

**INTERGOVERNMENTAL AGREEMENT  
Motor Vehicle Fuel Dealer Tax Collection  
in the City of Portland**

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT;" and the City of Portland, hereinafter referred to as "City," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

- A. By the authority granted in Oregon Revised Statutes (ORS) 190.110 and 283.110, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
- B. Under ORS 802.010, ODOT has the authority to perform all of the duties, functions, and powers with respect to the administration of the laws relating to the motor vehicle fuel license tax, aircraft fuel license tax and use fuel license tax including ORS Chapter 319.
- C. Under ORS 319.950, a city, county or other local government may enact or amend any charter provision, ordinance, resolution or other provision taxing fuel for motor vehicles after submitting the proposed tax to the electors of the local government for their approval.
- D. On May 17, 2016, the City adopted City of Portland Code Chapter 17.105, "Motor Vehicle Fuel Tax," (attached as Exhibit A and by this reference made a part hereof) that was subsequently approved by the electors of the City, hereinafter referred to as "Chapter 17.105." Chapter 17.105 authorizes the collection and use of a \$0.10 per gallon motor vehicle fuel license tax (hereinafter referred to as "tax") on motor vehicle fuel dealers that sell, use or distribute fuel in the City.
- E. The City desires that ODOT act as the tax administrator for the purpose of taxes due under Chapter 17.105.

**NOW THEREFORE**, the premises being in general as stated in the foregoing recitals, it is agreed by and between the Parties hereto as follows:

**TERMS OF AGREEMENT**

- 1. ODOT shall act as the tax administrator for the taxes due under Chapter 17.105 pursuant to the terms and conditions of this agreement.
- 2. The term of this agreement shall begin on the date all required signatures are obtained and shall terminate on December 31, 2035, unless extended by a written amendment to this agreement.

3. The implementaion of tax collection services shall be no later than January 1, 2017 as mutually agreed in writing by ODOT and the City.
4. Upon the effective date of Chapter 17.105, the City shall pay a fee to ODOT for activities performed by ODOT required or necessary for the implementation of Chapter 17.105 (hereinafter referred to as "start-up costs"). The fee shall be at a rate of \$55.00 per hour, and the City shall not be required to pay ODOT for more than fifty (50) hours of such work. The fee and the fifty (50) hour cap apply only to start-up costs incurred by ODOT. Start up costs include but are not limited to programming charges, service and supplies, travel, Attorney General expenses, and ODOT staff time. The start-up costs are in addition to the costs incurred by ODOT in the administration of Chapter 17.105, described in Paragraph 6, below. In no event will the City be required to pay start-up costs totaling more than \$7,500, but the City agrees to pay a minimum of \$2,200 in start-up costs.
5. The City shall pay ODOT a share of the total, actual cost incurred by ODOT for the upgrade to ODOT's computer system necessitated by this agreement ("the Computer System Cost"). The Computer System Cost is currently estimated by ODOT to be \$31,830. The amount of the City's share will depend on the number of governmental entities who contract with ODOT to use the computer system. ODOT will divide the Computer System Cost evenly by the total number of entities and charge the City for one share thereof. ODOT will ensure that all costs related to computer system functionality required by a single entity will be paid solely by that entity and that such costs will not be included in the Computer System Cost.
6. The City shall be responsible for the actual costs incurred by ODOT for administration of Chapter 17.105. The actual costs will be paid to ODOT pursuant to Paragraph 7, below. Administration includes, but is not limited to, processing reports and payments; entering data into the system; resolving errors and discrepancies; managing records; responding to licensee inquiries, and auditing.
7. Taxes paid under Chapter 17.105 shall be collected by ODOT on behalf of the City. Actual costs incurred by ODOT in the administration of Chapter 17.105 shall be retained by ODOT from the tax collected under Chapter 17.105 on a monthly basis. The actual costs retained by ODOT under this paragraph shall be deposited by ODOT into the Department of Transportation Motor Vehicle Suspense Account with the State Treasurer pursuant to ORS 802.110. ODOT shall retain from the tax collected under Chapter 17.105 all refunds due all tax payors under ORS 319.280 to ORS 319.320, and shall pay the refunds retained directly to such tax payors. The balance of the tax collected by ODOT under Chapter 17.105 shall be transferred to the City's Local Government Investment Pool Account with the State Treasurer no later than the 15<sup>th</sup> day of the month following the month of collection.
8. ODOT shall be responsible for all aspects of tax administration as it pertains to Chapter 17.105 and as further defined in this agreement. ODOT **will not** act as tax administrator for purposes of declaring the effective date of the tax, or commencing

IGA for Motor Vehicle Fuel Dealer Tax Collection

Oregon Department of Transportation and the City of Portland

and prosecuting lawsuits to final determination in any court. ODOT will provide litigation support in the event of a lawsuit. The City shall pay a fee to ODOT for litigation support at a rate of \$55.00 per hour. Litigation support includes, but is not limited to, document preparation, travel, and testimony.

9. ODOT may, at its sole discretion, determine what action shall be taken to enforce Chapter 17.105 for purposes of tax administration. In exercising its discretion, ODOT shall provide a level of service comparable to the level of service it provides in the administration of the Oregon motor vehicle fuel tax statutes. Audits will be limited to motor vehicle fuel dealers that are also licensed under ORS Chapter 319.
10. If the City requests and ODOT agrees, or if ODOT deems it necessary to vary substantially from the standard level of service, a supplemental agreement shall be entered into between the Parties before services are performed.
11. ODOT's Project Manager responsible for this agreement is ODOT Fuel Tax Manager or designee, Transportation Building – Mail Stop 21, 355 Capitol St NE, Salem, OR 97301-2530.
12. The City's Project Manager responsible for coordinating the administrative requirements of this agreement is Ken Lee, City of Portland / PBOT / Finance, 1120SW 5<sup>th</sup> Avenue, Suite 800 Portland OR 97204, or designee.
13. Beginning in January 2017 and no later than March 15 each year thereafter, ODOT shall provide a written report for the preceding calendar year to the City showing the total revenue collected, refunds paid, the expenses incurred for administration and collection of the tax, and any other information ODOT or the City deem pertinent to this agreement. In the annual report, ODOT may also make recommendations concerning amendments to the City's Code, ordinances, procedures, and policies in administration of the tax, or other related matters.
14. ODOT and the City shall coordinate all necessary announcements to the public so as to facilitate effective administration of the tax and maintain consistency in public announcements and information.
15. ODOT will maintain all databases and records created or received by ODOT under this agreement for not less than the period of time which ODOT maintains records for its administration of ORS Chapter 319. ODOT will make all such information available to City in the same format as the format used by ODOT. Such information shall include, but not be limited to, information concerning the identity, business operations and tax payment history of all fuel dealers who are subject to Chapter 17.105. Upon termination of this agreement for any reason, ODOT will provide City with copies of all of the data described above, in electronic format, if possible, or in a form otherwise acceptable to the City.



**GENERAL PROVISIONS**

16. In order to ensure consistency in the administration of the tax, each Party shall notify the other in writing of any change in Chapter 17.105 and state or local regulations or rulings related to the tax at least thirty (30) days prior to the effective date of such change.
17. This agreement may be terminated by either Party upon ninety (90) days' notice, in writing and delivered by certified mail or in person.
18. ODOT may terminate this agreement to the extent permitted by law on thirty (30) days' notice, effective upon delivery of written notice to the City or at such later date as may be established by ODOT, under any of the following conditions; if Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the work under this agreement is prohibited or if ODOT is prohibited from paying for such work from the planned funding source.

Any termination of this agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

19. The Parties agree to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270, which are incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, the Parties expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
20. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or the City with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
21. With respect to a Third Party Claim for which one Party is jointly liable with the other Party (or would be if joined in the Third Party Claim), the first Party shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and

amounts paid in settlement actually and reasonably incurred and paid or payable by the other Party in such proportion as is appropriate to reflect the relative fault of the Parties in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Parties shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Each Party's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if the Party had sole liability for the Third Party Claim.

22. The Parties shall attempt in good faith to resolve any dispute arising out of this agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
23. ODOT shall perform the service under this agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
24. All employers, including the Parties, that employ subject workers who work under this agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers' Liability insurance with coverage limits of not less than \$500,000 must be included. The Parties shall ensure that each of their subcontractors comply with these requirements.
25. Each Party acknowledges and agrees that the other Party and the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the first Party which are directly pertinent to this agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for a Party's costs of copies is reimbursable by the other Party.
26. This agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this agreement so executed shall constitute an original.
27. This agreement and its attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no other understandings, agreements, or representations, oral or written, that could be understood as overriding any provision of this agreement. No waiver, consent, modification or

change of terms of this agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to enforce any provision of this agreement shall not constitute a waiver by that Party of that or any other provision.

*The remainder of this page is intentionally blank.*

**THE PARTIES**, by execution of this agreement, hereby acknowledge that its signing representatives have read this agreement, understand it, and agree to be bound by its terms and conditions.

**City of Portland**, by and through the  
Director of its Bureau of Transportation

By \_\_\_\_\_

Date \_\_\_\_\_

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Deputy Director for Central Services

Date \_\_\_\_\_

**APPROVED AS TO FORM**

By \_\_\_\_\_  
City Attorney

Date \_\_\_\_\_

**City Contact:**

Ken Lee  
City of Portland /PBOT / Finance  
1120 SW 5<sup>th</sup> Avenue, Suite 800  
Portland, OR 97204  
[Ken.Lee@portlandoregon.gov](mailto:Ken.Lee@portlandoregon.gov)

**ODOT Contact:**

Douglas KleeB  
ODOT Fuels Tax MS 21  
355 Capitol St NE  
Salem, OR 97301  
[Douglas.J.KLEEB@odot.state.or.us](mailto:Douglas.J.KLEEB@odot.state.or.us)  
503-378-5773

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Fuels Tax Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

City/ODOT  
Agreement No. 31425

188002

EXHIBIT A  
CITY OF PORTLAND



## Chapter 17.105 Motor Vehicle Fuel Tax

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### - Note

(Chapter added by Resolution 37185 (approved at May 17, 2016 election); effective May 17, 2016.)

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### **17.105.010 Tax Imposed.**

A Motor Vehicle Fuel Tax is hereby imposed on every Dealer or Seller. The tax imposed shall be paid monthly to the City. 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, and ORS 310.510 to 310.990.

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### **17.105.015 Temporary Tax of 4 Years.**

This Chapter will be in full force and effect upon enactment. The Motor Vehicle Fuel Tax established in Section 17.105.045 shall be imposed beginning on the tax implementation date established by the Tax Administrator and shall sunset 4 years after the tax implementation date. The tax implementation date shall not be earlier than September 1, 2016. The Tax Administrator is authorized to collect amounts receivable under this Chapter for taxes and penalties accrued prior to the termination of the Motor Vehicle Fuel Tax.

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### **17.105.020 Use of Tax Revenues.**

A. For the purpose of this Section, Motor Vehicles Fuel Tax net revenues means the revenue from the tax and penalties imposed by this Chapter remaining after interest, collection, administrative, other costs, refunds, and credits are deducted from Motor Vehicle Fuel Tax revenues.

B. The City shall use Motor Vehicles Fuel Tax net revenues only for construction, reconstruction, improvement, repair, maintenance, operation and use of public Highways, roads and streets as described in the Oregon Constitution, Article IX, Section 3a.

C. The type of projects to be completed will be those approved and undertaken out of the Street Repair and Traffic Safety Program, and will include but not be limited to projects in the following categories:

1. Street Repair
2. Safe Routes to Schools
3. Sidewalk Completion

4. High Crash Corridor Safety Improvements
  5. Reducing Bicycle/Car conflicts
  6. Intersection Safety Improvements
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188002

## **17.105.025 Definitions.**

As used in this Chapter, unless the context requires otherwise, the following words and phrases shall mean:

**A. City** means the City of Portland.

**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 if that Dealer assumes liability for the payment of the applicable Motor Vehicle Fuel Tax to the City and Dealer does not include terminal storage facilities; or
2. Produces, refines, manufactures or compounds Motor Vehicle Fuel 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 Fuel with respect to which there has been no Motor Vehicle Fuel Tax previously incurred.

**C. Distribution.** In addition to its ordinary meaning, the delivery of Motor Vehicle Fuel by a Dealer or Seller 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 Seller.

**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** includes gasoline, diesel, mogas, methanol and any other flammable or combustible gas or liquid, by whatever name such gasoline, diesel, mogas, methanol, gas or liquid is known or sold, usable as fuel for the operation of Motor Vehicles, except gas, diesel, mogas, methanol 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 any natural Person, association, firm, partnership, corporation, joint venture or other business entity.

**H. Seller** means

1. A person that sells Motor Vehicle Fuel to a user of vehicles; or
2. If the Motor Vehicle Fuel is dispensed at a non-retail facility, the person that owns the users accounts and bills the users for Motor Vehicle Fuel purchased at a non-retail facility.

**I. Service Station** means any place operated for the purpose of retailing and delivering Motor Vehicle Fuel into the fuel tanks of Motor Vehicles.

**J. Street Repair and Traffic Safety Program** means the City of Portland program in the Transportation Operating Fund where Motor Vehicle Fuel Tax net revenue pursuant to this chapter is deposited and street repair and traffic safety expenditures are recorded.

**K. Terminal Storage Facility** means any fuel storage facility that has marine or pipeline access.

**L. Tax Administrator** means the City Council, the City Council's designees, or any Person or entity with whom the City Council contracts to implement the Motor Vehicle Fuel Tax program or a portion thereof.

**M. Weight Receipt** means a receipt issued by the Oregon Department of Transportation, stating the combined weight of each self-propelled or motor-driven vehicle.

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### **17.105.030 License Requirements.**

No Dealer or Seller shall sell, use, or distribute any Motor Vehicle Fuel until he/she has secured a Dealer's or Seller's license as required herein.

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### **17.105.035 License Applications and Issuance.**

**A.** Every Person, who is a Dealer or Seller of Motor Vehicle Fuel in the City of Portland, shall make application to the Tax Administrator for a license authorizing such Person to engage in business as a Dealer or Seller in the City of Portland.

**B.** Applications for the license shall be made on forms prescribed by the Tax Administrator.

**C.** Applications shall include, among other items as may be required by the Tax Administrator:

1. The business name under which the applicant transacts business.
2. The address of applicant's principal place of business and location of distributing stations in and within three miles of the city.
3. The name and address of the managing agent, the names and addresses of the several Persons constituting the firm or partnership or, if a corporation, the name under which the corporation is authorized to transact business and the names and addresses of its principal officers and registered agent, as well as primary transport carrier.

**D.** If an application for a Motor Vehicle Fuel Dealer's license or Seller's license is complete and accepted for filing, the Tax Administrator shall issue to the Dealer or Seller a license in such form as the Tax Administrator may prescribe to transact business in the city. A license issued hereunder is not assignable, and is valid only for the Dealer or Seller in whose name it is issued.

**E.** The Tax Administrator shall retain all completed applications together with a record of all licensed Dealers and Sellers.

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### **17.105.040 Failure to Secure License.**



- A. If a Dealer or Seller sells, distributes, or uses any Motor Vehicle Fuel without first filing the application and obtaining the license required by Section 17.105.035, the Motor Vehicle Fuel Tax on all Motor Vehicle Fuel sold, distributed or used by that Dealer or Seller shall be immediately due and payable.
- B. The Tax Administrator shall determine, from as many available sources as the Tax Administrator determines reasonable, the amount of tax due, shall assess the Dealer or Seller for the tax due together with a penalty of 100 percent of the tax. In any suit or proceeding to collect the tax or penalty or both, the assessment shall be prima facie evidence that the Dealer or Seller therein named is indebted to the City in the amount of the tax and penalty stated.
- C. Any tax or penalty assessed pursuant to this Section may be collected in the manner prescribed in Section 17.105.095 with reference to delinquency in payment of the fee or by an 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 all other sums provided by law.
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### **17.105.045 Amount and Payment of Tax.**

In addition to any fees or taxes otherwise provided for by law, every Dealer or Seller engaging in the city in the sale, use or Distribution of Motor Vehicle Fuel shall:

- A. Not later than the 25th day of each calendar month, submit a report to the Tax Administrator on forms prescribed by the Tax Administrator 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 or Seller 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 10 cents 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 Code or Administrative Rules promulgated in accordance with this Chapter.
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### **17.105.050 Revocation of License.**

- A. The Tax Administrator may revoke the license of any Dealer or Seller who fails to comply with any provision of this Chapter. The Tax Administrator shall mail, by certified mail addressed to the Dealer or Seller at his/her last known address appearing in the files of the Tax Administrator, a notice of intent to revoke. The notice of revocation shall provide the reason(s) for revocation which include, but are not limited to, failure to register for a license, failure to remit the tax, failure to file required reports or any information as required by the Tax Administrator, or failure to pay any penalty or interest assessments.
- B. A Dealer or Seller has the right to protest a notice of revocation to the Tax Administrator in writing within 14 days. The Tax Administrator must forward the appeal, including the reasons for the determination, to the Business License Appeals Board within 30 days. The Tax Administrator may prescribe by Administrative Rule procedures for the protest and appeal of license revocations. The license revocation shall become effective when the local protest and appeal process provided in Administrative Rules is completed and a final decision has been issued.
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**17.105.055 Cancellation of License.**

- A. The Tax Administrator may, upon written request of a Dealer or Seller, cancel a license issued to that Dealer or Seller. The Tax Administrator shall, upon approving the Dealer's or Seller's request for cancellation, set a date not later than 30 days after receipt of the written request, after which the license shall no longer be effective.
- B. The Tax Administrator may, after 30 days' notice has been mailed to the last known address of the Dealer or Seller, cancel the license of Dealer or Seller upon finding that the Dealer or Seller is no longer engaged in the business of a Dealer or Seller.
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**17.105.060 Remedies Cumulative.**

Except as otherwise provided in Sections 17.105.095 and 17.105.105, the remedies provided in Sections 17.105.040, 17.105.050, and 17.105.055 are cumulative. No action taken pursuant to those sections shall relieve any Person from the penalty provisions of this Code.

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**17.105.065 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.

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**17.105.070 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 in Motor Vehicle Fuel.

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**17.105.075 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 the 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.

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### **17.105.080 Exemption of Weight Receipt Holders.**

Motor Vehicle Fuel sold to holders of a Weight Receipt shall not be charged the Motor Vehicle Fuel Tax.

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### **17.105.085 Exemption of Export Fuel.**

A. The Motor Vehicle Fuel Tax imposed by Section 17.105.010 shall not be imposed on Motor Vehicle Fuel:

1. Exported from the city by a Dealer; or
2. Sold by a Dealer for export by the purchaser to an area or 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 exemption from Motor Vehicle Fuel Taxes claimed under this Section other than in the case of stock transfers or deliveries in the Dealer's 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 filing of an export certificate, waive the filing of the certificate. 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.

C. No Person shall, through false statement, trick or device, or otherwise, obtain Motor Vehicle Fuel for export as to which the Motor Vehicle Fuel 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 divert or cause to be diverted 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 purchased of his/her act.

D. 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.

E. In support of any exemption from taxes on account of sales of Motor Vehicle Fuel for export by the purchaser, the Dealer shall retain in his/her files for at least 3 years, an export certificate executed by the purchaser in such form and containing such information as is 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.

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### **17.105.090 Exemption of Motor Vehicle Fuel Sold or Distributed to Dealers.**

A. Notwithstanding Section 17.105.095 of this Chapter, if the first sale, use or distribution of motor vehicle fuel is from one licensed Dealer to another licensed Dealer, the selling or distributing Dealer is not required to pay the Motor Vehicle Fuel Tax imposed in this Chapter. When the purchasing or receiving Dealer first sells, uses or distributes the fuel, that Dealer shall pay the Motor Vehicle Fuel Tax regardless of whether the sale, use or distribution is to another

licensed Dealer.

B. A Dealer who renders monthly statements to the Tax Administrator as required by this Chapter shall show separately the number of gallons of Motor Vehicle Fuel sold or delivered to Dealers.

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### **17.105.095 Payment of Tax and Delinquency.**

A. The Motor Vehicle Fuel Tax imposed by this Chapter shall be paid to the Tax Administrator on or before the 25th day of each month.

B. Except as provided in Subsections 17.105.095 C. and E., if payment of the Motor Vehicle Fuel Tax is not paid as required by Subsection 17.105.095 A., a penalty of 1 percent of such tax shall be assessed and be immediately due and payable.

C. Except as provided in Subsection 17.105.095 E., 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 of the tax shall be assessed. Said penalty shall be in addition to the penalty provided for in Subsection 17.105.095 B. and shall be immediately due and payable.

D. If the Motor Vehicle Fuel Tax imposed by this Chapter is not paid as required by Subsection 17.105.095 A., interest shall be charged at the rate of .0329 percent per day until the tax, interest and penalties have been paid in full.

E. Penalties imposed by this Section shall not apply if a penalty has been assessed and paid pursuant to Section 17.105.040. The Tax Administrator may for good cause shown waive any penalties assessed under this Section.

F. If any Person fails to pay the Motor Vehicle Fuel Tax, interest, or any penalty provided for by this Section, the Tax Administrator shall commence and prosecute in any court of competent jurisdiction an action at law to collect the amounts due. Such action may be taken on the sole authority of the Tax Administrator.

G. In the event any suit or action is instituted to collect the Motor Vehicle Fuel Tax, interest, or any penalty provided for by 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 all other sums provided by law.

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### **17.105.100 Monthly Statement of Dealer or Seller.**

Every Dealer or Seller in Motor Vehicle Fuel shall provide to the Tax Administrator on or before the 25th day of each month, on forms prescribed, prepared and furnished by the Tax Administrator, a statement of the number of gallons of Motor Vehicle Fuel sold, distributed or used by the Dealer or Seller during the preceding calendar month. The statement shall be signed by the Dealer or Seller or the Dealer's or Seller's agent.

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### **17.105.105 Failure to File Monthly Statement.**

If a Dealer or Seller fails to file any statement required by Section, the Tax Administrator shall determine from as many available sources as the Tax Administrator determines reasonable the amount of Motor Vehicle Fuel sold, distributed or used by such Dealer or Seller for the period unreported, and such determination shall in any proceeding be prima facie



evidence of the amount of fuel sold, distributed or used. The Tax Administrator shall assess the Dealer or Seller for the Motor Vehicle Fuel Tax upon the amount determined, adding a penalty of 10 percent of the tax for non-reporting. The penalty shall be cumulative to other penalties provided in this Code.

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### **17.105.106 Refunds.**

Refunds on the Motor Vehicle Fuel Tax will be made pursuant to any refund provisions of Chapter 319 of the Oregon Revised Statutes, including but not limited to ORS 319.280, 319.320, and 319.831. Claim forms for refunds may be obtained from the Tax Administrator's office.

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### **17.105.110 Examinations and Investigations.**

The Tax Administrator, or duly authorized agents, may make any examination of accounts, records, stocks, facilities and equipment of Dealers, Sellers, Service Stations and other Persons engaged in storing, selling or distributing Motor Vehicle Fuel or other petroleum product or products within this city, and such other investigations as it considers necessary in carrying out the provisions of this Chapter. If the examinations or investigations disclose that any reports of Dealers, Sellers, or other Persons 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 payments of such Dealers, Sellers, or other Persons, or may make such refund or credit, as may be necessary to correct the errors disclosed by its examinations or investigation. The Dealer or Seller shall reimburse the City for the reasonable costs of the examination or investigation if the action discloses that the Dealer or Seller paid 95 percent or less of the tax owing for the period of the examination or investigation. In the event that such an examination or investigation results in an assessment by and an additional payment due to the City, such additional payment shall be subject to interest at the rate of .0329 percent per day from the date the original tax payment was due.

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### **17.105.115 Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax.**

- A. Except as otherwise provided in this Code, any credit for erroneous overpayment of tax made by a Dealer or Seller taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a Dealer or Seller must be taken or filed within 3 years after the date on which the overpayment was made to the City.
  - B. Except in the case of a fraudulent report or failure to make a report, every notice of additional tax proposed to be assessed under this Code shall be served on Dealers and Sellers within 3 years from the date upon which such additional taxes become due or were paid, whichever is later, and shall be subject to penalty as provided in Section 17.105.095.
  - C. In the case of the filing of a false or fraudulent report, a failure to file a required report, or willful refusal to remit the tax, an assessment may be made, or a proceeding for the collection of such assessment may be commenced, at any time.
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### **17.105.120 Examining Books and Accounts of Carriers of Motor Vehicle**



## **Fuel.**

The Tax Administrator or duly authorized agents of the Tax Administrator 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 Code.

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### **17.105.125 Records to be Kept by Dealers and Sellers.**

Every Dealer and Seller in Motor Vehicle Fuel shall keep a record in such form as may be prescribed or approved 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.

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### **17.105.130 Records to be Kept 3 Years.**

Every Dealer and Seller shall maintain and keep, for a period of 3 years and 6 months, all records of Motor Vehicle Fuel used, sold and distributed within the city by such Dealer or Seller, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the Tax Administrator. In the event such records are not kept within the state of Oregon, the Dealer or Seller shall reimburse the Tax Administrator for all travel, lodging, and related expenses incurred by the Tax Administrator in examining such records. The amount of such expenses shall be assessed in addition to the tax imposed by Section 17.105.010.

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### **17.105.135 Citizen Oversight Committee; Annual Audits.**

A. The City will appoint a citizen oversight committee that is representative of the city's diverse communities to ensure the Motor Vehicle Fuel Tax is being implemented as required, to monitor revenues and review expenditures made, and to report their findings in a public record to the City Council on an annual basis. The committee will be comprised of a minimum of 8 and a maximum of 20 members.

B. The use of Motor Vehicle Fuel Tax net revenues will be audited annually.

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### **17.105.140 Chapter Effective If Passed.**

Chapter 17.105 of this Code does not take effect unless Measure 26-173 is approved by the people according to elections results for the election held in the City on May 17, 2016.

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### **17.105.145 Administrative Rules.**

The Tax Administrator has authority to promulgate administrative rules in accordance with this Chapter which shall have the same force and effect as any other provision of Chapter 17.105.