

CHAPTER 207

TAX ON OPERATION OF COMMERCIAL MOTOR VEHICLES

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1207.001 Short title.—This chapter shall be known as the "Florida Special Fuel and Motor Fuel Use Tax Act of 1981," and the taxes levied under this chapter shall be in addition to all other taxes imposed by law.

History.—s. 2, ch. 80-415; s. 1, ch. 81-151; s. 101, ch. 95-417.

1Note.—Section 101, ch. 95-417, amended s. 207.001, effective July 1, 1996, to read:

207.001 Short title.—This chapter shall be known as the "Florida Diesel Fuel and Motor Fuel Use Tax Act of 1981," and the taxes levied under this chapter shall be in addition to all other taxes imposed by law.

Note.—Former s. 206.971.

207.002 Definitions.—As used in this chapter, the term:

(1) "Apportioned motor vehicle" means any motor vehicle which is required to be registered under the International Registration Plan.

¹(2) "Commercial motor vehicle" means any vehicle not owned or operated by a governmental entity which uses special fuel or motor fuel on the public highways; and which has a gross vehicle weight in excess of 26,000 pounds, or has three or more axles regardless of weight, or is used in combination when the weight of such combination exceeds 26,000 pounds gross vehicle weight. The term excludes any vehicle owned or oper-

ated by a ²coordinated community transportation provider as defined in s. 427.011 or by a private operator that provides public transit services under contract with such a provider.

(3) "Department" means the Department of Highway Safety and Motor Vehicles.

(4) "Motor carrier" means any person owning, controlling, operating, or managing any motor vehicle used to transport persons or property over any public highway.

(5) "Motor fuel" means what is commonly known and sold as gasoline and fuels containing a mixture of gasoline and other products.

(6) "Operate," "operated," "operation," or "operating" means and includes the utilization in any form of any commercial motor vehicle, whether loaded or empty, whether utilized for compensation or not for compensation, and whether owned by or leased to the motor carrier who uses it or causes it to be used.

(7) "Person" means and includes natural persons, corporations, copartnerships, firms, companies, agencies, or associations, singular or plural.

(8) "Public highway" means any public street, road, or highway in this state.

¹(9) "Special fuel" means any liquid product or gas product or combination thereof, including, but not limited to, all forms of fuel known or sold as diesel fuel, kerosene, butane gas, or propane gas and all other forms of liquefied petroleum gases, except those defined as "motor fuel," used to propel a motor vehicle.

¹(10) "Use," "uses," or "used" means the consumption of special fuel or motor fuel in a commercial motor vehicle for the propulsion thereof.

(11) "International Registration Plan" means a registration reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees or license taxes on the basis of fleet miles operated in various jurisdictions.

(12) "Apportionable vehicle" means any vehicle, except a recreational vehicle, a vehicle displaying restricted plates, a municipal pickup and delivery vehicle, a bus used in transportation of chartered parties, and a government-owned vehicle, which is used or intended for use in two or more states of the United States or provinces of Canada that allocate or proportionally register vehicles and which is used for the transportation of persons for hire or is designed, used, or maintained primarily for the transportation of property and:

(a) Is a power unit having a gross vehicle weight in excess of 26,000 pounds;

(b) Is a power unit having three or more axles, regardless of weight; or

(c) Is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

(13) "Interstate" means vehicle movement between or through two or more states.

(14) "Intrastate" means vehicle movement from one point within a state to another point within the same state.

(15) "Registrant" means a person in whose name or names a vehicle is properly registered.

History.—s. 2, ch. 80-415; s. 1, ch. 81-151; s. 66, ch. 83-217; s. 1, ch. 84-260; s. 40, ch. 85-180; s. 4, ch. 86-243; s. 6, ch. 87-198; s. 102, ch. 95-417.

Note.—Section 102, ch. 95-417, amended subsections (2), (9), and (10), effective July 1, 1996, to read:

(2) "Commercial motor vehicle" means any vehicle not owned or operated by a governmental entity which uses diesel fuel or motor fuel on the public highways; and which has a gross vehicle weight in excess of 26,000 pounds, or has three or more axles regardless of weight, or is used in combination when the weight of such combination exceeds 26,000 pounds gross vehicle weight. The term excludes any vehicle owned or operated by a coordinated community transportation provider as defined in s. 427.011 or by a private operator that provides public transit services under contract with such a provider.

(9) "Diesel fuel" means any liquid product or gas product or combination thereof, including, but not limited to, all forms of fuel known or sold as diesel fuel, kerosene, butane gas, or propane gas and all other forms of liquefied petroleum gases, except those defined as "motor fuel," used to propel a motor vehicle.

(10) "Use," "uses," or "used" means the consumption of diesel fuel or motor fuel in a commercial motor vehicle for the propulsion thereof.

Note.—"Coordinated community transportation provider," as defined in s. 427.011, was redesignated as "community transportation coordinator" by s. 1, ch. 89-376, and the definition was amended.

Note.—Former s. 206.972.

207.003 Privilege tax levied.—A tax for the privilege of operating any commercial motor vehicle upon the public highways of this state shall be levied upon every motor carrier at a rate which includes the rate provided in chapter 206, the sales tax imposed by part II of chapter 212, the minimum tax rates imposed by ss. 336.021 and 336.025, and the tax rate provided in s. 336.026 on each gallon of special fuel or motor fuel used for the propulsion of a commercial motor vehicle by such motor carrier within the state.

History.—s. 2, ch. 80-415; s. 1, ch. 81-151; s. 29, ch. 83-3; s. 97, ch. 90-136; s. 9, ch. 90-351; s. 103, ch. 95-417.

Note.—Section 103, ch. 95-417, amended s. 207.003, effective July 1, 1996, to read:

207.003 Privilege tax levied.—A tax for the privilege of operating any commercial motor vehicle upon the public highways of this state shall be levied upon every motor carrier at a rate which includes the minimum rates provided in parts I, II, and IV of chapter 206 on each gallon of diesel fuel or motor fuel used for the propulsion of a commercial motor vehicle by such motor carrier within the state.

Note.—Former s. 206.973.

207.004 Registration of motor carriers; identifying devices; fees; renewals; temporary fuel-use permits and driveway permits.—

(1)(a) No motor carrier shall operate or cause to be operated in this state any commercial motor vehicle, other than a Florida-based commercial motor vehicle that travels Florida intrastate mileage only, that uses special fuel or motor fuel until such carrier has registered with the department or has registered under a cooperative reciprocal agreement as described in s. 207.0281, after such time as this state enters into such agreement, and has been issued an identifying device or such carrier has been issued a permit as authorized under subsections (4) and (5) for each vehicle operated. There shall be a fee of \$4 per year or any fraction thereof for each such identifying device issued. The identifying device shall be provided by the department and must be conspicuously displayed on the commercial motor vehicle as prescribed by the department while it is being operated on the public highways of this state. The transfer of an identifying device from one vehicle to another vehicle or from one motor carrier to another motor carrier is prohibited.

(b) The motor carrier to whom an identifying device has been issued shall be solely responsible for the proper use of the identifying device by its employees, consignees, or lessees.

(2) Identifying devices shall be issued each year for the period January 1 through December 31, or any portion thereof, if tax returns and tax payments, when applicable, have been submitted to the department for prior reporting periods. Identifying devices may be displayed for the next succeeding indicia period beginning December 1 of each year.

(3) If a motor carrier no longer operates or causes to be operated in this state a commercial motor vehicle, the identifying device shall be destroyed and the motor carrier to whom the device was issued shall notify the department immediately by letter of such removal and of the number of the identifying device that has been destroyed.

(4) A motor carrier, before operating a commercial motor vehicle on the public highways of this state, must display an identifying device as required under subsections (1) and (2) or must obtain a temporary fuel-use permit for that vehicle. A temporary fuel-use permit shall expire within 10 days after date of issuance. The cost of a temporary fuel-use permit is \$45, and the permit exempts the vehicle from the payment of the motor fuel or special fuel tax imposed under this chapter during the term for which the permit is valid. However, the vehicle is not exempt from paying the fuel tax at the pump.

(5)(a) A registered motor carrier holding a valid certificate of registration may, upon payment of the \$45 fee per permit, secure from the department, or any wire service authorized by the department, a temporary fuel-use permit. A blank temporary fuel-use permit, before its use, must be executed by the motor carrier, in ink or type, so as to identify the carrier, the vehicle to which the permit is assigned, and the date that the vehicle is placed in and removed from service. The temporary fuel-use permit shall also show a complete identification of the vehicle on which the permit is to be used, together with the name and address of the owner or lessee of the vehicle. The endorsed temporary fuel-use permit shall then be carried on the vehicle that it identifies and shall be exhibited on demand to any authorized personnel. Temporary fuel-use permits may be transmitted to the motor carrier by electronic means and shall be completed as outlined by department personnel prior to transmittal. The motor carrier to whom a temporary fuel-use permit is issued shall be solely responsible for the proper use of the permit by its employees, consignees, or lessees. Any erasure, alteration, or unauthorized use of a temporary fuel-use permit shall render it invalid and of no effect. A motor carrier to whom a temporary fuel-use permit is issued may not knowingly allow the permit to be used by any other person or organization.

(b) An unregistered motor carrier may, upon payment of the \$45 fee, secure from any wire service authorized by the department, by electronic means, a temporary fuel-use permit that shall be valid for a period of 10 days. Such permit must show the name and address of the unregistered motor carrier to whom it is issued, the date the vehicle is placed in and removed from service, a complete identification of the vehicle on which the per-

mit is to be used, and the name and address of the owner or lessee of the vehicle. The temporary fuel-use permit shall then be carried on the vehicle that it identifies and shall be exhibited on demand to any authorized personnel. The unregistered motor carrier to whom a temporary fuel-use permit is issued shall be solely responsible for the proper use of the permit by its employees, consignees, or lessees. Any erasure, alteration, or unauthorized use of a temporary fuel-use permit shall render it invalid and of no effect. The unregistered motor carrier to whom a temporary fuel-use permit is issued may not knowingly allow the permit to be used by any other person or organization.

(c) A registered motor carrier engaged in driveway transportation, in which the cargo is the vehicle itself and is in transit to stock inventory and the ownership of the vehicle is not vested in the motor carrier, may, upon payment of the \$4 fee, secure from the department a driveway permit. The driveway permits shall be issued for the period January 1 through December 31. An original permit must be in the possession of the operator of each vehicle and shall be exhibited on demand to any authorized personnel. Vehicle mileage reports must be submitted by the motor carrier, and the road privilege tax must be paid on all miles operated within this state during the reporting period. All other provisions of this chapter shall apply to the holder of a driveway permit.

History.—s. 2, ch. 80-415; s. 1, ch. 81-151; s. 102, ch. 81-259; s. 67, ch. 83-217; s. 2, ch. 84-260; s. 41, ch. 85-180; s. 7, ch. 87-198; s. 5, ch. 88-306; s. 5, ch. 90-329; s. 1, ch. 94-306; s. 104, ch. 95-417.

Note.—Section 104, ch. 95-417, amended paragraph (a) of subsection (1) and subsection (4), effective July 1, 1996, to read:

(1)(a) No motor carrier shall operate or cause to be operated in this state any commercial motor vehicle, other than a Florida-based commercial motor vehicle that travels Florida intrastate mileage only, that uses diesel fuel or motor fuel until such carrier has registered with the department or has registered under a cooperative reciprocal agreement as described in s. 207.0261, after such time as this state enters into such agreement, and has been issued an identifying device or such carrier has been issued a permit as authorized under subsections (4) and (5) for each vehicle operated. There shall be a fee of \$4 per year or any fraction thereof for each such identifying device issued. The identifying device shall be provided by the department and must be conspicuously displayed on the commercial motor vehicle as prescribed by the department while it is being operated on the public highways of this state. The transfer of an identifying device from one vehicle to another vehicle or from one motor carrier to another motor carrier is prohibited.

(4) A motor carrier, before operating a commercial motor vehicle on the public highways of this state, must display an identifying device as required under subsections (1) and (2) or must obtain a temporary fuel-use permit for that vehicle. A temporary fuel-use permit shall expire within 10 days after date of issuance. The cost of a temporary fuel-use permit is \$45, and the permit exempts the vehicle from the payment of the motor fuel or diesel fuel tax imposed under this chapter during the term for which the permit is valid. However, the vehicle is not exempt from paying the fuel tax at the pump.

Note.—Former s. 206.974.

207.005 Returns and payment of tax; delinquency; calculation of fuel used during operations in the state; credit; bond.—

(1) The taxes levied under this chapter shall be due and payable on the first day of the month following the last month of the reporting period. The department may promulgate rules for requiring and establishing procedures for annual, semiannual, or quarterly filing. The reporting period shall be the 12 months beginning July 1 and ending June 30. It shall be the duty of each motor carrier registered or required to be registered under the provisions of this chapter to submit a return within 30 days after the due date. The due date shall be as follows:

- (a) If annual filing, the due date shall be July 1;
- (b) If semiannual filing, the due dates shall be January 1 and July 1; or
- (c) If quarterly filing, the due dates shall be January 1, April 1, July 1, and October 1.

(2) The amount of fuel used in the propulsion of any commercial motor vehicle within this state may be calculated, if the motor carrier maintains adequate records, by applying total interstate vehicular consumption of all special fuel and motor fuel used as related to total miles traveled and applying such rate to total miles traveled within this state. In the absence of adequate documentation by the motor carrier, the department is authorized to promulgate rules converting miles driven to gallons used.

(3) For the purpose of computing the carrier's liability for the road privilege tax, the total gallons of fuel used in the propulsion of any commercial motor vehicle in this state shall be multiplied by the rates provided in chapter 206, part II of chapter 212, the minimum tax rates provided in ss. 336.021 and 336.025, and the tax rate provided in s. 336.026. From the sum determined by this calculation, there shall be allowed a credit equal to the amount of the tax per gallon under chapter 206, part II of chapter 212, the minimum tax rates provided in ss. 336.021 and 336.025, and the tax rate provided in s. 336.026 for each gallon of fuel purchased in this state during the reporting period when the special fuel or motor fuel tax was paid at the time of purchase. If the tax paid under chapter 206, part II of chapter 212, the minimum tax rates provided in ss. 336.021 and 336.025, and the tax rate provided in s. 336.026 exceeds the total tax due under this chapter, the excess may be allowed as a credit against future tax payments, until the credit is fully offset or until eight calendar quarters shall have passed since the end of the calendar quarter in which the credit accrued, whichever occurs first. A refund may be made for this credit provided it exceeds \$10.

(4) The department is authorized to promulgate the necessary rules to provide for an adequate bond from each motor carrier to ensure payment of taxes required under this chapter.

History.—s. 2, ch. 80-415; s. 1, ch. 81-151; s. 103, ch. 81-259; s. 30, ch. 83-3; s. 12, ch. 83-138; s. 68, ch. 83-217; s. 3, ch. 84-260; s. 1, ch. 84-334; s. 4, ch. 84-353; s. 98, ch. 90-136; s. 6, ch. 90-329; s. 10, ch. 90-351; s. 2, ch. 94-306; s. 105, ch. 95-417.

Note.—Section 105, ch. 95-417, amended subsections (2) and (3), effective July 1, 1996, to read:

(2) The amount of fuel used in the propulsion of any commercial motor vehicle within this state may be calculated, if the motor carrier maintains adequate records, by applying total interstate vehicular consumption of all diesel fuel and motor fuel used as related to total miles traveled and applying such rate to total miles traveled within this state. In the absence of adequate documentation by the motor carrier, the department is authorized to promulgate rules converting miles driven to gallons used.

(3) For the purpose of computing the carrier's liability for the road privilege tax, the total gallons of fuel used in the propulsion of any commercial motor vehicle in this state shall be multiplied by the rates provided in parts I, II, and IV of chapter 206. From the sum determined by this calculation, there shall be allowed a credit equal to the amount of the tax per gallon under parts I, II, and IV of chapter 206 for each gallon of fuel purchased in this state during the reporting period when the diesel fuel or motor fuel tax was paid at the time of purchase. If the tax paid under parts I, II, and IV of chapter 206 exceeds the total tax due under this chapter, the excess may be allowed as a credit against future tax payments, until the credit is fully offset or until eight calendar quarters shall have passed since the end of the calendar quarter in which the credit accrued, whichever occurs first. A refund may be made for this credit provided it exceeds \$10.

Note.—Former s. 206.975.

207.006 Reports to be filed regardless of tax.—All statements or reports required by this chapter to be

made to the department shall be filed regardless of whether tax is due under the provisions of this chapter.

History.—s. 2, ch. 80-415; s. 1, ch. 81-151.

Note.—Former s. 206.977.

207.007 Offenses; penalties and interest.—

(1) If any motor carrier registered under this chapter fails to file a return and pay any tax liability under this chapter within the time required hereunder, the department may impose a delinquency penalty of \$50 or 10 percent of the delinquent taxes due, whichever is greater, if the failure is for not more than 30 days, with an additional 10 percent penalty for each additional 30 days, or fraction thereof, during the time which the failure continues, not to exceed a total penalty of 100 percent in the aggregate. However, the penalty may not be less than \$50.

(2) In addition to any other penalties, any delinquent tax shall bear interest at the rate of 1 percent per month, or fraction thereof, calculated from the date the tax was due. If the department enters into a cooperative reciprocal agreement under the provisions of s. 207.0281, the department shall collect and distribute all interest due to other jurisdictions at the same rate as if such interest were due to the state.

(3) Any person who:

(a) Willfully refuses or neglects to make any statement, report, or return required by the provisions of this chapter;

(b) Knowingly makes, or assists any other person in making, a false statement in a return or report or in connection with an application for registration under this chapter; or

(c) Violates any of the provisions of this chapter, a penalty for which is not otherwise provided,

is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the department may revoke or suspend the registration privileges under ss. 207.004 and 320.02 of the violator. Each day or part thereof during which a person operates or causes to be operated a commercial motor vehicle without being the holder of an identifying device or having a valid temporary fuel-use or driveaway permit as required by this chapter constitutes a separate offense within the meaning of this section. In addition to the penalty imposed by this section, the defendant shall be required to pay all taxes, interest, and penalties due to the state.

History.—s. 2, ch. 80-415; s. 1, ch. 81-151; s. 55, ch. 85-180; s. 79, ch. 87-6; s. 48, ch. 87-101; s. 8, ch. 87-198; s. 14, ch. 92-320; s. 3, ch. 94-306.

Note.—Former s. 206.983.

207.008 Retention of records by motor carrier.—

Each registered motor carrier shall maintain and keep pertinent records and papers as may be required by the department for the reasonable administration of this chapter and shall preserve such records as long as required by s. 213.35.

History.—s. 2, ch. 80-415; s. 1, ch. 81-151; s. 8, ch. 88-119.

Note.—Former s. 206.98.

207.011 Inspection of records; hearings; forms; rules.—

(1) The department shall have the authority to prescribe all forms upon which reports shall be made to it and any other forms required for the proper administration of this chapter.

(2) The department shall have the authority to prescribe all rules necessary for the enforcement of this chapter.

(3) The department, or any authorized agent thereof, is authorized to examine the records, books, papers, and equipment of any motor carrier, any retail dealer of special fuels, and any wholesale distributor of special fuels or motor fuels that are deemed necessary to verify the truth and accuracy of any statement or report and ascertain whether the tax imposed by this chapter has been paid.

(4) The department or any of its duly authorized agents shall have the power in the enforcement of the provisions of this chapter to hold hearings, administer oaths to witnesses, and take the sworn testimony of any person and cause it to be transcribed into writing; for such purposes, the department shall be authorized to issue subpoenas and subpoenas duces tecum and conduct such investigations as it may deem necessary.

(5) If any person unreasonably refuses access to such records, books, papers, other documents, or equipment, or if any person fails or refuses to obey such subpoenas duces tecum or to testify, except for lawful reasons, before the department or any of its authorized agents, the department shall certify the names and facts to the clerk of the circuit court of any county; and the circuit court shall enter such order against such person in the premises as the enforcement of this chapter requires.

(6) In any action or proceeding for the collection of the tax and penalties or interest imposed in connection therewith, an assessment by the department of the amount of the tax, penalties, or interest due shall be prima facie evidence of the claim of the state; and the burden of proof shall be upon the person charged to show that the assessment was incorrect and contrary to law.

History.—s. 2, ch. 80-415; s. 1, ch. 81-151; s. 9, ch. 87-198; s. 4, ch. 94-306; s. 106, ch. 95-417.

Note.—Section 106, ch. 95-417, amended subsection (3), effective July 1, 1996, to read:

(3) The department, or any authorized agent thereof, is authorized to examine the records, books, papers, and equipment of any motor carrier, any retail dealer of diesel fuels, and any wholesale distributor of diesel fuels or motor fuels that are deemed necessary to verify the truth and accuracy of any statement or report and ascertain whether the tax imposed by this chapter has been paid.

Note.—Former s. 206.981.

207.012 Estimate of amount of tax due and unpaid.

(1) Whenever any motor carrier neglects or refuses to make and file any report for any reporting period as required by this chapter or files an incorrect or fraudulent report, or is in default in the payment of any taxes and penalties thereon payable under this chapter, the department, after giving at least 10 days' notice to the motor carrier, shall, from any information it may be able to obtain from its office or elsewhere, estimate the number of gallons of fuel with respect to which the motor carrier has become liable for taxes under this chapter and the amount of taxes due and payable thereon, to which sum shall be added the penalties and interest required under s. 207.007.

(2) In any action or proceeding for the collection of the tax and any penalties or interest imposed in connection therewith, an assessment by the department in the amount of the tax due and the interest or penalties due to the state shall constitute prima facie evidence of the claim of the state; and the burden of proof shall be upon the motor carrier to show that the assessment was incorrect or contrary to law.

History.—s. 2, ch. 80-415; s. 1, ch. 81-151.

Note.—Former s. 206.982.

207.013 Suits for collection of unpaid taxes, penalties, and interest.—Upon demand of the department, the Department of Legal Affairs or the state attorney for a judicial circuit shall bring appropriate actions, in the name of the state or in the name of the Department of Highway Safety and Motor Vehicles in the capacity of its office, for the recovery of taxes, penalties, and interest due under this chapter; and judgment shall be rendered for the amount so found to be due together with costs. However, if it shall be found as a fact that such claim for, or grant of, an exemption or credit was wilful on the part of any motor carrier, retail dealer, or distributor of special fuel or motor fuel, judgment shall be rendered for double the amount of the tax found to be due with costs. The department may employ an attorney at law to institute and prosecute proper proceedings to enforce payment of the taxes, penalties, and interest provided for by this chapter and may fix the compensation for the services of such attorney at law.

History.—s. 2, ch. 80-415; s. 1, ch. 81-151; s. 10, ch. 87-198; s. 107, ch. 95-417.

Note.—Section 107, ch. 95-417, amended s. 207.013, effective July 1, 1996, to read:

207.013 Suits for collection of unpaid taxes, penalties, and interest.—Upon demand of the department, the Department of Legal Affairs or the state attorney for a judicial circuit shall bring appropriate actions, in the name of the state or in the name of the Department of Highway Safety and Motor Vehicles in the capacity of its office, for the recovery of taxes, penalties, and interest due under this chapter; and judgment shall be rendered for the amount so found to be due together with costs. However, if it shall be found as a fact that such claim for, or grant of, an exemption or credit was wilful on the part of any motor carrier, retail dealer, or distributor of diesel fuel or motor fuel, judgment shall be rendered for double the amount of the tax found to be due with costs. The department may employ an attorney at law to institute and prosecute proper proceedings to enforce payment of the taxes, penalties, and interest provided for by this chapter and may fix the compensation for the services of such attorney at law.

Note.—Former s. 206.984.

207.014 Departmental warrant for collection of unpaid taxes.—

(1) Upon the determination of the amount of unpaid taxes and penalties due from a person, the department may issue a warrant, under its official seal, directed to the sheriff of any county of the state, commanding the sheriff to levy upon and sell the goods and chattels of such person found within the sheriff's jurisdiction for the payment of the amount of such delinquency, with the added penalties and interest and the cost of executing the warrant and conducting the sale, and to return such warrant to the department and pay the department the money collected by virtue thereof. However, any surplus resulting from such sale after all payments of costs, penalties, and delinquent taxes have been made shall be returned to the defaulting person.

(2) The sheriff to whom any such warrant is directed shall proceed upon the same in the same manner as prescribed by law in respect to executions issued against goods and chattels upon judgment by the several circuit courts, except as otherwise provided in this chapter.

(3) In the event there is a contest or claim of any kind with reference to the property levied upon or the amount of taxes, costs, or penalties due, such contest or claim shall be tried in the circuit court in and for the county in which the warrant was executed, as nearly as may be in the same manner and means as such contest or claim would have been tried in such court had the warrant originally issued upon a judgment rendered by such court. The warrant issued as provided in this section shall constitute prima facie evidence of the amount of taxes, interest, and penalties due to the state by the motor carrier; and the burden of proof shall be upon the motor carrier, retail dealer, or distributor of special fuel or motor fuel to show that the amounts or penalties were incorrect.

(4) Nothing in this section shall be construed as forfeiting or waiving any rights to collect such taxes or penalties by an action upon any bonds that may be filed with the department under the provisions of this chapter or by suit or otherwise; and in case such suit, action, or other proceeding is instituted for the collection of the tax, such suit, action, or other proceeding shall not be construed as waiving any other right herein provided. Any civil proceeding under this chapter shall not be construed as a waiver or as an estoppel in any criminal proceeding against such person under this chapter.

History.—s. 2, ch. 80-415; s. 1, ch. 81-151; s. 105, ch. 81-259; s. 1091, ch. 95-147; s. 108, ch. 95-417.

Note.—Section 108, ch. 95-417, amended subsection (3), effective July 1, 1996, to read:

(3) In the event there is a contest or claim of any kind with reference to the property levied upon or the amount of taxes, costs, or penalties due, such contest or claim shall be tried in the circuit court in and for the county in which the warrant was executed, as nearly as may be in the same manner and means as such contest or claim would have been tried in such court had the warrant originally issued upon a judgment rendered by such court. The warrant issued as provided in this section shall constitute prima facie evidence of the amount of taxes, interest, and penalties due to the state by the motor carrier, and the burden of proof shall be upon the motor carrier, retail dealer, or distributor of diesel fuel or motor fuel to show that the amounts or penalties were incorrect.

Note.—Former s. 206.985.

207.015 Tax a lien on property.—If any person liable for the tax imposed by this chapter neglects or refuses to pay it, the amount of the tax, including any interest, penalty, or addition to the tax, with any cost that may accrue in addition thereto, shall be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, then belonging to or thereafter acquired by the person, whether the property is employed by the person in the prosecution of business or is in the hands of an assignee, trustee, or receiver for the benefit of creditors, from the date the taxes are due and payable. The lien shall have priority over any lien or encumbrance whatsoever except the lien of other state taxes having priority by law, and except that the lien shall not be valid as against any bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights attached before the time when the department filed claim of lien in the office of the clerk of the circuit court of the county where the principal place of business of the person is located or, if the person has no principal place of business in the state, in the office of the Department of State, for which no filing fee shall be required. The lien shall continue until the amount of the tax, with any penalties and interest subsequently accruing, is paid or until the tax is barred under

chapter 95. The department may issue a certificate of release of lien when the amount of the tax, with any penalties and interest subsequently accruing thereon, has been satisfied by the person; and the person may record it with the clerk of the circuit court of the county where the claim of lien was filed.

History.—s. 2, ch. 80-415; s. 1, ch. 81-151.
Note.—Former s. 206.986.

207.016 Officer's sale of property or franchise.—

(1) No sheriff, receiver, assignee, master, or other officer shall sell the property or franchise of any person for failure to pay taxes, penalties, or interest without first filing with the department a statement containing the following information:

- (a) The name of the plaintiff or party at whose instance or upon whose account the sale is made.
- (b) The name of the person whose property or franchise is to be sold.
- (c) The time and place of sale.
- (d) The nature of the property and the location of the same.

(2) The department, after receiving notice as provided in subsection (1), shall furnish to the sheriff, receiver, trustee, assignee, master, or other officer having charge of the sale a certified copy or copies of all taxes, penalties, and interest on file in the office of the department as liens against such person and, in the event there are no such liens, a certificate showing that fact, which certified copy or copies of certificate shall be publicly read by such officer at and immediately before the sale of the property or franchise of such person.

History.—s. 2, ch. 80-415; s. 2, ch. 81-151.
Note.—Former s. 206.987.

207.017 Department to furnish certificate of liens.

The department shall furnish to any person applying therefor a certificate showing the amount of all liens for tax, penalties, and interest that may be of record in the files of the department against any person under the provisions of this chapter.

History.—s. 2, ch. 80-415; s. 3, ch. 81-151.
Note.—Former s. 206.988.

207.018 Foreclosure of liens.—The department may file an action in the name of the state to foreclose the liens provided for in this chapter. The procedure shall be the same as the procedure for foreclosure of mortgages on real estate. A certificate of the department setting forth the amount of taxes due shall be prima facie evidence of the matter therein contained. The action may be instituted at any time after the lien becomes effective and before it is barred under chapter 95. The title to the land conveyed by such deed shall be indefeasible as to all parties defendant in the action.

History.—s. 2, ch. 80-415; s. 3, ch. 81-151.
Note.—Former s. 206.989.

207.019 Discontinuance or transfer of business; change of address.—

(1) Whenever a person ceases to engage in business as a motor carrier within the state by reason of the discontinuance, sale, or transfer of the business of such person, he or she shall notify the department in writing at least 10 days prior to the time the discontinuance,

sale, or transfer takes effect. Such notice shall give the date of discontinuance and, in the event of a sale or transfer of the business, the date thereof and the name and address of the purchaser or transferee. All special fuel or motor fuel use taxes shall become due and payable concurrently with such discontinuance, sale, or transfer; and any such person shall, concurrently with such discontinuance, sale, or transfer, make a report, pay all such taxes, interest, and penalties, and surrender to the department the registration issued to such person.

(2) Unless notice has been given to the department as provided in subsection (1), such purchaser or transferee is liable to the state for the amount of all taxes, penalties, and interest under the laws of this state accrued against the person selling or transferring his or her business on the date of such sale or transfer, but only to the extent of the value of the property and business thereby acquired from such motor carrier.

(3) Nothing in this section shall be construed as releasing the motor carrier so transferring or discontinuing his or her business from liability for any taxes or for any interest or penalty due under the provisions of this chapter.

(4) Every motor carrier shall submit in writing to the department any change in address of his or her principal place of business within 10 days after such change becomes effective.

History.—s. 2, ch. 80-415; s. 3, ch. 81-151; s. 104, ch. 81-259; s. 1092, ch. 95-147; s. 109, ch. 95-417.

Note.—Section 109, ch. 95-417, amended subsection (1), effective July 1, 1996, to read:

(1) Whenever a person ceases to engage in business as a motor carrier within the state by reason of the discontinuance, sale, or transfer of the business of such person, he or she shall notify the department in writing at least 10 days prior to the time the discontinuance, sale, or transfer takes effect. Such notice shall give the date of discontinuance and, in the event of a sale or transfer of the business, the date thereof and the name and address of the purchaser or transferee. All diesel fuel or motor fuel use taxes shall become due and payable concurrently with such discontinuance, sale, or transfer; and any such person shall, concurrently with such discontinuance, sale, or transfer, make a report, pay all such taxes, interest, and penalties, and surrender to the department the registration issued to such person.

Note.—Former s. 206.979.

207.021 Settlement or compromise of penalties or interest.—The department may settle or compromise, pursuant to s. 213.21, penalties or interest imposed under this chapter.

History.—s. 2, ch. 80-415; s. 3, ch. 81-151; s. 4, ch. 84-170; s. 4, ch. 84-260.
Note.—Former s. 206.99.

207.022 Restraining and enjoining violation.—In a suit or other proceeding instituted in any court of competent jurisdiction in the name of the state by the Department of Legal Affairs or by a state attorney at the direction of the department, any person who violates any of the provisions of this chapter or who fails to pay the taxes and all interest and penalties due by him or her to the state under the provisions of this chapter may be restrained and enjoined from operating any motor vehicle within this state until such person has paid all of such taxes, interest, and penalties due the state and has complied with the provisions of this chapter. Any proceeding instituted under this section shall not operate as a bar to the prosecution of any person guilty of violating any of the criminal laws of the state.

History.—s. 2, ch. 80-415; s. 3, ch. 81-151; s. 1093, ch. 95-147.
Note.—Former s. 206.991.

207.023 Authority to inspect vehicles, make arrests, seize property, and execute warrants.—

(1) As a part of their responsibility when inspecting commercial vehicles, the Department of Highway Safety and Motor Vehicles, the Department of Agriculture and Consumer Services, and the Department of Transportation shall ensure that all vehicles are properly qualified under the provisions of this chapter.

(2) The Department of Highway Safety and Motor Vehicles, the Department of Agriculture and Consumer Services, the Department of Transportation, and their deputies, agents, and employees may assess the penalty imposed in s. 316.545(4) for violations of s. 207.004(4) and may make arrests without warrants for violations of the other provisions of this chapter. Any person arrested for a violation of any provision of this chapter shall be surrendered without delay to the sheriff of the county in which the arrest was made, and a formal complaint shall be made against the person, in accordance with law.

(3) Commercial motor vehicles owned or operated by any motor carrier who refuses to comply with this chapter may be seized by authorized agents or employees of the Department of Highway Safety and Motor Vehicles, the Department of Agriculture and Consumer Services, or the Department of Transportation; or authorized agents and employees of any of these departments also may seize property as set out in ss. 206.205, 206.21, and 206.215. Upon such seizure, the property shall be surrendered without delay to the sheriff of the county where the property was seized for further proceedings.

(4) When the Department of Highway Safety and Motor Vehicles deems it advisable, it may direct the warrant provided for in s. 207.014 to one of such deputies, agents, or employees of the department, who shall then execute the warrant and proceed thereon in the same manner provided for sheriffs in such cases.

History.—s. 2, ch. 80-415; s. 3, ch. 81-151; s. 69, ch. 83-217; s. 56, ch. 85-180; s. 11, ch. 87-198; s. 1094, ch. 95-147.

Note.—Former s. 206.992.

207.024 Cooperation of other state agencies in administration of law.—

The department is empowered to call on any state agency, department, bureau, or board for any and all information which, in its judgment, may be of assistance in administering or preparing for the administration of this chapter; and such state agency, department, bureau, or board is authorized, directed, and required to furnish such information.

History.—s. 4, ch. 81-151.

207.025 Exchange of information.—The department is authorized to exchange information with the American Association of Motor Vehicle Administrators and with another state or states as necessary to enforce the provisions of this chapter.

History.—s. 2, ch. 80-415; s. 5, ch. 81-151; s. 12, ch. 87-198.

Note.—Former s. 206.994.

207.026 Allocation of tax.—All moneys derived from the taxes and fees imposed by this chapter shall be paid into the State Treasury by the department for deposit in the Gas Tax Collection Trust Fund from which the following transfers shall be made: After withholding

\$50,000 from the proceeds therefrom, to be used as a revolving cash balance, and the amount of funds necessary for the administration and enforcement of this tax, all other moneys shall be transferred in the same manner and for the same purpose as provided in ss. 206.41, 206.45, 206.60, 206.605, 206.9945, 212.69, 336.021, 336.025, and 336.026.

History.—s. 2, ch. 80-415; s. 5, ch. 81-151; s. 106, ch. 81-259; s. 31, ch. 83-3; s. 4, ch. 85-164; s. 41, ch. 87-6; s. 13, ch. 87-198; ss. 46, 47, ch. 87-548; s. 99, ch. 90-136; s. 11, ch. 90-351; s. 5, ch. 94-306; s. 110, ch. 95-417.

Note.—Section 110, ch. 95-417, amended s. 207.026, effective July 1, 1996, to read:

207.026 Allocation of tax.—All moneys derived from the taxes and fees imposed by this chapter shall be paid into the State Treasury by the department for deposit in the Fuel Tax Collection Trust Fund from which the following transfers shall be made: After withholding \$50,000 from the proceeds therefrom, to be used as a revolving cash balance, and the amount of funds necessary for the administration and enforcement of this tax, all other moneys shall be transferred in the same manner and for the same purpose as provided in ss. 206.41, 206.45, 206.60, 206.605, 206.606, 206.608, 206.9945, 336.021, and 336.025.

Note.—Former s. 206.995.

207.0281 Registration; cooperative reciprocal agreements between states.—

(1) The Department of Highway Safety and Motor Vehicles may enter into a cooperative reciprocal agreement, including, but not limited to, the international fuel-tax agreement, with another state or group of states for the administration of the tax imposed by this chapter. An agreement arrangement, declaration, or amendment is not effective until stated in writing and filed with the Department of Highway Safety and Motor Vehicles.

(2) The agreement may provide for determining the base state for users, users' records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods including defining uniform penalty and interest rates for late reporting, and determining methods for collecting and forwarding of motor fuel taxes and penalties to another jurisdiction and may include other provisions as will facilitate the administration of the agreement.

(3) The department may, as required by the terms of the agreement, forward to the proper officers of another state any information in the department's possession relative to the manufacture, receipt, sale, use, transportation, or shipment of motor fuels by any person. The department may disclose to the proper officers of another state the location of offices, motor vehicles, and other real and personal property of users of motor fuels.

(4) The agreement may provide for each state to audit the records of persons based in the state to determine if the motor fuel taxes due each state are properly reported and paid. Each state shall forward the findings of the audits performed on persons based in the state to each state in which the person has taxable use of motor fuels. For persons who are not based in this state and who have taxable use of motor fuel in this state, the department shall serve the audit findings received from another state in the form of an assessment on the person as though an audit was conducted by the department.

(5) Any agreement entered into under this section does not preclude the department from auditing the records of any person covered by the provisions of this chapter.

(6) The department may adopt rules for the administration and enforcement of the agreements.

(7) This section and the contents of any reciprocal agreement entered into under this section supersede all other fuel-tax requirements of this chapter for commer-

cial motor vehicles.

(8) The legal remedies for any person served with an order or assessment under this section are as prescribed in this chapter.

History.—s. 14, ch. 87-198; s. 51, ch. 91-45; s. 6, ch. 94-306.