

CHAPTER 351. OIL COMPANY FRANCHISE TAX

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Authority

The provisions of this Chapter 351 issued under 75 Pa.C.S. § 9506(a), unless otherwise noted.

Source

The provisions of this Chapter 351 adopted May 27, 1983, effective May 28, 1983, 13 Pa.B. 1781, unless otherwise noted.

§ 351.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—75 Pa.C.S. §§ 9501—9512 (relating to taxes for highway maintenance and construction).

First sale—The sale to a wholesale or retail dealer, consumer or direct use in this Commonwealth of petroleum products occurring immediately after importation or production.

Oil company—Every corporation, association, joint-stock association, partnership, limited partnership, co-partnership, natural individual or individuals, and a business conducted by a trustee or trustees wherein evidence of ownership is evidenced by certificate or written instrument, formed for or engaged in the sale or importation of petroleum products within this Commonwealth; or anyone deemed to be an oil company under 75 Pa.C.S. §§ 9501 or 9502(f) (relating to definitions; and imposition of tax); or anyone who elects to be an oil company under 75 Pa.C.S. § 9502(i).

Petroleum product—A product derived wholly or in part from crude oil and used for propelling a motor vehicle on the public highways. Examples of petroleum products are gasoline, gasohol, diesel fuel, LP gas and kerosene. Petroleum products do not include products for off-highway use.

Petroleum revenue—Consideration derived from the first sale in this Commonwealth of petroleum products otherwise subject to the liquid fuels tax or

the fuel use tax in this Commonwealth, whether in cash, credits or property of any kind, and without a deduction except for returned merchandise, Pennsylvania liquid fuels tax or fuel use tax or Federal excise tax. Consideration includes transportation or freight charges, whether included in the price of the product or stated separately.

Report—Oil Company Franchise Tax Report (Form REV-1386), which may be obtained from Tax Information Service, Department of Revenue, Strawberry Square Tax Information Service, Harrisburg, Pennsylvania 17127.

Notes of Decisions

The Department's definition of "first sale" did not go beyond the authority delegated to it by the Legislature. *Carlos R. Leffler, Inc. v. Commonwealth*, 556 A.2d 18, 21 (Pa. Commw. 1989); affirmed 574 A.2d 600 (Pa. 1990).

§ 351.2. Filing requirements.

- (a) The following oil companies shall file a report each month:
 - (1) An oil company which produces petroleum products in this Commonwealth.
 - (2) An oil company which imports petroleum products into this Commonwealth.
 - (3) An oil company for which the Department has approved an election to report and pay the Oil Company Franchise Tax.
 - (4) An oil company which has been assigned an Oil Company Franchise Tax account number by the Department.
- (b) Reports relating to fraudulent or mistaken claims of exemption shall comply with the following:
 - (1) A person not required to file a monthly report who fraudulently or mistakenly claims an exemption at the time of purchase and later resells or uses a petroleum product for a taxable use shall file a report relating solely to that resale or use.
 - (2) A person not required to file a monthly report who purchases a product for off-highway use and subsequently uses the product on the public highways or resells it for such use shall file a report relating to that resale or use.
- (c) A person who willfully makes a false and fraudulent report shall be guilty of willful and corrupt perjury and, upon conviction, shall be subject to punishment as provided by law. The penalty shall be in addition to other penalties imposed by this chapter.
- (d) A person who willfully fails, neglects or refuses to make a report or to pay the applicable tax shall be guilty of a misdemeanor of the third degree and, upon conviction, shall be sentenced to pay a fine not exceeding \$2,500 or to undergo imprisonment not exceeding 1 year, or both. The penalty shall be in addition to other penalties imposed by this chapter.

Cross References

This section cited in 61 Pa. Code § 351.5 (relating to exemptions).

§ 351.3. Imposition of tax.

(a) *Basis of tax.* A tax of 3.5% of the petroleum revenue derived from the first sale of petroleum products made within this Commonwealth is imposed upon oil companies required to file a report.

(b) *“First sale” defined.* The first sale is the sale to a wholesale or retail dealer, or consumer, or direct use in this Commonwealth of petroleum products occurring immediately after importation or production.

(c) *Deferred first sale.* A first sale may be deferred when an oil company sells petroleum products to a purchasing oil company which agrees to pay the applicable Oil Company Franchise Tax on its subsequent sale or use. Refer to § 351.6 (relating to first sales to other oil companies which have an Oil Franchise Tax account number).

§ 351.4. Valuation of sales for reporting petroleum revenue.

(a) *Sales at arm’s length.* An oil company may use its actual sales prices for valuing sales of petroleum products, or in lieu of using the actual sales price, the Department will accept the Average Wholesale Price as determined and publicized by the Department. However, an oil company may not use the actual price for one petroleum product and the Average Wholesale Price for another; nor may the oil company use an average of its own prices to report and pay the tax.

(b) *Sales not at arm’s length: direct use.* Sales not at arm’s length and first sales resulting from direct use are to be valued using the consideration which would have been received in an arm’s length transaction with an unrelated person (market price). The Average Wholesale Price as provided in subsection (a) may also be used.

§ 351.5. Exemptions.

(a) *General.* First sales of petroleum products to purchasers listed in subsection (b) who are exempt from liquid fuels taxation or to purchasers for off-highway use do not generate petroleum revenue, provided that the sales are documented as set forth in subsection (d).

(b) *Purchasers to whom exempt first sales may be made.* The following are purchasers to whom exempt first sales may be made:

- (1) United States Government.
- (2) Commonwealth of Pennsylvania and its political subdivisions.
- (3) Nonprofit elementary and secondary schools as defined in 61 Pa. Code § 315.2 (relating to filing requirements).
- (4) Volunteer rescue squads, volunteer fire companies and volunteer ambulance associations.
- (5) Second Class County Port Authorities.

(c) *Exempt use.* First sales of petroleum products not actually used on the public highways to propel motor vehicles do not generate petroleum revenue. However, products for which the actual use is unknown are presumed to be taxable until it has been ascertained that the product will be used off-highway; see subsections (d)—(g) for exemption and adjustment procedures.

(d) *Documentation.* To substantiate an exempt first sale the selling oil company shall obtain a completed exemption certificate (Form REV-1385) or other documentation containing equivalent information. This form is available from Tax Information Service, Department of Revenue, Strawberry Square, Harrisburg, Pennsylvania 17127. The selling oil company shall also mark the invoice for that sale with the notation: “Exempt Sale—Not Subject to Oil Company Franchise Tax,” or similar language.

(e) *Subsequent documentation of exemption.* An oil company shall pay the applicable Oil Company Franchise Tax on petroleum products if it does not have an exemption certificate or other documentation containing equivalent information at the time of the sale. If an oil company later receives the certificate after the sale has been reported and the applicable tax has been paid, it may then adjust a subsequent month’s tax report (See Instructions, Form REV-1386) to reflect the additional documented exempt sale. This form is available from Tax Information Service, Department of Revenue, Strawberry Square, Harrisburg, Pennsylvania 17127.

(f) *Liability for taxable sale or use of products previously claimed exempt.* The seller is not responsible for the Oil Company Franchise Tax if a purchaser executes an exemption certificate or provides other documentation containing equivalent information at the time of the purchase even if the purchaser subsequently resells the petroleum product or uses it for a taxable purpose. In such a case, the purchaser is deemed to be an oil company and shall report and pay applicable tax with respect to that transaction, even though he has no Oil Company Franchise Tax Account Number.

(g) *Fraudulent exemptions.* A purchaser who intentionally provides an oil company with false or fraudulent documentation of exemption, thereby enabling that oil company to obtain a credit or exemption, or a purchaser who fraudulently receives a credit for taxes paid, will be liable to pay to the Department 200% of the credit obtained plus interest as provided in § 351.7 (relating to reporting and payment).

§ 351.6. First sales to other oil companies which have an Oil Franchise Tax account number.

First sales of petroleum products to another oil company which has an Oil Franchise Tax account number and agrees to report and pay the applicable Oil Company Franchise Tax upon its subsequent sale or use of the products do not generate petroleum revenue provided all such sales are documented. Thus, the

selling oil company is relieved of the obligation to pay the applicable tax on this sale. This documentation must include:

- (1) Identification of the product.
- (2) Name of the purchasing oil company and its Oil Company Franchise Tax account number. The Department will not recognize the sale unless the purchaser has a number.
- (3) Evidence of the agreement to report and pay the tax. Use of exemption certificate is preferred.

Cross References

This section cited in 61 Pa. Code § 351.3 (relating to imposition of tax).

§ 351.7. Reporting and payment.

(a) *Due date.* The report shall be filed and the tax due shall be paid for each month on or before the next to the last business day of the following month on Form REV-1386. Additional copies of Form REV-1386 may be obtained from the Tax Information Service, Department of Revenue, Strawberry Square, Harrisburg, Pennsylvania 17127 upon request.

(b) *Additional tax for late filing.* An amount equal to 15% of the gross tax will be added as an additional tax for filing a report after the due date.

(c) *Late payment; interest.* A tax not paid on or before the due date is subject to interest at the rate provided by law from the date due until paid.

(d) *Failure to file; false report.* Negligently or willfully failing to file a report or knowingly filing a false report subjects the offender to additional tax in the amount of 15% of the tax determined by the Department to be due, plus interest as provided in subsection (c).

Cross References

This section cited in 61 Pa. Code § 351.5 (relating to exemptions).

§ 351.8. Change of name or address.

An oil company required to file a report shall immediately notify the Department in writing of a change of name or address.

§ 351.9. Termination of business.

An oil company required to file a report shall notify the Department in writing within 10 days of the discontinuance of its business.

§ 351.10. Cancellation of Oil Company Franchise Tax account.

An oil company assigned an Oil Company Franchise Tax account which believes that it is not required to file a report or wishes to terminate its election to be deemed an oil company, may apply to the Department in writing requesting a review of its account and cancellation of its number. No Oil Company Fran-

chise Tax account will be cancelled without the approval of the Department. A person having an Oil Company Franchise Tax account number is required to file a monthly report, whether or not tax is due, until the time that the account number has been withdrawn.

§ 351.11. Recordkeeping.

(a) *Records required; retention period.* A person liable to pay the tax shall retain exemption certificates, supporting documentation and other related records relating to transactions affecting the tax, including, inter alia, the following, for a period of 3 years after the report is filed:

- (1) Petroleum products exported.
- (2) Sales of petroleum products upon which the Oil Company Franchise Tax has previously been paid.
- (3) Sales of bulk quantities of petroleum products known to be for heating purposes.
- (4) Sales of petroleum products to other oil companies which have agreed to report and pay the applicable Oil Company Franchise Tax.
- (5) Exempt first sales or use, including subsequently acquired documentation and adjustments.

(b) *Penalties.* Failure to retain required records is a misdemeanor of the third degree, conviction of which subjects the offender to a fine not exceeding \$1,000 or imprisonment for not more than 6 months or both. Failure to permit the Department to examine books and records is a misdemeanor of the third degree, conviction of which may subject the offender to a fine not exceeding \$2,500 or imprisonment for not more than 1 year or both.

§ 351.14. Enforcement.

Revenue Enforcement Agents are designated Special Investigators with the powers set forth by 75 Pa.C.S. § 9506(e) (relating to administration and enforcement).

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