

*For: Monday, **January 12, 2015**, City Council Meeting*

Advance Packet Information

Dated: 1/5/2015

Included in this packet is documentation to support the following Agenda item:

ORDINANCES

1. Ordinance adding Chapter 3.25, Motor Vehicle Fuel Sales Tax to Brookings Municipal Code Title 3, Revenue and Finance. [City Manager, pg. 2]
 - a. Ordinance 15-O-742 [pg. 4]
 - b. Refund request sample [pg. 13]
 - c. ORS excerpts [pg. 14]

*Obtain Public Comment Forms and view the agenda and packet information on-line at www.brookings.or.us, or at City Hall. Return completed Public Comment Forms to the City Recorder before the start of meeting or during regular business hours.


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CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: January 12, 2015

Originating Dept: City Manager



Signature (submitted by)

City Manager Approval

Subject: Fuel Tax Ordinance

Recommended Motion: Adopt Ordinance 15-O-742, adding Chapter 3.25, Motor Vehicle Fuel Sales Tax to Brookings Municipal Code Title 3, Revenue and Finance, to be enacted on July 1, 2015, only upon voter approval of the City's Local Motor Vehicle Fuel Sales Tax Measure to be place on the May 19, 2015 Primary Election Ballot.

Financial Impact:

This ordinance would enact the administrative procedures for the proposed \$0.4 cent per gallon fuel tax measure which is on the May 2015 ballot.

Background/Discussion:

The City Council has placed a local fuel tax measure on the May, 2015, ballot. If approved, the City will collect a four-cent-per-gallon tax on gasoline sold within the City. The ballot measure does not include detail on how the tax will be collected or how, for example, the owners of commercial vehicles and boats, can secure refunds for the amount of tax paid. The purpose of the tax is to generate revenue for road maintenance.

The proposed ordinance goes into detail concerning how the tax is to be collected and administered.

The proposed ordinance provides that persons purchasing fuel and paying the tax can obtain a refund of 80 per cent of the amount of tax paid if the fuel is used for purposes as outlined in Oregon Revised Statutes 319.280-319.330. Those eligible for refunds under the aforementioned sections include those who have paid the tax on fuel sold to operate:

1. Stationary gas engines or tractors.
2. Motor boats, if used for commercial purposes.
3. Small engines, such as lawn mowers and chain saws.
4. Power take off units on delivery trucks.
5. Vehicles used on private property/roads or state/federal property/roads for the removal of forest products.
6. Vehicles or equipment used in farming operations.
7. Aircraft.

The proposed ordinance also provides an 80 per cent exemption for commercial trucking operators operating vehicles with a gross weight over 26,000 pounds. These are vehicles that are subject to the State "Weight-Mile Tax." In earlier meetings, the City Council majority had

indicated a desire to provide a partial exemption for commercial carriers. This provision of the ordinance was taken from the Eugene Municipal Code.

The fuel vendor would need to issue a receipt for fuel sold for the aforementioned purposes and the fuel purchaser would need to apply for a refund. As the fuel tax is typically incorporated into the pump price, it is not practical to offer an exemption from paying the tax at the pump, which is why all fuel taxing entities have enacted a refund procedure. Most cities that have enacted a local fuel tax have contracted with ODOT to administer the tax. The City Staff has not fully evaluated this alternative and the proposed ordinance authorizes the City Manager to make this determination.

The Ordinance has been crafted with an effective date to coincide with the approval of the local fuel tax measure appearing on the May 2015 ballot. It also provides that the System Replacement Fee currently collected from City water/sewer utility customers would be repealed if the fuel tax measure is approved.

Attachment(s):

- a. Ordinance 15-O-742.
- b. Sample refund request; City of Eugene.
- c. ORS 319.280, 290, 300, 320, 330.

IN AND FOR THE CITY OF BROOKINGS
STATE OF OREGON
ORDINANCE 15-O-742

IN THE MATTER OF ORDINANCE 15-O-742, AN ORDINANCE ADDING CHAPTER 3.25, MOTOR VEHICLE FUEL SALES TAX TO BROOKINGS MUNICIPAL CODE TITLE 3, REVENUE AND FINANCE TO BE ENACTED ON JULY 1, 2015, ONLY UPON VOTER APPROVAL OF THE CITY'S LOCAL MOTOR VEHICLE FUEL SALES TAX MEASURE TO BE PLACED ON THE MAY 19, 2015 PRIMARY ELECTION BALLOT.

Sections:

- Section 1. Ordinance identified.
- Section 2. Add Chapter 3.25, Motor Vehicle Fuel Sales Tax

The City of Brookings ordains as follows:

Section 1. Ordinance Identified. This ordinance adds Chapter 3.25, Motor Vehicle Fuel Sales Tax to Brookings Municipal Code Title 3, Revenue and Finance to be enacted on July 1, 2015, only upon voter approval of the City's Local Motor Vehicle Fuels Sales Measure to be placed on the May 19, 2015 Primary Election ballot.

Section 2. Adds Chapter 3.25: Chapter 3.25, Motor Vehicles Fuel Sales Tax, is amended to read as follows:

Chapter 3.25
Motor Vehicle Fuel Sales Tax

- 3.25.010 Purpose
- 3.25.020 Definitions
- 3.25.030 Tax Imposed
- 3.25.040 Amount and Payment
- 3.25.050 Permit Requirements
- 3.25.060 Permit Applications and Issuance
- 3.25.070 Failure to Secure Permit
- 3.25.060 Revocation of Permit
- 3.25.090 Cancellation of Permit
- 3.25.100 Remedies Cumulative
- 3.25.110 Payment of Tax and Delinquency
- 3.25.120 Monthly Statement of Dealer
- 3.25.130 Failure to File Monthly Statements
- 3.25.140 Billing Purchasers
- 3.25.150 Failure to Provide Invoice or Delivery Tag
- 3.25.160 Transporting Motor Vehicle Fuel in Bulk
- 3.25.170 Exemption of Export Fuel
- 3.25.180 Sales to Armed Forces Exempted
- 3.25.190 Fuel in Vehicles Coming into City Not Taxed
- 3.25.200 Fuel Sold or Delivered to Dealers
- 3.25.210 Refunds
- 3.25.220 Examinations and Investigations

- 3.25.230 Limitation on Credit or Refund of Overpayment and on Assessment of Additional Tax
- 3.25.240 Examining Books and Accounts of Carrier of Motor Vehicle Fuel
- 3.25.250 Records to be Kept by Dealers
- 3.25.260 Records to be Kept Three Years
- 3.25.270 Use of Tax Revenues
- 3.25.280 Street System Replacement Fee
- 3.25.290 Effective Date and Expiration of Fuel Tax

3.25.010 Purpose

The purpose of the motor vehicle fuel tax is to raise revenues necessary for the construction, reconstruction, improvement, repair, maintenance, operation and use of the public streets system in the City. The City's annual revenue target from the fuel tax is \$300,000.00 adjusted annually by the Engineering News Record Construction Cost Index for the preceding May to May, twelve (12) month period. If the fuel tax revenue exceeds the annual target, then the City Council shall reduce the amount of the tax for the next year.

3.25.020 Definitions

As used in this chapter, the following definitions shall apply:

- A. "City" means the City of Brookings, Oregon.
- B. "Dealer" means any person who:
 - 1. Imports or causes to be imported motor vehicle fuel for sale, use or distribution in the city, but "dealer" does not include any person who imports into the city motor vehicle fuel in quantities of 500 gallons or less purchased from a supplier who is licensed as a dealer hereunder and who assumes liability for the payment of the applicable motor vehicle fuel tax to the city; or
 - 2. Produces, refines, manufactures or compounds motor vehicle fuels in the city for use, distribution or sale in the city; or
 - 3. Acquires in the city for sale, use or distribution in the city motor vehicle fuels with respect to which there has been no license tax previously incurred.
- C. "Distribution" means, in addition to its ordinary meaning, the delivery of motor vehicle fuel by a dealer to any service station or into any tank, storage facility or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel is withdrawn directly for sale or for delivery into the fuel tanks of motor vehicles whether or not the service station, tank or storage facility is owned, operated or controlled by the dealer.
- D. "Highway" means every way, thoroughfare, and place of whatever nature, open for use of the public for the purpose of vehicular travel.
- E. "Motor vehicle" means all vehicles, engines or machines, movable or immovable, operated or propelled by the use of motor vehicle fuel.
- F. "Motor vehicle fuel" means and includes diesel and gasoline and any other flammable or combustible gas or liquid, by whatever name such as diesel and gasoline, gas or liquid is known or sold, usable as fuel for the operation of motor vehicles, except gas or liquid, the chief use of which, as determined by the tax administrator, is for purposes other than the propulsion of motor vehicles upon the highways.
- G. "Person" means and includes every natural person, association, firm partnership, corporation, joint venture or other business entity.

- H. "Service station" means and includes any place operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.
- I. "Tax administrator" means the city manager, the city manager's designee, or any person or entity with whom the city manager contracts to perform those duties.
- J. "Weight receipt" means a receipt issued by the Oregon Department of Transportation, stating the combined weight of each self-propelled or motor-driven vehicle.

3.25.030 Tax Imposed

A motor vehicle fuel tax is hereby imposed on every dealer. The tax imposed shall be paid to the tax administrator. The tax administrator is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection and administration of the motor vehicle fuel tax, including all powers specified in ORS 319.010 to 319.430.

3.25.040 Amount and Payment

In addition to any fees or taxes otherwise provided for by law, every dealer engaging in his own name, or in the name of others, or in the name of his representatives or agents with the City, in the sale, use of distribution of motor vehicle fuel, shall:

- A. Not later than the 25th day of each calendar month, render a statement to the tax administrator or duly authorized agent of all motor vehicle fuel sold, used or distributed by him/her in the city as well as all such fuel sold, used or distributed in the city by a purchaser thereof upon which sale, use or distribution the dealer has assumed liability for the applicable motor vehicle fuel tax during the preceding calendar month.
- B. Pay a motor vehicle fuel tax computed on the basis of four cents (\$0.04) per gallon of such motor vehicle fuel so sold, used or distributed as shown by such statement in the manner and within the time provided in this chapter.

3.25.050 Permit Requirements

No dealer shall sell, use or distribute any motor vehicle fuel until he/she has secured a dealer's permit as required herein.

3.25.060 Permit Applications and Issuance

- A. Every person, before becoming a dealer in motor vehicle fuel in the city, must file an application with the tax administrator for a permit authorizing such person to engage in business as a dealer.
- B. Applications for the permit must be made on forms prescribed, prepare and furnished by the tax administrator.
- C. The applications must be accompanied by a duly acknowledged certificate containing:
 - 1. The business name under which the dealer is transacting business.
 - 2. The address of the applicant's principal place of business and location of distributing stations in the city.
 - 3. The name and address of the managing agent, the names and addresses of the several persons constituting the firm or partnership and, if a corporation, the corporate name under which it is authorized to transact business and the names and addresses of its principal officers and registered agent.
- D. If an application for a motor vehicle dealer's permit is complete and has been accepted for filing, the tax administrator shall issue to the dealer a permit in such form as the tax administrator may

prescribe to transact business in the city. The permit is not assignable and is valid only for the dealer in whose name it is issued.

- E. The tax administrator shall keep and file all applications with an alphabetical index thereof, together with a record of all permitted dealers.

3.25.070 Failure to Secure Permit

- A. If any dealer sells, distributes or uses any motor vehicle fuel without first filing the certificate and securing the permit required by this chapter, the motor vehicle fuel tax shall immediately be due and payable on account of all motor vehicle fuel so sold, distributed or used.
- B. The tax administrator shall proceed forthwith to determine, from as many available sources as the tax administrator determines reasonable, the amount of tax due, and shall assess the tax in the amount found due, together with a penalty of 100% of the tax, and shall make a certificate of such assessment and penalty. In any suit or proceeding to collect such tax or penalty or both, the certificate shall be prima facie evidence that the dealer therein named is indebted to the city in the amount of the tax and penalty stated.
- C. Any tax or penalty so assessed may be collected in the manner prescribed in 3.25.110 with reference to delinquency in payment of the tax or by action at law.
- D. In the event any suit or action is instituted to enforce this section, if the city is the prevailing party, the city shall be entitled to recover from the person sued reasonable attorney's fees at trial or upon appeal of such suit or action, in addition to other sums provided by law.

3.25.080 Revocation of Permit

The tax administrator may revoke the permit of any dealer who fails to comply with any provision of this chapter. The tax administrator shall mail by certified mail addressed to such dealer at his last known address appearing on the files of the tax administrator, a notice of intention to revoke the permit. The notice shall give the reason for the revocation. The revocation shall become effective without further notice if within 10 days from the mailing of the notice the dealer has not made good its default or delinquency.

3.25.090 Cancellation of Permit

- A. The tax administrator may, upon written request of a dealer, cancel a permit issued to that dealer. The tax administrator shall, upon approving the dealer's request for cancellation, set a date not later than 30 days after receipt of the written request, after which the permit shall not longer be effective.
- B. The tax administrator may, after 30 days' notice has been mailed to the last known address of the dealer, cancel the permit of dealer upon finding that the dealer is no longer engaged in the business of a dealer.

3.25.100 Remedies Cumulative

Except as otherwise provide in Sections 3.25.110 and 3.25.130, the remedies provided in Sections 3.25.070, 3.25.080 and 3.25.090, are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this code.

3.25.110 Payment of Tax and Delinquency

- A. The motor vehicle fuel tax imposed by Sections 3.25.030 and 3.25.040 shall be paid to the tax administrator on or before the 25th day of each month.

- B. Except as provided in subsections (C) and (E) of this section, if payment of the motor vehicle fuel tax is not paid as required by subsection (A) of this section, a penalty of one percent of such motor vehicle fuel tax shall be assessed and be immediately due and payable.
- C. Except as provided in subsection (E) of this section, if the payment of the tax and penalty, if any, is not made on or before the 1st day of the next month following that month in which payment is due, a further penalty of 10 percent (10%) of the tax shall be assessed. This penalty shall be in addition to the penalty provided for in subsection (B) of this section and shall be immediately due and payable.
- D. Penalties imposed by this section shall not apply if a penalty has been assessed and paid pursuant to Section 3.25.070. The tax administrator may for good cause shown waive any penalties assessed under this section.
- E. If any person fails to pay the motor vehicle fuel tax or any penalty provided for by this section, the tax and/or penalty shall be collected from that person for the use of the city. The tax administrator shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.
- F. In the event any suit or action is instituted to collect the motor vehicle fuel tax or any penalty provided for by this section, if the city is the prevailing party, then the City shall be entitled to recover from the person sued reasonable attorney's fees at trial or upon appeal of such suit or action, in addition to all other sums provided by law.

3.25.120 Monthly Statement of Dealer

Every dealer in motor vehicle fuel shall provide to the tax administrator on or before the 25th day of each month, on the forms prescribed, prepare and furnished by the tax administrator, a statement of the number of gallons of motor vehicle fuel sold, distributed or used by the dealer during the preceding calendar month. The statement shall be signed by the dealer or the dealer's agent.

3.25.130 Failure to File Monthly Statements

If a dealer fails to file any statement required by Section 3.25.120, the tax administrator shall proceed forthwith to determine from as many available sources as the tax administrator determines to be reasonable the amount of motor vehicle fuel sold, distributed or used by such dealer for the period unreported, and such determination shall in any proceeding be prima facie evidence of the amount of such fuel sold, distributed or used. The tax administrator shall immediately assess the dealer for the motor vehicle fuel tax upon the amount determined, adding thereto a penalty of ten percent (10%) of the tax. The penalty shall be cumulative to other penalties provided in this chapter.

3.25.140 Billing Purchasers

Dealers in motor vehicle fuel shall render bills to all purchasers of motor vehicle fuel. The bills shall separately state and describe the different products sold or shipped thereunder and shall be serially numbered except where other sales invoice controls acceptable to the tax administrator are maintained.

3.25.150 Failure to Provide Invoice or Delivery Tag

No person shall receive and accept motor vehicle fuel from any dealer, or pay for the same, or sell or offer the motor vehicle fuel for sale, unless the motor vehicle fuel is accompanied by an invoice or delivery tag showing the date upon which motor vehicle fuel was delivered, purchased or sold, and the name of the dealer.

3.25.160 Transporting Motor Vehicle Fuel in Bulk

Every person operating any conveyance for the purpose of hauling, transporting or delivering motor vehicle fuel in bulk shall, before entering upon the public highways of the city with such conveyance, have and possess during the entire time of hauling or transporting of such motor vehicle fuel, an invoice, bill of sale or other written statement showing the number of gallons, the true name and address of the seller or consignor, and the true name and address of the buyer or consignee, if any, of the same. The person hauling such motor vehicle fuel shall at the request of any officer authorized by law to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale or other statement.

3.25.170 Exemption of Export Fuel

- A. The motor vehicle fuel tax imposed by Sections 3.25.030 and 3.25.040 shall not be imposed on motor vehicle fuel that is:
 - 1. Exported from the city by a dealer; or
 - 2. Sold by a dealer for export by the purchaser to an area of areas outside the city in containers other than the fuel tank of a motor vehicle, but every dealer shall be required to report such exports and sales to the city in such detail as may be required.
- B. In support of any claimed exemption from motor vehicle fuel taxes claimed under this section other than in the case of stock transfers or deliveries in his/her own equipment, every dealer must execute and file with the tax administrator an export certificate in such form as shall be prescribed, prepared and furnished by the tax administrator, containing a statement, made by some person having actual knowledge of the fact of such exportation, that the motor vehicle fuel has been exported from the city, and giving such details with reference to such shipment as the tax administrator may require. The tax administrator may demand of any dealer such additional data as is deemed necessary in support of any such certificate, and failure to supply such data will constitute a waiver of all right to exemption claimed by virtue of such certificate. The tax administrator may, in a case where the tax administrator believes no useful purpose would be served by fling of an export certificate, waive the filing of the certificate.
- C. Any motor vehicle fuel carried from the city in the fuel tank of a motor vehicle shall not be considered as exported from the city.
- D. No person shall, through false statement, trick or device, or otherwise, obtain motor vehicle fuel for export as to which the city tax has not been paid and fail to export the same, or any portion thereof or cause the motor vehicle fuel or any portion thereof not to be exported, or diverted or cause to be delivered the motor vehicle fuel or any portion thereof, to be used, distributed or sold in the city and fail to notify the tax administrator and the dealer from whom the motor vehicle fuel was originally purchase of his/her act.
- E. No dealer or other person shall conspire with any person to withhold from export, or divert from export or to return motor vehicle fuel to the city for sale or use so as to avoid any of the fees imposed herein.
- F. In support of any exemption from taxes on account of sales of motor vehicle fuel in individual quantities of 500 gallons or less for export by the purchaser, the dealer shall retain in his/her files for at least three years an export certificate executed by the purchaser in such form and containing such information as I s prescribed by the tax administrator. This certificate shall be prima facie evidence of the exportation of the motor vehicle fuel to which it applies only if accepted by the dealer in good faith.

3.25.180 Sales to Armed Forces Exempted

The license tax imposed by Sections 3.25.030 And 3.25.040 shall not be imposed on any motor vehicle fuel sold to the Armed Forces of the United States for use in ships, aircraft or for export from the city; but every dealer shall be required to report such sales to the tax administrator in such detail as may be required. A certificate by an authorized officer of such Armed Forces shall be accepted by the dealer as sufficient proof that the sale is for the purpose specified in the certificate.

3.25.190 Fuel in Vehicles Coming into City Not Taxed

Any person coming into the city in a motor vehicle may transport in the fuel tank of such vehicle, motor vehicle fuel for his/her own use only and for the purpose of operating such motor vehicle without securing a permit or paying the tax provided in Sections 3.25.030 and 3.25.040, or complying with any of the provision imposed upon dealers herein, but if the motor vehicle fuel so brought into the city is removed from the fuel tank of the vehicle or used for any purpose other than the propulsion of the vehicle, the person importing fuel into the city shall be subject to all the provisions herein applying to dealers.

3.25.200 Fuel Sold or Delivered to Dealers

- A. A dealer selling or delivering motor vehicle fuel to dealers is not required to pay a motor vehicle tax thereon.
- B. The dealer in rendering monthly statements to the city as required by Sections 3.25.040 and 3.25.120 shall show separately the number of gallons of motor vehicle fuel sold or delivered to dealers.

3.25.210 Refunds

- A. Refunds of tax on motor vehicle fuel will be made pursuant to ORS 319.280 to 319.320. Claim forms for refunds may be obtained from the office of the tax administrator. Claims for refunds must be filed with the tax administrator within 15 months from the date of purchase or invoice.
- B. In addition, a holder of a weight receipt that certifies to the City that the motor vehicle fuel upon which the tax was imposed will be used only for fueling vehicles subject to the State of Oregon's weight-mile tax, may apply for a refund of 80% of the tax imposed by Sections 3.25.030 and 3.25.040 on motor vehicle fuel purchases.

3.25.220 Examinations and Investigations

The tax administrator, or duly authorized agent, may make any examination of accounts, records, stocks, facilities and equipment of dealers, service stations and other person engaged in storing, selling or distributing motor vehicle fuel or other petroleum product or products within the city, and such other investigations as it considers necessary in carrying out the provisions of this chapter. If the examination or investigations disclose that any reports of dealers or other persons theretofore filed with the tax administrator pursuant to the requirements herein, have shown incorrectly the amount of gallonage of motor vehicle fuel distributed or the tax accruing thereon, the tax administrator may make such changes in subsequent reports and payment of such dealers or other person, or may make such refunds, as may be necessary to correct the errors disclosed by its examination or investigations. The dealer shall reimburse the city for the reasonable costs of the examination or investigations if the action disclosed that the dealer paid 95% or less of the tax owing for the period of the examination or investigation. In the vent that such examination or investigation result in an assessment by and an additional payment due to the

city, such additional payment shall be subject to interest at the rate of 18% per year from the date the original tax payment was due.

3.25.230 Limitation on Credit or Refund of Overpayment and on Assessment of Additional Tax

- A. Except as otherwise provided in this chapter, any credit for erroneous overpayment of tax made by a dealer taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a dealer must be so taken or filed within three (3) years after the date on which the overpayment was made to the City.
- B. Except in the case of a fraudulent report or neglect to make a report, every notice of additional tax proposed to be assessed under this chapter shall be served on dealers within three (3) years from the date upon which such additional taxes become due, and shall be subject to penalty as provided in Section 3.25.110.

3.25.240 Examining Books and Accounts of Carrier of Motor Vehicle Fuel

The tax administrator, or duly authorize agent, may at any time during normal business hours examine the books and accounts of any carrier of motor vehicle fuel operating within the city for the purpose of enforcing the provisions of this chapter.

3.25.250 Records to be Kept by Dealers

Every dealer in motor vehicle fuel shall keep a record in such form as may be prescribed by the tax administrator of all purchases, receipts, sales and distribution of motor vehicle fuel. The records shall include copies of all invoices or bills of all such sales and shall at all times during the business hours of the day be subject to inspection by the tax administrator or authorized officers or agents of the tax administrator.

3.25.260 Records to be Kept Three Years

Every dealer shall maintain and keep, for a period of three (3) years, all records of motor vehicle fuel used, sold and distributed within the city by such dealer, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the tax administrator. In the vent such records are not kept within the State of Oregon, the dealer shall reimburse the tax administrator for all travel, lading, and related expenses incurred by the tax administrator in examining such records. The amount of such expenses shall be an additional tax imposed by Section 3.25.030.

3.25.270 Use of Tax Revenues

- A. For the purposes of this section, net revenue shall mean the revenue from the tax imposed by Sections 3.25.030 and 3.25.040 remaining after providing for the cost of administration and any refunds and credits authorized herein.
- B. The net revenue shall be used only for the maintenance, repair and rehabilitation of public highways, roads and streets within the city. Such work may include sidewalk, bicycle, storm drain and utility relocation associated with a street improvement project.
- C. Tax revenues shall be accounted for in the "Fuel Tax Fund" in the city's annual budget where revenues and expenditures shall be shown.
- D. The City Manager shall prepare an annual report to the City Council on the expenditure of fuel tax revenues.

3.25.280 Street System Replacement Fee

As of July 1, 2015, the current Street System Replacement Fee is repealed. No street system replacement fee shall be imposed while this fuel tax is in effect.

3.25.290 Effective Date and Expiration of Fuel Tax

The Motor Vehicle Fuel Sales Tax will become effective July 1, 2015 and will expire at 11:59 p.m. on June 30, 2018.

First Reading: _____ Passage: _____
Second Reading: _____ Effective Date: _____

Signed by me in authentication of its passage this _____, day of _____, 2015

ATTEST:

Mayor Ron Hedenskog

City Recorder Joyce Heffington

[Place on company letterhead]

[Date]

Tish Peterson
Public Works Financial Services Manager
City of Eugene
858 Pearl St. Suite 400
Eugene, OR 97401

Re: Request for refund certificate under Eugene Code 3.483(2)

Dear Ms. Peterson:

Pursuant to Eugene Code, 1971 section 3.483(2), I request that the City of Eugene issue a Refund Certificate for fuel dispensed at the following facility, which is owned by *[insert company name]*:

[Name of company]

[Mailing address]

[Fuel facility address if different than mailing address]

I certify that a refund will be requested only for motor vehicle fuel taxes paid on fuel purchased in bulk by *[insert company name]*, distributed at this bulk fueling facility, and used only in vehicles owned or operated by *[insert company name]* and that are subject to the Oregon weight-mile tax. The attached exhibit lists identification number, license plate, and declared weight for each vehicle for which bulk fuel will be purchased and identified for refund under EC 3.483(2).

I understand that any refunds must be claimed within 15 months of the date that the fuel was purchased and that refund applications may be filed no more frequently than quarterly and may not be filed to request funds less than \$25.

[Signature of company official]

2013 ORS § 319.280¹

Refunds generally

- (1) Any person who has paid any tax on motor vehicle fuel levied or directed to be paid by ORS 319.010 (Definitions for ORS 319.010 to 319.430) to 319.430 (Savings clause) either directly by the collection of the tax by the vendor from the consumer, or indirectly by adding the amount of the tax to the price of the fuel and paid by the consumer, shall be reimbursed and repaid the amount of such tax paid, except as provided in ORS 319.290 (Limitation on applications for refunds) to 319.330 (Refunds to purchasers of fuel for aircraft), if such person has:
- (a) Purchased and used such fuel for the purpose of operating or propelling a stationary gas engine, a tractor or a motor boat, if the motor boat is used for commercial purposes at any time during the period for which the refund is claimed;
 - (b) Purchased and used such fuel for cleaning or dyeing or other commercial use, except when used in motor vehicles operated upon any highway;
 - (c) Purchased and exported such fuel from this state, in containers other than fuel supply tanks of motor vehicles, provided that the person:
 - (A) Exports the motor vehicle fuel from this state to another state, territory or country, not including a federally recognized Indian reservation located wholly or partially within the borders of this state, where the motor vehicle fuel is unloaded; and
 - (B) Has a valid motor vehicle fuel dealers license or its equivalent issued by the state, territory or country to which the fuel is exported and where it is unloaded;
 - (d) Purchased and exported such fuel in the fuel supply tank of a motor vehicle and has used such fuel to operate the vehicle upon the highways of another state, if the user has paid to the other state a similar motor vehicle fuel tax on the same fuel, or has paid any other highway use tax the rate for which is increased because such fuel was not purchased in, and the tax thereon paid, to such state; or
 - (e) Purchased and used such fuel for small engines that are not used to propel motor vehicles on highways, including but not limited to those that power lawn mowers, leaf blowers, chain saws and similar implements.

- (2) When a motor vehicle with auxiliary equipment uses fuel and there is no auxiliary motor for such equipment or separate tank for such a motor, a refund may be claimed and allowed as provided by subsection (4) of this section, except as otherwise provided by this subsection, without the necessity of furnishing proof of the amount of fuel used in the operation of the auxiliary equipment. The person claiming the refund may present to the Department of Transportation a statement of the claim and be allowed a refund as follows:
- (a) For fuel used in pumping aircraft fuel, motor vehicle fuel, fuel or heating oils or other petroleum products by a power take-off unit on a delivery truck, refund shall be allowed claimant for tax paid on fuel purchased at the rate of three-fourths of one gallon for each 1,000 gallons of petroleum products delivered.
 - (b) For fuel used in operating a power take-off unit on a cement mixer truck or on a garbage truck, claimant shall be allowed a refund of 25 percent of the tax paid on all fuel used in such a truck.
- (3) When a person purchases and uses motor vehicle fuel in a vehicle equipped with a power take-off unit, a refund may be claimed for fuel used to operate the power take-off unit provided the vehicle is equipped with a metering device approved by the department and designed to operate only while the vehicle is stationary and the parking brake is engaged; the quantity of fuel measured by the metering device shall be presumed to be the quantity of fuel consumed by the operation of the power take-off unit.
- (4) Before any such refund may be granted, the person claiming such refund must present to the department a statement, accompanied by the original invoices, or reasonable facsimiles approved by the department, showing such purchases; provided that in lieu of original invoices or facsimiles, refunds submitted under subsection (1)(d) of this section shall be accompanied by information showing source of the fuel used and evidence of payment of tax to the state in which the fuel was used. The statement shall be made over the signature of the claimant, and shall state the total amount of such fuel for which the claimant is entitled to be reimbursed under subsection (1) of this section. The department upon the presentation of the statement and invoices or facsimiles, or other required documents, shall cause to be repaid to the claimant from the taxes collected on motor vehicle fuel such taxes so paid by the claimant. [Amended by 1959 c.186 §3; 1963 c.257 §2; 1969 c.465 §1; 1971 c.163 §1; 1973 c.135 §1; 1985 c.152 §1; 1997 c.364 §1; 2001 c.820 §4; 2003 c.56 §2]

Note: The amendments to 319.280 (Refunds generally) by section 19, chapter 781, Oregon Laws 2013, become operative July 1, 2015. See section 27, chapter 781, Oregon Laws 2013. The text that is operative on and after July 1, 2015, is set forth for the users convenience.

319.280 (Refunds generally). (1) Any person who has paid any tax on motor vehicle fuel levied or directed to be paid by ORS 319.010 (Definitions for ORS 319.010 to 319.430) to 319.430 (Savings clause) either directly by the collection of the tax by the vendor from the consumer, or indirectly by adding the amount of the tax to the price of the fuel and paid by the consumer, shall be reimbursed and repaid the amount of such tax paid, except as provided in ORS 319.290 (Limitation on applications for refunds) to 319.330 (Refunds to purchasers of fuel for aircraft), if such person has:

- (a) Purchased and used such fuel for the purpose of operating or propelling a stationary gas engine, a tractor or a motor boat, if the motor boat is used for commercial purposes at any time during the period for which the refund is claimed;
 - (b) Purchased and used such fuel for cleaning or dyeing or other commercial use, except when used in motor vehicles operated upon any highway;
 - (c) Purchased and exported such fuel from this state, in containers other than fuel supply tanks of motor vehicles, provided that the person:
 - (A) Exports the motor vehicle fuel from this state to another state, territory or country, not including a federally recognized Indian reservation located wholly or partially within the borders of this state, where the motor vehicle fuel is unloaded; and
 - (B) Has a valid motor vehicle fuel dealers license or its equivalent issued by the state, territory or country to which the fuel is exported and where it is unloaded;
 - (d) Purchased and exported such fuel in the fuel supply tank of a motor vehicle and has used such fuel to operate the vehicle upon the highways of another state, if the user has paid to the other state a similar motor vehicle fuel tax on the same fuel, or has paid any other highway use tax the rate for which is increased because such fuel was not purchased in, and the tax thereon paid, to such state;
 - (e) Purchased and used such fuel for small engines that are not used to propel motor vehicles on highways, including but not limited to those that power lawn mowers, leaf blowers, chain saws and similar implements;
or
 - (f) Purchased and used such fuel for operating a motor vehicle the metered use of which is subject to the per-mile road usage charge imposed under ORS 319.885 (Per-mile road usage charge), if the person has paid the charge.
- (2) When a motor vehicle with auxiliary equipment uses fuel and there is no auxiliary motor for such equipment or separate tank for such a motor, a

refund may be claimed and allowed as provided by subsection (5) of this section, except as otherwise provided by this subsection, without the necessity of furnishing proof of the amount of fuel used in the operation of the auxiliary equipment. The person claiming the refund may present to the Department of Transportation a statement of the claim and be allowed a refund as follows:

- (a)** For fuel used in pumping aircraft fuel, motor vehicle fuel, fuel or heating oils or other petroleum products by a power take-off unit on a delivery truck, refund shall be allowed claimant for tax paid on fuel purchased at the rate of three-fourths of one gallon for each 1,000 gallons of petroleum products delivered.
 - (b)** For fuel used in operating a power take-off unit on a cement mixer truck or on a garbage truck, claimant shall be allowed a refund of 25 percent of the tax paid on all fuel used in such a truck.
- (3)** When a person purchases and uses motor vehicle fuel in a vehicle equipped with a power take-off unit, a refund may be claimed for fuel used to operate the power take-off unit provided the vehicle is equipped with a metering device approved by the department and designed to operate only while the vehicle is stationary and the parking brake is engaged; the quantity of fuel measured by the metering device shall be presumed to be the quantity of fuel consumed by the operation of the power take-off unit.
- (4)**
 - (a)** The department may provide by rule that a refund under subsection (1)(f) of this section be granted as a credit against future per-mile road usage charges incurred by the person under ORS 319.885 (Per-mile road usage charge).
 - (b)**
 - (A)** The department may provide by rule for refund thresholds that are met by aggregating refund amounts or by estimating motor vehicle fuel tax refunds by vehicle type, at the option of the person claiming the refund.
 - (B)** If the person claiming the refund opts for an estimated refund based on vehicle type, the requirement under subsection (5) of this section that the person claiming the refund must present original invoices or reasonable facsimiles showing motor vehicle fuel purchases does not apply.
- (5)** Before any such refund may be granted, the person claiming such refund must present to the department a statement, accompanied by the original invoices, or reasonable facsimiles approved by the department, showing such purchases; provided that in lieu of original invoices or facsimiles, refunds submitted under subsection (1)(d) of this section shall be accompanied by information showing source of the fuel used and evidence of payment of tax to the state in which the fuel was used. The statement shall

be made over the signature of the claimant, and shall state the total amount of such fuel for which the claimant is entitled to be reimbursed under subsection (1) of this section. The department upon the presentation of the statement and invoices or facsimiles, or other required documents, shall cause to be repaid to the claimant from the taxes collected on motor vehicle fuel such taxes so paid by the claimant.

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Chapter 319

Atty. Gen. Opinions

Applicability to license tax of exemptions from fuel tax and refund of taxes paid, (1974) Vol 37, p 229

Related Statutes³

- 184.642
Department of Transportation Operating Fund
- 184.643
Transfer of certain fuel tax moneys to operating fund
- 319.020
Monthly statement by dealer
- 319.240
Exemption of export fuel
- 319.290
Limitation on applications for refunds
- 319.415
Estimate of tax on fuel used for boats
- 319.883
Definitions for ORS 319.883 to 319.945

¹ Legislative Counsel Committee, *CHAPTER 319—Motor Vehicle and Aircraft Fuel Taxes*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors319.html (2013) (last accessed Apr. 27, 2014).

2013 ORS § 319.290¹

Limitation on applications for refunds

Applications for refunds made under ORS 319.280 (Refunds generally), 319.320 (Refund of tax on fuel used in operation of vehicles over certain roads or private property) and 319.330 (Refunds to purchasers of fuel for aircraft) must be filed with the Department of Transportation before the expiration of 15 months from the date of purchase or invoice, except that unused fuel reported as an ending inventory on any claim may be included in a subsequent claim if presented not later than 15 months from the filing date of the claim which established the inventory. All applications for refunds based upon exportation of motor vehicle fuel from this state in the fuel supply tank of a motor vehicle must be filed with the department before the expiration of 15 months from the last day of the month in which the fuel was used, or before the expiration of 15 months from the date of an assessment for unpaid tax by the state in which the fuel was used. [Amended by 1955 c.730 §9; 1963 c.257 §3; 1979 c.344 §5]

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Atty. Gen. Opinions

Applicability to license tax of exemptions from fuel tax and refund of taxes paid, (1974) Vol 37, p 229

Related Statutes³

- 319.020
Monthly statement by dealer
- 319.280
Refunds generally
- 802.110
Procedures for financial administration

2013 ORS § 319.300¹

Seller to give invoice for each purchase made by person entitled to refund

- (1) When motor vehicle fuel is sold to a person who claims to be entitled to a refund of the tax imposed, the seller of the motor vehicle fuel shall make and deliver at the time of the sale separate invoices for each purchase in such form and containing any information prescribed by the Department of Transportation.
- (2) The invoices shall be legibly written and shall be void if any corrections or erasures appear on the face thereof. Any person who alters any part of any invoice that will tend to give to the claimant an illegal gain, shall have the entire claim invalidated. The seller shall for a period of at least 18 months retain copies of all invoices and make them available to the department upon request. [Amended by 1953 c.77 §2; 1955 c.730 §10; 1957 c.209 §7]

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¹ Legislative Counsel Committee, *CHAPTER 319—Motor Vehicle and Aircraft Fuel Taxes*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors319.html (2013) (last accessed Apr. 27, 2014).

² Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2013, Chapter 319*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ano319.html (2013) (last accessed Apr. 27, 2014).

³ OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

2013 ORS § 319.320¹

Refund of tax on fuel used in operation of vehicles over certain roads or private property

- (1) Upon compliance with subsection (2) or (3) of this section the Department of Transportation shall refund, in the manner provided in subsection (2) or (3) of this section, the tax on motor vehicle fuel that is used in the operation of a motor vehicle:
- (a) By any person on any road, thoroughfare or property in private ownership.
 - (b) By any person on any road, thoroughfare or property, other than a state highway, county road or city street, for the removal of forest products, as defined in ORS 321.005 (Definitions for ORS 321.005 to 321.185, 321.560 to 321.600 and 477.440 to 477.460), or the products of such forest products converted to a form other than logs at or near the harvesting site, or for the construction or maintenance of the road, thoroughfare or property, pursuant to a written agreement or permit authorizing the use, construction or maintenance of the road, thoroughfare or property, with or by:
 - (A) An agency of the United States;
 - (B) The State Board of Forestry;
 - (C) The State Forester; or
 - (D) A licensee of an agency named in subparagraph (A), (B) or (C) of this paragraph.
 - (c) By an agency of the United States or of this state or of any county, city or port of this state on any road, thoroughfare or property, other than a state highway, county road or city street.
 - (d) By any person on any county road for the removal of forest products, as defined in ORS 321.005 (Definitions for ORS 321.005 to 321.185, 321.560 to 321.600 and 477.440 to 477.460), or the products of such forest products converted to a form other than logs at or near the harvesting site, if:
 - (A)

The use of the county road is pursuant to a written agreement entered into with, or to a permit issued by, the State Board of Forestry, the State Forester or an agency of the United States, authorizing such person to use such road and requiring such person to pay for or to perform the construction or maintenance of the county road;

(B) The board, officer or agency that entered into the agreement or granted the permit, by contract with the county court or board of county commissioners, has assumed the responsibility for the construction or maintenance of such county road; and

(C) Copies of the agreements or permits required by subparagraphs (A) and (B) of this paragraph are filed with the department.

(2) Except for a farmer subject to subsection (3) of this section, the person or agency, as the case may be, who has paid any tax on such motor vehicle fuels levied or directed to be paid, as provided by ORS 319.010 (Definitions for ORS 319.010 to 319.430) to 319.430 (Savings clause), is entitled to claim a refund of the tax so paid on such fuels or for the proportionate part of tax paid on fuels used in the operation of such vehicles, when part of the operations are over such roads, thoroughfares or property. The proportionate part shall be based upon the number of miles traveled by any such vehicle over such roads, thoroughfares or property as compared to the total number of miles traveled by such vehicle. To be eligible to claim such refund the person or agency, as the case may be, shall first establish and maintain a complete record of the operations, miles traveled, gallons of fuel used and other information, in such form and in such detail as the department may prescribe and require, the source of supply of all fuels purchased or used, and the particular vehicles or equipment in which used. Whenever any such claim is received and approved by the department, it shall cause the refund of tax to be paid to the claimant in like manner as provided for paying of other refund claims.

(3) A farmer who has paid any tax on motor vehicle fuels levied or directed to be paid, as provided in ORS 319.010 (Definitions for ORS 319.010 to 319.430) to 319.430 (Savings clause), is entitled to claim a refund of the tax paid on such fuels used in farming operations in the operation of any motor vehicle on any road, thoroughfare or property in private ownership. To be eligible to claim such refund a farmer shall maintain in such form and in such detail as the department may prescribe and require, a record, supported by purchase invoices, of all such motor vehicle fuel purchased (including fuel purchased to operate any motor vehicle on the highway) and, for each and every motor vehicle operated on the highway, a record of all fuel used and of all miles traveled on the highway. Whenever any such claim is received and approved by the department, it shall cause the refund of tax to be paid to the claimant in like manner as provided for paying of other refund claims.

- (4) As used in subsections (2) and (3) of this section, farmer includes any person who manages or conducts a farm for the production of livestock or crops but does not include a person who manages or conducts a farm for the production of forest products, as defined in ORS 321.005 (Definitions for ORS 321.005 to 321.185, 321.560 to 321.600 and 477.440 to 477.460), or the products of such forest products converted to a form other than logs at or near the harvesting site, or of forest trees unless the production of such forest products or forest trees is only incidental to the primary purpose of the farming operation. [Amended by 1961 c.368 §1; 1965 c.64 §1; 1965 c.425 §2; 1967 c.367 §2; 1979 c.344 §6]

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Chapter 319

Atty. Gen. Opinions

Applicability to license tax of exemptions from fuel tax and refund of taxes paid, (1974) Vol 37, p 229

Related Statutes³

- 184.642
Department of Transportation Operating Fund
- 184.643
Transfer of certain fuel tax moneys to operating fund
- 319.020
Monthly statement by dealer
- 319.290
Limitation on applications for refunds

¹ Legislative Counsel Committee, *CHAPTER 319—Motor Vehicle and Aircraft Fuel Taxes*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors319.html (2013) (last accessed Apr. 27, 2014).

² Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2013, Chapter 319*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ano319.html (2013) (last accessed Apr. 27, 2014).

2013 ORS § 319.330¹

Refunds to purchasers of fuel for aircraft

- (1) Whenever any statement and invoices are presented to the Department of Transportation showing that motor vehicle fuel or aircraft fuel has been purchased and used in operating aircraft engines and upon which the full tax for motor vehicle fuel has been paid, the department shall refund the tax paid, but only after deducting from the tax paid nine cents for each gallon of such fuel so purchased and used, except that when such fuel is used in operating aircraft turbine engines (turbo-prop or jet) the deduction shall be one cent for each gallon. No deduction provided under this subsection shall be made on claims presented by the United States or on claims presented where a satisfactory showing has been made to the department that such aircraft fuel has been used solely in aircraft operations from a point within the State of Oregon directly to a point not within any state of the United States. The amount so deducted shall be paid on warrant of the Oregon Department of Administrative Services to the State Treasurer, who shall credit the amount to the State Aviation Account for the purpose of carrying out the provisions of the state aviation law. Moneys credited to the account under this section are continuously appropriated to the Oregon Department of Aviation.
- (2) If satisfactory evidence is presented to the Department of Transportation showing that aircraft fuel upon which the tax has been paid has been purchased and used solely in aircraft operations from a point within the State of Oregon directly to a point not within any state of the United States, the department shall refund the tax paid. [Amended by 1959 c.505 §6; 1973 c.575 §1; 1977 c.293 §2; 1999 c.935 §26; 1999 c.1037 §§2,4; 2005 c.755 §16]

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Chapter 319

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Applicability to license tax of exemptions from fuel tax and refund of taxes paid, (1974) Vol 37, p 229

Related Statutes³

- 319.280
Refunds generally
- 319.290
Limitation on applications for refunds
- 319.417
Estimate of tax on fuel used in aircraft

¹ Legislative Counsel Committee, *CHAPTER 319—Motor Vehicle and Aircraft Fuel Taxes*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors319.html (2013) (last accessed Apr. 27, 2014).

² Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2013, Chapter 319*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ano319.html (2013) (last accessed Apr. 27, 2014).

³ OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

Currency Information

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