, No. 497, eff. 6-1-97.

Trans 152.07 Licensee records requirements.

(1) FUEL. Each licensee shall maintain a complete record of all fuel purchased, received and used in the conduct of its business. The fuel records shall contain the following:

- (a) The date of each receipt of fuel.
- (b) The name and address of the person from whom purchased or received.
- (c) The number of units received.
- (d) The type of fuel.
- (e) The vehicle or equipment into which the fuel was placed.
- (f) Fuel summaries for each vehicle for each jurisdiction in which the vehicle was operated.
- (g) Summaries of the total fuel obtained under each category specified in pars. (c) to (f) for each calendar quarter.

(2) DISTANCE. All licensees shall, in addition, maintain detailed distance records on an individual vehicle basis. Such records shall contain the following:

- (a) Both taxable and non-taxable usage of fuel.
- (b) Actual distance traveled for taxable and non-taxable use.
- (c) Travel summaries for each vehicle for each jurisdiction in which the vehicle operated.

(d) Summaries of the total distance under each category specified in pars. (a) to (c) for each calendar quarter.

(e) Supporting information shall include the following information:

- 1. Date of trip (starting and ending).
- 2. Trip origin and destination.
- 3. Route of travel.
- 4. Beginning and ending odometer or hubodometer reading of the trip.
- 5. Total trip distance.
- 6. Distance by jurisdiction.
- 7. Unit number or vehicle identification number.
- 8. Vehicle fleet number.
- 9. Registrant's name.

(2m) DECAL ACCOUNTABILITY. The licensee is responsible to account for all decals issued to licensee. That includes which vehicle decals were placed on and the sequential decal identification number that the vehicle received. Failure to account for all decals issued, for a period of 4 years may result in a 4-mpg jeopardy assessment based on Wisconsin average vehicle use.

(3) RETENTION PERIOD. Licensees shall retain the records required by subs. (1) and (2) for a period of 4 years from the due date of the tax report unless the required tax report is not filed. If a required tax report is not filed, the licensee shall retain the required records until the department otherwise authorizes. Failure to timely provide records demanded for the purpose of audit extends the statute of limitations for assessment of additional tax by the department until 9 months after the records are provided. Successive failures to adequately respond to a demand for records relate back to the first demand. The record retention period is extended indefinitely by refusal to provide documents.

(4) BURDEN OF PROOF. All motor fuel or special fuel acquired which is normally subject to use tax is taxable unless proof to the contrary is provided by the licensee.

History: Cr. Register, August, 1993, No. 452, eff. 9-1-93; renum. from Trans 152.06, Register, May, 1997, No. 497, eff. 6-1-97; CR 04-004: cr. (2m) Register December 2004 No. 588, eff. 1-1-05.

Trans 152.08 Reporting. **(1) QUARTERLY REPORTS.**

Except as provided in sub. (2), all licensees shall file a calendar quarterly report with the department and shall pay all taxes due. Payment shall be included with the quarterly report. Quarterly reports are required, even if no operation was conducted during the reporting period or if no taxable fuel was used. Failure to receive the authorized report form does not relieve the licensee from the obligation of submitting a report.

(2) ANNUAL REPORTS. Notwithstanding the quarterly reporting requirements of sub. (1), the department may allow annual reporting by licensees who have been reporting for at least one calendar year and whose operations equal less than 5,000 total annual miles or 8300 kilometers in Wisconsin. This will be based upon at least 4 quarters of filing history. Should a licensee choose to report annually, it shall petition the department and receive approval to do so. The reporting period for a licensee filing annual reports shall be from April 1 to March 31.

(3) DUE DATE. The report filed by the licensee shall be due on the last day of the month immediately following the close of the quarter for which the report is due. Reports postmarked with U.S. or Canadian postal service postmark not later than midnight of the due date or marked as received by the fuel tax unit within the department prior to the due date shall be considered timely filed. If the last day of the month falls on a Saturday, Sunday or legal holiday, the next business day shall be considered the due date.

(4) COMPUTER-GENERATED REPORTS. The department may authorize a licensee or its agent to submit a computer-generated report in lieu of the standard report if the report includes all

required information and is in a form which is acceptable to the department.

(5) PENALTY. Reports not filed by the due date shall be considered late and any taxes due considered delinquent. The department shall assess the licensee an appealable penalty of \$50 or 10% of assessed taxes, whichever is greater, for any of the following:

- (a) Failure to file a required report.
- (b) Filing a required report late.
- (c) Filing a late amended required report which shows taxes due.
- (d) Underpaying or failing to pay taxes due at the time of filing the report.

(6) INTEREST. The department shall assess interest on all delinquent taxes due from the due date of the report. Interest shall accrue at the interest rate of one percent per month. One month's interest shall be charged for each month or fraction thereof that a report is late.

(7) ALTERNATE MEASUREMENT. For reporting fuels that cannot be measured in liters or gallons, the licensee shall report the fuel at a conversion factor determined by the department.

(8) AMENDMENTS. Licensees may not amend quarterly reports requesting a refund after receiving notification of an impending audit.

(9) REVOCATION. If any licensee fails to report when required to do so or fails to pay in full the taxes due, the department shall mail a notice of intent to revoke the license to the address of record of the licensee advising of the immediate revocation of IFTA licensing privileges if the delinquent amount is not paid within 10 days. If the person's tax delinquency has not been satisfied within 10 days, the person's license shall be revoked.

History: Cr. Register, August, 1993, No. 452, eff. 9-1-93; renum. from Trans 152.07, Register, May, 1997, No. 497, eff. 6-1-97; CR 04-004: am. (9) Register December 2004 No. 588, eff. 1-1-05.

Trans 152.09 Refunds and credits. (1) REFUND REQUESTS. The licensee shall receive on request a refund of any accumulated credits. An applicant claiming a refund shall file a report in the form prescribed by the department together with the proof of the payment of the tax. If the report is not filed within 90 days of the end of the quarter in which the credit accrued, no refund may be paid.

(2) CREDITS. A licensee shall receive full credit for tax paid on fuel purchased in Wisconsin and consumed in another jurisdiction provided a fuel use tax is paid to the other jurisdiction. Upon request, the department shall refund the amount of any credit balance. Proof of payment of tax paid to Wisconsin and other jurisdictions may be required. A credit, when not refunded, shall be carried over to offset liabilities of the licensee in future reporting periods until the credit is fully offset or until 8 calendar quarters shall have passed from the end of the calendar quarter in which the credit accrued, whichever occurs sooner. A credit shall be forfeited if not used or refunded within the 8-quarter period.

(3) DELINQUENT TAXES. As a condition to issuance of a fuel tax license, an applicant shall authorize on the application that a refund may be withheld if the licensee is delinquent of fuel use taxes due or taxes or fees due other agencies of this state. Refunds may be withheld if there is another tax or monetary liability due to another state agency. No refund shall be issued to any person that has not filed all reports due at the time of the request or who has not paid all taxes due under s. 341.45, Stats. The department may set off any refunds due a person if the person is delinquent of fuel taxes or any other fees to the department or any other state agency. Setoffs are allocated to delinquent fuel taxes, registration fees due the department and then to fees due other agencies.

History: Cr. Register, August, 1993, No. 452, eff. 9-1-93; renum. from Trans 152.11, Register, May, 1997, No. 497, eff. 6-1-97.

Trans 152.095 Successor liability. (1) GENERAL. If any licensee liable for any amount of tax and interest under this

subchapter sells the licensee's business, substantially all the assets of the business or quits the business, the licensee's successor shall withhold a sufficient amount of the purchase price to cover such amount until the former licensee produces a receipt from the department that it has been paid or a certificate stating that no amount is due. If any taxes and interest are due, the licensee's successor is personally liable for the payment of the amount required to be withheld to the extent of the purchase price.

(2) DEFINITIONS. In this section:

- (a) 1. "Successor" includes any of the following:
 - a. A purchaser or assignee of a business or assets of a business.
 - b. A creditor, including a financial institution, that actually operates the business or part of the business which has been voluntarily surrendered by a delinquent debtor in full or partial liquidation of the debt.
 2. "Successor" does not include:
 - a. A surviving joint tenant where the business or assets passes by law to the remaining joint tenant.
 - b. A financial institutional or mortgagee who forecloses on a loan to a licensee owing delinquent tax.
 - c. A personal representative, special administrator or the licensee's estate.
 - (b) "Purchase price" includes all of the following:
 1. Consideration paid for tangible personal property and for intangibles such as leases, licenses and good will.
 2. Fair market value or property received for tangible personal property and for intangibles such as leases, licenses and good will.
 3. Debts assumed by the purchaser, or canceled by a creditor.

(3) EXTENT OF LIABILITY. (a) If there is no purchase price, there shall be no successor's liability.

(b) A successor shall be liable to the extent of the purchase price.

(c) A successor shall be liable only for the amount of tax and interest and not for penalties. The successor's liability shall not bear interest after the purchase date.

(d) A successor's liability is determined by law and may not be altered by agreements or contracts between the buyer and the seller.

(4) PROCEDURES FOR PURCHASERS. (a) A purchaser shall withhold a sufficient amount from the purchase price to cover any fuel use tax and interest liability.

(b) The purchaser shall submit a written request to the department for a clearance certificate. The letter requesting the certificate shall include the licensee's name, business name and license number, if known, of the prior operator. All fuel use tax reports for all periods shall be filed with the department before it may issue the certificate.

(c) The department has 60 days from the date it receives the request for clearance certificate or from the date that the former owner makes its records available, whichever is later, but no later than 90 days after it receives the request, to ascertain the amount of fuel tax liability, if any. The department shall, within these periods, issue either of the following:

1. A clearance certificate.
2. A notice of fuel use tax liability to the successor, which shall state the amount of tax and interest due before a clearance certificate can be issued.

(d) The department's failure to mail the notice within the 90 day period under par. (c) shall release the purchaser from any further liability.

(5) DEPARTMENT'S COLLECTION PROCEDURES. (a) The department shall first direct collection actions against a licensee who sells the licensee's business, supplies or equipment.

(b) Action against the successor may not be commenced prior to an action against the predecessor unless the predecessor has no ability to pay or it appears that a delay would jeopardize collection of an amount due.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Subchapter II — IRP

Trans 152.10 International registration plan. Under the authority of s. 341.405, Stats., Wisconsin became a member of the international registration plan. The IRP is an agreement among states and provinces to simplify the payment of registration fees by interstate motor carriers. The IRP reduces the paperwork and compliance burdens for the motor carrier industry. The provisions of the international registration plan in effect on October 1, 1996, and those subsequently ratified by this state, are incorporated by reference.

Note: Wisconsin became a member of the International Registration Plan effective January 1, 1978. A copy of the plan is on file at the offices of the Revisor of Statutes and the Secretary of State, and may be ordered from the Wisconsin Department of Transportation, Motor Carrier Services Section, P.O. Box 7955, Madison, Wisconsin 53707-7955.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Trans 152.101 IRP registration application. A person shall file an application for licensing in the name of the licensee with the department on forms specified by the department. The application shall contain the following:

- (1) The federal employer identification number. For owner operators, a valid Wisconsin drivers license number.
- (2) Valid IFTA license. Owner operators without their own IFTA license shall provide a copy of a current lease showing name of lessor, individual or legal name of the lessee, the date of the lease, the period of the lease, and a statement that the lessee is responsible for the filing of the fuel tax. If the lease terminates prior to the IRP renewal, the new lease shall be provided to the department within 30 days of new lease.
- (3) USDOT number of the motor carrier responsible for the safety of the registered vehicle.
- (4) Owner's, partner's or corporate name.
- (5) Legal business name if different than sub. (2).
- (6) Geographical address used for the established place of business.
- (7) A telephone bill with a Wisconsin phone number and Wisconsin geographical address in the business name billed to the established place of business address.
- (8) Registration with the Wisconsin department of financial institutions as a business in good standing in Wisconsin.
- (9) An original signature of the licensee and if there is an authorized representative or attorney in fact, the original signature of the authorized representative or attorney in fact, or in an electronic format as prescribed by the department.
- (10) Proof of vehicle ownership in the form of a photocopy of the vehicle title.

Note: A license application form MV2854 may be ordered from the Wisconsin Department of Transportation, Motor Carrier Services Section, P.O. Box 7955, Madison, Wisconsin 53707-7955.

History: CR 04-004: cr. Register December 2004 No. 588, eff. 1-1-05.

Trans 152.105 Registration required. No person may operate an apportionable vehicle in this state unless at the time of operation the vehicle is registered under the IRP, is issued a valid vehicle registration trip permit, is exempt under a reciprocity agreement, or is entering or leaving Wisconsin to have or after having had special equipment, or a body constructed or installed, or for repair as provided by s. 341.40, Stats.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Trans 152.11 Records requirements. (1) DISTANCE RECORDS. All registrants shall maintain detailed distance records

on an individual vehicle basis. Such records shall contain all of the following:

- (a) Actual distance travelled.
- (b) Distance summaries for each vehicle for each jurisdiction in which the vehicle operated.
- (c) Summaries of the total distance operated in all jurisdictions for each reporting period.
- (d) Supporting information shall include the following information:
 - 1. Date of trip, both starting and ending.
 - 2. Trip origin and destination.
 - 3. Route of travel.
 - 4. Beginning and ending odometer or hubodometer reading of the trip.
 - 5. Total trip distance.
 - 6. Distance by jurisdiction.
 - 7. Unit number or vehicle identification number.
 - 8. Vehicle fleet number.
 - 9. Registrant's name.

(2) ELECTRONIC RECORDS AND RECORD KEEPING. On-board recording devices, satellite tracking systems, or other electronic data recording systems may be used in lieu of or in addition to handwritten detailed distance records for record keeping purposes. If a registrant or licensee exercises this option, any device or electronic system used in conjunction with a device shall meet the requirements specified in s. Trans 152.11 (1), unless waived by the department. Other equipment monitoring devices, such as those that transmit or may be interrogated as to vehicle location or travel, may be used to supplement or verify handwritten or electronically-generated detailed distance records.

(3) TITLE. A copy of the Wisconsin title to the vehicle being registered shall accompany the application and be maintained in the carrier's file.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97; CR 04-004: cr. (3) Register December 2004 No. 588, eff. 1-1-05.

Trans 152.12 Records retention period. Registrants shall retain the records for an application for apportionment registration required by s. Trans 152.11 for 5½ years. Failure to timely provide records demanded for the purpose of audit extends the statute of limitations for assessment of additional tax by the department until 9 months after the records are provided. Successive failures to adequately respond to a demand for records relate back to the first demand. The record retention period is extended indefinitely by refusal to provide documents.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Trans 152.123 Inadequate records penalty. If any person fails to make the records required under s. Trans 152.11 available upon proper request or if any person fails to maintain adequate required records, the department may compute and assess upon the registrant an inadequate records penalty in addition to other penalties, taxes and fees. The IRP penalty assessment shall be computed as follows:

- (1) Upon the registrant's first refusal to make the required records available upon proper request or upon the department's first determination of inadequate maintenance of records, a penalty equal to 20% of the total registration fee for the period under review.
- (2) If the registrant was previously assessed an inadequate record penalty, then upon the registrant's refusal to make the required records available upon proper request or upon the department's determination of inadequate maintenance of records, a penalty equal to 50% of the total registration fee for the period under review.
- (3) If the registrant was previously assessed more than one inadequate record penalty, then upon the registrant's refusal to make the required records available upon proper request or upon

the department's determination of inadequate maintenance of records, a penalty equal to 100% of the total registration fee for the period under review.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Trans 152.124 Special registration period. (1) The department may require that any vehicle eligible for registration under the IRP be registered according to a monthly series system of registration prescribed by this section.

(2) There are established 12 registration periods, each to be designated by a calendar month and to start on the first day of such month and end on the last day of the 12th month from the date of commencement. The department shall administer the monthly series system of registration to distribute the work of registration throughout the calendar year.

(3) All vehicles subject to registration under the monthly series system under this section shall be registered by the department for a period of 12 consecutive calendar months, except as follows:

(a) If the registrant holds IRP registration plates which were removed from a vehicle and the plates were issued under the monthly series system, the department shall register a replacement vehicle of the same type and gross weight which is the subject of the application for the remainder of the unexpired registration period.

(b) If the registrant does not hold current IRP registration plates under the circumstances described in par. (a) and the application is an original rather than a renewal application, the department may register the vehicle which is the subject of the application for such period or part of a period as the department determines will help to equalize the registration and renewal workload of the department.

(4) When the department initially implements the monthly series registration system under this section, it may provide for renewal registration periods of not less than 6 months nor more than 18 months. The fees under this subsection shall be assessed according to the length of the registration periods.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Trans 152.125 Permanent IRP plates. (1) The department may issue permanent registration plates to vehicles registered under the auspices of the IRP.

(2) The department shall charge a fee of \$3.00 to cover the cost of issuance of each plate issued under the IRP as specified in s. 341.405 (2), Stats.

(3) The department shall charge a fee of \$3.00 to cover the cost of issuance of each cab card issued under the IRP as specified in s. 341.405 (2), Stats.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Trans 152.126 Display of IRP plates. (1) The department may issue one registration plate to each vehicle registered under the auspices of the IRP.

(2) If the vehicle is a truck tractor, road tractor or motor truck, the registration plate shall be attached firmly and rigidly in a horizontal position in a conspicuous place on the front of the vehicle.

(3) If the vehicle is a semitrailer or trailer, the registration plate shall be attached firmly and rigidly in a horizontal position in a conspicuous place on the back of the vehicle.

(4) The plate shall at all times be maintained in a legible condition and shall be so displayed that it can be readily and distinctly seen and read.

(5) Any peace officer may require the proper display of a plate pursuant to this section.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Trans 152.128 Penalties. Persons who own or operate apportionable vehicles which are not in compliance with the

requirements of subch. II may be subject to the penalties under s. 85.16, Stats.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Subchapter III — Audits, Assessments and Appeals

Trans 152.13 Audits and assessments. (1) **AUDIT.** The department may conduct such audits that it deems necessary to determine the adequacy of the taxes or fees paid under this chapter. All records described in this chapter shall be made available to the department at its request.

(2) **AUDITOR EXPENSES.** If the records of an applicant, a licensee or a registrant are not made available to the department in Wisconsin, the department shall require the applicant, licensee or registrant to reimburse the department for actual and necessary expenses plus wages pursuant to the appropriate state compensation plan or applicable labor agreement. The actual and necessary expenses charged include the following:

- (a) Travel expenses.
- (b) Meal expenses.
- (c) Lodging expenses.
- (d) Telephone expenses.
- (e) Copying and data processing expenses.

(3) **ASSESSMENTS.** (a) The department may, by field or office audit, determine the fuel use tax or registration fees to be paid or refunded to any person. The determination may be made on the basis of facts contained in the reports or upon any other information in the department's possession. The determination may be made on the basis of sampling, whether or not the person being audited has complete records of transactions and whether or not the person being audited consents. The department may examine and inspect books, records, memoranda and property of any person in order to verify the tax liability of that person or another person. The department may subpoena any person to give testimony under oath before it and to produce whatever books, records or memoranda are necessary in order to enable the department to verify the tax liability of that person or another person. The determination by the department shall be presumed to be correct. If that determination is challenged, the burden of proving its invalidity shall be on the person challenging it.

(b) If any person fails to make records available upon proper request or if any person fails to maintain records from which the true liability may be determined, the department may assess a tax or registration fee based upon the department's estimation of the tax or registration fee liability. The department may make an estimate from information previously furnished by the person, if available, may make an estimate based upon 4 miles per gallon, and any other pertinent information that may be available to the department. The assessment made by the department pursuant to this procedure shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person to establish by a fair preponderance of evidence that the assessment is erroneous or excessive.

(c) In the event that a person fails, neglects or refuses to file a tax report when due, the department shall, on the basis of the best information available to it, determine the tax or fee liability and shall, after adding the appropriate penalties and interest, serve the assessment upon the person in the same manner as an audit assessment.

(4) **NOTICE OF ACTION.** The department shall notify the licensee or other person audited in writing of the notice of action of any audit they perform. The department may issue a proposed notice of action to a licensee or other person audited before issuing the notice of action.

History: Cr. Register, August, 1993, No. 452, eff. 9-1-93; renum. from Trans 152.08 and am. (1), (2) (intro.), (3), Register, May, 1997, No. 497, eff. 6-1-97.

Trans 152.14 Appeal procedures. (1) **GENERAL.** A person feeling aggrieved by the notice of an action may petition

the department's motor carrier tax and permit section for a redetermination. If a person files a petition for redetermination, the additional tax or overpayment shall not become due and payable until 30 days after the matter becomes final.

(2) **FORMAT.** The petition for redetermination shall be written, preferably typed, on only one side of plain white paper 8 1/2 inches wide by 11 inches long. This request shall set forth clearly and concisely the specific grievance to the action, including a statement of the relevant facts and propositions of law upon which the grievance is based. Each request shall be signed by the taxpayer or a duly authorized representative.

(3) **FILING DEADLINE.** A petition for redetermination shall be filed within 30 days after the receipt of notice of an action. A petition for redetermination is not considered filed within the 30 day period unless it is actually received by the department's motor carrier tax and permit section, or unless it is mailed in a properly addressed envelope, with postage prepaid, the envelope is post-marked before midnight of the 30th day and the petition is actually received by the department within 5 days of the prescribed 30th day date.

(4) **PAYMENT.** Any person who files a petition for redetermination may pay any portion of the assessment admitted to be correct together with interest to date of payment. The payment shall be considered an admission that that portion of the assessment is correct. The admitted portion that is paid may not be recovered in an appeal in any other action or proceeding.

(5) **INFORMAL CONFERENCE.** A petitioner may request in a petition for redetermination or at any time before the department has acted upon the petition, an informal conference at which the facts and issues involved in the assessment or determination may be discussed. The conference shall be held at a time and place determined by the department.

(6) **CLOSING STIPULATIONS.** If by the informal conference or otherwise the parties reach an agreement as to the facts, issues and applicable law, the department and the petitioner may enter into a closing stipulation.

(7) **FULL DISCLOSURE.** No person against whom an assessment of taxes or fees has been made shall be allowed in any action either as a plaintiff or a defendant or in any other proceeding to question such assessment unless such person has complied with s. Trans 152.14 (1) to (3) and unless such person makes full disclosure under oath at the hearing before the tax appeals commission of all relevant matters. The department of transportation may waive the requirement of full disclosure under oath.

(8) **FURTHER APPEAL.** Any person who has filed a petition for determination with the department and who is aggrieved by the redetermination of the department may, within 30 days after the redetermination but not thereafter, file a petition for review of the action of the department with the tax appeals commission.

Note: The Tax Appeals Commission mailing address is 5005 University Avenue, Suite 110, Madison, Wisconsin 53705-5400. See also ch. TA 1, Practice and Procedures before the Tax Appeals Commission.

History: Cr. Register, August, 1993, No. 452, eff. 9-1-93; renum. from Trans 152.09, am. (2) and cr. (7), Register, May, 1997, No. 497, eff. 6-1-97; CR 04-004; renum. (7) to be (8) and am., cr. (7) Register December 2004 No. 588, eff. 1-1-05.

Trans 152.15 Revocation. If an assessed tax or fee has not been paid when due and the person has not filed a written

appeal within 30 days of the notification of action or audit finding, that tax or fee becomes delinquent. A notice of delinquency and revocation shall be sent to the last known address of the licensee or registrant advising of the immediate revocation of fuel tax licensing, IRP registration privileges, or hire operating authority and single-state insurance registration. A license may also be revoked if the licensee fails to comply with the provisions of this chapter or the provisions of the IFTA or IRP. An appealable notice of revocation shall be mailed to the licensee's or registrant's mailing address of record. If the appeal is not filed within 30 days, the revocation shall be final and conclusive. A licensee or registrant's licensing privileges shall remain revoked until the reason for the revocation has been removed. In addition, the department may revoke, suspend or refuse any registration, certificate or permit issued under the authority of the department upon revocation of a person's fuel tax or IRP licensing privileges.

History: Cr. Register, August, 1993, No. 452, eff. 9-1-93; renum. from Trans 152.10 and am., Register, May, 1997, No. 497, eff. 6-1-97; CR 04-004; am. Register December 2004 No. 588, eff. 1-1-05.

Trans 152.16 Jeopardy assessment. Before any tax or fee becomes due, if the department has reason to believe that any licensee or registrant, including former registrants or licensees, intends or is likely to evade or attempt to evade payment of the tax or fee when due, or intends or is likely to convey, dispose of, or conceal his or her property or abscond from the state, or do any other act which would render the state insecure in the collecting the tax or fee when due, the department may demand payment forthwith of all taxes and fees accrued by the licensee or registrant, which shall immediately become payable and collectible as if delinquent, and the property of the licensee or registrant shall be subject to attachment as provided in s. 78.70, Stats.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

Subchapter IV – Collections

Trans 152.17 Actions to collect tax, fees and penalties. (1) **DEPARTMENT COLLECTION.** The department shall make initial efforts to collect delinquent fuel tax and registration fees. The department may:

(a) Assess the person responsible for paying the fuel use taxes and registration fees. The department may subpoena any records necessary to determine the person responsible for paying the fuel use taxes and registration fees. Any officer, employee, fiduciary or agent who is responsible for paying taxes, fees, interest, penalties or other charges under this chapter incurred by another person but not paid is personally liable for those taxes, fees, interest, penalties or other charges. The officer, employee, fiduciary or agent may appeal that determination under the procedures of subch. III.

(b) Suspend or refuse to issue any permit, license or registration to any person who is responsible for paying the fee, taxes, interest or penalty under this chapter.

(2) **THIRD PARTY COLLECTION.** The department may refer for collection any delinquent fuel taxes and registration fees to the department of revenue. The department of revenue may collect any delinquent fuel taxes and registration fees as it collects motor vehicle fuel and alternative fuel general aviation taxes under s. 78.70, Stats.

History: CR 04-004; cr. Register December 2004 No. 588, eff. 1-1-05.