CHAPTER 28

Motor Fuels Subject to User Fees

CROSS REFERENCES

Road use fees for vehicles powered by electricity, hydrogen, and fuels other than motor fuel, see Section 56‑3‑645.

ARTICLE 1

Definitions

**SECTION 12‑28‑110.** Definitions.

 As used in this chapter:

 (1) “Alternative fuel” means a liquefied petroleum gas, liquefied natural gas, compressed natural gas product, or a combination of liquefied petroleum gas and a compressed natural gas product used in an internal combustion engine or motor to propel any form of vehicle, machine, or mechanical contrivance. It includes all forms of fuel commonly or commercially known or sold as butane, propane, liquefied natural gas, or compressed natural gas.

 (2) “Blend stock” includes any petroleum product component of gasoline, such as naphtha, reformate, or toluene, that can be blended for use in a motor fuel. However, it does not include any substance that ultimately is used for consumer nonmotor fuel use and is sold or removed in drum quantities 55 gallons or less at the time of the removal or sale.

 (3) “Blended fuel” means a mixture composed of gasoline or diesel fuel and another liquid, other than a de minimis amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.

 (4) “Blender” includes a person who produces blended motor fuel outside the bulk transfer/terminal system.

 (5) “Blending” means the mixing of one or more petroleum products, with or without another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use or otherwise sold for use in the generation of power for the propulsion of a motor vehicle, an airplane, or a motorboat. It does not include blending that occurs in the process of refining by the original refiner of crude petroleum or the blending or products known as lubricating oil and greases.

 (6) “Bulk end user” means a person who receives into the person’s own storage facilities in transport truck lots of motor fuel subject to the user fee for the person’s consumption.

 (7) “Bulk plant” means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

 (8) “Bulk transfer” means a transfer of motor fuel from one location to another by pipeline tender or marine delivery within bulk transfer/terminal system.

 (9) “Bulk transfer/terminal system” means the motor fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Gasoline in a refinery, pipeline, vessel, or terminal is in the bulk transfer/terminal system. Motor fuel subject to the user fee in the fuel supply tank of an engine, or in a tank car, rail car, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.

 (10) “Director” means the administrative head of the Department of Revenue or his designee.

 (11) “Dead storage” is the amount of motor fuel subject to the user fee that will not be pumped out of a storage tank because the motor fuel is below the mouth of the draw pipe. For this purpose, a dealer may assume that the amount of motor fuel in dead storage is two hundred gallons for a tank with a capacity of ten thousand gallons or less and four hundred gallons for a tank with a capacity of more than ten thousand gallons.

 (12) “Delivery” means the placing of motor fuel subject to the user fee or any liquid into the fuel tank of a motor vehicle.

 (13) “Department” means the South Carolina Department of Revenue.

 (14) “Destination state” means the state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use.

 (15) “Diesel fuel” means a liquid, including biodiesel and a biodiesel blend that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel‑powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the propulsion engine of a diesel‑powered highway vehicle. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the propulsion engine of a diesel‑powered highway vehicle. “Diesel fuel” does not include jet fuel if the buyer is registered to purchase jet fuel subject to federal taxes applicable to jet fuel and the seller obtains certification of that fact satisfactory to the Internal Revenue Service before making the sale.

 (16) “Diesel‑powered highway vehicle” means a motor vehicle operated on a highway that is propelled by a diesel‑powered engine.

 (17) “Distributor” means a person who acquires motor fuel from a supplier or from another distributor for subsequent sale or use.

 (18) “Dyed diesel fuel” means diesel fuel that is required to be dyed under United States Environmental Protection Agency and Internal Revenue Service rules or pursuant to other requirements subsequently set by the agency or service including any invisible marker requirements.

 (19) “Eligible purchaser” means a person who has been authorized by the department pursuant to Section 12‑28‑930 to make the election under Section 12‑28‑925.

 (20) “Enterer” includes a person who is the importer of record under federal customs law with respect to motor fuel subject to the user fee. If the importer of record is acting as an agent, the person for whom the agent is acting is the enterer. If there is no importer of record of motor fuel subject to the user fee entered into this State, the owner of the diesel fuel at the time it is brought into South Carolina is the enterer.

 (21) “Entry” means the importing of motor fuel subject to the user fee into this State. However, if motor fuel subject to the user fee is brought into this State in the fuel tank of a motor vehicle, it is not deemed to be an “entry” if it is not removed from the fuel tank except as used for the propulsion of that motor vehicle, except to the extent that motor fuel subject to the user fee was acquired user fee‑free for export or a refund of the user fee was claimed as a result of exportation from the state from which that motor fuel subject to the user fee was transported into South Carolina.

 (22) “Ethanol” means “fuel grade ethanol”.

 (23) “Export” means to obtain motor fuel in this State for sale or other distribution in another state. In applying this definition, motor fuel delivered out‑of‑state by or for the seller constitutes an export by the seller and motor fuel delivered out‑of‑state by or for the purchaser constitutes an export by the purchaser.

 (24) “Exporter” means a person, other than a supplier, who purchases motor fuel subject to the user fee in this State for the purpose of transporting or delivering the fuel to another state or country.

 (25) “Fuel grade ethanol” means American Society for Testing and Materials standard in effect January 1, 1995, and successor rules, as the D‑4806 specification for denatured fuel grade ethanol for blending with gasoline for use as automatic spark‑ignition engine fuels.

 (26) “Fuel transportation vehicle” means a vehicle designed for highway use which also is designed or used to transport motor fuels subject to the user fee and includes transport trucks and tank wagons.

 (27) “Gasohol” means blended fuel composed of gasoline and fuel alcohol.

 (28) “Gasoline” means all products commonly or commercially known or sold as gasoline that are suitable for use as a motor fuel. It does not include a product sold as a product other than gasoline and has an American Society for Testing Materials octane number of less than seventy‑five as determined by the “motor method” and does not include aviation gasoline if the buyer is registered to purchase aviation gasoline free of user fees and the seller obtains certification of that fact satisfactory to the Department before making the sale.

 (29) “Gasoline blend stocks” includes any petroleum product component of gasoline, such as naphtha, reformate, or toluene, that can be blended for use in a motor fuel. However, it does not include any substance that ultimately is used for consumer nonmotor fuel use and is sold or removed in drum quantities fifty‑five gallons or less at the time of the removal or sale.

 (30) “Gross gallons” means the total, measured product, exclusive of temperature or pressure adjustments, considerations or deductions, in United States gallons.

 (31) “Heating oil” means a motor fuel subject to the user fee that is burned in a boiler, furnace, or stove for heating or industrial processing purposes.

 (32) “Highway vehicle” means a self‑propelled vehicle that is designed for use on a highway.

 (33) “Import” means to bring motor fuel into this State for sale, use, or storage by any means of conveyance other than in the fuel supply tank of a motor vehicle. In applying this definition, motor fuel delivered into this State from out‑of‑state by or for the seller constitutes an import by the seller, and motor fuel delivered into this State from out‑of‑state by or for the purchaser constitutes an import by the purchaser.

 (34) “Import verification number” means the number assigned by the department or its delegate or appointee with respect to a single transport truck delivery into this State from another state upon request for an assigned number by an importer or the transporter carrying motor fuel subject to the user fee into this State for the account of an importer.

 (35) “In this State” means the area within the borders of South Carolina including all territories within the borders owned by or added to the United States of America.

 (36) “Invoiced gallons” means the gallons actually billed on an invoice in payment to a supplier.

 (37) “K‑1 kerosene” means burner fuel designed for unvented space heaters which meets American Society for Testing Materials standard D‑3699, in effect January 1, 1995, and successor rules, as the specification for #1‑K kerosene.

 (38) “Liquid” means a substance that is liquid in excess of sixty degrees Fahrenheit and a pressure of fourteen and seven‑tenths pounds a square inch absolute.

 (39) “Motor fuel” means gasoline, diesel fuel, substitute fuel, renewable fuel, alternative fuel, and blended fuel.

 (40) “Motor fuel transporter” means a person who transports motor fuel by transport truck or railroad tank car.

 (41) “Motor vehicle” means a vehicle that is propelled by an internal combustion engine or motor and is designed to permit the vehicle’s mobile use on highways. It does not include:

 (a) farm machinery including machinery designed for off‑road use but capable of movement on roads at low speeds;

 (b) a vehicle operated on rails; or

 (c) machinery designed principally for off‑road use.

 (42) “Net gallons” means the remaining product, after all considerations and deductions have been made, measured in United States gallons, corrected to a temperature of sixty degrees Fahrenheit, thirteen degrees Celsius, and a pressure of fourteen and seven‑tenths pounds a square inch, the ultimate end amount.

 (43) “Permissive supplier” means a person who does not meet the geographic jurisdictional connections to this State required of a supplier as defined in Section 12‑28‑920(A), but who:

 (a) is a position holder in a federally qualified terminal located outside this State; or

 (b) acquires a product in out‑of‑state terminals from a position holder in a transaction that otherwise qualifies as a two‑party exchange under Section 12‑28‑110(63); and under this subitem and subitem (a);

 (c) is registered under Section 4101 of the Internal Revenue Code for transactions in taxable motor fuels in the bulk transfer/terminal distribution system.

 (44) “Person” means a natural person, a partnership, a firm, an association, a corporation, a representative appointed by a court, the State, a political subdivision or any other entity, group, or syndicate.

 (45) “Position holder” means the person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

 (46) “Public highway” means the entire width between boundary lines of each publicly maintained way in this State, including streets and alleys in municipalities, when any part of the way is open to the public use for vehicle travel.

 (47) “Qualified terminal” means a qualified terminal as defined under Internal Revenue Code, regulation, and practices and which has been assigned a terminal control number by the Internal Revenue Service.

 (48) “Rack” means a mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a railroad tank car, a transport truck, or another means of bulk transfer outside of the bulk transfer/terminal system.

 (49) “Refiner” means a person who owns, operates, or otherwise controls a refinery within the United States.

 (50) “Refinery” means a facility used to produce motor fuel subject to the user fee from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons and from which motor fuel subject to the user fee may be removed by pipeline, by vessel, or at a rack.

 (51) “Removal” means a physical transfer other than by evaporation, loss, or destruction of motor fuel subject to the user fee from a terminal, manufacturing plant, customs custody, pipeline, marine vessel including barges and tankers, refinery, or any receptacle that stores motor fuel subject to the user fee.

 (52) “Retailer” means a person who engages in the business of selling or distributing to the end user within this State.

 (53)(a) “Supplier” means a person who meets all the following conditions:

 (i) is subject to the general taxing jurisdiction of this State;

 (ii) is registered under Section 4101 of the Internal Revenue Code for transactions in taxable motor fuels in the bulk transfer/terminal distribution system; and

 (iii) is one of the following:

 1. is the “position holder” in a terminal or refinery in this State;

 2. imports motor fuel subject to the user fee into this State from a foreign country;

 3. acquires motor fuel subject to the user fee from a terminal or refinery in this State from a position holder pursuant to a “two‑party exchange”;

 4. is the position holder in a terminal or refinery outside this State with respect to motor fuel subject to the user fee which that person imports into this State on his account.

 (b) A terminal operator is not considered a supplier merely because the terminal operator handles motor fuel subject to the user fee consigned to it within a terminal. When the term “supplier” is used in this chapter other than in this section, it is deemed to also refer the term “permissive supplier” unless provided otherwise.

 (54) “Tank wagon” means a straight truck having multiple compartments designed or used to carry liquid motor fuel.

 (55) “Motor fuel subject to the user fee” means gasoline, diesel fuel, kerosene, blended fuel, substitute fuel, alternative fuel and blends of them and any other substance blended with them.

 (56) “Terminal” is a storage and distribution facility for motor fuel subject to the user fee, supplied by pipeline or marine vessel, which has been registered as a qualified terminal by the Internal Revenue Service.

 (57)(a) “Terminal bulk transfers” include, but are not limited to: a marine barge movement of fuel from a refinery or terminal to a terminal;

 (b) pipeline movements of fuel from a refinery or terminal to a terminal.

 (c) book transfers of products within a terminal between suppliers before completion of removal across the rack;

 (d) two‑party exchanges between licensed suppliers.

 (58) “Terminal operator” is a person who owns, operates, or otherwise controls a terminal and does not use a substantial portion of the motor fuel subject to the user fee that is transferred through or stored in the terminal for its own use. “For its own use” means for its own consumption or in the manufacture of products other than motor fuel. A terminal operator may own the motor fuel subject to the user fee that is transferred through or stored in the terminal.

 (59) “Throughputter” means a person who does all of the following:

 (a) receives transfer of motor fuel subject to the user fee from refiners, importers, terminal operators, or other throughputters;

 (b) stores the motor fuel subject to the user fee in a terminal;

 (c) owns the motor fuel subject to the user fee or holds the inventory position to the motor fuel subject to the user fee, as reflected on the records of the terminal operator, at the time of removal or sale from a terminal.

 (60) “Transmix” means the buffer or interface between two different products in a pipeline shipment or a mix of two different products within a refinery or terminal that results in an off‑grade mixture.

 (61) “Transport truck” means a semitrailer or trailer combination rig designed or used to transport liquid motor fuel over the highways.

 (62) “Transporter” means a person engaged in the business of transporting motor fuels subject to the user fee.

 (63) “Two‑party exchange” means a transaction in which a product is transferred from one licensed supplier or licensed permissive supplier to another pursuant to an exchange agreement. An exchange agreement means an agreement between a licensed supplier or licensed permissive supplier and another licensed supplier or permissive supplier where one is a position holder in a terminal who agrees to deliver motor fuel subject to the user fee to the other party or the other party’s customer at the loading rack of the terminal where the delivering party holds an inventory position.

 (64) “Ultimate purchaser” means a person who uses motor fuel subject to the user fee.

 (65) “Ultimate vendor” means a person who sells motor fuel subject to the user fee to the user of the fuel, the ultimate purchaser.

 (66) “Undyed diesel fuel” means diesel fuel that is not subject to the United States Environmental Protection Agency requirements, or has not been dyed in accordance with Internal Revenue Service Fuel dyeing provisions.

 (67) “Vehicle fuel tank” means any receptacle on a motor vehicle from which fuel is supplied for the propulsion of the motor vehicle.

 (68) “Wholesaler” means a person who acquires motor fuel subject to the user fee from a supplier or from another wholesaler for subsequent sale and distribution at wholesale by tank cars, motor vehicles, or both.

 (69) “Substitute fuel” means a liquid that is commonly and commercially known or sold as a fuel that is suitable for use in a highway vehicle. The fuel meets this requirement if, without further processing or blending, the fuel is a fluid and has practical and commercial fitness for use in the propulsion of a highway vehicle. This includes all liquids regardless of temperature or pressure.

 (70) “Biodiesel” means a fuel composed of mono‑alkyl esters of long chain fatty acids generally derived from vegetable oils or animal fats, commonly known as B100, that is commonly and commercially known or sold as a fuel that is suitable for use in a highway vehicle. The fuel meets this requirement if, without further processing or blending, the fuel is a fluid and has practical and commercial fitness for use in the propulsion of a highway vehicle. “Biodiesel” means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the United States Environmental Protection Agency pursuant to Section 211 of the Clean Air Act (42 U.S.C. 7545) and that meets the American Society for Testing and Materials D6751‑02a Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

 (71) “Biodiesel blend” means a blend of biodiesel fuel with petroleum based diesel fuel, commonly designated Bxx where xx represents the volume percentage of biodiesel fuel in the blend (for example B20 is 20 percent biodiesel, 80 percent petro diesel), and that is commonly and commercially known or sold as a fuel that is suitable for use in a highway vehicle. The fuel meets this requirement if, without further processing or blending, the fuel is a fluid and has practical and commercial fitness for use in the propulsion of a highway vehicle.

 (72) “Renewable fuel” means liquid nonpetroleum based fuels that can be placed in vehicle fuel tanks and used as a fuel in a highway vehicle. It includes all forms of fuel commonly or commercially known or sold as biodiesel and ethanol.

 (73) “Diesel gallon equivalent” or “DGE” means the amount of liquefied natural gas containing the same energy content as one gallon of diesel. For purposes of calculating the motor fuel user fee on liquefied natural gas that is used or consumed in this State in producing or generating power for propelling a motor vehicle, each 6.06 pounds of liquefied natural gas equals one gallon of motor fuel.

 (74) “Gasoline gallon equivalent” or “GGE” means the amount of compressed natural gas or liquefied petroleum gas containing the same energy content as one gallon of gasoline. For purposes of calculating the motor fuel user fee on compressed natural gas or liquefied petroleum gas that is used or consumed in South Carolina in producing or generating power for propelling a motor vehicle, each 126.67 cubic feet of compressed natural gas, or 5.66 pounds if the compressed natural gas is dispensed via a mass flow meter, equals one gallon of motor fuel and each gallon of liquefied petroleum gas equals .73 of a gallon of motor fuel.

HISTORY: 1995 Act No. 136, Section 2; 2006 Act No. 386, Sections 18.A, 18.B, eff July 1, 2006; 2006 Act No. 386, Sections 36.C.1, 36.C.2, eff June 14, 2006; 2007 Act No. 83, Section 17, eff June 19, 2007; 2016 Act No. 160 (H.4328), Section 5, eff April 21, 2016; 2016 Act No. 269 (S.1122), Sections 1.A‑1.C, eff June 6, 2016.

Effect of Amendment

2016 Act No. 160, Section 5, added (73) and (74), relating to diesel gallon equivalent and gasoline gallon equivalent.

2016 Act No. 269, Section 1.A‑1.C, in (1), twice inserted “, liquefied natural gas”; and in (39) and (55), inserted “alternative fuel”.

CROSS REFERENCES

Road use fees for vehicles powered by electricity, hydrogen, and fuels other than motor fuel, see Section 56‑3‑645.

Sale of unblended and blended petroleum products, see Section 39‑41‑235.

**SECTION 12‑28‑120.** Clarifying certain references to the term gallon.

 For purposes of this chapter, any reference to the term gallon with respect to liquefied natural gas means diesel gallon equivalent (DGE) and any reference to the term gallon with respect to compressed natural gas or liquefied petroleum gas means gasoline gallon equivalent (GGE). For any gaseous product for which a conversion factor is not provided for in this chapter, based on the best information available, the department shall establish a temporary conversion factor to determine the gallon equivalent. The department shall subsequently submit to the General Assembly a recommended legislative change for this conversion factor.

HISTORY: 2016 Act No. 160 (H.4328), Section 6, eff April 21, 2016.

ARTICLE 3

Imposition of User Fees

**SECTION 12‑28‑310.** User fees on gasoline and diesel fuel.

 (A) Subject to the exemptions provided in this chapter, a user fee of sixteen cents a gallon is imposed on:

 (1) all gasoline, gasohol, or blended fuels containing gasoline that are used or consumed for any purpose in this State; and

 (2) all diesel fuel, substitute fuels, or alternative fuels, or blended fuels containing diesel fuel that are used or consumed in this State in producing or generating power for propelling motor vehicles.

 (B) The user fee levied on motor fuel subject to the user fee pursuant to this chapter is a levy and assessment on the consumer, and the levy and assessment on other persons as specified in this chapter are as agents of the State for the collection of the user fee. This section does not affect the method of collecting the user fee as provided in this chapter. The user fee imposed by this section must be collected and paid at those times, in the manner, and by the persons specified in this chapter.

 (C) The license user fee imposed by this section is instead of all sales, use, or other excise tax that may be imposed otherwise by any municipality, county, or other local political subdivision of the State.

 (D) On July 1, 2017, and each July first thereafter until after July 1, 2022, the department shall permanently increase the amount of the user fee imposed pursuant to subsection (A) by two cents, for a total of twelve cents. All of the funds raised by the increase in the motor fuel user fee imposed by this subsection must be credited to the Infrastructure Maintenance Trust Fund.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4A; 2005 Act No. 161, Section 25.A, eff June 9, 2005; 2006 Act No. 386, Section 18.C, eff July 1, 2006; 2017 Act No. 40 (H.3516), Section 2, eff July 1, 2017.

Effect of Amendment

2017 Act No. 40, Section 2, added (D), providing that the department shall phase‑in an increase of twelve cents on the user fee over six years.

Library References

Taxation 3680.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2179, 2186 to 2187.

United States Supreme Court Annotations

State tax or fee imposed for motor carrier’s use of highways as violating commerce clause (Article 1, Section 8, clause 3) of Federal Constitution—Supreme Court cases. 97 L Ed 2d 843.

**SECTION 12‑28‑320.** Presumption that fuel delivered to motor vehicle fuel supply tank is used in this State.

 Except as otherwise provided under Article 7 of this chapter, the department shall consider it a presumption that all motor fuel subject to the user fee delivered in this State into a motor vehicle fuel supply tank is to be used or consumed on the highways in this State producing or generating power for propelling motor vehicles.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3692.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2194 to 2196.

**SECTION 12‑28‑330.** Presumption that fuel from terminal in State, imported, or delivered into end user’s storage tank is used in State.

 The department considers it a rebuttable presumption, subject to proof of exemption pursuant to Article 7 of this chapter, that all motor fuel subject to the user fee removed from a terminal in this State, or imported into this State other than by a bulk transfer within the bulk transfer terminal system or delivered into an end user’s storage tank, is to be used or consumed in this State, in the case of gasoline, gasohol, or blended fuels containing gasoline and is to be used or consumed on the highways in this State in producing or generating power for propelling motor vehicles in the case of all other motor fuel.

HISTORY: 1995 Act No. 136, Section 2; 2005 Act No. 161, Section 25.B, eff June 9, 2005; 2006 Act No. 386, Section 18.D, eff July 1, 2006.

Library References

Taxation 3692.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2194 to 2196.

**SECTION 12‑28‑340.** Petroleum product and ethanol blenders requirements imposed on terminal; blender of record; Renewable Identification Number trading system.

 (A) Regardless of other products offered, a terminal, as defined in Section 12‑28‑110(56), located within the State must offer a petroleum product that has not been blended with ethanol and that is suitable for subsequent blending with ethanol.

 (B) A person or entity must not take any action to deny a distributor, as defined in Section 12‑28‑110(17), or retailer, as defined in Section 12‑28‑110(52), who is doing business in this State and who has registered with the Internal Revenue Service on Form 637(M) from being the blender of record afforded them by the acceptance by the Internal Revenue Service of Form 637(M).

 (C) A distributor or retailer and a refiner must utilize the Renewable Identification Number (RIN) trading system. Nothing in this section should be construed to imply a market value for RINs.

HISTORY: 2008 Act No. 338, Section 3, eff June 25, 2008.

Library References

Taxation 3681.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2179.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

Act enacted by the General Assembly, containing sections relating to sales tax exemptions for energy efficient products, a sales tax holiday for firearms, and regulation of fuel blending, violated the one subject rule of the Constitution, which provides that every act “shall relate to but one subject, and that shall be expressed in the title.” Const. Art. 3, 17; Code 1976, 12‑28‑340, 12‑36‑2120. American Petroleum Institute v. South Carolina Dept. of Revenue (S.C. 2009) 382 S.C. 572, 677 S.E.2d 16. Statutes 1617(14); Taxation 3626

**SECTION 12‑28‑350.** Motor fuel taxes or user fees; boundary clarification.

 A retailer that sells motor fuel whose business location changes from South Carolina to North Carolina as a result of the boundary clarification, as contained in the amendments to Section 1‑1‑10, effective January 1, 2017, is allowed a refund of South Carolina motor fuel taxes or user fees if North Carolina requires the retailer to pay the North Carolina motor fuel taxes or user fees on that same fuel.

HISTORY: 2016 Act No. 270 (S.667), Section 10, eff January 1, 2017.

ARTICLE 5

Measurement of User Fees

**SECTION 12‑28‑510.** User fee on motor fuel measured by invoiced gallons.

 The user fee imposed by this chapter on use of motor fuel subject to the user fee which was imported into this State by a licensed importer, other than by a bulk transfer, shall arise at the time the product is entered into the State and shall be measured by invoiced gallons received outside this State at a refinery, terminal, or at a bulk plant for delivery to a destination in this State.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3685, 3686, 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2186 to 2187, 2189, 2191 to 2193.

**SECTION 12‑28‑520.** Measurement of user fees on motor fuel; user fee complemented by user fees measured annually at each terminal.

 (A) Except as provided in Section 12‑28‑510, the user fee imposed by this chapter on the use of motor fuel subject to the user fee must be measured by invoiced gallons of motor fuel subject to the user fee removed, other than by a bulk transfer, by a licensed supplier from a qualified terminal or refinery within this State, and from a qualified terminal or refinery outside this State for delivery to a location in South Carolina as represented on the shipping papers if the supplier imports the motor fuel subject to the user fee for his own account or the supplier has made a user fee precollection election under Section 12‑28‑910. This user fee otherwise generally must be determined in the same manner as the tax imposed by Section 4081 of the Internal Revenue Code of 1986, or the Code of Federal Regulations as it exists as of January 1, 1995, or as subsequently modified.

 (B) The user fee imposed by this chapter on use of motor fuel subject to the user fee in this State as measured by gallons removed by a supplier, or terminal operator, from terminals in this State must be complemented by a user fee measured annually at each terminal in this State by the amount by which net gallons lost or unaccounted for, including transmix, within each terminal exceed the sum of net gallon gains plus one‑half of one percent times the number of all net gallons removed from the terminal across the rack or in bulk.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3685, 3686, 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2186 to 2187, 2189, 2191 to 2193.

**SECTION 12‑28‑530.** Repealed.

HISTORY: Former Section, titled Increase in user fee rate, had the following history: 1995 Act No. 136, Section 2. Repealed by 2017 Act No. 40, Section 10, eff July 1, 2017.

ARTICLE 7

Exemptions and Refunds

**SECTION 12‑28‑710.** Exemption from the user fee on motor fuel.

 Subject to the procedural requirements and conditions set out in this article, the following are exempt from the user fee imposed by Section 12‑28‑310 on motor fuel subject to the user fee:

 (1) motor fuel subject to the user fee for which proof of export is available in the form of a terminal issued destination state shipping paper;

 (a) exported by a supplier who is licensed in the destination state;

 (b) sold by a supplier to another person for immediate export to a state for which the destination state’s motor fuel user fee has been paid to the supplier who is licensed to remit user fees to the destination state;

 (c) which is destined for use other than for resale within the destination state for which an exemption has been made available by the destination state subject to procedural regulations promulgated by the department;

 (2) motor fuel subject to the user fee which was acquired by a licensed exporter and as to which the user fee imposed by this chapter previously has been paid or accrued, which motor fuel was placed into storage in this State and subsequently was exported by transport truck by or on behalf of the licensed exporter;

 (3) motor fuel subject to the user fee which was acquired by an unlicensed exporter and as to which the user fee imposed by this chapter previously has been paid or accrued and subsequently was exported by transport truck by or on behalf of the licensed exporter in a diversion across state boundaries properly reported in conformity with Section 12‑28‑1525;

 (4) motor fuel subject to the user fee exported out of a bulk plant in this State in a tank wagon if the destination of that vehicle does not exceed twenty‑five miles from the borders of this State and as to which the user fee imposed by this chapter previously has been paid or accrued, subject to gallonage limits and other conditions established by the department;

 (5) K‑1 kerosene sold at retail through dispensers which have been designed and constructed to prevent delivery directly from the dispenser into a vehicle fuel supply tank and K‑1 kerosene sold at retail through nonbarricaded dispensers in quantities of not more than twenty‑one gallons for use other than for highway purposes, under regulations as the department reasonably requires;

 (6) motor fuel subject to the user fee sold to the United States or its agencies or instrumentalities;

 (7) subject to determination by the department, that portion of motor fuel subject to the user fee used to operate equipment attached to a motor vehicle, if the motor fuel subject to the user fee was placed into the fuel supply tank of a motor vehicle that has a common fuel reservoir for travel on a highway and for the operation of equipment;

 (8) motor fuel subject to the user fee acquired by an end user out‑of‑state and carried into this State, retained within and consumed from the same vehicle fuel supply tank within which it was imported;

 (9) kerosene and diesel fuel used as heating oil or in trains or used in equipment not licensed as a motor vehicle other than as expressly exempted under another provision;

 (10) motor fuel subject to the user fee which was lost or destroyed as a direct result of a sudden and unexpected casualty;

 (11) diesel fuel subject to the user fee which has been contaminated by dye so as to be unsalable or unusable as highway fuel;

 (12) motor fuel subject to the user fee used in state‑owned school buses and in state‑owned administration and service vehicles used in the pupil transportation program and transportation of students by state‑funded institutions of higher learning;

 (13) motor fuel subject to the user fee used in manufacture of fuel oil;

 (14) motor fuel subject to the user fee sold for use in commercial shrimp boats;

 (15) gasoline subject to the user fee used in operating tractors or other farm equipment used exclusively in farm operations, no part of which is used in any vehicle or equipment driven upon the public roads, streets, or highways of this State. A claim for refund must be made under Section 12‑28‑790;

 (16) gasoline used in aircraft.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 456, Section 15; 1996 Act No. 461, Section 4CC, DD; 1998 Act No. 442, Section 1.

Library References

Taxation 3682 to 3684.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2179.

Attorney General’s Opinions

Former Section 12‑27‑270 exempts gasoline from taxation when used in State‑owned school buses. The section does not provide an exemption for motor fuels other than gasoline. 1982 Op Atty Gen, No 82‑54, p 60 (July 30, 1982) 1982 WL 155023.

Under former Code 1962 Section 65‑1064.2 [former Code 1976 Section 12‑27‑270] (gasoline tax) only State‑owned buses are entitled to the exemption contained therein and not county‑owned buses. 1974‑75 Op Atty Gen, No 4015, p 86 (April 8, 1975) 1975 WL 22312.

The exemption provided for gasoline purchased for use in State‑owned administrative and service vehicles used in the pupil transportation program is not retrospective in its effect. (Decided under former law.) 1965‑66 Op Atty Gen, No 2072, p 166 (June 13, 1966) 1966 WL 8536.

**SECTION 12‑28‑720.** Perfection of exemption for imports.

 The exemption for exports:

 (1) under Section 12‑28‑710(1) must be perfected by a deduction on the report of the supplier which is otherwise responsible for user fees on removal of the product from a terminal or refinery in this State;

 (2) under Section 12‑28‑710(2) and 12‑28‑710(4) may be perfected at the option of the exporter by a refund claim if the claim in the aggregate month to date exceeds one thousand dollars, by a refund claimed on the licensed exporter report for that month’s activity, or under Section 12‑28‑710(3) if a diversion by an unlicensed exporter upon a refund application is made to the department within three years.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4B.

Library References

Taxation 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2189.

**SECTION 12‑28‑730.** Exempt use of K‑1 kerosene.

 Exempt use of K‑1 kerosene is governed by regulations promulgated by the department which must follow regulations governing the exemption promulgated by the federal government to the extent that impositions of conforming regulations is practical and does not work a hardship on sellers and end users in this State.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3682.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2179.

**SECTION 12‑28‑740.** Perfection of exemption for federal government, agencies, instrumentalities, and reservations, and state‑owned buses and vehicles used in an educational program.

 The exemption for sales of motor fuel subject to the user fee for use by the federal government, federal agencies, instrumentalities, and federal reservations, and state‑owned buses and vehicles used in an educational program provided under Section 12‑28‑710(6) and (12) must be perfected as follows:

 (1) by refund claim by a licensed fuel vendor which made a sale of user fee‑paid motor fuel as ultimate vendor to an exempt government user listed above on behalf of the exempt user. The claim must be made directly to the department under regulations and procedures and on forms provided by the department. The department shall issue a refund within thirty days of receipt of the claim for refund from the licensed fuel vendor;

 (2) if the department makes a finding that its collections would not be jeopardized by application by an ultimate vendor for a Government Exempt Bulk Sales Permit which entitles that person to make purchases of fuel user fee‑free for resale for exempt government use under the following conditions:

 (a) The vendor shall make application with the department for the permit on a form acceptable to the department. The application must include:

 (i) proof of financial responsibility or bond in an amount not to exceed the user fee on the total gallons to be purchased user fee‑exempt in any year;

 (ii) an estimate of total user fee‑exempt gallons to be sold under the permit on an annual basis, which amount constitutes the limit of user fee‑exempt purchases which the applicant is authorized to make, absent re‑application pursuant to subitem (f) of this item;

 (iii) the name of the suppliers from which the applicant shall make the user fee‑exempt purchases under this permit for the term covered by the permit. This subitem does not mandate sales by a supplier to another person;

 (iv) a list of government user fee‑exempt purchasers qualifying under subsubitem (c) of this subitem and estimated volumes for them;

 (v) other information the department reasonably requires.

 (b) Upon evaluation of the data provided by applicant and independent investigation of that information the department in its discretion makes, the department shall issue the permit provided under this section to the applicant with a copy to each supplier named by the applicant pursuant to subitem (a) of this item.

 (c) In order for a government entity to qualify as a government user fee‑exempt purchaser eligible for user fee‑exempt sales under this section, the ultimate vendor shall obtain a properly completed Federal Form 1094, its state equivalent, or successor form from the government entity and shall send to the department a copy of this form with an estimate of the annual quantity of motor fuel subject to the user fee to be supplied to that government entity purchaser. The department shall assign an approval number for that government entity and location and shall issue a permit to the ultimate vendor authorizing the ultimate vendor to make user fee‑exempt sales of that estimated quantity of fuel to the agency.

 (d) The department may not require that the identical gallons purchased by the ultimate vendor under the permit be delivered to the eligible government entity, only that the total gallons purchased under the permit user fee exempt equal the total gallons delivered to all eligible government entities.

 (e) If the ultimate vendor fails to deliver any quantity of the user fee‑exempt purchases to eligible government entities, the ultimate vendor is liable for the user fee on that quantity. If the excess of user fee‑exempt gallons purchased exceeds gallons sold for user fee‑exempt use by ten percent, the department in its discretion may levy a penalty equal to ten percent of the user fee due in addition to user fees due.

 (f) If the ultimate vendor needs to purchase additional gallons above that estimated to fulfill his commitments, he shall notify the department. If the department is satisfied with the reports submitted accounting for the user fee‑exempt fuel previously submitted, it shall increase the quantity authorized on the permit and so notify the supplier.

 (3) If the sale to the eligible government entities of motor fuel subject to the user fee occur at a fixed retail pump available to the general public by:

 (a) application by the ultimate vendor, having made the sale to the eligible government entity without the user fee, for a refund from the department by submitting the application and supporting documentation the department reasonably prescribes by regulation;

 (b) by application for a refund, if the purchase is charged to a credit card issued to an eligible government entity, the issuer of the card elects to be the ultimate vendor, and the federal agency is billed without the user fee;

 (c) if the sale to the government entity includes the user fee levied by this chapter, by application for a refund by the government entity from the department including submitting such supporting documentation the department reasonably prescribes by regulation.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4C; 2005 Act No. 145, Section 25, eff June 7, 2005.

Library References

Taxation 3684.

Westlaw Topic No. 371.

**SECTION 12‑28‑750.** Perfection by refund claim filed by end user for fuel used to operate machinery.

 The exemptions per use pursuant to Section 12‑28‑710(7) must be perfected by refund claim filed by the end user who shall provide evidence of an allocation of use satisfactory to the department.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3701.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2206.

**SECTION 12‑28‑760.** No user fee on motor fuel carried into State, retained in vehicle and consumed by an end user.

 No user fee imposed by this chapter may be paid by or levied upon motor fuel consumed by an end user who meets the requirement of Section 12‑28‑710(8).

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3682.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2179.

**SECTION 12‑28‑770.** Refund upon application after contamination or loss of motor fuel.

 The exemption for motor fuel subject to the user fee pursuant to Section 12‑28‑710(10) and (11) which was purchased user fee‑paid for a user fee use and, after the purchase, was contaminated by the presence of a dye or marker or subject to a sudden and unexpected casualty loss, must be refunded to the person responsible for the contamination or loss event upon application and on proof shown acceptable to the department.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3701.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2206.

**SECTION 12‑28‑780.** Refund of motor fuel user fees erroneously paid.

 The motor fuel user fee that has otherwise been erroneously paid by a person must be refunded by the department upon proof shown satisfactory to the department. The department’s authority under this section must be construed broadly to prevent unjust and unintended payment of user fees on exempt uses or by exempt users.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3701.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2206.

**SECTION 12‑28‑785.** Perfection of exemptions not covered under Sections 12‑28‑720 through 12‑28‑780.

 All exemptions under Section 12‑28‑710, not expressly covered under Sections 12‑28‑720 through 12‑28‑780, must be perfected as follows:

 (1) A supplier or tank wagon importer shall take a deduction against motor fuel subject to the user fee shown on his monthly report for those gallons of diesel fuel removed from a terminal or refinery destined for delivery to a point in this State as shown on the shipping papers, as to which dye was added in a manner which conforms to federal requirements established by the Internal Revenue Code and regulations issued under it.

 (2) The end user shall apply for refund with respect to motor fuel subject to the user fee purchased by the end user for consumption in an exempt use described under Section 12‑28‑710 as to which the user fee imposed by this chapter previously was paid and no refund previously issued.

 (3) An importer shall take a deduction against the user fee owed under Section 12‑28‑905(A) or (B) or dyed diesel fuel if such diesel fuel would have met the requirements of item (1).

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2189.

**SECTION 12‑28‑790.** Refunds claims.

 (A) To claim a refund under Sections 12‑28‑720 through 12‑28‑780, a person shall present to the department a statement that contains a written verification that the claim is made under penalties of perjury and lists the total amount of motor fuel subject to the user fee purchased and used for exempt purposes. The claim must be filed not more than three years after the date the motor fuel subject to the user fee was purchased. The statement must show that payment for the purchase has been made and the amount of the user fee paid on the purchase has been remitted to the seller.

 (B) The department may make investigations it considers necessary before refunding the motor fuel user fee to a person and may investigate a refund after the refund has been issued and within the time frame for making adjustments to the user fee under this chapter.

 (C) To facilitate efficient administration and instead of the individual refund procedures, the department may provide by regulation an alternative election by the applicant for a refund by way of credit against state income tax liability.

HISTORY: 1995 Act No. 136, Section 2; 2006 Act No. 386, Section 18.E, eff July 1, 2006.

CROSS REFERENCES

Civil penalties and damages applicable to certain return or statement filings, see Section 12‑54‑43.

Criminal penalties applicable to certain return or statement filings, see Section 12‑54‑44.

Library References

Taxation 3701.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2206.

**SECTION 12‑28‑795.** Interest on refund.

 Interest on a claim for refund must be paid at the rate and in the manner provided for in Section 12‑54‑25.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 456, Section 1; 1996 Act No. 461, Section 4D.

Library References

Taxation 3701.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2206.

ARTICLE 9

Payments; Liability; Eligibility; Collections

**SECTION 12‑28‑905.** Time for payment of motor fuel user fees imported from another state.

 (A) Except as otherwise provided in this chapter, the user fee imposed by Section 12‑28‑310 on motor fuel subject to the user fee measured by gallons imported from another state must be paid by the licensed occasional importer who has imported the nonexempt motor fuel subject to the user fee within three business days of the earlier of the time the nonexempt motor fuel subject to the user fee was entered into the State or the time a valid import verification number required by Section 12‑28‑1125 was assigned by the department under regulations the department promulgates. However, if the supplier has made a blanket election to pre‑collect the user fee under Section 12‑28‑910(B), he is jointly liable with the importer for the user fee and shall remit the user fee to the department on behalf of the importer under the same terms as a supplier payment under Section 12‑28‑915, and no import verification number is required.

 (B) Except as otherwise provided in this section, the user fee imposed by Section 12‑28‑310 on motor fuel subject to the user fee measured by gallons imported from another state must be paid by the licensed bonded importer who has imported the nonexempt motor fuel subject to the user fee during a month before the twenty‑second day of the following month unless the day falls upon a weekend or state or banking holiday, in which case the liability is due the next succeeding business day, if before the time of import the importer obtains a valid import verification number required by Section 12‑28‑1125, assigned by the department under regulations promulgated by the department. However, if the supplier has made a blanket election to pre‑collect the user fee under Section 12‑28‑910(B), he is jointly liable with the importer for the user fee and shall remit the user fee to the department on behalf of the importer under the same terms as a supplier payment under Section 12‑28‑915, and no import verification number is required.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4E.

Library References

Taxation 3697.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2206.

**SECTION 12‑28‑910.** Blanket election to treat all removals from out‑of‑state terminals as if from in‑state terminals; notice of election.

 (A) Any licensed supplier or licensed permissive supplier may make a blanket election with the department to treat all removals from all of its out‑of‑state terminals with a destination in this State as shown on the terminal issued shipping paper as if the removals were removed across the rack by the supplier from a terminal in this State for all purposes.

 (B) This election must be made by filing “notice of election” with the department as provided in this section.

 (C) The department shall release a list of electing suppliers under subsection (B) upon request by any person.

 (D) The absence of an election by a supplier under this section does not relieve the supplier of responsibility for remitting the user fee imposed by this chapter upon the removal from an out‑of‑state terminal for import into this State by the supplier.

 (E) A supplier which makes the election provided by this section shall pre‑collect the user fee imposed by this chapter on all removals from a qualified terminal on its account as a position holder or a person receiving fuel from a position holder pursuant to a two‑party exchange agreement without regard to the license status of the person acquiring the fuel from the supplier, the point or terms of sale, or the character of delivery.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3686.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2189, 2191 to 2193.

**SECTION 12‑28‑915.** User fees collected and remitted by supplier; due date; late user fees.

 (A) The user fee imposed by Section 12‑28‑310 measured by motor fuel subject to the user fee removed by a licensed supplier from a terminal or refinery in this State other than a bulk transfer, must be collected and remitted to the State by the supplier, as shown in the terminal operator’s records, who removes the gallons subject to the user fee.

 (B) The supplier and each reseller shall list the amount of user fees as a separate line item on all invoices or billings.

 (C) All user fees to be paid by a supplier with respect to gallons removed on his account during a calendar month is due and payable before the twenty‑second day of the following month unless the day falls upon a weekend or state or banking holiday in which case the liability is due the next succeeding business day.

 (D) A supplier shall give notification of late user fees remitted to the supplier by an eligible purchaser and give timely notification to the department of late remittances if that supplier previously gave notice to the department of an uncollectible user fee amount pursuant to Section 12‑28‑940(B).

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4F.

Library References

Taxation 3707.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2213.

**SECTION 12‑28‑920.** Liability of terminal operator for motor fuel user fee; payment.

 (A) The terminal operator of a terminal in this State is jointly and severally liable for the user fee imposed under Section 12‑28‑310 and shall remit payment to this State upon discovery of either of the following conditions:

 (1) The supplier with respect to the motor fuel subject to the user fee is a person other than the terminal operator and is not a licensed supplier. The terminal operator is relieved of liability if he establishes all of the following:

 (a) The terminal operator has a valid terminal operator’s license issued for the facility from which the motor fuel is withdrawn.

 (b) The terminal operator has an unexpired notification certificate from the supplier as required by the department or the Internal Revenue Service.

 (c) The terminal operator has no reason to believe that any information on the certificate is false.

 (2) In connection with the removal of diesel fuel that is not dyed and marked in accordance with Internal Revenue Service requirements, the terminal operator provides a person with a bill of lading, shipping paper, or similar document indicating that the diesel fuel is dyed and marked in accordance with Internal Revenue Service requirements.

 (B) The terminal operator is severally liable for the user fee imposed by this chapter and measured in accordance with Section 12‑28‑520(B) which is not allocable to a licensed supplier and shall remit the user fee due with the annual report required under Section 12‑28‑1330(E). No user fee is due if the terminal operator can establish by substantial evidence that the gallons lost were diesel fuel dyed before receipt by that terminal operator. No collection allowance or deductions are allowed with respect to payment of this user fee. If the gallons lost or unaccounted for exceed five percent of the gallons removed from that terminal across the rack, a penalty of one hundred percent of the user fee otherwise due must be paid by the terminal operator with the user fee due.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3683, 3697.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2206.

**SECTION 12‑28‑925.** Collection of motor fuel user fees from purchaser; election to defer user fee payment.

 Each supplier and bonded importer who sells motor fuel subject to the user fee shall collect from the purchaser the motor fuel user fee imposed under Section 12‑28‑310. At the election of an eligible purchaser evidenced by a written statement from the department as to the purchaser eligibility status as determined under Section 12‑28‑930, the seller may not require a payment of motor fuel user fees on transport truckloads from the purchaser sooner than one business day before the date on which the user fee is required to be remitted by the supplier or bonded importer under Section 12‑28‑915. This election is subject to a condition that the eligible purchaser’s remittances of all amounts of user fees due the seller must be paid by electronic funds transfer. Failure of a supplier or bonded importer to comply with the requirements of this section may result in suspension or revocation of the license in accordance with Section 12‑28‑1180(B). The eligible purchaser’s election under this subsection may be terminated by the seller if the eligible purchaser does not make timely payments to the seller as required by this section.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4G.

Library References

Taxation 3697, 3707.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2206, 2213.

**SECTION 12‑28‑930.** Qualifications of purchasers for election under Section 12‑28‑930; bond.

 Each purchaser who desires to make an election under Section 12‑28‑925 shall present evidence to the department that the applicant was a licensee in good standing under the predecessor motor fuel statute as to which he remitted user fees to the department, or the applicant meets the financial responsibility and bonding requirements imposed by this chapter which bond shall conform to the specific requirements of this section. The department may require a purchaser who pays the user fee to a supplier to file with the department a surety bond payable to the State, upon which the purchaser is the obligor or other financial security, in an amount satisfactory to the department. The department may require that the bond indemnify the department against uncollectible user fee credits claimed by the supplier under Section 12‑28‑940.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3683, 3698.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2207.

**SECTION 12‑28‑935.** Rescission of purchaser’s eligibility and election to defer payment of user fees.

 The department may rescind a purchaser’s eligibility and election to defer motor fuel user fee remittances after a hearing and upon a showing of good cause, including failure to make timely user fee deferred payment to a supplier of the user fee under Section 12‑28‑925 by sending written notice to all suppliers or publishing notice of the revocation pursuant to regulations. The department may require further assurance of the purchaser’s financial responsibility, may increase the bond requirement for that purchaser, or may take other action to ensure remittance of the motor fuel user fee. The department shall follow the revocation procedures under Section 12‑28‑1180 in rescinding eligible purchaser status.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4H.

**SECTION 12‑28‑940.** Computing amount of motor fuel user fees due.

 (A) In computing the amount of motor fuel user fees due, the supplier is entitled to a credit against the user fee payable in the amount of the user fee paid by the supplier that is uncollectible from an eligible purchaser.

 (B) The supplier shall provide notice to the department of a failure to collect user fees within ten days following the earliest date on which the supplier was entitled to collect the user from the eligible purchaser under Section 12‑28‑925.

 (C) The department may promulgate regulations establishing the evidence a supplier shall provide to receive the credit.

 (D) The credit must be claimed on the first return following the date of the failure of the eligible purchaser if the payment remains unpaid as of the filing date of that return or the credit is disallowed.

 (E) The claim for credit must identify the defaulting eligible purchaser and any user fee liability that remains unpaid.

 (F) If an eligible purchaser fails to make a timely payment of the amount of user fees due, the supplier’s credit is limited to the amount due from the purchaser, plus any user fee that accrues from that purchaser for a period ending upon the date the supplier receives notice from the department of revocation of eligible purchaser status.

 (G) No additional credit is allowed to a supplier under this section until the department authorizes the purchaser to make a new election under Section 12‑28‑925.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4I; 2003 Act No. 69, Section 3.I, eff June 18, 2003.

Library References

Taxation 3685, 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2186 to 2187, 2189.

**SECTION 12‑28‑945.** Licensed tank wagon operator‑importer; payment of user fees.

 Each licensed tank wagon operator‑importer who is liable for the user fee imposed by this chapter on nonexempt motor fuel imported by a tank wagon as to which the user fee previously has not been paid to a supplier, shall remit the motor fuel user fee for the preceding month’s import activities with his monthly report of activities. A licensed tank wagon importer is allowed to retain the tare allowance provided for in Section 12‑28‑960(A).

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3697.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2206.

**SECTION 12‑28‑950.** Payment of user fees by electronic fund transfer.

 All suppliers and bonded importers required to remit the motor fuel user fee shall remit the motor fuel user fees due by electronic fund transfer acceptable to the department, if required by regulation. The transfer or payment must be made on or before the date the user fee is due.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3697.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2206.

**SECTION 12‑28‑955.** Supplier may retain one‑tenth percent of user fee to cover cost of administration.

 Every supplier and permissive supplier who properly remits user fees under this chapter is allowed to retain one‑tenth percent of the user fee imposed by this chapter and collected and remitted by that supplier in accordance with this chapter to cover the cost of administration including reporting, audit compliance, dye injection, and shipping paper preparation.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3707.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2213.

**SECTION 12‑28‑960.** Tare allowance allowed to eligible purchaser, licensee importer, and supplier.

 (A) A tare allowance is allowed to each eligible purchaser, licensee importer, and supplier who lawfully is engaged in the distribution of user fee‑paid motor fuel within this State to offset thermal shrinkage and measurement differences occurring after removal of the motor fuel subject to the user fee from the terminal. The amount of the tare allowance is equal to two and sixty‑five one‑hundredths percent not to exceed two thousand dollars a month of the amount of the user fee imposed by this chapter and paid by the person, directly or indirectly, subject to the requirements and limitations set out in subsections (B) and (C). However, the tare allowance is not applicable more than once to any motor fuel subject to the user fee.

 (B) Every eligible purchaser who acquires motor fuel subject to the user fee from a supplier or licensed importer for distribution and use in this State, which motor fuel was previously subject to the user fee imposed by this chapter, is entitled to the tare allowance provided by subsection (A) by way of quarterly refund application to the department under regulations promulgated by and on forms prescribed by the department. The total amount of tare allowance claimed by the person may not exceed two thousand dollars for any month.

 (C) Every licensed importer and supplier making sales of user fee‑paid motor fuel to persons other than eligible purchasers is entitled to the tare allowance provided by subsection (A) by way of a credit against user fee remittances due to the State payable by the person. The total amount of tare allowance claimed by the person may not exceed two thousand dollars for any month.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3686.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2189, 2191 to 2193.

**SECTION 12‑28‑965.** User fees collected on motor fuel belongs to State and is held in trust by collector; personal liability for user fee, penalty and interest.

 The user fee that a supplier, importer, or fuel vendor collects on the sale of motor fuel subject to the user fee belongs to the State. These persons shall hold the money in trust for the State and for payment to the department as provided in this chapter. For a corporation or partnership, each officer, employee, or member of the employer who is in that capacity is under a duty to collect the user fee and is personally liable for the user fee, penalty, and interest.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3711, 3714.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220, 2222.

**SECTION 12‑28‑970.** Backup user fee equal to the user fee imposed.

 (A) A backup user fee equal to the user fee imposed by Section 12‑28‑310 is imposed and must be administered in accordance with procedures established by the department on the use on the highways of motor fuel subject to the user fee by an end user, including operators of state and local government vehicles, American Red Cross vehicles, and buses, and other persons exempted from the full federal highway tax, unless the person is exempted otherwise under Section 12‑28‑710(12), upon the delivery in this State into the fuel supply tank of a highway vehicle of:

 (1) diesel fuel that contains a dye;

 (2) motor fuel subject to the user fee on which a claim for refund has been made;

 (3) alternative fuels; or

 (4) substitute fuel on which a user fee previously has not been imposed by this chapter.

 (B) The ultimate vendor of motor fuel subject to the user fee is jointly and severally liable for the user fee imposed by subsection (A) if the ultimate vendor knows or has reason to know that the motor fuel, as to which the user fee imposed by this chapter has not been paid, is or will be consumed in a nonexempt use.

 (C)(1) A back‑up user fee equal to the user fee imposed by Section 12‑28‑310 is imposed on a liquid or gas that is not otherwise taxed pursuant to this chapter and that is commonly or commercially known or sold as a fuel suitable for use in a highway vehicle. The user fee is due upon the first receipt of the product when received from a source outside of South Carolina by any wholesaler, retailer, or end‑user and the user fee is imposed upon, and is the liability of, the wholesaler, retailer, or end‑user who first received the product into the State.

 (2) A back‑up user fee equal to the user fee imposed by Section 12‑28‑310 is imposed on any liquid or gas that is not otherwise taxed pursuant to this chapter and that is commonly or commercially known or sold as a fuel suitable for use in a highway vehicle. The user fee is due upon the first sale or use of the product when produced in this State by a person and the user fee is imposed upon the first in‑state sale or use by that person. The user fee is imposed upon, and is the liability of, the producer of the product.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4J; 2006 Act No. 386, Sections 18.F, 18.G, eff July 1, 2006.

Library References

Taxation 3682.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2179.

**SECTION 12‑28‑975.** Diversion of motor fuel subject to the user fee.

 (A) If an exporter diverts motor fuel subject to the user fee removed from a terminal in this State from an intended destination outside South Carolina as shown on the terminal‑issued shipping papers to a destination within this State, the exporter, in addition to compliance with the notification provided for by Section 12‑28‑780, shall notify and pay the user fee imposed by Section 12‑28‑310 to the State upon the same terms and conditions as if the exporter were an occasional importer licensed under Section 12‑28‑905(A) without deduction for the allowances provided by Section 12‑28‑960.

 (B) If an exporter removes from a bulk plant in this State motor fuel subject to the user fee as to which the user fee imposed by this chapter previously has been paid or accrued, the exporter may apply for and the State shall issue a refund of the user fee upon a showing of proof of export satisfactory to the department in conformity with Section 12‑28‑720, net of the allowances provided by Section 12‑28‑960.

 (C) If an unlicensed importer diverts motor fuel subject to the user fee from a destination outside this State to a destination inside this State after having removed the product from a terminal outside South Carolina, the importer, in addition to compliance with the notification provided for by Section 12‑28‑1525, shall notify the State and shall pay the user fee imposed by this chapter to South Carolina upon the same terms and conditions as if the unlicensed importer were a licensed occasional importer subject to Section 12‑28‑905(A) without deduction for the allowances provided by Section 12‑28‑960.

 (D) All licensed importers otherwise shall report and pay user fees on diversions into this State of imported motor fuel subject to the user fee under Section 12‑28‑905(A) or (B) in accordance with the regulations applicable to that license class. No Section 12‑28‑960 allowances may be deducted with respect to diverted shipments. An importer who has purchased the product from a licensed supplier, by mutual agreement with the supplier, may permit the supplier to assume the importer’s liability and adjust the importer’s user fees payable to the supplier.

 (E) If a monthly report is filed or the amount due is remitted later than the time required by this chapter, the user fee remitter shall pay to the department all of the motor fuel user fee the remitter collected from the sale of motor fuel subject to the user fee during the user fee period in addition to penalties and interest.

 (F) If there is a legal diversion from a destination in this State to another state, Section 12‑28‑1525 applies, and an unlicensed exporter diverting the product shall apply for a refund from this State in conformity with Sections 12‑28‑710(3) and 12‑28‑720 less the Section 12‑28‑960 allowance, except that a supplier may take a credit for diversions directed by that supplier for his own account, and the exporter, by mutual agreement with his supplier, may assign his claim to the supplier for which the supplier may take a credit.

HISTORY: 1995 Act No. 136, Section 2; 2006 Act No. 386, Section 18.H, eff July 1, 2006.

Library References

Taxation 3682, 3701.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2179, 2206.

**SECTION 12‑28‑980.** Final reports accompanied by payment; election to pay in installments.

 (A) The final report required by Section 12‑28‑1350 must be accompanied by payment of the final month’s liability except as otherwise provided in this section.

 (B) A motor fuel vendor who possessed a license to sell motor fuel subject to the user fee at wholesale or at retail before the effective date of this chapter who is ineligible to elect eligible purchaser status, or who otherwise does not apply for or does not receive eligible purchaser status under Section 12‑28‑930, in the alternative may elect to make payment of the user fee calculated pursuant to the “Final Report” in Section 12‑28‑1350 as provided in this section. The user fee must be paid in two equal annual installments beginning twelve months after the effective date of this chapter, with no discount or reduced by a fifteen percent discount if paid in a timely final report.

 (C) If a person elects under subsection (B) to defer payment, he is not eligible to claim eligible purchaser status under Section 12‑28‑930 for thirty‑six months following the election under subsection (B).

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3688, 3697.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2189, 2206.

**SECTION 12‑28‑985.** Floorstocks user fee report; accompanied by payment.

 The floorstocks user fee report required by Section 12‑28‑530(A) must be accompanied by payment of the floorstocks user fee calculated in accordance with Section 12‑28‑530(B). Payment must be made on or before the due date of that report. The floorstocks user fee imposed on inventory held outside of the bulk transfer system on the effective date of this chapter reportable under Section 12‑28‑530(A) is payable in two equal annual installments beginning twelve months after the effective date of the act. However, a person may pay the full amount due with a timely filed return and may take a fifteen percent discount.

HISTORY: 1995 Act No. 136, Section 2.

Editor’s Note

Section 12‑28‑530 was repealed by 2017 Act No. 40, Section 10, effective July 1, 2017.

Library References

Taxation 3688, 3697.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2189, 2206.

**SECTION 12‑28‑990.** Payment of user fees by persons blending materials or manufacturing or otherwise producing substitute fuel or certain diesel fuel; licensing.

 (A) A person (i) blending materials including blendstocks, additives, fuel grade ethanol, and renewable fuels on which the user fee has not been paid, with motor fuels subject to the user fee for which the user fee has been paid or accrued; or (ii) manufacturing or otherwise producing a substitute fuel or diesel fuel, unless dye was added in a manner that conforms to federal requirements established by the Internal Revenue Code and regulations exempting the product from the motor fuel tax pursuant to Section 12‑28‑710(11) shall remit the user fee imposed by this chapter.

 (B) A fuel vendor subject to the user fee under subsection (A) shall remit the user fee with the report required pursuant to Section 12‑28‑1390(B).

 (C) A person other than a fuel vendor liable for the user fee payable pursuant to subsection (A) shall remit the user fee directly to the department within thirty days of the blending or manufacturing event in accordance with procedures established by the department.

 (D) A person subject to the user fee payable pursuant to subsection (A) must be licensed by the department as a blender or a manufacturer.

HISTORY: 1995 Act No. 136, Section 2; 2006 Act No. 386, Section 18.I, eff July 1, 2006; 2006 Act No. 386, Section 36.D, eff June 14, 2006.

Library References

Taxation 3682.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2179.

**SECTION 12‑28‑995.** Payment of user fees on fuel imported in tank wagon if destination does not exceed twenty‑five miles from border of this State.

 Subject to gallonage limits and other conditions established by the department, the department shall provide for the payment of user fees imposed by this chapter by a person importing gasoline or diesel motor fuel from a bulk plant in another state in a tank wagon if the destination of that vehicle does not exceed twenty‑five miles from the borders of this State.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3682.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2179.

ARTICLE 11

Licenses

**SECTION 12‑28‑1100.** Supplier’s license; fee.

 Each supplier engaged in business in this State as a supplier first shall obtain a supplier’s license. The fee for a supplier’s license is two thousand dollars.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Licenses 16(9).

Westlaw Topic No. 238.

C.J.S. Licenses Section 55.

**SECTION 12‑28‑1105.** Permissive supplier’s license; fee.

 A person who desires to collect the user fee imposed by this chapter as a supplier and who meets the definition of a permissive supplier may obtain a permissive supplier’s license. Application for or possession of a permissive supplier’s license does not in itself subject the applicant or licensee to the jurisdiction of this State for a purpose other than administration and enforcement of this chapter. The fee for a permissive supplier’s license is one hundred dollars.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Licenses 16(9).

Westlaw Topic No. 238.

C.J.S. Licenses Section 55.

**SECTION 12‑28‑1110.** Terminal operator’s license; fee.

 Each terminal operator other than a supplier licensed under Section 12‑28‑1100 engaged in business in this State as a terminal operator first shall obtain a terminal operator’s license for each terminal site. The fee for each terminal operator’s license is three hundred dollars.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Licenses 16(9).

Westlaw Topic No. 238.

C.J.S. Licenses Section 55.

**SECTION 12‑28‑1115.** Exporter’s license; fee.

 The State in its discretion may require an exporter to obtain an exporter’s license first if the exporter exports products to another state without first paying that destination state’s motor fuel user fee to the supplier. The fee for an exporter’s license is one hundred dollars.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Licenses 16(9).

Westlaw Topic No. 238.

C.J.S. Licenses Section 55.

**SECTION 12‑28‑1120.** Transporter’s license; fee.

 A transporter who is not licensed as a supplier shall obtain a transporter’s license before transporting motor fuel subject to the user fee. The registration fee for a transporter’s license is fifty dollars.

HISTORY: 1995 Act No. 136, Section 2; 2006 Act No. 386, Section 18.J, eff July 1, 2006.

Library References

Licenses 16(9).

Westlaw Topic No. 238.

C.J.S. Licenses Section 55.

**SECTION 12‑28‑1125.** Occasional importer’s license or a bonded importer’s license; fees.

 (A) Each person who wishes to cause motor fuel subject to the user fee to be delivered into this State on his behalf, for his own account, or for resale to a purchaser in this State, from another state by any means into storage facilities other than a qualified terminal, shall apply and obtain an occasional importer’s license or a bonded importer’s license, at the discretion of the applicant.

 (B) This section does not apply to a person who:

 (1) exclusively imports motor fuel subject to the user fee which is exempted because it has been dyed in accordance with Section 12‑28‑770;

 (2) imports nonexempt motor fuels subject to the user fee meeting the following conditions:

 (a) the motor fuel subject to the user fee is subject to one or more user fee precollection agreements with suppliers as provided under Section 12‑28‑910;

 (b) the motor fuel user fee precollection by the supplier is expressly evidenced on the terminal‑issued shipping paper as more specifically provided under Section 12‑28‑1520.

 (C) A person desiring to import motor fuel subject to the user fee to a destination in this State from another specific terminal source state, and who has not entered into an agreement to prepay this state’s motor fuel user fee to the supplier or permissive supplier with respect to the imports, shall obtain a valid:

 (1) occasional importer’s license under subsection (A) for the fee of five hundred dollars; or

 (2) bonded importer’s license under subsection (A) for the fee of two thousand dollars subject to the special two million dollar bonding requirements of Section 12‑28‑1155(B).

 (D) The person described in subsection (C) shall:

 (1) obtain an import verification number from the department before entering South Carolina and no sooner than twenty‑four hours before entering for each separate import into this State;

 (2) display the import verification number on the terminal‑issued shipping document required under Section 12‑28‑1545;

 (3) comply with the payment requirements under Sections 12‑28‑905(A) or (B), whichever is applicable.

 (E) The importers’ licenses issued pursuant to this section must be specific to each source of supply state.

HISTORY: 1995 Act No. 136, Section 2; 2016 Act No. 160 (H.4328), Section 8, eff April 21, 2016.

Effect of Amendment

2016 Act No. 160, Section 8, in (A), substituted “by any means” for “in a fuel transport truck or in a pipeline or barge shipment”.

Library References

Licenses 16(9).

Westlaw Topic No. 238.

C.J.S. Licenses Section 55.

**SECTION 12‑28‑1130.** Tank wagon operator‑importer license; fee.

 Each person who is an importer of motor fuel subject to the user fee into this State by a tank wagon operating out of or controlling a bulk plant in another state, if the destination of that tank wagon is within twenty‑five miles of the borders of South Carolina, shall make application for and obtain a license from the department before engaging in import activities. However, registration as a tank wagon operator‑importer does not constitute authorization of the persons to acquire nonexempt motor fuel free of the user fee imposed by this chapter at a terminal either within or outside this State for direct delivery to a location in South Carolina. A person who possesses a valid importer’s license is eligible as a tank wagon operator‑importer without issuance of a separate license if the importer also operates one or more bulk plants outside this State. The fee for a tank wagon operator‑importer license is fifty dollars. Operators of tank wagons delivering products into this State more than twenty‑five miles from the border shall apply for an importer’s license under Section 12‑28‑1125.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4K.

Library References

Licenses 16(9).

Westlaw Topic No. 238.

C.J.S. Licenses Section 55.

**SECTION 12‑28‑1135.** Fuel vendor license; fee.

 (A) Each person who purchases motor fuel subject to the user fee for resale within this State from a licensed terminal supplier first shall obtain a fuel vendor license which is operative for all locations controlled or operated by that licensee in this State or in any other state from which the person removes fuel for delivery and use in South Carolina.

 (B) Each fuel vendor shall maintain detailed records of all purchases and sales for no less than three years.

 (C) All fuel vendor records must be maintained in English and Arabic numerals or acceptable to electronic formats.

 (D) Each fuel vendor shall make an annual report of gallons subject to the user fee sold at retail by county in accordance with Section 12‑28‑1390.

 (E) In its discretion, the department may exempt from subsection (A) persons who possess a valid supplier, terminal operator, transporter, importer, tank wagon operator, or exporter license. The fee for the fuel vendor license is fifty dollars.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4L; 2001 Act No. 89, Section 21, eff July 20, 2001.

Library References

Licenses 16(9).

Westlaw Topic No. 238.

C.J.S. Licenses Section 55.

**SECTION 12‑28‑1139.** Miscellaneous fuel user fee license; fee.

 Each person who is liable for the user fee imposed by Sections 12‑28‑970 and 12‑28‑990(C) who is not licensed under Sections 12‑28‑1100 through 12‑28‑1135 shall obtain a miscellaneous fuel user fee license. There is no registration fee for this license.

HISTORY: 1996 Act No. 461, Section 4M.

Library References

Licenses 16(9).

Westlaw Topic No. 238.

C.J.S. Licenses Section 55.

**SECTION 12‑28‑1140.** Application for a license.

 Each application for a license under this chapter must be made upon a form prepared and furnished by the department. It must be subscribed to by the applicant and may contain the information the department reasonably may require for the administration of this chapter, including the applicant’s federal identification number and, with respect to the applicant for an exporter’s license, a copy of the applicant’s license to purchase or handle motor fuel subject to the user fee user fee‑free in the specified destination state for which the export license is to be issued.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Licenses 32.

Westlaw Topic No. 238.

C.J.S. Licenses Section 105.

**SECTION 12‑28‑1145.** Investigation of applicant for a license.

 The department shall investigate each applicant for a license under this chapter. No license may be issued if the department determines that one or more of the following exists:

 (1) The application is not filed in good faith.

 (2) The applicant is not the real party in interest.

 (3) The license of the real party in interest is revoked for cause.

 (4) Other reasonable cause for nonissuance exists.

 (5) With respect to an exporter’s license the applicant is not licensed in the intended specific state of destination.

 (6) The applicant has a prior conviction for motor fuel user fee evasion.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Licenses 20.

Westlaw Topic No. 238.

C.J.S. Architects Section 6.

C.J.S. Landlord and Tenant Sections 340 to 343, 345.

C.J.S. Licenses Sections 62 to 66.

**SECTION 12‑28‑1150.** Fingerprinting provisions; exemptions.

 Applicants, including corporate officers, partners, and individuals, for a license issued by the director, may be required to submit their fingerprints to the department at the time of applying. Officers of publicly‑held corporations and their subsidiaries are exempt from this fingerprinting provision. Persons, other than applicants for an importer’s license, who possessed licenses issued under a predecessor statute continuously for three years before the effective date of this chapter also are exempt from this provision. Fingerprints required by this section must be submitted on forms prescribed by the department. The department may forward to the Federal Bureau of Investigation or any other agency for processing all fingerprints submitted by license applicants. The receiving agency shall issue its findings to the department. The license application fee must be used to pay the cost of the investigation. The department or another state agency may maintain a file of fingerprints.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4N.

Library References

Licenses 20.

Westlaw Topic No. 238.

C.J.S. Architects Section 6.

C.J.S. Landlord and Tenant Sections 340 to 343, 345.

C.J.S. Licenses Sections 62 to 66.

**SECTION 12‑28‑1155.** Application must be filed with surety bond or cash deposit.

 (A) Except as otherwise provided in this section, concurrently with the filing of an application for a license under this chapter, the department shall require the applicant to file with the department a surety bond or cash deposit:

 (1) in an amount determined by the director of not less than two thousand dollars or not more than a three‑month user fee liability for the applicant as estimated by the department;

 (2) conditioned upon the keeping of records and the making of full and complete reports and payments as required by this chapter.

 (B) Suppliers and bonded importers shall post a bond of not less than two million dollars, except that with respect to a person registered under the Internal Revenue Section 4101 as a taxable fuel registrant, the bond may be reduced to a one million dollar minimum. An applicant alternatively may show proof of financial responsibility in lieu of posting of bond. Proof of five million dollars net worth constitutes evidence of financial responsibility in the absence of circumstances indicating the department is otherwise at risk with respect to collection of its user fees from the applicant.

 (C) If the applicant files a bond, the bond must:

 (1) be with a surety company approved by the department which may be an affiliate in the business of assuring the obligations;

 (2) name the applicant as the principal and the State as the obliged;

 (3) be on forms prescribed by the department.

 (D) Fuel vendors defined in Section 12‑28‑1135, other than persons required to be licensed under provisions other than in those sections, and miscellaneous fuel user fee licensees defined in Section 12‑28‑1139, are exempt from the bonding requirements of this section.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4O.

Library References

Licenses 26.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 67 to 69.

**SECTION 12‑28‑1160.** Applicant may be required to furnish current verified, financial statements.

 At the department’s reasonable discretion, it may require a licensee or an applicant to furnish current verified, financial statements. The department may make independent inquiry into the financial condition of the applicant and is not required to accept as accurate financial statements which have not been certified or independently audited. If the department determines that a licensee’s financial condition warrants an increase in the bond or cash deposit, the department may require the licensee to furnish an increased bond or cash deposit.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Licenses 20.

Westlaw Topic No. 238.

C.J.S. Architects Section 6.

C.J.S. Landlord and Tenant Sections 340 to 343, 345.

C.J.S. Licenses Sections 62 to 66.

**SECTION 12‑28‑1165.** Licensee to file a new bond or additional deposit when required.

 (A) The department may require a licensee to file a new bond with a satisfactory surety in the same form and amount if:

 (1) liability upon the previous bond is discharged or reduced by the judgment rendered, payment made, or otherwise disposed of;

 (2) in the opinion of the department, any surety on the previous bond becomes unsatisfactory. If the new bond is unsatisfactory, the department shall cancel the license. If the new bond is furnished satisfactorily, the department shall release in writing the surety on the previous bond from liability accruing after the effective date of the new bond.

 (B) If a licensee has a cash deposit with the department and the deposit is reduced by a judgment rendered, payment made, or otherwise disposed of, the director may require the licensee to make a new deposit equal to the amount of the reduction.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Licenses 26.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 67 to 69.

**SECTION 12‑28‑1170.** Time for securing new bond or additional deposit; cancellation of license for unsatisfactory new bond or cash deposit.

 (A) If the department reasonably determines that the amount of the existing bond or cash deposit is insufficient to ensure payment to the State of the user fee and any penalty and interest for which the licensee is or may become liable, upon written demand of the department, the licensee shall file a new bond or increase the cash deposit. The department shall allow the licensee at least fifteen days to secure the increased bond or cash deposit.

 (B) The new bond or cash deposit must meet the requirements set forth in this chapter.

 (C) If the new bond or cash deposit required under this section is unsatisfactory, the department shall cancel the licensee’s license certificate.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Licenses 26.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 67 to 69.

**SECTION 12‑28‑1175.** Written request for release by surety; time limitations; request by licensee for release of bond or security after three years.

 (A) Sixty days after making a written request for release to the department, the surety of a bond furnished by a licensee is released from any liability to the State accruing on the bond after the sixty days. The release does not affect any liability accruing before the expiration of the sixty days.

 (B) The department promptly shall notify the licensee furnishing the bond that a release has been requested. Unless the licensee obtains a new bond that meets the requirements of this chapter and files with the department the new bond within sixty days, the department shall cancel the license.

 (C) Sixty days after making a written request for release to the department, the cash deposit provided by a licensee is canceled as security for any obligation accruing after expiration of the sixty days. However, the department may retain all or part of the cash deposit for up to three years and one day as security for obligations accruing before the effective date of the cancellation. Any part of the deposit that is not retained by the department must be released to the licensee. Before the expiration of the sixty‑day period, the licensee shall provide the department with a bond that satisfies the requirements of this chapter or the department shall cancel the license.

 (D) A licensee who has filed a bond or other security under this chapter is entitled, on request, to have the department return, refund, or release the bond or security if, in the judgment of the department, the licensee continuously has complied with this chapter for the previous three consecutive years. However, if the department determines that the revenues of the State would be jeopardized by the return, refund, or release of bond or security, the department may elect to retain the bond or security, or having released it, may reimpose a requirement for bond or security to protect the revenues of this State. The decision of the department to not release a bond or security may be reviewed, after application by the licensee, pursuant to the Administrative Procedures Act.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Licenses 26.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 67 to 69.

**SECTION 12‑28‑1180.** Notice of proposed denial of application; hearing; notice of suspension or revocation of license; hearing.

 (A) Before being denied a license, the department shall grant the applicant a notice of the proposed denial, including the reasons for its decision. After having the opportunity to cure defects in the application, if the applicant does not agree with the decision, a hearing on the proposed denial is available to the applicant pursuant to the Administrative Procedures Act.

 (B) The department may suspend or revoke a license for failure to comply with this chapter after at least thirty days’ notice to the licensee and a hearing, should such be requested, pursuant to the Administrative Procedures Act.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4P.

Library References

Licenses 22.

Westlaw Topic No. 238.

C.J.S. Architects Section 12.

C.J.S. Licenses Sections 70 to 72.

**SECTION 12‑28‑1185.** Issuance of license.

 If the applicant and bond are approved, the department shall issue a license and as many copies as the licensee has places of business for which a license is required.

HISTORY: 1995 Act No. 136, Section 2.

**SECTION 12‑28‑1190.** Validity of license.

 A license is valid until suspended, revoked for cause, or canceled.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Licenses 38.

Westlaw Topic No. 238.

C.J.S. Architects Sections 13 to 14.

C.J.S. Licenses Sections 80, 82 to 100.

**SECTION 12‑28‑1195.** License is nontransferable.

 No license is transferable to another person or to another place of business. For purposes of this article, a transfer means transfer of a majority interest in a business association, other than a publicly‑held association, including corporation, out partnerships, trusts, joint ventures, and any other business associations, to another person. A substantial change in ownership of a business association other than a publicly‑held business association, must be reported to the department under regulations promulgated by the department.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Licenses 37.

Westlaw Topic No. 238.

C.J.S. Licenses Section 81.

**SECTION 12‑28‑1196.** License must be displayed at place of business.

 Each license must be preserved and conspicuously displayed at the place of business for which it is issued. The department may waive this requirement for any class of licensee in its discretion.

HISTORY: 1995 Act No. 136, Section 2.

**SECTION 12‑28‑1197.** Surrender of license upon discontinuance of business.

 Upon the discontinuance of the business or relocation, the license issued for the location must be surrendered immediately to the department.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Licenses 38.

Westlaw Topic No. 238.

C.J.S. Architects Sections 13 to 14.

C.J.S. Licenses Sections 80, 82 to 100.

**SECTION 12‑28‑1199.** Notice that licensee has discontinued, sold, or transferred business.

 Whenever a person licensed to do business under this chapter discontinues, sells, or transfers the business, the licensee immediately shall notify the department in writing of the discontinuance, sale, or transfer. The notice must give the date of discontinuance, sale, or transfer and for the sale or transfer of the business, the name and address of the purchaser or transferee. The licensee is liable for all user fees, interest, and penalties that accrue or may be owing and any criminal liability for misuse of the license that occurs before issuance of the notice.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Licenses 38.

Westlaw Topic No. 238.

C.J.S. Architects Sections 13 to 14.

C.J.S. Licenses Sections 80, 82 to 100.

ARTICLE 13

Reports

CROSS REFERENCES

Civil penalties and damages applicable to certain return or statement filings, see Section 12‑54‑43.

Criminal penalties applicable to certain return or statement filings, see Section 12‑54‑44.

**SECTION 12‑28‑1300.** Verified statement by supplier; reporting of information.

 (A) For the purpose of determining the amount of motor fuel user fees due, every supplier shall file with the department, on forms prescribed and furnished by the department, a verified statement by the supplier. The department may require the reporting of information reasonably necessary to determine the amount of motor fuel user fees due.

 (B) The reports required by this article must be filed with respect to information for the preceding calendar month on or before the twenty‑second day of the current month.

 (C) The supplier report required by this section must include the following information, with respect to billed gallons of motor fuel subject to the user fee, for all products in the aggregate, and the supplier shall identify if the billed gallon is net or gross:

 (1) all shipments of motor fuel subject to the user fee removed from a terminal in this State as to which the user fee imposed by this chapter previously was paid or accrued for direct delivery outside this State by the exporter;

 (2) removal of gallons of diesel fuel or heating oil from terminals in this State by the reporting supplier, user fee exempt, as to which dye has been added in accordance with Sections 12‑28‑710(9) and 12‑28‑785;

 (3) removal of gallons of motor fuel from terminals in this State by the reporting supplier, user fee exempt, for export from this State by that supplier and as to which the proper motor fuel user fee for that other destination state has been collected or accrued by the reporting supplier at the time of removal from the terminal, sorted by state of destination;

 (4) removal of gallons of motor fuel from terminals in this State by the reporting supplier, destination state user fee exempt, for export by the persons, sorted by state of destination under claim of destination state user fee exemption for an exempt use recognized by the department under Section 12‑28‑710(1)(c);

 (5) removal of gallons of motor fuel from terminals in this State by the reporting supplier, user fee exempt, for sale to exporters, for export by the persons, and as to which the proper motor fuel user fee for that other destination state has been collected or accrued by the reporting supplier at the time of removal from the terminal, sorted by state of destination;

 (6) removal of gallons of motor fuel from terminals within this State for sale by the reporting supplier directly to the United States Government and its agencies or instrumentalities, or United States military posts;

 (7) removal of gallons of motor fuel from terminals within this State for sale by the reporting supplier directly to end users other than the federal government, its agencies and instrumentalities, and United States military posts, for any other exempt use for which the end users properly have assigned refund claims to the ultimate vendor and each distributor in the chain including the reporting supplier;

 (8) total removals in this State;

 (9) removal of gallons of motor fuel from a terminal in another state by the reporting supplier, for sale to a licensed importer, user fee exempt, for import into this State by that licensed importer.

 (10) removal of gallons of motor fuel from a terminal in another state by the reporting supplier for import other than by bulk transfer by that supplier into this State, or for sale by the reporting supplier to a person for import into this State by that person, and in either case, as to which this state’s user fee was accrued by the reporting supplier at the time of removal from the out‑of‑state terminal;

 (11) removal of gallons of diesel fuel or heating oil from a terminal in another state by the reporting supplier, for import or for sale for import into this State, as to which dye has been added in accordance with Sections 12‑28‑710(9) and 12‑28‑785;

 (12) total removals from out‑of‑state terminals with this State as the state of destination;

 (13) corrections made by the supplier pursuant to Section 12‑28‑1525 for changes in destination state which affect the supplier’s or his customer’s user fee liability to this State;

 (14) gallons removed by the supplier from a terminal within or without this State and sold to another distributor for resale to an end user for an exempt purpose as to which a refund claim has been assigned by all parties to the supplier;

 (15) other information which the department in its discretion determines is reasonably required to determine user fee liability under this chapter.

 (D) Every licensed supplier or permissive supplier separately shall disclose and identify in a written statement to the department with the supplier or permissive supplier report any removal and sale from the bulk transfer/terminal system in another state by that supplier to a person other than a licensed supplier, permissive supplier, or importer of gallons of motor fuel subject to the user fee, other than diesel fuel dyed in accordance with Sections 12‑28‑710(9) and 12‑28‑785(1) which gallons are destined for this State, as shown by the terminal‑issued shipping paper, and as to which gallons the user fee imposed by this chapter has not been collected or accrued by the supplier upon removal. A person who knowingly violates or knowingly aids or abets another to violate this subdivision is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

 (E) Each supplier separately shall identify each sale of K‑1 kerosene, other than dyed diesel fuel, sold free of user fees in accordance with reporting requirements established by the department.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Sections 4Q, 4R.

Library References

Taxation 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2189.

**SECTION 12‑28‑1305.** Licensed occasional importer must file monthly a verified sworn statement of operations.

 (A) Each licensed occasional importer shall file with the department monthly a verified sworn statement of operations within this State including:

 (1) gallons subject to the user fee with fee prepaid to a supplier upon removal from an out‑of‑state terminal;

 (2) gallons subject to the user fee subject to the three‑day payment rule of Section 12‑28‑905(A) sorted by source state, by supplier, by terminal or by bulk plant location;

 (3) other information with respect to the source and means of transportation of nonexempt motor fuel subject to the user fee as the department in its discretion may require on forms prescribed and furnished by the department. However, the department may waive any portion or all of the reporting requirements if it determines that border states have adopted and implemented reciprocal terminal report requirements adequate to assure the department that it receives complete information in respect of motor fuel removed by and on behalf of suppliers from terminals in border states which is destined for this State.

 (B) A person who knowingly violates or knowingly aids and abets another to violate this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2189.

**SECTION 12‑28‑1310.** Licensed bonded importer must file monthly verified sworn statement of operations.

 (A) Each licensed bonded importer shall file with the department monthly a verified sworn statement of operations within this State including:

 (1) gallons subject to the user fee with fee prepaid to a supplier upon removal from an out‑of‑state terminal;

 (2) gallons subject to the user fee with user fee remittance by the bonded importer according to Section 12‑28‑905(B) sorted by source state, supplier, terminal, or by bulk plant;

 (3) other information with respect to the source and means of transportation of nonexempt motor fuel subject to the user fee as the department in its discretion may require on forms it prescribes and furnishes.

 (B) The department may waive any portion or all of the reporting requirements if it determines that border states have adopted and implemented reciprocal terminal report requirements adequate to assure the department that it receives complete information in respect of motor fuel removed by and on behalf of suppliers from terminals in border states which is destined for this State.

 (C) A person who knowingly violates or knowingly aids and abets another to violate this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2189.

**SECTION 12‑28‑1320.** Licensed tank importer must file monthly verified sworn statement of operations.

 Each licensed tank wagon operator‑importer shall file with the department monthly a verified sworn statement of operations within this State plus other information in respect of the source and means of transportation of nonexempt motor fuel subject to the user fee as the department in its discretion may require on forms it prescribes and furnishes. A person who knowingly violates or knowingly aids and abets another to violate this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4S.

Library References

Taxation 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2189.

**SECTION 12‑28‑1330.** Terminal operator must file monthly sworn statement of operations; annual report.

 (A) A person operating a terminal in this State shall file with the department monthly a sworn statement of operations within South Carolina for each terminal within this State including the information set out in subsection (B) on forms prescribed by the department. The department may require the reporting of information it considers reasonably necessary in addition to that required under subsection (B).

 (B) The monthly terminal report required by this section must include the following information for each terminal location in this State:

 (1) terminal code assigned by the Internal Revenue Service; total inventory at the terminal operated by the terminal operator;

 (2) detail schedules of receipts by shipment including:

 (a) carrier name or alpha code;

 (b) carrier FEIN;

 (c) mode of transportation;

 (d) date received;

 (e) document number;

 (f) net gallons received;

 (g) product type;

 (3) detail schedules of removals by shipment including:

 (a) carrier name or alpha code;

 (b) carrier FEIN;

 (c) mode of transportation;

 (d) destination state;

 (e) supplier responsible for reporter removal;

 (f) supplier FEIN;

 (g) date removed from terminal;

 (h) document number;

 (i) net gallons;

 (j) gross gallons.

 (C) If the Internal Revenue Service provides a common system of assigning to carriers alpha‑numeric code in lieu of names, this date is required in lieu of carrier names.

 (D) For purposes of reporting and determining user fee liability under this chapter, every licensee shall maintain inventory records as required by the department.

 (E) Each person operating a terminal in this State shall file an annual report for each terminal within South Carolina on forms provided by the department. The report must be filed for each calendar year before February twenty‑sixth the following year. This report must include the following data:

 (1) net amount of monthly temperature adjusted, net gallons, gains or losses;

 (2) total net gallons removed from the terminal in bulk and across the rack during the calendar year;

 (3) total net gallons removed across the terminal rack during the calendar year and other information as the department considers reasonably necessary to determine the user fee liability of the terminal operator under this chapter;

 (4) amount of user fees due calculated pursuant to Section 12‑28‑520(B).

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2189.

**SECTION 12‑28‑1340.** Terminal reports regarding source state; similar data from federal terminal report or source state.

 If the source state does not require a terminal report which provides data substantially similar to that required by Section 12‑28‑1330, a terminal operator subject to the police power of this State, and who operates a terminal outside that state, shall provide a report of gallons removed as to which the operator issued a shipping paper indicating South Carolina as the destination state consistent with the information required under Section 12‑28‑1330. This section does not apply if substantially similar data is readily available to this State from a federal terminal report or from the source state.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2189.

**SECTION 12‑28‑1350.** Final report and payment by licensee.

 (A) Every licensee, upon the discontinuance, sale, or transfer of the business or upon the cancellation, revocation, or termination by law of a license under Section 12‑28‑1195 or 12‑28‑1199 or as otherwise provided, within thirty days, shall make a report as required under this chapter marked “final report” and shall pay all motor fuel user fees and penalties that may be due the State except as otherwise provided by law. The payment must be made to the department in accordance with Section 12‑28‑980.

 (B) For purposes of this section, a person who was licensed to remit motor fuel user fees by this State before the effective date of this chapter and who is not licensed as a supplier under this chapter is deemed to have the license terminated under this section as of the effective date.

 (C) A former licensee must be given the opportunity to apply for eligible purchaser status as provided in Sections 12‑28‑925 and 12‑28‑930 before the effective date of this chapter. If the determination is not complete before the effective date, collection of user fees shown on the final report of the former license must be delayed until such determination is complete. However, the final report is due not later than thirty days after a denial of eligible purchaser status under Section 12‑28‑980 becomes final.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2189.

**SECTION 12‑28‑1360.** Persons licensed as exporter must file monthly reports.

 (A) A person licensed as an exporter shall file monthly reports with the department on forms prescribed and furnished by the department concerning the amount of motor fuel subject to the user fee exported from this State.

 (B) The report must contain the following information with respect to motor fuel other than diesel fuel dyed in accordance with the Internal Revenue Code:

 (1) all shipments of motor fuel subject to the user fee removed from a terminal in this State as to which the user fee imposed by this chapter previously was paid or accrued for direct delivery outside of this State by the exporter;

 (2) all shipments of motor fuel subject to the user fee acquired free of this state’s motor fuel user fee at a terminal in this State for direct delivery outside of South Carolina but as to which the destination state’s motor fuel user fee was paid or accrued to the supplier at the time of removal from the terminal;

 (3) the gallons delivered to taxing jurisdictions outside this State out of bulk plant storage and whether by transport truck or tank wagon;

 (4) the name and federal employer identification number of the person receiving the exported motor fuel subject to the user fee from the exporter;

 (5) the date of the shipments;

 (6) the carrier name for alpha code and carrier FEIN.

 (C) The department in addition may require the reporting of other information it considers reasonably necessary to the enforcement of this chapter.

 (D) The department may waive this reporting requirement if it finds the reports unnecessary to the administration of this chapter.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2189.

**SECTION 12‑28‑1370.** Licensed transporter to file monthly reports.

 (A) A person licensed as a transporter in this State engaged in interstate commerce shall file monthly reports with the department, on forms prescribed and furnished by the department, concerning the amount of motor fuel subject to the user fee transported from a point outside this State to a point inside South Carolina, from a point inside this State to a point outside South Carolina, or between two points in this State.

 (B) If a transporter fails to make the reports required by this section, the person is subject to a civil penalty of one thousand dollars for each violation, as reasonably determined by the department.

 (C) The reports required by this section are for information purposes only and the director may waive the filing of the reports if the reports are unnecessary for the proper administration of this chapter.

 (D) This section ceases to be effective if a substantially similar data is available from federal government sources including a federal terminal report.

HISTORY: 1995 Act No. 136, Section 2; 2006 Act No. 386, Section 18.K, eff July 1, 2006.

Library References

Taxation 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2189.

**SECTION 12‑28‑1380.** Persons purchasing gallons user fee‑exempt for resale to government entities must file report.

 (A) A person purchasing gallons user fee‑exempt acquired pursuant to Section 12‑28‑740(1) for resale to government entities exempted under Section 12‑28‑710 shall file a report.

 (B) The report must contain:

 (1) total volume of net gallons acquired from the authorized supplier user fee‑exempt;

 (2) identification of authorized supplier;

 (3) a detailed listing of the bulk deliveries to each user fee‑exempt person segregated by authorization code;

 (4) date of deliveries;

 (5) volume delivered;

 (6) amount of excess tax‑exempt gallons sold over purchases or excess of user fee‑exempt purchases over sales;

 (7) the amount of penalty at ten percent of the amount by which excess of user fee‑exempt purchases over sales exceeds five percent of user fee‑exempt purchases;

 (8) other information the department may require;

 (9) sworn statement by the vendor as to the accuracy of the information contained in the report.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2189.

**SECTION 12‑28‑1390.** Fuel vendor’s reports.

 (A) A fuel vendor shall file an annual report of total gallons of gasoline sold at retail through a retail outlet accessible to the general public by that vendor by county before February twenty‑eighth annually for the preceding calendar year.

 (B) A fuel vendor shall make and file quarterly reports on the last day of the month following the close of each calendar quarter of sales of K‑1 kerosene, or other blendstocks not subject to the user fee, other than dyed diesel fuel, in accordance with regulations promulgated by the department. The department may waive this report requirement if it becomes unnecessary to the administration of this chapter. Persons who are required to identify separately and schedule sales and transfers of undyed K‑1 kerosene in reports otherwise required by this article are exempt from this requirement.

 (C) A fuel vendor making sales of K‑1 kerosene or other blendstocks not subject to the user fee for blending with diesel fuel or gasoline subject to the user fee or which sells K‑1 kerosene, other motor fuel, or blendstocks not subject to the user fee for use as motor fuel subject to the user fee shall remit monthly a report on or before the last day of the following month and remit with the report any user fee payable pursuant to this section or Section 12‑28‑990.

 (D) A fuel vendor shall retain for three years all purchase invoices for motor fuel subject to the user fee which clearly must designate the amount of user fees paid to this State as a separate line item. This line item also must be described generally as a “South Carolina Motor Fuel User Fee”. In the absence of invoices with the disclosures, the fuel vendor is jointly liable for the state user fee imposed by this chapter and the department has authority to proceed against the fuel vendor to collect the user fee.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4T.

Library References

Taxation 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2189.

**SECTION 12‑28‑1395.** Miscellaneous fuel user fee licensee’s statement.

 A person licensed as a miscellaneous fuel user fee licensee in this State shall file monthly a sworn statement on forms prescribed by the department and furnish any information the department considers necessary to the enforcement of this chapter.

HISTORY: 1996 Act No. 461, Section 4U.

Library References

Taxation 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2189.

**SECTION 12‑28‑1400.** Use of information in tracking petroleum products; reporting requirements; penalties.

 (A) All information required to be reported in this chapter must be used in the tracking of petroleum products and must be submitted in the manner provided by the department. The requirements may include, but not be limited to, the data elements, the format of the data elements, and the method and medium of transmission to the department.

 (B) A person liable for reporting under this chapter who fails to meet the requirements of this section within three months after notification of the failure by the department, in addition to all other penalties prescribed by this chapter, is subject to an additional penalty of five thousand dollars for each month the failure continues.

HISTORY: 2005 Act No. 145, Section 2, eff June 7, 2005.

ARTICLE 15

Shipping Requirements

**SECTION 12‑28‑1500.** Automated machine‑printed shipping documents; manually prepared documents in certain circumstances; exemptions.

 (A) A person operating a refinery, terminal, or bulk plant in this State shall prepare and provide to the driver of every fuel transportation vehicle receiving motor fuel subject to the user fee into the vehicle storage tank at the facility an automated machine‑printed shipping document setting out on its face:

 (1) identification by address of the terminal or bulk plant from which the motor fuel was removed;

 (2) date the motor fuel was removed;

 (3) amount of motor fuel removed, indicating actual gallons and net gallons;

 (4) state of destination as represented to the terminal operator by the transporter, the shipper or the shipper’s agent;

 (5) other information reasonably required by the department for the enforcement of this chapter.

 (B) A terminal operator manually may prepare shipping papers as a result of extraordinary unforeseen circumstances, including acts of God, which temporarily interfere with the terminal operator’s ability to issue automated machine‑generated shipping papers. However, before manually preparing the papers, the terminal operator shall provide telephonic notice to the department and obtain a service interruption authorization number which the operator’s employees shall add to the manually prepared papers before removal of each affected transport load from the terminal. The service interruption authorization number is valid for use by the terminal operator not more than twenty‑four hours. If the interruption has not been cured within the twenty‑four hour period, additional notices to the department are required and interruption authorization numbers may be issued upon explanation by the terminal operator satisfactory to the department.

 (C) An operator of a bulk plant in this State delivering motor fuel subject to the user fee into a tank wagon or subsequent delivery to an end consumer in this State is exempt from this section.

 (D) A terminal operator may load motor or diesel fuel, of which a portion is destined for sale or use in this State and a portion is destined for sale or use in another state. However, the split loads removed must be documented by the terminal operator by issuing shipping papers designating the state of destination for each portion of the fuel.

 (E) Each terminal operator shall post a conspicuous notice proximally located to the point of receipt of shipping papers by transport truck operators. The notice must describe in clear and concise terms the duties of the transport operator and retail dealer under Section 12‑28‑1505. The department by regulation may establish the language, type, style, and format of the notice.

 (F) A person who knowingly violates or knowingly aids and abets another to violate this section is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than three years, or both.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Automobiles 122.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 111 to 124.

**SECTION 12‑28‑1505.** Requirements relating to shipping documents.

 (A) A person transporting motor fuel subject to the user fee in a fuel transportation vehicle upon the public highways of this State shall:

 (1) carry on board the shipping document issued by the terminal operator or the bulk plant operator of the facility where the motor fuel subject to the user fee was obtained, within or outside this State. The shipping paper must set out on its face the state of destination of the motor fuel subject to the user fee transported in the vehicle as represented to the terminal operator at the time the fuel transportation vehicle was loaded or as otherwise provided in item (3);

 (2) show and permit duplication of the shipping document by a law enforcement officer or representative of the department, upon request, when transporting, holding, or off‑loading the motor fuel described in the shipping document;

 (3) deliver motor fuel subject to the user fee described in the shipping document to a point in the destination state shown on the face of the document unless the person or his agent does all of the following:

 (a) notifies the department or its nominee, before the earlier of removal from the state in which the shipment originated or the initiation of delivery, that the person received instructions after the shipping document was issued to deliver the motor fuel to a different destination state;

 (b) receives from the Department of Revenue or its agent a verification number authorizing the diversion;

 (c) writes on the shipping document the change in destination state and the confirmation number for the diversion;

 (4) provide a copy of the shipping document to the distributor or other person who controls the facility to which the motor fuel is delivered;

 (5) meets other conditions the department may reasonably require for the enforcement of this chapter.

 (B) The department shall provide by regulation for handwritten designations and procedures alternative for operators of tank wagons that have received motor fuel subject to the user fee at a bulk plant for delivery within or outside this State. A person in violation of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4V.

Library References

Automobiles 122.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 111 to 124.

**SECTION 12‑28‑1510.** Terminal‑issued shipping document provided on delivery of shipment.

 Every person transporting motor fuel subject to the user fee in vehicles upon the public highways of this State shall provide the original or a copy of the terminal‑issued shipping document accompanying the shipment to the operator of the retail outlet, bulk plant end user bulk storage facility to which delivery of the shipment was made. A person who knowingly violates or knowingly aids and abets another to violate this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Automobiles 122.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 111 to 124.

**SECTION 12‑28‑1515.** Inspection and retention of terminal‑issued shipping document by receiver of motor fuel subject to the user fee.

 An operator of a motor fuel subject to the user fee retail outlet, bulk plant, or bulk end user bulk storage facility shall receive, examine, and retain for thirty days at the delivery location the terminal‑issued shipping document received from the transporter for every shipment of motor fuel subject to the user fee that is delivered to that location with record retention of the shipping paper of three years required offsite. A person who knowingly violates or knowingly aids and abets another to violate this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Automobiles 122.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 111 to 124.

**SECTION 12‑28‑1520.** Acceptance of delivery without proper shipping paper prohibited.

 No retail dealer, bulk plant operator, wholesale distributor, or bulk end user knowingly may accept delivery of motor fuel subject to the user fee into bulk storage facilities in this State if that delivery is not accompanied by a shipping paper issued by the terminal operator, or bulk plant operator as provided by regulations, that sets out on its face this State as the state of destination of the motor fuel subject to the user fee or a diversion verification number pursuant to Section 12‑28‑1525, and other information required under Sections 12‑28‑1540 and 12‑28‑1545. A person who knowingly violates or knowingly aids and abets another to violate this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Automobiles 122.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 111 to 124.

**SECTION 12‑28‑1525.** Relief in case of improperly completed shipping paper; notification of diversion or correction; verification number.

 (A) The department shall provide for relief in a case where a shipment of motor fuel subject to the user fee legitimately is diverted from the represented destination state after the shipping paper has been issued by the terminal operator or where the terminal operator failed to cause proper information to be printed on the shipping paper.

 (B) These relief provisions must include a provision requiring that the shipper, the transporter, or an agent of either provide notification before the diversion or correction to the department if an intended diversion or correction is to occur, and that a verification number be assigned and manually added to the face of the terminal‑issued shipping paper.

 (C) The relief provisions must establish a protest procedure so a person found to be in violation of Section 12‑28‑1500 or 12‑28‑1515 may establish a defense to a civil penalty imposed under this chapter for violation of the section upon establishing substantial evidence satisfactory to the department that the violation was the result of an honest error made in the context of a good faith and reasonable effort to properly account for and report fuel shipments and user fees.

 (D) The department shall make reasonable efforts to coordinate with neighboring states and the Federation of Tax Administrators for the operation of a common telephonic diversion verification number assignment system including its shared burdens.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Automobiles 122.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 111 to 124.

**SECTION 12‑28‑1530.** Reliance on representations regarding destination, user fee‑exempt use or supplier’s obligation to collect user fees.

 The supplier and the terminal operator may rely for all purposes of this chapter on the representation by the transporter, the shipper, or the shipper’s agent as the shipper’s intended state of destination and user fee‑exempt use. The shipper, the importer, the transporter, the shipper’s agent, and a purchaser, not the supplier or terminal operator, are jointly liable for any user fee otherwise due to the State as a result of a diversion of the motor fuel subject to the user fee from the represented destination state. A terminal operator may rely on the representation of a licensed supplier with respect to the supplier’s obligation to collect user fees and the related shipping paper representation to be shown on the shipping paper as provided by Section 12‑28‑1540(A).

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3708.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2214 to 2215.

**SECTION 12‑28‑1535.** Unlawful sale, use, deliver, or storage of motor fuel subject to the user fee prohibited; exceptions.

 (A) Except as expressly provided in subsection (B), no person may sell, use, deliver, or store in this State, or import for sale, use, delivery, or storage in this State, motor fuel subject to the user fee as to which the user fee imposed by Section 12‑28‑310 previously has not been paid to or accrued by a licensed supplier or permissive supplier at the time of removal from a terminal or a license importer, if all the conditions of Section 12‑28‑1545 applicable to lawful import by the importer have been met.

 (B) The following are exceptions to subsection (A):

 (1) a supplier with respect to motor fuel subject to the user fee held within the bulk transfer/terminal system in this State which was manufactured in South Carolina or imported into this State in a bulk transfer;

 (2) an end user with respect to motor fuel subject to the user fee placed in that person’s vehicle supply tank outside of this State;

 (3) any person with respect to diesel fuel dyed in accordance with Section 12‑28‑770;

 (4) motor fuel subject to the user fee in the process of exportation by a licensed exporter in accordance with the shipping papers required by Section 12‑28‑1505 as to which the destination state user fee has been paid or accrued to the supplier and a statement meeting the requirements of Section 12‑28‑1540(A)(2) is shown on the shipping papers;

 (5) gasoline used in aircraft;

 (6) fuel in possession of an end user as to which a refund has been issued;

 (7) federal government exempt fuel under Section 12‑28‑710(6);

 (8) a licensed importer who has met the conditions of Section 12‑28‑1545.

 (C) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3712.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2221.

**SECTION 12‑28‑1540.** Required notations on terminal‑issued shipping paper; exceptions.

 (A) Except as provided in subsections (C) and (D), no person may operate a transport truck that is engaged in the shipment of motor fuel subject to the user fee on the public highways of this State without having on board a terminal‑issued shipping paper bearing, in addition to the requirements of Section 12‑28‑1505, a notation indicating, with respect to:

 (1) diesel fuel acquired under claim of exempt use, a statement indicating the fuel is “DYED DIESEL FUEL, NONFEE USE ONLY, PENALTY FOR USE SUBJECT TO THE USER FEE” for the load or the appropriate portion of the load;

 (2) any other motor fuel subject to the user fee, a notation indicating: “(supplier name) responsible (state name) motor fuel user fee” or any other annotation acceptable to the department which otherwise indicates that the user fee imposed by this chapter, or by the destination state, has been paid to the supplier with respect to the entire load or the appropriate portion of it.

 (B) A person is in violation of subsection (A) upon boarding the vehicle with a shipping paper which does not meet the requirements set forth in this section.

 (C) A licensed importer or a transporter acting in his behalf is exempt from subsection (A)(2) if Section 12‑28‑1545 is otherwise applicable. However, no exemption from this section is effective with respect to shipments sourced to a state which has adopted reciprocal legislation as recognized by the department.

 (D) The department in its discretion may provide an advance notification procedure with respect to documentation for imported motor fuel as to which the importer is unable to obtain terminal‑issued shipping papers which comply with this section.

 (E) A person who knowingly violates any part of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

 (F) The department, its appointee, or its representative may seize, confiscate, and dispose of motor fuel which is not accompanied by a required shipping paper.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Automobiles 122.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 111 to 124.

**SECTION 12‑28‑1545.** Requirements for licensed importer regarding fuel which has not been dyed, nor user fees paid or accrued by supplier.

 (A) If a licensed importer acquires motor fuel subject to the user fee destined for this State which has neither been dyed in accordance with the Internal Revenue Code and the regulations issued under it, nor user fees paid to or accrued by the supplier at the time of removal from the out‑of‑state terminal, a licensed importer and transporter operating on his behalf shall meet all of the following conditions before entering motor fuel onto the highways of this State by loaded transport truck:

 (1) The importer or the transporter obtains an import verification number from the department not sooner than twenty‑four hours before entering this State.

 (2) The import verification number is set out prominently and indelibly on the face of each copy of the terminal‑issued shipping paper carried on board the transport truck.

 (3) The terminal origin and the importer’s name and address also are set out prominently on the face of each copy of the terminal‑issued shipping paper.

 (4) The terminal‑issued shipping paper data otherwise required by this chapter are present; and

 (5) All user fees imposed by this chapter with respect to previously requested import verification number activity on the account of the importer or the transporter are remitted timely.

 (B) A person who knowingly violates or knowingly aids and abets another to violate this section is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than three years, or both.

 (C) The department, its appointee, or its representative may seize, confiscate, and dispose of motor fuel which is not accompanied by a required shipping paper.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Automobiles 122.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 111 to 124.

**SECTION 12‑28‑1550.** Requirements for exporting fuel.

 (A) No person may export motor fuel subject to the user fee from this State unless that person has obtained an exporter’s license or a supplier’s license or has paid the applicable destination state motor fuel user fee to the supplier and can demonstrate proof of exporting in the form of a destination state bill of lading.

 (B) A person who negligently violates this section is subject to a five hundred dollar civil penalty for each violation.

 (C) A person who knowingly violates or knowingly aids and abets another to violate this section is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than three years, or both.

 (D) An end user who exports fuel in a vehicle fuel supply tank incident to interstate transportation is exempt from this section.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Licenses 16(9).

Taxation 3682.

Westlaw Topic Nos. 238, 371.

C.J.S. Licenses Section 55.

C.J.S. Taxation Section 2179.

**SECTION 12‑28‑1555.** Use of dyed fuel prohibited; exceptions; penalties.

 (A) No person may operate or maintain a motor vehicle on a public highway in this State with motor fuel subject to the user fee contained in the fuel supply tank for the motor vehicle that contains dye as provided under Section 12‑28‑770.

 (B) This section does not apply to:

 (1) persons operating motor vehicles who have received fuel into their fuel tanks outside of this State in a jurisdiction that permits introduction of dyed motor fuel subject to the user fee of that color and type into the motor fuel tank of highway vehicles; or

 (2) users of dyed fuel on the highway which are lawful under the Internal Revenue Code and regulations including state and local government vehicles and buses unless otherwise prohibited by this chapter.

 (C) A person who negligently violates this section is subject to a five hundred dollar civil penalty.

 (D) A person who knowingly violates or knowingly aids and abets another to violate this section is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than three years, or both.

 (E) All fines and penalties imposed pursuant to this section must be placed in the Department of Transportation State Non‑Federal Aid Highway Fund.

HISTORY: 1995 Act No. 136, Section 2; 2005 Act No. 176, Section 1, eff June 14, 2005.

Library References

Taxation 3711, 3712.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2221.

**SECTION 12‑28‑1560.** Doing business without license; penalties.

 (A) No person may engage in a business activity in this State as to which a license is required by Article 11 of this chapter unless the person first obtains the license.

 (B) A person who negligently violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars and imprisoned not more than thirty days, or both. The violator also is subject to a one thousand dollar civil penalty.

 (C) A person who knowingly violates or knowingly aids and abets another to violate this section is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than three years, or both.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Licenses 41.

Taxation 3711.

Westlaw Topic Nos. 238, 371.

C.J.S. Licenses Sections 121 to 124.

C.J.S. Taxation Sections 1025, 2219 to 2220.

**SECTION 12‑28‑1565.** Fuel must meet ASTM standards.

 (A) No person may sell or purchase a product for use in the supply tank of a motor vehicle for general highway use that does not meet ASTM standards as published in the annual Book of Standards and its supplements unless amended or modified by the department.

 (B) The transporter and the transporter’s agent and customer have the exclusive duty to dispose of any product in violation of this section in the manner provided by federal and state law.

 (C) A person who knowingly violates or knowingly aids and abets another to violate this section is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than three years, or both.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3712.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2221.

**SECTION 12‑28‑1570.** False statement on shipping paper regarding liability for user fees; penalties.

 (A) No terminal operator may imprint, and no supplier may knowingly permit a terminal operator to imprint on his behalf, a statement on a shipping paper relating to motor fuel to be delivered to this State or to a state having substantially the same shipping paper legending requirements with respect to:

 (1) a supplier’s responsibility or liability for payment of the user fee imposed by this chapter;

 (2) the user fee‑paid or user fee‑collected status of a motor fuel subject to the user fee, unless the supplier or supplier’s representative first provides the terminal operator with a representation or direction to make the statement on behalf of the supplier.

 (B) A terminal operator who negligently imprints a statement in violation of this section is subject to a civil penalty of twenty dollars for each violation.

 (C) A terminal operator who knowingly imprints a statement in violation of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than three years, or both. The penalties provided in this section are in addition to any other user fee, fines, penalties, or sanctions which may be imposed.

 (D) A supplier who knowingly violates this section is jointly liable with the terminal operator.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Automobiles 122.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 111 to 124.

**SECTION 12‑28‑1575.** Notice regarding dyed diesel fuel.

 In general, a notice stating: “DYED DIESEL FUEL, NONFEE USE ONLY, PENALTY FOR USE SUBJECT TO THE USER FEE” must be:

 (1) provided by the terminal operator to a person who receives dyed diesel fuel at a terminal rack of that terminal operator;

 (2) provided by a seller of dyed diesel fuel to its buyer if the diesel fuel is located outside the bulk transfer/terminal system and is not sold from a retail pump or bulk plant posted in accordance with the requirements of item (3);

 (3) posted by a seller on a retail pump or bulk plant where it sells dyed diesel fuel for use by its buyer.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4BB.

**SECTION 12‑28‑1580.** Dyed diesel fuel notice required on shipping papers, bills of lading and invoices.

 The form of notice required under Section 12‑28‑1575(1) and (2) must be provided by the time of the removal or sale and must appear on shipping papers, bills of lading, and invoices accompanying the sale or removal of the dyed diesel fuel.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Automobiles 122.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 111 to 124.

**SECTION 12‑28‑1585.** Metering device required for fuel dispenser accessible by public; tampering prohibited.

 (A) A person operating motor fuel subject to the user fee dispenser equipment accessible by the general public shall provide metering devices for each dispenser and shall maintain records sufficient to enable the department to determine the volumes dispensed through that equipment with reasonable accuracy.

 (B) No person may exchange, replace, roll back, or otherwise tamper with the metering equipment without following procedures provided by the department for legitimate maintenance, repairs, and replacement purposes.

 (C) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than three years, or both.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2189.

**SECTION 12‑28‑1590.** Tamper‑resistant shipping papers required.

 A terminal operator in this State and every supplier licensed by this State for the collection of user fees on motor fuel subject to the user fee shall cause terminal‑issued shipping papers to meet tamper‑resistant standards the department by regulation may require including messages which identify whether shipping papers have been photocopied, numbering systems, and nonreproducible coding, and other devices. However, the department may not make a regulation effective earlier than twenty‑four months after the promulgation of a final regulation imposing the requirements.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Automobiles 122.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 111 to 124.

**SECTION 12‑28‑1592.** Tank wagons must have IFTA registration; exception.

 No person may operate a tank wagon in this State unless that tank wagon first is registered under IFTA for use on the highways of this State and has displayed on the vehicle an IFTA sticker designating the vehicle for use in this State. However, a vehicle licensed in this State and exempt from the IFTA regulations is exempt from this requirement.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Automobiles 122.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 111 to 124.

**SECTION 12‑28‑1595.** Unauthorized sale or use of dyed diesel fuel prohibited.

 (A) No person may sell or hold for sale dyed diesel fuel for any use that the person knows or has reason to know is not a use of the diesel fuel not subject to the user fee.

 (B) No person may use or hold for use dyed diesel fuel for a use other than a use not subject to the user fee if the person knew or had reason to know, that the diesel fuel was so dyed.

HISTORY: 1995 Act No. 136, Section 2.

**SECTION 12‑28‑1597.** Alteration of dye or marker in dyed diesel fuel prohibited.

 No person, wilfully with intent to evade user fees, may alter or attempt to alter the strength or composition of a dye or marker in dyed diesel fuel.

HISTORY: 1995 Act No. 136, Section 2.

Code Commissioner’s Note

2003 Act No. 69, Section 3.BBB directed the Code Commissioner to substitute “user fee” for “tax” and “motor fuel subject to the user fee” for “taxable motor fuel” wherever appearing in Title 12, Chapter 28.

ARTICLE 17

Penalties

**SECTION 12‑28‑1710.** Business entities and participating officers, employees, and agents liable for violations of Sections 12‑28‑1595 and 12‑28‑1597.

 A business entity and its officers, employees, and agents who wilfully participate in an act in violation of Section 12‑28‑1595 or Section 12‑28‑1597 are jointly and severally liable with the entity for the penalty which is the same as imposed under federal law.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

**SECTION 12‑28‑1720.** Liability for uncollected and unpaid user fees; penalties.

 (A) A supplier, a permissive supplier, or an importer who knowingly fails to collect and timely remit user fees otherwise required to be paid over to the department pursuant to Section 12‑28‑905 or 12‑28‑915 pursuant to a user fee precollection agreement under Section 12‑28‑910 is liable for the uncollected user fee plus the penalties provided in Chapter 54, Title 12 as appropriately applied by the department. The burden of proof rests with the department.

 (B) A person who fails or refuses to pay over to the State the user fee on motor fuel subject to the user fee at the time required in this chapter or who fraudulently withholds, appropriates, or otherwise uses the money or any portion of it belonging to the State is guilty of a misdemeanor and, upon conviction, must be fined as provided in Section 12‑54‑40(d)(1).

 (C) Truck drivers who violate Section 12‑28‑1510, 12‑28‑1540, or 12‑28‑1545 for the first time are guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days, or both. Truck drivers who violate the sections for the second and all subsequent times are guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than three years, or both.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3708, 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2214 to 2215, 2219 to 2220.

**SECTION 12‑28‑1730.** Penalties.

 (A) If a person liable for the user fee files a false or fraudulent return, there is added to the user fee an amount as provided in Section 12‑54‑43(G)(1).

 (B) The department shall impose a civil penalty of one thousand dollars for a person’s first occurrence of transporting motor fuel subject to the user fee without adequate shipping papers annotated as required under Sections 12‑28‑1510, 12‑28‑1540, and 12‑28‑1545. Each subsequent occurrence described in this subsection is subject to a civil penalty of five thousand dollars.

 (C) RESERVED.

 (D) A supplier who makes sales for export to a person who does not have an appropriate export license or without collection of the destination state tax on taxable motor fuel nonexempt in the destination state is subject to a civil penalty equal to the amount of this state’s motor fuel tax in addition to the user fee due to South Carolina.

 (E) The department may impose a civil penalty against every terminal operator who wilfully fails to meet shipping paper issuance requirements under Sections 12‑28‑920, 12‑28‑1500, and 12‑28‑1575 or wilfully files a return without the supporting schedules as required by the department pursuant to Sections 12‑28‑1330 and 12‑28‑1340. The civil penalty imposed on the terminal operator is the same as the civil penalty imposed under subsection (B).

 (F) The department shall impose a civil penalty in the amount of one thousand dollars or ten dollars for each gallon of dyed fuel involved, whichever is greater, on the operator of a vehicle that is used on the highways of this State, or is authorized or otherwise allowed to be used on the highways of this State, and who uses dyed fuel for the propulsion of that vehicle or who stores dyed fuel to be used for the propulsion of a vehicle on the highways of this State, regardless of whether any of such dyed fuel is used for a nontaxable purpose, unless permitted to do so under federal law.

 For purposes of this section, the operator is the person responsible for the management and operation of the vehicle, whether as owner, lessee, or other party.

 (G) An importer or transporter who knowingly imports undyed motor fuel subject to the user fee in a transport truck without a valid importer license or supplier license and an import verification number or a shipping paper showing on its face, as required under this chapter, that this state’s motor fuel user fee is not due is subject to a civil penalty of ten thousand dollars for each occurrence. This subsection does not apply to persons transporting motor fuel subject to the user fee through this State in interstate commerce.

 (H) If a person liable for the user fee files a return and wilfully fails to provide all information required by the department, the department may add to the user fee the amount provided in Section 12‑54‑43(C)(1).

HISTORY: 1995 Act No. 136, Section 2; 1998 Act No. 442, Section 2; 2001 Act No. 89, Section 22, eff September 1, 2001; 2005 Act No. 145, Section 26, eff June 7, 2005.

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

**SECTION 12‑28‑1740.** Impoundment, seizure, sale and forfeiture of vehicle and cargo for violation of shipping paper requirements.

 If a person is found operating a motor vehicle in violation of the shipping paper requirements in Sections 12‑28‑1505, 12‑28‑1540, 12‑28‑1545, and 12‑28‑1575, the vehicle and its cargo are subject to impoundment, seizure, and subsequent sale and forfeiture, in accordance with the general laws of this State respecting seizure and forfeiture. The failure of the operator of a motor vehicle to have on board when loaded a terminal‑issued bill of lading with a destination state machine‑printed on its face pursuant to Section 12‑28‑1505 or which fails to meet the descriptive annotation requirements of Sections 12‑28‑1540, 12‑28‑1545, and 12‑28‑1575, if applicable, is presumptive evidence of a violation sufficient to warrant impoundment and seizure of the vehicle and its cargo.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

ARTICLE 19

Enforcement Powers

**SECTION 12‑28‑1910.** Inspection of fuel and shipping papers.

 (A) The department or its appointees including federal government employees or persons operating under contract with the State, upon presenting appropriate credentials, may conduct inspections and remove samples of fuel from a vehicle, tank, or another container to determine coloration of diesel fuel or to identify shipping paper violations. Inspection must be performed in a reasonable manner consistent with the circumstances. However, prior notice is not required. Inspectors physically may inspect, examine, or otherwise search a tank, reservoir, or other container that can or may be used for the production, storage, or transportation of fuel. Inspection may be made of equipment used for, or in connection with, the production, storage, or transportation of fuel. Inspectors may demand to be produced for immediate inspection the shipping papers, documents, and records required to be kept by a person transporting fuel. These places may include, but are not limited to, a:

 (1) terminal;

 (2) fuel storage facility that is not a terminal;

 (3) retail fuel facility;

 (4) highway rest stops; or

 (5) designated inspection site defined as any state highway or waterway inspection station, weigh station, agricultural inspection station, mobile station, or other location designated by the department either fixed or mobile.

 (B) Inspections to determine violations under this chapter may be conducted by the Department of Public Safety, agents of the Department of Revenue, motor carrier inspectors in this State in addition to their duties otherwise defined, and other law enforcement officers through procedures established by the Department of Revenue. Agents of the Department of Revenue have the same power and authority provided to authorized personnel under the applicable statute.

 (C) An inspector reasonably may detain a person or equipment transporting fuel in or through this State for the purpose of determining whether the person is operating in compliance with the provisions of this chapter and the regulations promulgated pursuant to it. Detainment may continue for a time only as is necessary to determine whether the person is in compliance.

HISTORY: 1995 Act No. 136, Section 2; 2000 Act No. 399, Section 3(P)(1), eff August 17, 2000.

Library References

Taxation 3705.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2212.

**SECTION 12‑28‑1920.** Operation of permanent or portable weigh stations.

 The department may assign qualified persons who are not state police officers to supervise or operate permanent or portable weigh stations. A person assigned under this section may stop, inspect, and issue citations to operators of trucks and trailers, barges or vessels having a declared gross weight of eleven thousand pounds or more, and buses, at a permanent weigh station, or other inspection point, or while operating a clearly marked state police vehicle for violations of this chapter.

HISTORY: 1995 Act No. 136, Section 2.

**SECTION 12‑28‑1930.** Audits; transportation sampling audits; inspection of shipping papers.

 (A) The department or an authorized deputy, employee, or agent may audit and examine the records, books, papers, and equipment of terminal suppliers, importers, wholesalers, jobbers, retail dealers, terminal operators, fuel vendors, and all private and common carriers of motor fuel to verify the completeness, truth, and accuracy of any statement or report and ascertain whether or not the user fee imposed by this law has been paid.

 (B) The department has the same general authority provided under subsection (A) with respect to narrow transportation sampling audits, except all fuel vendors and bulk purchasers of fuel shall make available to the department necessary records with respect to the transactions which the department is attempting to verify during normal business hours at the person’s physical location in this State, or at the department’s offices if the person’s location at which the records are located is outside of South Carolina, within three business days after the request.

 (C) The department or an appointee including federal government employees and persons contracting with the State, upon proof of credentials shown, in the aggregate referred to for purposes of this section as fuel inspectors, may inspect and each fuel vendor, motor fuel transporter, or bulk purchaser shall disclose immediately upon request any shipping paper required by this chapter to be maintained at the physical location where the request is made which may include any place motor fuel is stored or held for sale or transportation.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3686.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2189, 2191 to 2193.

**SECTION 12‑28‑1940.** Penalties for refusing audit or inspection.

 (A) A person who refuses to permit an inspection or audit authorized by this chapter is subject to a civil penalty of five thousand dollars in addition to any penalty imposed by other provisions of this chapter.

 (B) A person who refuses, for the purpose of evading user fees, to allow an inspection, in addition to being liable for other penalties imposed by this article, is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than three years, or both.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

ARTICLE 21

Specialized Compensating Fuel User Fees

**SECTION 12‑28‑2110.** Collection of user fees for fuels consumed by government diesel and other federally exempt vehicles.

 The department must collect the user fee imposed by this chapter on motor fuels subject to the user fee consumed on the highways by state and local government diesel and other federally exempt fuel‑powered highway vehicles, to be collected and administered in accordance with Sections 12‑28‑1139 and 12‑28‑1395.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4W.

Library References

Taxation 3707.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2213.

ARTICLE 23

Petroleum and Petroleum Product

**SECTION 12‑28‑2310.** Definitions.

 “Petroleum” or “petroleum product” as used in this article means gasoline, gasohol, kerosene, diesel fuels, jet fuels, fuel oil No. 1 through 4, or like product of petroleum, or a product which may be susceptible for use as petroleum products under whatever name called.

HISTORY: 1995 Act No. 136, Section 2.

**SECTION 12‑28‑2315.** Analysts, chemists, and inspectors appointed.

 The department shall appoint analysts, chemists, and inspectors required to carry out this article. The inspectors may examine all barrels, tanks, or other vessels containing petroleum or petroleum products to see that they are tagged properly as required in this article and, as directed, collect and test samples of petroleum products offered for sale in the State, and when so instructed, collect and send samples to the Department of Agriculture for examination.

HISTORY: 1995 Act No. 136, Section 2.

**SECTION 12‑28‑2320.** Inspector interested in manufacture or vending of gasoline, illuminating or heating oil.

 Any inspector who, while in office, is interested, directly or indirectly, in the manufacture or vending of any gasoline or illuminating or heating oil is subject to the provisions of Section 12‑58‑110.

HISTORY: 1995 Act No. 136, Section 2.

**SECTION 12‑28‑2325.** Law enforcement assistance.

 The Department of Public Safety and law enforcement agents, upon request of the Department of Revenue, may assist in the enforcement of all laws relating to the inspection of petroleum products.

HISTORY: 1995 Act No. 136, Section 2.

**SECTION 12‑28‑2330.** Filing of statement for intent to sell petroleum products.

 All manufacturers, wholesalers, and jobbers, before selling or offering for sale in this State any petroleum product shall file with the department a statement that they desire to do business in the State and furnish the name or brand of the product which they desire to sell, with the name and address of the manufacturer and a statement that the product must comply with the requirements of this article. Annually on January first, an up‑to‑date listing must be submitted by the bonded company covering additional jobbers, dealers, distributors, consignors, by whatever name called who shall receive and distribute in bulk quantities the petroleum products in South Carolina.

HISTORY: 1995 Act No. 136, Section 2.

**SECTION 12‑28‑2335.** Notice of shipment of petroleum products into State.

 When petroleum products are shipped into this State, the manufacturer or jobber shall give notice to the department of every shipment in invoiced gallons with the name and gallons on the day shipment is made. The department may waive this requirement in part or in full as to any user fee payer if it is redundant or unnecessary.

HISTORY: 1995 Act No. 136, Section 2.

**SECTION 12‑28‑2340.** Standards for petroleum products; testing.

 The Commissioner of Agriculture may promulgate regulations prescribing standards for petroleum products and methods for testing them.

HISTORY: 1995 Act No. 136, Section 2.

**SECTION 12‑28‑2345.** Records of receipt and shipment of petroleum products.

 A person who sells or offers for sale a petroleum product shall keep an accurate record of all lots of shipments of the product received by him and the products shipped by him. All delivery manifests, original and copies, shall show actual destination of products before they leave the terminal or location of origination. A person who alters shipping information on shipping documents involving petroleum products, unless the original and all copies are likewise adjusted and records amended, is guilty of a misdemeanor and, upon conviction, must be fined no more than five thousand dollars or imprisoned not more than one year, or both.

HISTORY: 1995 Act No. 136, Section 2.

**SECTION 12‑28‑2350.** Inspection of records pertaining to petroleum products.

 The department may inspect all records of a person doing business in this State for the purpose of ascertaining information relative to the sales, transportation, or possession of petroleum products. Legible records must be kept at the point of origin or reasonable approved proximity for auditing purposes. Terminal operators and suppliers as defined in Section 12‑28‑110 may maintain records at an approved central recordkeeping facility within or outside the State.

HISTORY: 1995 Act No. 136, Section 2.

**SECTION 12‑28‑2355.** Inspection and environmental impact fee charged on petroleum products.

 (A) For the purpose of providing funds for inspecting, testing, and analyzing petroleum products and for general state purposes, there must be paid to the department a charge of one‑fourth cent a gallon, which liability arises at the same time and is payable by the same person as the motor fuel user fee imposed under this chapter as if the petroleum product were motor fuel subject to the user fee under this chapter. Upon approval of the department, a surety bond is acceptable as monthly prepayments pending monthly reports and payments. Determination of acceptable bonding must be based on distribution, location of terminal facilities, and handling through other bonded suppliers.

 (B) In addition to the inspection fee of one‑fourth cent a gallon imposed pursuant to subsection (A), an environmental impact fee of one‑half cent a gallon is imposed which must be used by the department for the purposes of carrying out the provisions of this chapter. This one‑half cent a gallon environmental impact fee must be paid and collected in the same manner that the one‑fourth cent a gallon inspection fee is paid and collected, except that the monies generated from these environmental impact fees must be transmitted by the Department of Revenue to the Department of Health and Environmental Control which shall deposit the fees as provided in Section 44‑2‑40.

 (C) Notwithstanding any other provision of law, the fees collected pursuant to subsection (A) must be credited to the Department of Transportation State Non‑Federal Aid Highway Fund as provided in the following schedule:

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
|   | Fees | General Fund | Department of |
|   | Collected After | of the State | Transportation |
|   |   |   | State Non‑Federal Aid |
|   |   |   | Highway Fund |
|   |   |   |   |
|   | June 30, 2005 | 60 percent | 40 percent |
|   | June 30, 2006 | 20 percent | 80 percent |
|   | June 30, 2007 | 0 percent | 100 percent. |

HISTORY: 1995 Act No. 136, Section 2; 2005 Act No. 176, Section 2, eff June 14, 2005; 2017 Act No. 40 (H.3516), Section 9, eff July 1, 2017.

Effect of Amendment

2017 Act No. 40, Section 9, amended (C), deleting a provision that credited the Department of Agriculture with ten percent of the revenues.

**SECTION 12‑28‑2360.** Refund of inspection fee on petroleum products.

 A person may present to the department proof that he has paid an inspection fee on petroleum products in error or has paid an inspection fee on shipments of petroleum products subsequently diverted from the State, whereupon the department shall refund the amount of the inspection fee to the payee out of the petroleum products inspection fund, if the proof of the claim is submitted within the time period provided for in Section 12‑54‑85.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 456, Section 2; 1996 Act No. 461, Section 4X.

**SECTION 12‑28‑2365.** Remittance of fees on petroleum products.

 Fees must be remitted at the same time and on the same return as user fees imposed under Section 12‑28‑310, and all monies received under this section must be paid into the State Treasury as provided for in Section 12‑28‑2355(A) and (B). The monies must be turned over monthly by the department to the State Treasurer, as are other funds. The discount allowed for under Sections 12‑28‑955 and 12‑28‑960 are not allowed for payments made under Section 12‑28‑2355.

HISTORY: 1995 Act No. 136, Section 2.

**SECTION 12‑28‑2370.** Department to promulgate regulations.

 The department may promulgate regulations necessary for carrying out the provisions of this article.

HISTORY: 1995 Act No. 136, Section 2.

**SECTION 12‑28‑2375.** Retail dealers of petroleum products exempt; exception.

 The provisions of this article do not apply to a retail dealer in petroleum products, unless the retail dealer sells or offers to sell petroleum products of a manufacturer, wholesaler, or jobber who refuses to comply with the provisions of this article.

HISTORY: 1995 Act No. 136, Section 2.

**SECTION 12‑28‑2380.** Motor fuel use to which article applies.

 All motor fuels placed into motor vehicles for use in their operation or for the operation of their parts or attachments are subject to the fees provided in this article. This section does not apply to a seller‑user of liquefied petroleum gas.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4Y.

Library References

Taxation 3682.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2179.

**SECTION 12‑28‑2385.** Exports of petroleum products exempt from inspection fee.

 Exports of petroleum products are exempt from the inspection fee imposed by Section 12‑28‑2355. The export exemption applicable to the inspection fee on motor fuel subject to the user fee must be perfected in the same manner as the export exemption for motor fuel subject to the user fee.

HISTORY: 1995 Act No. 136, Section 2.

ARTICLE 25

Reports and Bond Requirements

**SECTION 12‑28‑2520.** Motor fuel licensee bond exemption based on statement of assets and liabilities.

 A motor fuel licensee may furnish the department with a statement of assets and liabilities, and if in the judgment of the department the property owned by the motor fuel licensee is sufficient to protect the State in the payment of all motor fuel user fees due, a bond is not required.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 461, Section 4Z.

Library References

Taxation 3698.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2207.

ARTICLE 27

Deposits and Distributions

**SECTION 12‑28‑2710.** Funds collected deposited to credit of State Treasurer.

 All monies collected by the department under this chapter must be deposited to the credit of the State Treasurer as taxes collected by the department.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3714.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2222.

**SECTION 12‑28‑2720.** Distribution of gasoline user fee to Department of Transportation and general fund.

 The proceeds from ten and thirty‑four hundredths cents a gallon of the user fee on gasoline only as levied and provided for in this chapter must be turned over to the Department of Transportation for the purpose of that department.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 458, Part II, Section 5A.

Library References

Taxation 3714.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2222.

**SECTION 12‑28‑2725.** Apportionment to department of mass transit; audit.

 Of the ten and thirty‑four hundredths cents user fee on gasoline imposed pursuant to this chapter, an amount equal to twenty‑ five hundredths of a cent on each gallon must be used by the department for mass transit.

 The State Auditor annually shall audit, or cause to be audited, the state’s regional transit authorities and eleemosynary organizations acting as regional transit authorities receiving funds from the Department of Transportation. Copies of the audits must be made available to the department and to the General Assembly.

HISTORY: 1996 Act No. 458, Part II, Section 55A; 2005 Act No. 164, Section 14, eff June 10, 2005.

Library References

Taxation 3714.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2222.

**SECTION 12‑28‑2730.** Distribution of gasoline user fee to Department of Natural Resources; water recreational resources fund; creation.

 (A) One percent of the proceeds from thirteen cents of the gasoline user fee imposed pursuant to this chapter must be transmitted to the Department of Natural Resources for a special water recreational resources fund of the State. All balances in the fund must be carried forward annually so that no part of it reverts to any other fund.

 (B) The fund must be apportioned based upon the number of registered boats or other watercraft in each county and expended by the department to acquire, create, or improve water recreational resources. As used in this section, “water recreational resources” means public waters which are naturally occurring or which provide habitat for fish, aquatic animals, or waterfowl and which must provide public recreational opportunities. These funds may be used to promote activities that take place on the water for recreation provided that no more than ten percent of each annual allocation may be used for this purpose beginning July 1, 2003.

 (C) Each county delegation may make recommendations to the South Carolina Department of Natural Resources for projects to acquire, create, or improve water recreational resources. The department must give these recommendations primary consideration over any other projects.

 (D) The Department of Natural Resources may use up to one‑third of the funds for law enforcement, noxious aquatic weed control, and acquisition. The department must be reimbursed for design and engineering costs and administration of this section from the funds collected under the provisions of this section.

 (E) Any revenue collected or any funds remaining in the Water Recreational Resources Fund created by Act 1134 of 1968, must be transferred to the fund created by this act.

 (F) Any funds collected by the state treasury between January 7, 2002, and the effective date of this act which would have been allocated to the Water Recreation Resource Fund created by Section 12‑28‑2730 must be allocated to the fund created by this section.

 (G) The department must dispose of all surplus property owned by the department or subject to its custody and control for purposes of disposal in the manner provided by law for the disposition of surplus state property. Notwithstanding another provision of law or policy, it is unlawful for retired employees of the department to purchase surplus property directly from the department. It is not unlawful for retired employees to purchase surplus property that is disposed of according to law and sold at public auction.

 (H) All proceeds from the sale of the department’s surplus property that was originally purchased with a county’s water recreational resources funds must be returned to the county that originally purchased the property and placed in that county’s water recreational resources fund.

 (I) Beginning with property purchased during fiscal year 2000, the department must provide the legislative delegations of each county with an annual inventory of all property purchased with the county’s water recreational resources funds on or before the beginning of the next ensuing session of the General Assembly.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 458, Part II, Section 10A; 2002 Act No. 187, Section 1, eff March 12, 2002.

Library References

Taxation 3714.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2222.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 30, Executive‑ Legislative Conflicts.

Attorney General’s Opinions

Discussion of the expenditure of funds by the South Carolina Department of Natural Resources from the Water Recreational Resources Fund for the dredging of accumulated sediment in Saluda Lake in Greenville and Pickens Counties. S.C. Op.Atty.Gen. (Jan. 26, 2006) 2006 WL 269608.

Section 12‑28‑2730 does not authorize expenditures from the Water Recreational Resources Fund for the purchase of watercraft. S.C. Op.Atty.Gen. (Jan. 15, 2004) 2004 WL 113636.

Discussion of use of the Water Recreation Resources Fund. S.C. Op.Atty.Gen. (March 12, 1997) 1997 WL 208013.

Monies in water recreational resources fund should not be appropriated to the Lake Murray Tourism and Recreational Association to be expended by the Association to promote Lake Murray (interpreting former Section 12‑27‑390. 1988 Op Atty Gen, No. 88‑53, p 154 (July 14, 1988) 1988 WL 383536.

The gasoline tax is levied partially for highway use, county road use, secondary road use and water recreational resources: taxes collected at marinas may be distributed for road use if the levying statute so provides (interpreting former Section 12‑27‑390). 1979 Op Atty Gen, No. 79‑117, p 165 (October 3, 1979) 1979 WL 29120.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

Statute allocating money from the Water Recreational Resources Fund (W.R.R.F.) based upon the number of boats or other watercraft registered in each county, subject to the approval of a majority of the county legislative delegation, including a majority of the resident senators, violates the separation of powers by permitting the legislature to execute a law and usurping executive powers for the benefit of legislative delegations. Knotts v. S.C. Dept. of Natural Resources (S.C. 2002) 348 S.C. 1, 558 S.E.2d 511. Constitutional Law 2390; States 127

Unconstitutional portion of statute allocating money from the Water Recreational Resources Fund (W.R.R.F.) based upon the number of boats or other watercraft registered in each county, subject to the approval of a majority of the county legislative delegation, including a majority of the resident senators, could not be severed from other portions; removing the unconstitutional legislative delegation clause left the program without a body to direct expenditures, and the statute indicated a legislative intent to affix its own county delegations as the sole authority to direct disbursement of W.R.R.F. funds. Knotts v. S.C. Dept. of Natural Resources (S.C. 2002) 348 S.C. 1, 558 S.E.2d 511. Statutes 1535(12)

Legislature has the power to delineate how an executive department may fund a request under the Water Recreational Resources Fund (W.R.R.F.), statutorily outline how the Department of Natural Resources (DNR) must expend money from W.R.R.F., and allow legislative delegations to make suggestions on how to spend W.R.R.F. funds. Knotts v. S.C. Dept. of Natural Resources (S.C. 2002) 348 S.C. 1, 558 S.E.2d 511. Constitutional Law 2390; States 127

**SECTION 12‑28‑2740.** Distribution of gasoline user fee among counties; requirements for expenditure of funds; county transportation committees.

 (A) The proceeds from two and sixty‑six one‑hundredths cents a gallon of the user fee on gasoline only as levied and provided for in this chapter must be deposited with the State Treasurer and expended for purposes set forth in this section. The monies must be apportioned among the counties of the State in the following manner:

 (1) one‑third distributed in the ratio which the land area of the county bears to the total land area of the State;

 (2) one‑third distributed in the ratio which the population of the county bears to the total population of the State as shown by the latest official decennial census;

 (3) one‑third distributed in the ratio which the mileage of all rural roads in the county bears to the total rural road mileage in the State as shown by the latest official records of the Department of Transportation. The Department of Revenue shall collect the information required pursuant to Section 12‑28‑1390 regarding the number of gallons sold in each county for use in making allocations of donor funds as provided in subsection (H). The Department of Revenue shall submit the percentage of the total represented by each county to the Department of Transportation and to each county transportation committee annually by May first of the following calendar year. Upon request of a county transportation committee, the Department of Transportation shall continue to administer the funds allocated to the county.

 All interest earnings on the County Transportation Fund in the State Treasury must be added to the distribution to counties under this section in proportion to each county’s portion of the entire County Transportation Fund. Except for those funds being used in connection with highway projects administered by the Department of Transportation on behalf of counties administering their own “C” funds, these distributions of earnings and the calculation required to determine the appropriate amount shall not include those counties administering their own “C” funds.

 (B) The funds expended must be approved by and used in furtherance of a countywide transportation plan adopted by a county transportation committee. The county transportation committee must be appointed by the county legislative delegation and must be made up of fair representation from municipalities and unincorporated areas of the county. County transportation committees may join in approving a regional transportation plan, and the funds must be used in furtherance of the regional transportation plan. This subsection does not prohibit the county legislative delegation from making project recommendations to the county transportation committee. A county transportation committee may expend from the funds allocated under this section an amount not to exceed two thousand dollars for reasonable administrative expenses directly related to the activities of the committee. Administrative expenses may include costs associated with copying, mailings, public notices, correspondence, and recordkeeping but do not include the payment of per diem or salaries for members of the committee.

 (C) At least twenty‑five percent of a county’s apportionment of “C” funds, based on a biennial averaging of expenditures, must be expended on the state highway system for construction, improvements, and maintenance. The Department of Transportation shall administer all funds expended on the state highway system unless the department has given explicit authority to a county or municipal government or other agent acting on behalf of the county transportation committee to design, engineer, construct, and inspect projects using their own personnel. The county transportation committee, at its discretion, may expend up to seventy‑five percent of “C” construction funds for activities including other local paving or improving county roads, for street and traffic signs, and for other road and bridge projects.

 (D) The funds allocated to the county also may be used to issue county bonds or state highway bonds as provided in subsection (J), pay directly for appropriate highway projects, including engineering, contracting, and project supervision, and match federal funds available for appropriate projects. Beginning July 1, 2002, for any new “C” fund allocations received on or after this date, the balance of uncommitted funds carried forward from one year into the next may not exceed three hundred percent of the county’s total apportionment for the most recent year. Expenditures must be documented on a per‑project basis upon the completion of each project in reports to the respective county transportation committees. This documentation must be provided by the agency or local government actually expending the funds and it shall include a description of the completed project and a general accounting of all expenditures made in connection with the project summaries of these reports then must be forwarded by each county transportation committee to the department using guidelines established by the department and the department shall compile these reports into an annual statewide report to be submitted to the General Assembly by the second Tuesday of January of each year. The documentation and reporting requirements of this subsection apply only to counties administering their own “C” funds. For purposes of this section, “uncommitted funds” means funds held in the county’s “C” fund account that have not been designated for specific projects.

 (E) All unexpended “C” funds allocated to a county remain in the account allocated to the county for the succeeding fiscal year and must be expended as provided in this section.

 (F) The countywide and regional transportation plans provided for in this section must be reviewed and approved by the Department of Transportation. Before the expenditure of funds by a county transportation committee, the committee shall adopt specifications for local road projects. In counties electing to expend their allocation directly pursuant to subsection (A), specifications of roads built with “C” funds are to be established by the countywide or regional transportation committee. In counties in which the county transportation committee elects to have “C” funds administered by the Department of Transportation, primary and secondary roads built using “C” funds must meet Department of Transportation specifications.

 (G) This section must not be construed as affecting the plans and implementation of plans for a Statewide Surface Transportation System as developed by the Department of Transportation.

 (H)(1) For purposes of this subsection, “donor county” means a county that contributes to the “C” fund an amount in excess of what it receives under the allocation formula as stated in subsection (A). In addition to the allocation to the counties pursuant to subsection (A), the Department of Transportation annually shall transfer to the donor counties an amount equal to seventeen million dollars in the ratio of the individual donor county’s contribution in excess of “C” fund revenue allocated to the county under subsection (A) to the total excess contributions of all donor counties.

 (2) A county is eligible for an additional allocation from the Department of Transportation if the county contributed to the “C” fund an amount in excess of what it receives under the allocation formula as stated in subsection (A) plus what it receives under item (1). The Department of Transportation annually shall transfer to the eligible counties an amount up to three and one‑half million dollars in the ratio of the individual eligible county’s contribution to the “C” fund in excess of the eligible county’s total allocations under subsection (A) and item (1) to the total excess contributions of all eligible counties remaining after all allocations under subsection (A) and item (1) have been made. Under no circumstances can an allocation under this item result in an eligible county receiving total allocations in excess of what the county contributed to the “C” fund.

 (I)(1) In expending funds pursuant to this section, counties that administer their own “C” funds shall use a procurement system that requires competitive sealed bids, no bid preferences not required by state or federal law, and public advertisement of all projects. All bids for contracts in excess of one hundred thousand dollars must be accompanied by certified bid bonds, and all work awarded under the contracts must be covered by performance and payment bonds for one hundred percent of the contract value. Bid summaries must be published in a newspaper of general distribution following each award.

 (2) The requirement of a bond for bid security or a bond for payment and performance may not include the requirement that the surety bond be furnished by a particular surety company or through a particular agent or broker.

 (J) State highway bonds may be issued for the completion of projects for which “C” funds may be expended for projects as determined by the county transportation committee. The applicable source for payment of principal and interest on the bonds is the share of “C” fund revenues available for use by the county transportation committee. The application for the bonds must be filed by the county transportation committee with the Commission of the Department of Transportation and the State Treasurer, which shall forward the application to the State Fiscal Accountability Authority. The State Fiscal Accountability Authority shall consider the application in the same manner that it considers state highway bonds, mutatis mutandis.

 (K) Members of the committee are insulated from all personal liability arising out of matters related directly to and within the scope of the performance of official duties and functions conferred upon the committee pursuant to this section.

 (L) In Berkeley County, appointments made pursuant to this section are governed by the provisions of Act 159 of 1995.

 (M) In Dorchester County, appointments made pursuant to this section are governed by the provisions of Act 512 of 1996.

 (N) In Georgetown County, appointments made pursuant to this section are governed by the provisions of Act 515 of 1996 and Section 2, Act 141 of 2001.

 (O) Notwithstanding other provisions of this section, the legislative delegation of a county may by delegation resolution abolish the county transportation committee and devolve its powers and duties on the governing body of the county. This devolution may be reversed and the county transportation committee reestablished by a subsequent delegation resolution. The exercise of county transportation committee powers and duties by a county governing body is not deemed to constitute dual office holding.

 (P) The Department of Transportation shall perform reviews to ensure compliance with subsections (C), (D), (F), and (I). A county failing to comply with these subsections must have all subsequent “C” fund allocations withheld until the requirements of those subsections are met. If a county fails to comply with those subsections within twenty‑four months, the county forfeits fifty percent of its allocations for the following year and the forfeited amount must be divided among the other counties as provided in subsection (A).

 (Q) A county subject to a proposed withholding or forfeiture of “C” fund allocations pursuant to this section must be notified in writing of the department’s decision. The county, within sixty days of receipt of notice of the decision, may request a review of the decision by a panel consisting of the state highway engineer or his designee, the chairman of the affected county’s transportation committee or his designee, and a third person named by mutual agreement between the state highway engineer and the county transportation committee chairman. The panel shall meet and render a decision within ninety days of the request by the county transportation committee. The decision of the panel may be appealed by requesting a contested case hearing before the Administrative Law Court pursuant to Section 1‑23‑600 and the rules of procedure for the Administrative Law Court. The request for a hearing must be made within thirty days of receipt of the panel’s decision.

 (R) The legislative delegation of the county, by resolution, may rename the county transportation committee established by this section as the (insert name of county) Legislative Delegation transportation committee. Upon the adoption of such a resolution, all references in this section and any other provisions of law to the county transportation committee, for purposes of that county, are deemed references to that county’s legislative delegation transportation committee.

 (S) Notwithstanding the provisions of subsection (A), on July 1, 2018, and each July first thereafter until after July 1, 2021, the amount of proceeds of the user fee on gasoline only as levied for in this chapter that must be deposited with the State Treasurer and expended for the purposes of this section must be increased by .3325 cents a gallon, until such time as the total amount equals three and ninety‑nine one‑hundredths cents a gallon. Any increase in proceeds resulting from the provisions of this subsection must be used exclusively for repairs, maintenance, and improvements to the state highway system.

HISTORY: 1995 Act No. 136, Section 2; 1997 Act No. 117, Section 1; 1997 Act No. 155, Part II, Section 50A; 1997 Act No. 155, Part II, Section 51A; 2002 Act No. 253, Section 4, eff May 14, 2002; 2002 Act No. 293, Section 1, eff June 3, 2002; 2004 Act No. 215, Section 1, eff April 27, 2004; 2017 Act No. 40 (H.3516), Sections 11, 13, eff July 1, 2017.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Editor’s Note

By a Ordinance No. 96‑5‑15, dated October 2, 1996, the Berkeley County Council has notified the Code Commissioner that it accepts the responsibility and authority for making the appointments provided in Act 159 of 1995 which were formerly made by the Berkeley County Legislative Delegation pursuant to the authority of this section.

By Resolution 96‑07, dated July 15, 1996, the Dorchester County Council has notified the Code Commissioner that it accepts the responsibility and authority for making the appointments provided in Act 512 of 1996 which were formerly made by the Dorchester County Legislative Delegation pursuant to the authority of this section.

By a resolution dated August 13, 1996, the Georgetown County Council has notified the Code Commissioner that it accepts the responsibility and authority for making the appointments provided in Act 515 of 1996 which were formerly made by the Georgetown County Legislative Delegation pursuant to the authority of this section.

2002 Act No. 253, Section 7, provides as follows:

“This act takes effect upon approval by the Governor and applies to all subject contracts entered into after that date.”

2003 Act No. 69, Section 3.BBB directed the Code Commissioner to substitute “user fee” for “tax” and “motor fuel subject to the user fee” for “taxable motor fuel” wherever appearing in Title 12, Chapter 28.

Effect of Amendment

2017 Act No. 40, Section 11, in (H), inserted the paragraph identifiers; in (H)(1), deleted “from the state highway fund” following “shall transfer”; and added (H)(2), relating to the distribution of the motor fuel user fee to counties and allowing for certain additional allocations.

2017 Act No. 40, Section 13, added (S), relating to increasing the amount of proceeds of the user fee on gasoline.

Library References

Taxation 3714.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2222.

Attorney General’s Opinions

Discussion of whether “C” funds may be used by a country transportation committee to pay for attorney’s services associated with projects. S.C. Op.Atty.Gen. (June 8, 2017) 2017 WL 2704750.

“C” funds may be used to improve the ingress and egress of fire department parking lots if furthering a countywide transportation plan, but the funds may not be used to pave fire department parking lots themselves. S.C. Op.Atty.Gen. (November 18, 2016) 2016 WL 7177426.

Discussion of a grant awarded by the Marlboro County Transportation Commission to the Lake Paul A. Wallace Authority to pay for parking lot resurfacing and fencing at a local state‑owned lake. S.C. Op.Atty.Gen. (May 24, 2016) 2016 WL 3355902.

“C” funds may be used for expenditures involving highway/railroad crossings, including bridge projects, at the discretion of the county transportation committee, provided that such are acceptable in the county or regional transportation plan adopted by the transportation committee and are designated for a public purpose. S.C. Op.Atty.Gen. (June 19, 2012) 2012 WL 2484919.

The simultaneous occupation of the positions of member of the Beaufort County Transportation Committee and member of the State Board for Technical and Comprehensive Education would constitute dual office holding under the South Carolina Constitution. S.C. Op.Atty.Gen. (July 26, 2002) 2002 WL 1925759.

The county legislative delegation possesses the legal authority under the statute to appoint the members of the transportation committee. S.C. Op.Atty.Gen. (Oct. 9, 2000) 2000 WL 1803623.

Discussion of term limits for members of the Beaufort County Transportation Committee. S.C. Op.Atty.Gen. (Aug. 21, 2000) 2000 WL 1347166.

Discussion of whether members of the Horry County Transportation Committee may be compensated for out‑of‑pocket expenses and special meeting expenses. S.C. Op.Atty.Gen. (Oct. 21, 1998) 1998 WL 940290.

“C” funds may be used to construct roads within an industrial park, as such is for a public purpose. S.C. Op.Atty.Gen. (Aug. 31, 1998) 1998 WL 746209.

If a member of the Dorchester County Transportation Committee were to serve simultaneously on the Summerville Town Council, such service would most likely violate the dual office holding prohibitions of the State Constitution. S.C. Op.Atty.Gen. (April 2, 1998) 1998 WL 261409.

Discussion of a number of questions regarding the Spartanburg County Transportation Committee and the county’s expenditure of the gasoline tax. S.C. Op.Atty.Gen. (May 13, 1997) 1997 WL 323766.

If the York County Council does not have the authority to expend “C” funds, they do not have the authority to seek the return of these funds from the municipalities. S.C. Op.Atty.Gen. (March 10, 1997) 1997 WL 208010.

Discussion of the powers and duties of the Beaufort County Legislative Delegation in constituting the Beaufort County Transportation Committee. S.C. Op.Atty.Gen. (Feb. 14, 1997) 1997 WL 205819.

A county council does not have the authority under Section 12‑28‑2740 to expend “C” funds. Furthermore, if a county council member were to serve simultaneously on the county transportation committee, that individual would most probably violate the dual office prohibitions of the state Constitution. S.C. Op.Atty.Gen. (Dec. 18, 1996) 1996 WL 766544, 1996 WL 766545.

Discussion of the fifteen‑dollar road‑use fee imposed by Horry County which is collected throughout the year with the payment of vehicle taxes, and the revenue raised goes into a road fund account which is divided among Horry County Council members to be spent within their respective council districts as they see fit. S.C. Op.Atty.Gen. (Jan. 23, 1995) 1995 WL 67625.

**SECTION 12‑28‑2750.** Distribution of remainder of gasoline and fuel user fees to State Highway Fund.

 Subject to the provisions of Section 12‑28‑2910, the remainder of the proceeds from the gasoline and fuel user fees levied and provided for in this chapter must be remitted to the State Highway Fund.

HISTORY: 1995 Act No. 136, Section 2.

Library References

Taxation 3714.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2222.

ARTICLE 29

Economic Development

**SECTION 12‑28‑2910.** South Carolina Coordinating Council for Economic Development; establishing project priorities; disposition of payments.

 (A) The first eighteen million dollars generated from three cents of the user fee levied in this chapter must be segregated in a separate account for economic development. This account may be expended only upon the authorization of the South Carolina Coordinating Council for Economic Development which shall establish project priorities. Funds devoted to the economic development account must remain in the account if not expended in the previous fiscal year. Annually, funds from the user fee must be deposited to replenish the account to the extent and in an amount necessary to maintain an uncommitted or an unobligated fund balance of eighteen million dollars but not to exceed eighteen million dollars for the ensuing fiscal year, or both. The council may spend no more than two hundred fifty thousand dollars, in the first year only, for a long‑term economic development plan which must be submitted to the General Assembly on completion of the plan. The council may spend not more than sixty thousand dollars annually for a state infrastructure model.

 (B) All interest earnings on the Economic Development Account must be credited to the State Highway Fund.

 (C) Notwithstanding another provision of law, the payments required pursuant to subsection (A) shall be:

 (1) in fiscal year 2005‑2006, twelve million dollars to the account for economic development and six million dollars credited to the Department of Transportation State Non‑Federal Aid Highway Fund; and

 (2) in fiscal year 2006‑2007, six million dollars to the account for economic development and twelve million dollars credited to the Department of Transportation State Non‑Federal Aid Highway Fund. All payments to the account for economic development shall cease at the end of fiscal year 2006‑2007.

 (D) Beginning in fiscal year 2007‑2008, and each succeeding fiscal year, the first eighteen million dollars generated from three cents of the user fee levied in this chapter must be credited to the Department of Transportation State Non‑Federal Aid Highway Fund.

 (E) From the amount set aside pursuant to subsection (A), the council is authorized to expend funds which were not obligated or committed as of July first of the current fiscal year only as necessary for the location or expansion of an industry or business facility in South Carolina. Eligible expenditures include water and sewer projects, road or rail construction and improvement projects, land acquisition, fiber‑optic cable, relocation of new employees, pollution‑control equipment, environmental testing and related due diligence reports, acquiring and improving real property, and site preparation. Site preparation is defined as surveying, environmental and geotechnical study and mitigation, clearing, filling, and grading. Relocation expenses constitute eligible expenditures only for those employees to whom the company is paying gross wages at least two times the lower of the per capita income for either the State or the county in which the project is located. The Coordinating Council annually shall prepare a detailed report for submission to the General Assembly by March fifteenth which itemizes the expenditures from the fund for the preceding calendar year. The report shall include an identification of the following information:

 (a) company name or confidential project number;

 (b) location of project;

 (c) amount of grant award; and

 (d) scope of grant award.

HISTORY: 1995 Act No. 136, Section 2; 1995 Act No. 145, Part II, Section 49C; 2005 Act No. 176, Section 3, eff June 14, 2005; 2010 Act No. 290, Section 29, eff January 1, 2011.

Library References

Taxation 3714.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2222.

**SECTION 12‑28‑2915.** Disposition of taxes collected.

 (A) Notwithstanding another provision of law, seven million dollars of the taxes collected pursuant to Article 1, Chapter 23, Title 12 must be placed in the account for economic development contained in Section 12‑28‑2910 for fiscal year 2005‑2006, fourteen million dollars for fiscal year 2006‑2007, and twenty million dollars for fiscal year 2007‑2008 and for each succeeding fiscal year thereafter.

 (B) Beginning in fiscal year 2007‑2008, all taxes collected pursuant to Article 1, Chapter 23, Title 12 in excess of twenty million dollars must be credited to the Department of Transportation which shall:

 (1) annually distribute fifty percent of the excess to the State Non‑Federal Aid Highway Fund; and

 (2) make an annual contribution from nonstate tax sources in an amount equivalent to fifty percent of the excess to the State Highway Account of the South Carolina State Transportation Infrastructure Bank.

HISTORY: 2005 Act No. 176, Section 4, eff June 14, 2005.

Library References

Taxation 3714.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2222.

**SECTION 12‑28‑2920.** Construction of toll roads.

 The department shall review projects for the possibility of constructing toll roads to defray the cost of these projects pursuant to the authority granted the department in Section 57‑5‑1330. No project may be funded by means of imposing a toll on the users of the project unless in conjunction with federal funds authorized for use on toll roads it is determined to be substantially feasible by the department. The funds derived from tolls must be:

 (1) credited to the State Highway Fund or retained and applied by the entity or entities developing the toll road pursuant to an agreement authorized under Section 57‑3‑200 for the purpose of funding the cost of construction, financing, operation, and maintenance of the toll project; or

 (2) used to service bonded indebtedness for highway transportation purposes incurred pursuant to Paragraph 9, Section 13, Article X of the South Carolina Constitution.

 Upon repayment of the cost of construction and financing, toll charges shall cease.

HISTORY: 1995 Act No. 136, Section 2; 1996 Act No. 458, Part II, Section 92B.

**SECTION 12‑28‑2930.** Allocation of state source highway funds for construction and renovation projects to firms owned and controlled by disadvantaged ethnic minorities or women.

 (A)(1) Of total state source highway funds, including revenues generated by Section 12‑28‑2740, expended in a fiscal year on highway, bridge, and building construction, and building renovation contracts, the Department of Transportation and counties shall ensure that not less than:

 (a) five percent are expended through direct contracts with estimated values of two hundred fifty thousand dollars or less with small business concerns owned and controlled by socially and economically disadvantaged ethnic minorities (MBEs);

 (b) five percent are expended through direct contracts with estimated values of two hundred fifty thousand dollars or less with firms owned and controlled by disadvantaged females (WBEs).

 (2) The two hundred fifty thousand dollars value limits may be raised in the discretion of the department as MBEs/WBEs are able to provide bondability.

 (B) The department shall certify eligible firms under this section and shall give at least thirty days’ notice to certified firms of contracts to be let. The department shall take into consideration the location and availability of MBE or WBE firms in the State when designating projects to be set aside. No certified MBE or WBE may participate after June 30, 1999, or nine years from the date of the firm’s first contract, whichever is later, if that firm performed at least three million dollars in highway contracts for four consecutive years while certified as a WBE or MBE. Firms performing less than three million dollars in highway contracts for four consecutive years may be recertified for additional five‑year periods based upon recertification reviews by the department.

 (C) To achieve the set‑asides set forth in subsection (A), the department shall advertise a number of highway construction projects at each regularly scheduled highway letting to be bid exclusively by MBEs and WBEs. The total annual value of those projects awarded must equal at least ten percent of total state source highway funds expended in each fiscal year, or otherwise documented as described in subsection (D). Projects must be awarded when the lowest responsive and responsible bidder submits a bid within ten percent of the official engineer’s estimate. If the lowest responsive bid exceeds the engineer’s estimate by more than ten percent, the department may enter into negotiation with the low bidder making reasonable changes in the plans and specifications as necessary to bring the contract price within the ten percent range. If the low bidder agrees to the changes and the revised contract price, the contract must be awarded to the low bidder at the revised price. If the low bidder can show just cause for his bid exceeding the ten percent range, the department may award the contract without making any changes in the plans and specifications or the contract price. If the department fails to award any advertised project, that project may be readvertised through the normal bid process and must not be readvertised for the purpose of achieving the set‑asides.

 (D) If no MBE or WBE firms certified pursuant to this section are available to perform a contract, the department shall verify and record this fact, and the verification must be preserved in department records.

 (E) To facilitate implementation of this section, the department may waive bonding requirements for contracts let pursuant to this section with estimated construction costs not exceeding two hundred fifty thousand dollars a contract, and any contract set aside and awarded to any MBE or WBE contractor without bonding shall provide expressly that termination of the contract for default of the contractor renders the contractor ineligible for any further department nonbonded contracts for a minimum period of two years from the date of the notice. The department shall act as bonding company when bonding requirements have been waived. Any claims brought by subcontractors or suppliers in connection with nonbonded projects must be heard by the Department Claims Committee and all legitimate claims must be paid by the department. The committee shall take into account circumstances such as unsettled payments and disputes with the department or other circumstances that are beyond the MBE/WBEs control. Claims resulting in monetary settlements shall render the MBE/WBEs ineligible for any further department nonbonded projects until the MBE/WBE has reimbursed or has made acceptable arrangements to reimburse the department for the amount due as a result of the settlement.

 (F) In awarding any contract pursuant to this section, preference must be given to an otherwise eligible South Carolina contractor submitting a responsible bid not exceeding an otherwise eligible out‑of‑state contractor’s low bid by two and one‑half percent.

 (G) The department shall establish written guidelines to be used in the selection and design of projects awarded under this section. Those guidelines shall outline the types of projects best suited for this program and other related criteria.

 (H) When a MBE or WBE receives a contract, the department shall furnish a letter, upon request, stating the dollar value and duration of, and other information about the contract, which may be used by the MBE or WBE in negotiating lines of credit with lending institutions.

 (I) The department shall issue an annual report listing all contracts awarded pursuant to this section. That report must also include a listing of all contracts and subcontracts awarded pursuant to Section 106(C) of the Federal Surface Transportation Act of 1987 (STAA‑1987; P.L. 100‑17, Section 106(c)). The listings must be both chronological and by name of participating firms. Entries must include file numbers, locations, and dollar amounts. The report must also contain information relating to canceled contracts and subcontracts, subcontractor substitutions, and final payments to MBE/WBEs.

 (J) Any MBE or WBE acting as a prime contractor shall perform at least thirty percent of the work with his own forces. If thirty percent of the work is performed with his own forces, the total amount of the contract is counted toward the MBE/WBE set‑asides. If less than thirty percent is performed by the MBE/WBE, then only that portion performed by the MBE/WBE is counted toward the set‑asides.

 (K) The department shall make available technical assistance for MBEs and WBEs for not less than three hundred thousand dollars. Any of these funds awarded to small consulting firms owned and controlled by MBEs or WBEs may count toward the set‑asides established in subsection (A) of this section. The selected firms must be South Carolina based and experienced in assisting with the development of minority firms.

 (L) Technical assistance provided under subsection (K) must include written and verbal instruction on competitive bidding, management techniques, and general business operations. Firms certified under this section must be represented by a company officer in at least twenty hours of continuing education a year in order to remain certified. The department shall implement a system that will designate a lead engineer to work with MBE/WBEs. This engineer shall work with the office of compliance, the supportive services contractor, and with the department’s engineers to provide early technical assistance to MBE/WBEs with contracts in each highway district. The support must include professional and technical assistance aimed toward meeting the standards, the specifications, the timing, quality, and other requirements of their contracts. The department also shall endeavor to utilize the expertise of established highway, bridge, and building contractors when providing technical and support services.

 (M) Any contracts awarded through the normal bid process to certified MBEs or WBEs may count toward the set‑asides. Subcontracts entered into between prime contractors and certified MBE/WBEs without regard to these provisions may be counted toward the set‑asides outlined in subsection (A) of this section if these subcontracts are verified through the department records.

 (N) If any part or provision of this section is declared to be unconstitutional or unenforceable by a court of competent jurisdiction of this State, the court’s decision, nevertheless, has no effect on the constitutionality, validity, and enforceability of the other parts and provisions of this section which are considered severable.

 (O) Within one hundred twenty days of the effective date of this section the department shall promulgate and implement regulations to administer the provisions of this section.

HISTORY: 1995 Act No. 136, Section 2.

Cross References

Disadvantaged Business Enterprises Program regulations, see S.C. Code of Regulations R. 63‑700 et seq.

Transportation Infrastructure Bank, qualified projects, expenditure of loan proceeds, see Section 11‑43‑190.

Library References

Highways 113(1).

Westlaw Topic No. 200.

C.J.S. Highways Section 179.

**SECTION 12‑28‑2940.** Exemption from appraisal provisions.

 Acquisitions by the Department of Transportation under the “C” Fund program are exempt from the requirements of all appraisal provisions of Title 28, Chapter 2 (Sections 28‑2‑10 et seq.), and Sections 1‑11‑110, 3‑5‑50, 3‑5‑100, 3‑5‑330, 4‑17‑20, 5‑27‑150, 5‑31‑420, 5‑31‑430, 5‑31‑440, 5‑31‑610, 5‑35‑10 , 6‑11‑130, 6‑23‑290, 13‑1‑350, 13‑11‑80, 24‑1‑230, 28‑3‑20, 28‑3‑30, 28‑3‑140, 28‑3‑460, 46‑19‑130, 48‑11‑110, 48‑15‑30, 48‑15‑50, 48‑17‑30, 48‑17‑50, 49‑17‑1050, 49‑19‑1060, 49‑19‑1440, 50‑13‑1920, 50‑19‑1320, 51‑13‑780, 54‑3‑150, 55‑9‑80, 55‑11‑10, 57‑3‑700, 57‑5‑370, 57‑5‑380, 57‑21‑200, 57‑25‑190, 57‑25‑470, 57‑25‑680, 57‑27‑70, 58‑9‑2030, 58‑15‑410, 58‑17‑1200, 13‑1‑1330, 58‑27‑130, 58‑31‑50, 59‑19‑200, 59‑105‑40, 59‑117‑70, 59‑123‑90.

HISTORY: 2000 Act No. 399, Section 3(P)(2), eff August 17, 2000.