

**15 AAC 40.300. Fuel subject to tax; incidence of tax**

(a) The motor fuel tax is imposed under AS 43.40 at the earlier of

(1) the sale or transfer of motor fuel in the state; or

(2) the use of motor fuel in the state.

(b) A sale or transfer of fuel is a taxable event, unless

(1) to a person who uses fuel that is exempt under 15 AAC 40.310;

(2) the fuel being sold or transferred is excluded from being "motor fuel" under AS 43.40.100 (2); or

(3) between qualified dealers.

(c) If a sale or transfer of fuel was exempt from tax under (b) of this section, but the fuel is later sold, transferred, or used in a manner that does not meet the requirements for the exemption from tax under (b) of this section, the applicable tax is imposed at the time of the first taxable sale, transfer, or use. The person who sells, transfers, or uses the fuel that is taxable under AS 43.40 shall file a tax return under 15 AAC 40.400 and pay the applicable tax to the department. If a subsequent sale or transfer is subject to a higher tax rate under AS 43.40 than the tax rate imposed on the first sale, the higher rate applies.

(d) A sale or transfer of fuel to a person eligible for a refund for non-highway use under AS 43.40.030 (a) is taxed at the rate under AS 43.40.010 (a). The person who uses the fuel may file a claim with the department for any available refund.

(e) The following examples illustrate the application of this section:

**EXAMPLE 1**

Cannery A is not licensed as a qualified dealer. Cannery A purchases diesel at a tax rate of five cents per gallon. Cannery A sells its excess diesel to Dealer X who picks up the diesel and sells it to a person who uses it for heating. Cannery A must collect tax at the general tax rate of eight cents per gallon on all sales of diesel to Dealer X because Dealer X is not a person exempt under AS 43.40. Cannery A must file a tax return to report the sale of diesel to Dealer X and pay the applicable tax to the department. Dealer X may file a claim for refund for any sales exempt under AS 43.40, including sales to customers who use the diesel for heating purposes.

## EXAMPLE 2

Taxpayer A purchases diesel without paying the tax, with the intention of using the diesel for heating purposes. Taxpayer A later uses the diesel for a purpose that is not exempt, such as use in a licensed motor vehicle. Taxpayer A must file a tax return to report the taxable use of the diesel and pay the applicable tax.

## EXAMPLE 3

Municipality A purchases diesel without paying tax, in accordance with 15 AAC [40.320\(c\)](#) , intending to use a portion of the diesel, and to sell the remainder to residents of the community for heating purposes. Municipality A later sells some of the diesel to a contractor for use in non-highway equipment. Municipality A must collect tax of eight cents per gallon on the diesel sold to the contractor and file a tax return to report those sales. The contractor may file a claim for a partial refund on the diesel used in non-highway equipment under [AS 43.40.030](#) (a).

**History: Eff. 4/1/2001, Register 157**

**Authority:** [AS 43.05.080](#)

[AS 43.40.010](#)

[AS 43.40.100](#)

### **15 AAC 40.310. Exempt sales, transfers, or uses**

(a) Except as provided in (b) of this section, fuel meeting the following requirements is exempt from tax under AS 43.40:

- (1) fuel that is specifically excluded under [AS 43.40.100](#) (2)(A) - (L);
- (2) fuel withdrawn from a foreign trade zone or bonded warehouse to the extent that an exemption is required by 19 U.S.C. 81a-81u and 19 U.S.C. 1309(a) and (d);
- (3) fuel that is exported;
- (4) fuel used exclusively for a domestic purpose in single or multiple unit private dwellings, including mobile homes, but not including watercraft;
- (5) losses of volume of fuel that occur during handling, transportation, and storage, including losses of volume due to temperature changes of the fuel.

(b) The exemption available under [43.40.100\(2\)\(I\)](#) for fuel used to heat private or commercial buildings or facilities does not apply to fuel used in or on watercraft.

**History:** Eff. 4/1/2001, Register 157

**Authority:** [AS 43.05.080](#)

[AS 43.40.010](#)

[AS 43.40.100](#)

**15 AAC 40.320. Sales or transfers for mixed uses**

(a) Except as provided in (b) of this section, fuel transferred to a common storage tank is taxable at the time of sale or transfer at the highest rate that applies to any of the fuel transferred into the tank.

(b) A person operating jet propulsion aircraft in both foreign and domestic flights may elect to defer the payment of the tax under [AS 43.40](#) on the transfer of the fuel to a common storage tank. A person makes the election annually on a form or in a format prescribed by the department. A person making the election must file a tax return and remit the amount of tax due no later than the last day of the month following the month in which the person withdrew the fuel from the common storage tank. The withdrawal from the common storage tank of fuel subject to tax under [AS 43.40](#) is a taxable transfer under AS 43.40.

(c) A municipality or a federally recognized tribe may elect to defer the payment of tax on diesel purchased for its own official use and for resale to residents of the municipality or tribal members if

(1) the municipality is incorporated under [AS 29.05.011](#) and is not connected to more than 200 miles of publicly maintained roads; or

(2) the federally recognized tribe stores the fuel in a location that is not connected to more than 200 miles of publicly maintained roads.

(d) A municipality or federally recognized tribe that elects under (c) of this section to defer the payment of tax must file this election with the department on a form or in a format prescribed by the department. The department will notify the municipality or tribe that its election is accepted and the election remains effective until the municipality or tribe revokes it in writing. The municipality or tribe making the election must file a tax return if the municipality or tribe sells fuel for which taxes were deferred under this subsection if the fuel is sold for a use that is taxable.

(e) The following examples illustrate the application of (a) of this section:

#### EXAMPLE 1

If the tax is eight cents per gallon and fuel used for heating purposes is exempt, a transfer of fuel to a common storage tank providing fuel for both on-road and heating uses is taxable at eight cents per gallon.

#### EXAMPLE 2

If fuel for marine use is taxable at five cents per gallon, a transfer of fuel to a common storage tank providing fuel for both on-road and marine uses is taxable at eight cents per gallon.

#### EXAMPLE 3

Assuming the same rates listed in examples 1 and 2 of this subsection, a transfer of fuel to a common storage tank providing fuel for both marine and heating uses is taxable at five cents per gallon.

**History:** Eff. 4/1/2001, Register 157

**Authority:** [AS 43.05.080](#)

[AS 43.40.010](#)

[AS 43.40.100](#)

#### **15 AAC 40.330. Certificate of use**

- (a) A dealer or reseller must obtain a certificate of use in each calendar year from the person intending to use the fuel at the time of the first sale or transfer of fuel that is exempt from taxation under AS 43.40. A certificate of use must be a form prescribed by the department. That form may be obtained from the dealer, reseller, or department.
- (b) A person engaged in mining or construction activity who purchases fuel for heating purposes must include an attachment to the certificate of use that identifies and diagrams the location of each storage tank that stores fuel used exclusively for heating.
- (c) The person who intends to use the fuel must sign the certificate of use. The certificate of use is not valid if signed by a dealer or reseller.
- (d) A person obtaining fuel with a certificate of use who later uses the fuel for a purpose that is taxable under [AS 43.40](#) shall file a tax return on a form or in a format prescribed by the department and pay the tax by the last day of the month following the month in which the taxable use occurred.

(e) If the department publishes a list of qualified dealers or other persons to whom fuel may be transferred without collecting tax under [AS 43.40](#), a dealer may rely on the most recent list in place of a certificate of use obtained under this section.

(f) In determining whether a certificate of use is not required under [AS 43.40.015](#) (d)(2), the department will consider fuel to be exempted under [AS 43.40.100](#) (2)(1) as fuel used to heat private or commercial buildings or facilities only if the fuel is delivered to a tank

(1) providing a direct and dedicated supply to the building or facility being heated; or

(2) that is

(A) clearly and conspicuously marked as being intended for use or resale as heating fuel only; and

(B) equipped, modified or monitored to a degree sufficient to cause a reasonable person to believe that the tank's contents will be dispensed or resold as heating fuel only.

**History: Eff. 4/1/2001, Register 157; am 10/16/2013, Register 208**

**Authority:** [AS 43.05.080](#)

[AS 43.40.015](#)

[AS 43.40.050](#)

[AS 43.40.085](#)

[AS 43.40.100](#)

#### **15 AAC 40.340. Gasohol control period**

The lower tax rate provided for in [AS 43.40.010](#) (a)(4)(A) or (b)(4)(A) on gasohol applies during the

(1) control period specified in 18 AAC [53.010](#), except that the lower tax rate does not apply on March 1; and

(2) five days before the first day of the control period, as specified in 18 AAC [53.020](#).

**History: Eff. 4/1/2001, Register 157**

### **15 AAC 40.400. Tax return filing requirements**

(a) Each person subject to [AS 43.40.010](#) (c) shall file the tax return, under penalty of unsworn falsification, on a form or in a format prescribed by the department. Each person shall file a separate tax return for gasoline, diesel, aviation fuel, and gasohol.

(b) Each person filing a tax return under (a) of this section may deduct and retain one percent of the total monthly tax due per tax return, up to \$100, if the tax return is complete and timely filed, and the tax is timely paid. The department will not consider the tax return complete unless the tax return includes information on the sales, transfers, or purchases of all fuel held as inventory in this state, regardless of whether the fuel is classified as motor fuel under [AS 43.40.100](#) .

**History: Eff. 4/1/2001, Register 157**

**Authority:** [AS 43.05.080](#)

[AS 43.40.010](#)

### **15 AAC 40.500. Refunds and credits on sales or transfers by resellers**

A claim by a reseller for refund or credit on sales or transfers under [AS 43.40.035](#) must be made on a form prescribed by the department, and must include original invoices issued to the reseller, copies of invoices issued by the reseller, and copies of each certificate of use required under [AS 43.40.015](#) (b). The invoices must show the type of fuel transferred, the number of gallons transferred, and the amount of tax billed. The claim for refund or credit of taxes paid must be filed within one year after the date of the sale or transfer as shown on the invoice issued by the reseller.

**History: Eff. 4/1/2001, Register 157**

**Authority:** [AS 43.05.080](#)

[AS 43.40.035](#)

[AS 43.40.050](#)

[AS 43.40.060](#)

### **15 AAC 40.510. Other refunds**

(a) If a person obtains motor fuel on which the tax levied by [AS 43.40.010](#) has been paid and uses the fuel in a manner that would have made the fuel subject to a lower tax than was paid, or exempt from tax under [AS 43.40.100](#) (2), the person may apply to the department for a refund of the difference within the time period provided in [AS 43.40.050](#) (b). The refund claim must be made on a form prescribed by the department.

(b) Except as provided in (d) of this section, the claim must include original invoices of each purchase of fuel for which a refund is being claimed. The invoices must show the type of fuel purchased, the number of gallons of fuel purchased, and the amount of tax paid under AS 43.40.

(c) A person making a claim for refund for fuel used from a common storage tank must provide documentation to show the use of all fuel from that tank. The department will accept as documentation fuel use logs or other records that clearly show the use of fuel from that tank.

(d) An agency of the United States government whose employees make purchases of fuel exclusively for official use and use a credit card issued to that agency may submit a claim for refund containing a schedule of invoices of purchases of fuel instead of the original invoices for the fuel. Charges on the card must be billed directly to the federal governmental agency. A person may submit a claim for refund of more than \$100 under this subsection at any time within the period provided in [AS 43.40.050](#) (b). A person may submit only one claim of less than \$100 in any six-month period. The schedule of invoices must be subject to generally accepted internal accounting controls, be capable of verification by audit, and detail the following information for each purchase of fuel:

(1) the transaction date;

(2) the invoice number;

(3) the type of fuel purchased;

(4) the name of the seller and physical location of the pump;

(5) the name of the United States governmental agency purchasing the fuel;

(6) the price per gallon of fuel paid;

(7) the number of gallons of fuel purchased;

(8) the tax paid on each gallon of fuel purchased;

(9) other information required by the department in order to evaluate if the claim for refund meets the requirements of [AS 43.40](#) and this subsection.

**History:** Eff. 4/1/2001, Register 157

**Authority:** [AS 43.05.080](#)

[AS 43.40.030](#)

[AS 43.40.050](#)

[AS 43.40.100](#)

## **15 AAC 40.600. Qualified dealer license**

(a) A person is eligible for a qualified dealer license if that person meets the definition of a "qualified dealer" under [AS 43.40.100](#) (3) and sells at least 50 percent of fuel acquired to unrelated persons for any combination of the following purposes:

- (1) resale;
- (2) use in heating private or commercial buildings or facilities;
- (3) use in jet propulsion aircraft.

(b) A person applying for a qualified dealer license must use a form or format prescribed by the department. The person must provide an estimate of the average number of gallons of fuel subject to tax per month during a calendar year, and state the estimated amount of tax on those gallons. A license issued under this section is not transferable.

(c) The department may not issue or renew a qualified dealer license if

(1) the department finds reasonable cause to believe that the person has withheld information required in the application or that the information submitted in the application is false or misleading;

(2) the person applying for the license, or a responsible person of a business organization that is applying for the license, has been convicted within the last 10 years, in this state or in any other taxing jurisdiction, of crimes involving fuel tax under [AS 43.05.290](#) or similar provisions in other taxing jurisdictions;

(3) the person fails to comply with a requirement of [AS 43.40](#) or this chapter;

(4) the person does not meet the eligibility requirements for a qualified dealer license under 15 AAC [40.600\(a\)](#) ; or

(5) except if under appeal, the person has failed to pay in full the taxes, interest, and penalties levied under [AS 43.05](#) and AS 43.40.

(d) The department will issue only one qualified dealer license to each person.

(e) A license issued under this section expires on June 30 following the date of issue. Before a license issued under this section expires, the licensee may apply to renew the license, on a form or in a format prescribed by the department, for one year from the expiration date of the license.

(f) If the department determines a qualified dealer license may not be issued or renewed under this section, the department will mail or electronically deliver a notice of license denial or nonrenewal to the person whose license was denied or not renewed. The person may appeal a notice of license denial or nonrenewal not later than 10 days after the date the notice was mailed

or electronically delivered. The department will follow the appeal procedures of [AS 43.05](#) and 15 AAC [05](#).

**History:** Eff. 4/1/2001, Register 157; am 10/16/2013, Register 208

**Authority:** [AS 43.05.080](#)

[AS 43.40.100](#)

### **15 AAC 40.610. Bonding requirement**

(a) A person applying for a qualified dealer license under 15 AAC [40.600\(a\)](#) must file a bond with the department in an amount equal to twice the estimated average monthly tax or \$5,000, whichever is greater. A person applying to renew a qualified dealer license must file either a new bond or a bond continuation certificate on a form or in a format prescribed by the department. The bond may not be cancelled and must remain in effect until the department determines that the assessment or collection of the motor fuel tax is satisfied or prohibited by the applicable statute of limitations. The department may accept other security in the amount required by this section instead of a bond, including a certificate of deposit, a cash deposit, or bank letter of credit.

(b) If at any time the qualified dealer learns information that would lead a reasonable person to believe that the estimate required in 15 AAC [40.610\(a\)](#) is understated, the qualified dealer shall file a corrected estimate with the department, recalculate the amount of bond due under (a) of this section, and file an additional bond with the department. The qualified dealer shall file the corrected estimate and provide the additional bond within 30 days after the date on which the qualified dealer learned the information that would have resulted in a higher original estimate.

(c) Repealed 10/16/2013.

(d) The department may require an additional bond if the qualified dealer's average tax liability over the last 12 months exceeds the estimated tax liability upon which the bond is based.

(e) A qualified dealer that has shown a consistent history of timely filing of monthly tax returns and payment of monthly tax to the department over the last three years is not required to maintain a bond if the qualified dealer continues to remain in compliance with AS 43.40. The department will notify the qualified dealer of any noncompliance that would require the qualified dealer to file a bond under this subsection. The qualified dealer must file with the department the bond required by this subsection within thirty days of the date of issuance of the notice.

**History:** Eff. 4/1/2001, Register 157; am 10/16/2013, Register 208

**Authority:** [AS 43.05.080](#)

[AS 43.40.100](#)

### **15 AAC 40.615. Demand on bond or other security**

Except if under appeal, the department will make demand on a bond or other security if a licensee fails to pay an amount due under [AS 43.05](#), [AS 43.40](#), or this chapter to the department, including taxes, interest, or penalties, within the time required by law.

**History:** Eff. 10/16/2013, Register 208

**Authority:** [AS 43.05.080](#)

[AS 43.05.150](#)

[AS 43.40.100](#)

### **15 AAC 40.620. Revocation of qualified dealer license**

(a) The department may revoke a qualified dealer license issued or renewed under 15 AAC [40.600](#) if

(1) the licensee fails to comply with a requirement of [AS 43.40](#) or this chapter;

(2) the licensee is not currently engaged in the activities specified in [AS 43.40.100](#) (3);

(3) the licensee, or a responsible person of a licensee that is a business organization, has been convicted within the last 10 years, in this state or any other taxing jurisdiction, of crimes involving fuel tax under [AS 43.05.290](#) or similar provisions in other taxing jurisdictions; or

(4) except if under appeal, the licensee has failed to pay in full the taxes, interest, and penalties levied under [AS 43.05](#) and AS 43.40.

(b) If the department determines a qualified dealer license should be revoked, the department will mail a notice of proposed revocation at least 30 days before the revocation is to take effect. If the person has not cured the cause for revocation by the thirtieth day from the date of issuance of notice, or timely filed a notice of appeal under (d) of this section, the license is revoked by default on the thirtieth day from the date of issuance of notice. The department will mail a notice of revocation to the person.

(c) If the department revokes a qualified dealer license for failing to comply with [AS 43.40](#), the person is not eligible for a new license until 60 days after the date of revocation. The person must apply for a new qualified dealer license using the procedure set out in 15 AAC [40.600](#).

(d) A person may appeal a notice of proposed revocation under this section to the department. The appeal must be filed within 10 days after the date of the issuance of the notice of proposed revocation. The department will follow the appeal procedures of 15 AAC [05](#). The department may stay a revocation proceeding if the qualified dealer is in the process of contesting in court or with the department the amount of tax assessed under AS 43.40.

(e) If the department revokes a license under this section, the licensee shall, after all appeals have been exhausted, immediately surrender the license to the department.

**History:** Eff. 4/1/2001, Register 157; am 10/16/2013, Register 208

**Authority:** [AS 43.05.080](#)

[AS 43.40.100](#)

### **15 AAC 40.800. Recordkeeping requirements**

Each dealer, reseller, and user must keep records to make a complete accounting for the information required on the tax return or claim for a refund under [AS 43.40](#), including fuel purchases, transfers, and use. The records must include an accounting for inventories of fuel on the first and last days of the month, or in the case of a claim for a refund, inventories on the first and last days of the claim period. The failure to maintain records required by [AS 43.40.085](#) and this chapter will result in the denial of the refund.

**History:** Eff. 4/1/2001, Register 157

**Authority:** [AS 43.05.080](#)

[AS 43.40.085](#)

### **15 AAC 40.900. Definitions**

As used in [AS 43.40](#) and this chapter, unless the context requires otherwise,

- (1) "aviation fuel" means fuel used in an aircraft;
- (2) "charitable institution" means a person described in 26 U.S.C. 501(c)(3) (Internal Revenue Code sec. 501(c)(3)) and exempt from income taxation under 26 U.S.C. 501(a) (Internal Revenue Code sec. 501(a));
- (3) "common storage tank" means a storage tank serving both taxable and exempt uses, or multiple taxable uses to which various tax rates apply;
- (4) "dealer" has the meaning given in [AS 43.40.100](#) ;
- (5) "department" means the Department of Revenue;
- (6) "domestic purposes" means use in and around a private residence, except that it does not include use on public highways, in or on watercraft, or in conjunction with any commercial activity;

(7) "exported" means transported as cargo out of this state by or for the seller or purchaser and intended for use outside of this state;

(8) "federally recognized tribe" means a tribal entity that the United States Department of the Interior, Bureau of Indian Affairs, has recognized in this state and listed in 65 Fed. Reg. 13, 298 (Mar. 13, 2000); that list is adopted by reference;

(9) "flight" includes the continuing segment of a flight with a stopover in this state where the flight number and aircraft are not changed between flight segments;

(10) "fuel" has the meaning given to "motor fuel" in [AS 43.40.100](#) (2), except that "fuel" includes fuel and residual fuel oil listed in [AS 43.40.100](#) (2)(A)-(L);

(11) "gasohol" means motor fuel that is blended with alcohol as described in [AS 43.40.010](#) ;

(12) "import" means to deliver fuel as cargo into this state;

(13) "motor fuel" has the meaning given in [AS 43.40.100](#) ;

(14) "official use" does not include the following:

(A) consumption by a contractor who purchases motor fuel either for its own account or as the agent of a government agency for use in the performance of a contract with that agency;

(B) use in a private vehicle, unless transporting students;

(C) sales of fuel, except as provided in 15 AAC [40.320\(c\)](#) ;

(15) "person" means an individual, firm, partnership, joint venture, government, association, corporation, estate, trust, or receiver;

(16) "purchases" includes the manufacture of fuel;

(17) "qualified dealer" has the meaning given in [AS 43.40.100](#) ;

(18) "qualified municipality" means a municipality incorporated under [AS 29.05.011](#) that is not connected to more than 200 miles of publicly maintained roads;

(19) "reseller" means a person who sells or otherwise transfers in this state fuel upon which the taxes imposed by [AS 43.40](#) have been paid;

(20) "responsible person" means

(A) a general partner in a partnership, limited partnership, or limited liability partnership;

(B) the manager or any managing member of a limited liability company; or

(C) an officer, director, or majority shareholder of a corporation;

(D) any employee or contractor that has direct financial or physical control of fuel as part of that person's job duties;

(21) "stationary power plant" means a generator that is permanently attached to real property or is otherwise a fixture;

(22) "tax" means the motor fuel tax established under AS 43.40;

(23) "tax rate" means the motor fuel tax rate established under AS 43.40;

(24) "timely filed" means received by the department or postmarked on or before the last day of the month following the month motor fuel is sold, transferred, or used;

(25) "unrelated person" means a person other than one listed in 26 U.S.C. 267(b) (Internal Revenue Code sec. 267(b)); for purposes of this paragraph, 26 U.S.C. 267(b), as amended as of December 17, 1999, is adopted by reference;

(26) "user" has the meaning given in [AS 43.40.100](#) ;

(27) "watercraft" means a ship, boat, vessel, or other structure that is capable of being moved in or on water either under its own propulsion or propelled by another watercraft; "watercraft" includes a floating fish processor, a barge, a drilling ship, and a semi-submersible drilling rig;

(28) "foreign country" means any location that is not the 50 United States, the District of Columbia, or Puerto Rico.