

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

Ordinance No. 123

An Ordinance Imposing a Business License Fee on Motor Vehicle Fuel Dealers; Fixing Rates; Requiring Licenses; Imposing Penalties; and Providing for Administration, Enforcement and Collection of the Fee and Related Matters.

Multnomah County ordains as follows:

Section 1. Definitions.

As used in this ordinance, unless the context requires otherwise:

1. "County" means Multnomah County, Oregon.

2. "Division" means the Motor Vehicles Division of the Department of Transportation.

3. "Dealer" means any person who:

A. Imports or causes to be imported motor vehicle fuel for sale, use or distribution in, and after the same reaches the County, but "dealer" does not include any person who imports into the County 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 license fee to the County; or

B. Produces, refines, manufactures or compounds motor vehicle fuels in the County for use, distribution or

sale in the County; or

C. Acquires in the County for sale, use or distribution in the County motor vehicle fuels with respect to which there has been no license fee previously incurred.

4. "Distribution" means, in addition to its ordinary meaning, the delivery of motor vehicle fuel by a dealer or subdealer 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storage facility or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel is withdrawn directly for sale or for delivery into the fuel tanks of motor vehicles whether or not the service station, tank or storage facility is owned, operated or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 or subdealer.

5. "Highway" means every way, thoroughfare and place of whatever nature, open for use of the public for the purpose of vehicular travel.

6. "Motor vehicle" means all vehicles, engines or machines, movable or immovable, operated or propelled by the use of motor vehicle fuel.

7. "Motor vehicle fuel" means and includes gasoline and any other flammable or combustible gas or liquid, by whatever name such 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 division, is for purposes other than the propulsion of motor vehicles upon the highways of the State of Oregon. The term shall not include diesel fuel.

8. "Aircraft fuel" means any gasoline and any other flammable or combustible gas or liquid, by whatever name such gasoline, gas or liquid is known or sold, usable as fuel for the operation of aircraft, except gas or liquid, the chief use of which, as determined by the division, is for purposes other than the propulsion of aircraft.

9. "Person" includes every natural person, association, firm, partnership, corporation or the United States.

10. "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.

11. "Subdealer" means and include every person other than a dealer engaging in the business of handling motor vehicle fuel for sale and distribution both within and without the County.

Section 2. Fee Imposed.

A business license fee is hereby imposed on every dealer and subdealer. The fee imposed shall be paid monthly to the division, as agent for the County. The division is hereby designated the agent of the County for the purposes of administering the business license fee imposed by this ordinance and is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection and administration of the fee as it is authorized pursuant to ORS 319.010 to 319.430 with regard to the business license tax imposed therein.

Section 3. Amount and Payment.

1. Subject to subsections 2 and 3 of this section, in addition to any fees or taxes otherwise provided for by law, every dealer and subdealer engaging in his own name, or in the name of others, or in the name of his representatives or agents in the County, in the sale, use or distribution of motor vehicle fuel or withdrawal of motor vehicle fuel for sale, use or distribution within areas in the County within which the County has the power to tax the sale, use or distribution of motor vehicle fuel, shall:

A. No later than the 25th day of each calendar month, render a statement to the division of all motor vehicle fuel sold, used, distributed or so withdrawn by him in the County as well as all such fuel sold, used or distributed in the County by a purchaser thereof upon which sale, use or distribution the dealer is liable for the applicable license fee during the preceding calendar month.

B. Pay a license fee computed on the basis of one cent per gallon of such motor vehicle fuel, upon which no license fee has previously been paid or is otherwise due under this ordinance, so sold, used, distributed or withdrawn as shown by such statement in the manner and within the time provided in this ordinance.

2. In lieu of claiming refund of the fee paid as to motor vehicle fuel consumed by the daler or subdealer in nonhighway uses as provided in section 20, 21, and 24, or of any prior erroneous payment of license fee made to the County by the dealer or subdealer, the dealer or subdealer

may show such motor vehicle fuel as a credit or deduction on the monthly statement and payment of fee.

3. The license fee shall not be imposed wherever it is prohibited by the Constitution or laws of the United States or Oregon.

Section 4. License Requirements.

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

Section 5. License Applications and Issuance.

1. Every person, before becoming a dealer or subdealer in motor vehicle fuel in the County, shall make an application to the division for a license authorizing such person to engage in business as a dealer or subdealer.

2. Applications for the license must be made on forms prescribed, prepared and furnished by the division.

3. The applications shall be accompanied by a duly acknowledged certificate containing:

A. The business name under which the dealer or subdealer is transacting business within the County.

B. The place of business and location of distributing stations in the County.

C. 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.

4. The application for a motor vehicle fuel dealer's or subdealer's license having been accepted for filing, the division shall issue to the dealer or subdealer a license in such form as the division may prescribe to transact business in the County. The license so issued is not assignable, and is valid only for the dealer or subdealer in whose name issued.

5. The division shall keep and file all applications with an alphabetical index thereof, together with a record of all licensed dealers and subdealers.

Section 6. Failure to Secure License.

1. If any dealer or subdealer sells, distributes or uses any motor vehicle fuel without first filing the certificate and securing the license required by section 5, the license fee shall immediately be due and payable on account of all motor vehicle fuel so sold, distributed or used.

2. The division shall proceed forthwith to determine, from the best available sources, the amount of such fee, and it shall assess the fee in the amount found due, together with a penalty of 100 percent of the fee, and shall make its certificate of such assessment and penalty. In any suit or proceeding to collect such fee or penalty or both, the certificate is prima facie evidence that the dealer or subdealer therein named is indebted to the County in the

amount of the fee and penalty therein stated.

3. Any fee or penalty so assessed may be collected in the manner prescribed in section 10 with reference to delinquency in payment of the fee or by an action at law, which the division, through the Attorney General, shall commence and prosecute to final determination at the request of the division.

Section 7. Revocation of License.

The division shall revoke the license of any dealer or subdealer refusing or neglecting to comply with any provision of this ordinance. The division shall mail by registered mail addressed to such dealer or subdealer at his last known address appearing on the files of the division, a notice of intention to cancel. The notice shall give the reason for the cancellation. The cancellation shall become effective without further notice if within 10 days from the mailing of the notice the dealer or subdealer has not made good its default or delinquency.

Section 8. Cancellation of License.

1. The division may, upon written request of a dealer or subdealer, cancel any license issued to such dealer or subdealer, the cancellation to become effective 30 days from the date of receipt of the written request.

2. If the division ascertains and finds that the person to whom a license has been issued is no longer engaged in the business of a dealer or subdealer, the division may cancel the license of such dealer or subdealer upon investigation

after 30 days' notice has been mailed to the last known address of the dealer or subdealer.

Section 9. Remedies Cumulative.

Except as otherwise provided in sections 10 and 12, the remedies provided in sections 6, 7 and 8 are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this ordinance.

Section 10. Payment of Tax and Delinquency.

1. The license fee imposed by sections 2 and 3 shall be paid on or before the 25th day of each month to the division which, upon request, shall receipt the dealer or subdealer therefor.

2. Except as provided in subsection 4 of this section, to any license fee not paid as required by subsection 1 of this section there shall be added a penalty of one percent of such license fee.

3. Except as provided in subsection 4 of this section, if the fee and penalty required by subsection 2 of this section are not received on or before the close of business on the last day of the month in which the payment is due, a further penalty of 10 percent shall be paid in addition to the penalty provided for in subsection 2 of this section.

4. If the division determines that the delinquency was due to reasonable cause and without any intent to avoid payment, the penalties provided by subsection 2 and 3 of this section shall be waived. Penalties imposed by this section shall not apply when the penalty provided in section

6 has been assessed.

5. If any person fails to pay the license fee or any penalty provided for by this ordinance, the amounts thereof shall be collected from such person for the use of the County. The division, through the Attorney General, shall commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

6. No dealer who collects from any person the fee provided for herein, shall knowingly and wilfully fail to report and pay the same to the division as required herein.

Section 11. Monthly Statement of Dealer.

Every dealer or subdealer in motor vehicle fuel shall render to the division, on or before the 25th day of each month, on forms prescribed, prepared and furnished by the division, a signed statement of the number of gallons of motor vehicle fuel sold, distributed or used by him or them during the preceding calendar month. The statement shall be signed by one of the principal officers, or by an authorized agent in case of a corporation; or by the managing agent or owner in case of a firm or association. All statements filed with the division, as required in this section, are public records.

Section 12. Failure to File Monthly Statement.

If any dealer or subdealer, except one subject to section 6, fails to file the report required by section 11, the division shall proceed forthwith to determine from the best available source the amount of motor vehicle fuel sold,

distributed or used by such dealer or subdealer for the period unreported, and such determination shall be prima facie evidence of the amount of such fuel sold, distributed or used. The division immediately shall assess the license fee in the amount so determined, adding thereto a penalty of 10 percent for failure to report. The penalty shall be cumulative to other penalties provided in this ordinance. In any suit brought to enforce the rights of the County under this section, the certificate of the division showing the amount of fees, penalties and costs unpaid by any dealer or subdealer and that the same are due and unpaid to the County is prima facie evidence of the facts as shown.

Section 13. Billing Purchasers.

Bills shall be rendered to all purchasers of motor vehicle fuel by dealers or subdealers in motor vehicle fuel. The bills shall separately state and describe to the satisfaction of the division the different products shipped thereunder and shall be serially numbered except where other sales invoice controls acceptable to the division are maintained. The bills required hereunder may be the same as or incorporated in those required under ORS 319.210.

Section 14. Failure to Provide Invoice or Delivery Tag.

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

the dealer or subdealer in motor vehicle fuel.

Section 15. 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 County with such conveyance, have and possess during the entire time of his hauling or transporting 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 sheriff, deputy sheriff, constable, state police or other officer authorized by law to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale or other statement.

Section 16. Exemption of Export Fuel.

1. The license fee imposed by sections 2 and 3 shall not be imposed on motor vehicle fuel:

A. Exported from the County by a dealer or subdealer; or

B. Sold by a dealer or subdealer in individual quantities of 500 gallons or less for export by the purchaser to an area or areas outside the County in containers other than the fuel tank of a motor vehicle, but every dealer or subdealer shall be required to report such exports and sales to the division in such detail as may be required.

2. In support of any exemption from license fees claimed under this section other than in the case of stock transfers or deliveries in his own equipment, every dealer or subdealer must execute and file with the division an export certificate in such form as shall be prescribed, prepared and furnished by the division, 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 County, and giving such details with reference to such shipment as the division may require. The division may demand of any dealer or subdealer 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 division may, in a case where it believes no useful purpose would be served by filing of an export certificate, waive the certificate.

3. Any motor vehicle fuel carried from the County in the fuel tank of a motor vehicle shall not be considered as exported from the County, except that a refund of the fee may be paid on such fuel as provided in paragraph D of subsection 1 of section 20.

4. No person shall, through false statement, trick, or device, or otherwise, obtain motor vehicle fuel for export as to which the County fee 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 divert or cause to be diverted the motor vehicle fuel or any

portion thereof to be used, distributed or sold in the County and fail to notify the division and the dealer or subdealer from whom the motor vehicle fuel was originally purchased of his act.

5. No dealer, subdealer or other person shall conspire with any person to withhold from export, or divert from export or to return motor vehicle fuel to the County for sale or use so as to avoid any of the fees imposed herein.

6. In support of any exemption from fees 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 files for at least three years an export certificate executed by the purchaser in such form and containing such information as is prescribed by the division. 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.

Section 17. Sales to Armed Forces Exempted.

The license fee imposed by sections 2 and 3 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 County; but every dealer or subdealer shall be required to report such sales to the division 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.

Section 18. Fuel in Vehicles Coming Into County Not Taxed.

Any person coming into the County in a motor vehicle may transport in the fuel tank of such vehicle motor vehicle fuel for his own use only and for the purpose of operating such motor vehicle without securing a license or paying the fee provided in sections 2 and 3, or complying with any of the provisions imposed upon dealers herein, but if the motor vehicle fuel so brought into the County is removed from the fuel tank of the vehicle or used for any purpose other than the propulsion of the vehicle, the person so importing the fuel into the County shall be subject to all the provisions herein applying to dealers.

Section 19. Fuel Sold or Delivered to Dealers or Subdealers.

1. A dealer or subdealer selling or delivering motor vehicle fuel to dealers or subdealers is not required to pay a license fee thereon.

2. The dealer or subdealer in rendering monthly statements to the division as required by sections 3 and 11 shall show separately the number of gallons of motor vehicle fuel sold or delivered to dealers or subdealers.

Section 20. Refunds.

1. Any person who has paid any fees on motor vehicle fuel imposed or directed to be paid hereunder either directly by the collection of the fee by the vendor from the consumer, or indirectly by adding the amount of the fee to the price of the fuel and paid by the consumer, shall be reimbursed and repaid the amount of such fee paid by him, except as

provided in sections 21 and 24, if such person has:

A. Purchased and used such fuel for the purpose of operating or propelling stationary gas engines, tractors or motor boats; or

B. Purchased and used such fuel for cleaning or dyeing or other commercial use, except when used in motor vehicles operated upon any highway; or

C. Purchased and exported such fuel from the County, in containers other than fuel supply tanks of motor vehicles; or

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 fee or 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 fee or tax thereon paid, to such state.

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 division a statement of his 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 the fee 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 fee 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 division 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 division a statement accompanied by copies of the original invoices showing such purchases; provided that in lieu of such invoices, refunds submitted under paragraph D of subsection 1 of this section shall be accompanied by information showing source of fuel used and evidence of payment of fee or 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 he is entitled to be reimbursed under subsection 1 of this section. The division upon the presentation of the statement and invoices, or other required documents, shall cause to be repaid to the claimant from the fees collected on motor vehicle fuel such fees so paid by the claimant.

Section 21. Limitation on Applications for Refunds.

Applications for refunds made under section 20, 24, 25, 26, 27 and 28 must be filed with the division 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 division 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 fee or tax by the state in which the fuel was used.

Section 22. 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 fee 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 division.

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 division upon request.

3. The invoices required hereunder may be the same as or incorporated in those required under ORS 319.300.

Section 23. Claims for Refunds.

1. The division may require any person who makes claim for refund of fee on motor vehicle fuel to furnish a statement, under oath, giving his occupation, description of the machines or equipment in which the motor vehicle fuel was used, the place where used and such other information as the division may require.

2. The division may investigate claims and gather and compile such information in regard to the claims as it considers necessary to safeguard the County and prevent fraudulent practices in connection with fee refunds and evasions. The division may, in order to establish the validity of any claim, examine the books and records of the claimant for such purposes. The records shall be in such form and contain such information as the division may require. Failure of the claimant to maintain such records or to accede to the demand for such examination constitutes a

waiver of all rights to the refund claimed on account of the transaction questioned.

Section 24. Refund of Fee on Fuel Used in Operation of Vehicles Over Certain Roads or Private Property.

1. Except where a refund is authorized by sections 26 or 27, upon compliance with subsection 2 or 3 of this section the division shall refund, in the manner provided in subsection 2 or 3 of this section, the fee 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, 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:

- (1) An agency of the United States;
- (2) The State Board of Forestry;
- (3) The State Forester; or
- (4) A licensee of any agency named in subparagraph (1), (2), or (3) of this paragraph.

C. By an agency of the United States or of the State of Oregon or of any county, city or port of the State

of Oregon 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, or the products of such forest products converted to a form other than logs at or near the harvesting site, if:

(1) 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;

(2) 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

(3) Copies of the agreements or permits required by subparagraph (1) and (2) of this paragraph are filed with the division.

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 fee on such motor vehicle fuels imposed or directed to be paid, as provided herein, is entitled to claim a refund of the fee so paid on such fuels or for the proportionate part of the fee paid on fuels used in the operation of such vehicles, when part of the operations are over such road,

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 division 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 division, it shall cause the refund of fee to be paid to the claimant in like manner as provided for paying of other refund claims.

3. A farmer who has paid any fee on motor vehicle fuels imposed or directed to be paid, as provided herein, is entitled to claim a refund of the fee 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 division 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 division, it shall cause the refund of fee 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, 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.

Section 25. Refunds to Purchasers of Fuel for Aircraft.

Whenever any statement and invoices are presented to the division showing that motor vehicle fuel has been purchased and used in operating aircraft engines and upon which the fee on motor vehicle fuel has been paid, the division shall refund the fee paid.

Section 26. Refunds to Counties and Road Assessment Districts.

Any county or road assessment district formed under ORS 371.405 to 371.555 which buys and uses any motor vehicle fuel for the purpose of operating or propelling road maintainers, graders, tractors, trucks and other equipment used in the construction and maintenance of public highways and which has paid any fee on motor vehicle fuel imposed or

directed to be paid herein either directly by the collection of the fee by the vendor from the consumer, or indirectly by adding the amount of the fee to the price of the fuel and paid by the consumer, shall be reimbursed and repaid the amount of the fee paid by the county or road assessment district as provided by sections 20 to 25 if such machinery is used exclusively for the maintenance and construction of such public highways.

Section 27. Refunds to the State, Cities and Towns.

1. The State of Oregon and any incorporated city or town, by its proper officer or officers, may secure from the County a refund of any and all fee imposed and collected by the County on any motor vehicle fuel purchased and used by the state or such incorporated city or town.

2. The division may establish rules and regulations necessary to safeguard the County in the matter of the fee refunds authorized in this section. Noncompliance with any of such rules and regulations by the state or any incorporated city or town claiming refund under this section is grounds for refusal by the division to allow such claims.

3. The procedure for refund of fees provided by sections 20 to 25 shall apply insofar as applicable to claims for the refunds authorized by this section.

Section 28. Refund of Fee on Fuel Used in Transportation of Rural Free Delivery or Special Delivery Mail.

1. All fees collected by the County on the sale, use or distribution of any motor vehicle fuel used exclusively

in the transportation of rural free delivery mail or special delivery mail of the United States of America shall be refunded to the person paying the fee if the person is engaged solely and exclusively in the transportation of rural free delivery mail or special delivery mail of the United States of America.

2. Any person engaged solely and exclusively in the transportation of rural free delivery or special delivery mail of the United States of America, who buys any motor vehicle fuel and uses it exclusively in the transportation of rural free delivery mail or special delivery mail of the United States of America, and who has paid any fee on motor vehicle fuel, either directly by the collection of the fee by the vendor from the consumer or indirectly by adding the amount of the fee to the price of the fuel and paid by the consumer, shall be reimbursed and repaid the amount of the fee paid by him upon presenting to the division a statement accompanied by the original invoice showing the purchase. The statement shall be made over the signature of the claimant and shall state the total amount of fuel so purchased and used by the consumer for the transportation of rural free delivery mail or special delivery mail of the United States of America. The division, upon the presentation of the statement and the voucher, shall cause to be repaid to the consumer, from the fees collected on motor vehicle fuels, the fees so paid by the consumer on motor vehicle fuels so used.

Section 29. Examinations and Investigations.

The division, or its duly authorized agents, may make any examination of the accounts, records, stocks, facilities and equipment of dealers, subdealers, service stations and other persons engaged in storing, selling or distributing motor vehicle fuel or other petroleum product or products within this County, and such other investigations as it considers necessary in carrying out the provisions of this ordinance. If the examinations or investigations disclose that any reports of dealers, subdealers or other persons theretofore filed with the division pursuant to the requirements herein, have shown incorrectly the amount of gallonage of motor vehicle fuel distributed or the fee accruing thereon, the division may make such changes in subsequent reports and payments of such dealers, subdealers or other persons, or may make such refunds, as may be necessary to correct the errors disclosed by its examinations or investigations.

Section 30. Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Fee.

1. Except as otherwise provided in this ordinance, any credit for erroneous overpayment of fee made by a dealer or subdealer taken on a subsequent return or any claim for refund of fee erroneously overpaid filed by a dealer or subdealer must be so taken or filed within three years after the date on which the overpayment was made to the County.

2. Except in the case of a fraudulent report or neglect to make a report, every notice of additional fee proposed to

be assessed under this ordinance shall be served on dealers and subdealers within three years from the date upon which such additional fees become due.

Section 31. Examining Books and Accounts of Carrier of Motor Vehicle Fuel.

The division or its duly authorized agents may at any time during normal business hours examine the books and accounts of any carrier of motor vehicle fuel operating within the County for the purpose of checking shipments or use of motor vehicle fuel, detecting diversions thereof or evasion of fees in enforcing the provisions of this ordinance.

Section 32. Records to be Kept by Dealers.

Every dealer or subdealer in motor vehicle fuel shall keep a record in such form as may be prescribed by the division of all purchases, receipts, sales and distribution of motor 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 division or its deputies or other officers duly authorized by the division.

Section 33. Records to be Kept Three Years.

Every dealer and subdealer shall maintain and keep, for a period of three years, all records of motor vehicle fuel used, sold and distributed within the County by such dealer or subdealer, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the division. In the event such records are not kept within the

State of Oregon, the dealer or subdealer shall reimburse the division for all travel, lodging, and related expenses incurred by the division in examining such records. The amount of such expenses shall be an additional fee imposed hereunder.

Section 34. Use of Fee.

The fees collected hereunder, after deducting the costs of administration and collection, shall be used by the County solely for the purposes prescribed by the Oregon Constitution for the use of taxes upon motor vehicle fuel.

Section 35. Effective Date.

Subject to section 37, this ordinance shall take effect on January 1, 1977.

Section 36. Period of Effect.

This ordinance shall remain in effect for a period of three years following its effective date.

Section 37. Conditions for Taking Effect.

Notwithstanding anything in this ordinance to the contrary, this ordinance shall not become effective (1) if any state law is enacted between the date of enactment of this ordinance and January 1, 1977, which increases the state tax on the motor vehicle fuels subject to the tax imposed hereby and which provides for any portion of such increase to be allocated to the County; or (2) if any limitation under federal or state law is applicable to the price of motor vehicle fuels chargeable by dealers or subdealers and, as of January 1, 1977, prevents dealers from adding the tax imposed

hereby to the price charged by them for such fuels.

ADOPTED this 15th day of April, 1976, being the date of its second reading before the Board of County Commissioners of Multnomah County, Oregon.



BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

By *Donald S. Clark*
Chairman

APPROVED AS TO FORM:

GEORGE M. JOSEPH
County Counsel for
Multnomah County, Oregon

By *Martin B. Vidgoff*
Martin B. Vidgoff
Deputy County Counsel