

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND ELEVENTH LEGISLATURE

SECOND SPECIAL SESSION

November 18, 1983

AND AT THE

SECOND REGULAR SESSION

January 4, 1984 to April 25, 1984

AND AT THE

THIRD SPECIAL SESSION

September 4, 1984 to September 11, 1984

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J.S. McCarthy Co., Inc.
Augusta, Maine
1986

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND ELEVENTH LEGISLATURE
JANUARY 4, 1984 TO APRIL 25, 1984

CHAPTER 817

H.P. 1799 - L.D. 2380

AN ACT to Establish a Regional Fuel Tax Agreement.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 29 MRSA §246-A, sub-§1, as amended by PL 1983, c. 455, §11, is further amended to read:

1. Application. Notwithstanding any other provision of law, a person owning, operating or causing operation of a vehicle on the highways of this State, subject to Title 36, chapter 453, ~~455, 457 or~~ 459 or 463, shall apply to the Secretary of State for a fuel use identification decal for each vehicle covered by those reports or licensing requirement, except vehicles owned and operated by government agencies ~~and~~ vehicles bearing dealer registration plates pursuant to subchapter III-A and recreational vehicles.

Sec. 2. 29 MRSA §246-A, sub-§2, as amended by PL 1983, c. 533, is repealed and the following enacted in its place:

2. Vehicles requiring a fuel use identification decal. The following vehicles require a fuel use identification decal:

A. Gasoline powered motor vehicles or combinations of vehicles which are registered for a gross weight of 18,000 pounds or over;

B. Gasoline powered motor vehicles designed to carry 20 passengers or more for hire;

C. All other motor vehicles propelled by an internal combustion engine, powered by other than gasoline, registered for a gross weight of 7,000 pounds or over;

D. All motor vehicles propelled by an internal combustion engine powered by other than gasoline designed to carry 20 passengers or more for hire;
and

Interstate bus operators shall be required to obtain this decal on the same prorated basis as is used to determine fuel used within the State. The number of

buses that the state mileage factor represents of the entire fleet mileage shall be required to display the fuel use identification decal or be issued a certified statement that the appropriate fee has been paid.

Farm vehicles and farm motor trucks subject to a limited inspection, as provided in section 2506, subsection 5, are not required to have a fuel use identification decal pursuant to this section.

Sec. 3. 29 MRSA §246-A, sub-§5, as enacted by PL 1981, c. 689, §1, is amended to read:

5. Issuance; display; expiration. The Secretary of State shall issue an identification decal of such size and design as he shall prescribe, which shall be permanently affixed to the exterior of the vehicle in a location the Secretary of State shall specify and such decal shall at all times be visible and legible. ~~The decal shall become void on February 1st next following the date of issue~~ Commencing with the 1985 issue year, fuel use identification decals will expire December 31st.

Effective February 1, 1983, the Secretary of State shall also issue a fuel use certificate to be carried in the vehicle at all times.

Sec. 4. 29 MRSA §246-A, sub-§9, as enacted by PL 1981, c. 689, §1, is amended to read:

9. Suspension. On certification by the State Tax Assessor to the Secretary of State that a vehicle owner is not in compliance with Title 36, chapter 453, ~~455 or 457,~~ 459 or 463, the Secretary of State shall suspend all fuel use identification decals issued to that owner. Until the State Tax Assessor certifies to the Secretary of State that an owner is in full compliance, an owner who has had his fuel use identification decals revoked shall not operate or cause operation of vehicles registered to him which require decals to operate on Maine highways.

Reinstatement of the fuel use decal requires, in addition to meeting the requirements of this law, the payment of a fee of ~~\$20~~ \$25 to the Secretary of State, section 2241-D.

The Secretary of State shall promptly notify the Department of Public Safety of any suspension, revocation and reinstatement under provisions of this section. Every owner transferring ownership of a vehicle bearing a valid fuel use identification decal

shall disfigure any such decal and no person acquiring a vehicle with an unexpired fuel use identification decal may operate or cause operation of such vehicle without a valid trip permit or bearing a decal issued to him.

Sec. 5. 36 MRSA §2971, as amended by PL 1965, c. 289, is repealed and the following enacted in its place:

§2971. Application to certain carriers

This chapter shall include motor vehicles, including trucks, tractors and semi-trailers or any combination thereof, which are licensed for a gross weight of 18,000 pounds or over and vehicles designed to carry 20 passengers or more for hire, except for recreational vehicles. A vehicle shall be considered to be registered for such gross weight as is authorized under a permit issued by the Secretary of State in accordance with Title 29, section 246. These vehicles shall not be required to secure a permit from the Bureau of State Police.

Sec. 6. 36 MRSA §3202, sub-§9, as enacted by PL 1983, c. 94, Pt. D, §§6 and 9, is repealed and the following enacted in its place:

9. User. "User" means any person who is the registered owner of a motor vehicle, registered for 7,000 pounds or over or designed to carry 20 passengers or more for hire, who uses and consumes special fuel within this State in an internal combustion engine for the generation of power to propel vehicles of any kind or character, except recreational vehicles.

Sec. 7. 36 MRSA §3203, as enacted by PL 1983, c. 94, Pt. D, §§6 and 9, is repealed and the following enacted in its place:

§3203. Tax levied

An excise tax is levied and imposed upon all suppliers of special fuel sold and on all users of special fuel used in this State on each gallon of distillate at the rate prescribed in section 2903 and on each gallon of low-energy fuel at the rate prescribed in section 2903, less 1¢, except sales of special fuel made to the State or any political subdivision of the State; the special fuel sold or used in such form and under such circumstances as shall preclude the collection of this tax by reasons of the laws of the United States; sold only for exportation from this

State; delivered into a tank used solely for heating purposes, sold for resale to a licensed or registered supplier; and sold to a person for the generation of power for resale or manufacturing. Where special fuel is delivered by a supplier on a consignment basis to a consumer or to a retail outlet, whether the retail outlet is wholly owned by the supplier or not, it shall be considered to have been "sold" within the meaning of the Special Fuel Tax Act. All taxes collected under this section shall be credited to the Highway Fund.

Sec. 8. 36 MRSA §§3220, 3221 and 3222, are enacted to read:

§3220. Fuel use tax; compact

The State Tax Assessor or his designee, acting upon the advice of the Commissioner of Transportation and the Secretary of State or his designee, may enter into agreements with other states, the District of Columbia and Canadian provinces, with the approval of the Governor and the Legislature, providing for the reciprocal enforcement of the fuel tax laws imposed by the states or provinces entering into the agreement and empowering the duly authorized officer of any contracting state or province, which extends like authority to officers or employees of this State, to sue for the collection of the state's or province's fuel taxes in the courts of this State.

The State Tax Assessor or his designee, acting upon the advice of the Commissioner of Transportation and the Secretary of State or his designee, may execute and extend the provisions of any fuel use compact approved by the Governor and the Legislature.

The State Tax Assessor or his designee, acting upon the advice of the Commissioner of Transportation and the Secretary of State or his designee, shall prepare an annual report to the Legislature by January 1st of each year describing, explaining and justifying any extensions that have been made in the fuel use compact, as well as an overall evaluation of the effectiveness of the fuel use compact agreement. This report shall be sent directly to the joint standing committee of the Legislature having jurisdiction over transportation, the joint standing committee of the Legislature having jurisdiction over taxation and the Legislative Council, and the State Tax Assessor or his designee shall be prepared to consult with both these committees to secure necessary legislative concurrence.

§3221. Tax levied

The tax administered and collected by this chapter is levied in accordance with chapters 453 and 459.

§3222. Reporting and remitting tax

Reporting and remitting of the tax under this chapter shall be subject to the requirements and penalties of chapters 453 and 459 and the applicable trust fund provisions of chapter 461.

Sec. 9. 36 MRSA §3235, as enacted by PL 1983, c. 94, Pt. D, §§7 and 9, is amended to read:

§3235. Tax a debt; recovery; preference

The taxes, interest and penalties imposed by chapters 7, 451 ~~and~~ 453, 459 and 463, from the time the same shall be due, shall be personal debt of the supplier, distributor, importer, motor carrier or user to the State, recoverable in any court of competent jurisdiction in a civil action in the name of the State, and shall have preference in any distribution of the assets of the taxpayer, whether in bankruptcy, insolvency or otherwise. The proceeds of any judgment obtained shall be paid to the State Tax Assessor.

Sec. 10. 36 MRSA §3236, first ¶, as enacted by PL 1983, c. 94, Pt. D, §§7 and 9, is amended to read:

If any amount required to be paid to the State, under chapter 451, 453 ~~or~~, 459 or 463, is not paid when due, and no further review of the assessment is available under section 151, the State Tax Assessor may, within 3 years after administrative and judicial review has been exhausted, notify the person who according to the records of the State Tax Assessor is liable, specifying the amount required to be paid and interest and penalty due, and demanding payment within 12 days after the sending of that notice. The notice shall be given, as required by section 111, subsection 2, and shall warn the person that if he does not make payment as demanded, the State Tax Assessor may proceed to have the amount due collected by warrant as provided or may certify the amount due to the Attorney General for collection and, in addition, in the case of an amount due in respect to any vehicle, that if he does not make payment as demanded, suspension of the registration certificate and plates issued for that vehicle may result.

Sec. 11. 36 MRSA §3238, as enacted by PL 1983, c. 94, Pt. D., §§7 and 9, is amended to read:

§3238. Lien of tax

If any amount required to be paid to the State, under chapter 7, 451, 453 ~~or~~, 459 or 463, is not paid when due, the State Tax Assessor may file in the office of the registry of deeds of the county where that property is located, with respect to real property or fixtures and in the office in which a security or financing statement or notice with respect to personal property would be filed, a notice of lien specifying the amount of tax, interest, penalty and costs due, the name and last known address of the person liable for the amount and the fact that the State Tax Assessor has complied with all the provisions of chapter 7, 451, 453 ~~or~~, 459 or 463 in the assessment of the tax. From the time of filing, the amount set forth in the certificate constitutes a lien upon all property of the person liable in the county then owned by him or thereafter acquired by him in the period before the expiration of the lien. In the case of any prior mortgage on any real or personal property so written as to secure a present debt and also future advances by the mortgage to the mortgagor, the lien provided in this section, when notice of it has been filed in the proper office, shall be subject to the prior mortgage, unless the State Tax Assessor also notifies the mortgagee of the recording of the lien in writing, in which case any indebtedness thereafter created from the mortgagor to the mortgagee shall be junior to the lien provided in this section. The lien provided in this section has the same force, effect and priority as a judgment lien and shall continue for 5 years from the date of filing unless sooner released or otherwise discharged. The lien may, within the 5-year period or within 5 years from the date of the last extension of the lien in the manner provided in this section, be extended by filing for record in the appropriate office a notice of extension of lien and from the time of that filing, the lien shall be extended for 5 years unless sooner released or otherwise discharged.

Sec. 12. 36 MRSA c. 463 is enacted to read:

CHAPTER 463

REGIONAL FUEL TAX AGREEMENT

§3291. Purpose and principle

1. Agreement. This multijurisdictional agreement shall be referred to, cited and known as the Regional Fuel Tax Agreement, referred to in this chapter as the "agreement."

2. Purpose. It is the purpose of this agreement to:

A. Promote and encourage the fullest and most efficient possible use of the highway system by making uniform the administration of motor fuels consumption taxation laws with respect to motor vehicles operated interstate;

B. Enable participating jurisdictions to act cooperatively and provide mutual assistance in the administration and collection of motor fuels consumption taxes; and

C. Establish and maintain the concept of one administering base jurisdiction for each licensee to provide that a licensee's base jurisdiction will be the administrator of this agreement and execute all of its provisions with respect to the licensee.

§3292. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Applicant. "Applicant" means a person in whose name an application for licensing is filed with a base jurisdiction for the purpose of motor fuel tax reporting under the provisions of this agreement.

2. Base jurisdiction. "Base jurisdiction" means a jurisdiction that is a member of this compact where qualified motor vehicles are based for registration purposes. If the fleet has more than one member jurisdiction with qualified vehicles registered, then the person shall choose one member to be its base jurisdiction. In making the selection, consideration should be given to location of records and the number of vehicles registered in the base jurisdictions.

3. Calendar quarter. "Calendar quarter" means the 4 periods of January 1st to March 31st, April 1st to June 30th, July 1st to September 30th and October 1st to December 31st.

4. Commissioner. "Commissioner" means the official designated by the jurisdiction to be responsible

for administration of this agreement. In respect to the State, the commissioner shall mean the State Tax Assessor.

5. In-jurisdiction miles. "In-jurisdiction miles" means the total number of taxable miles operated by a licensee's qualified motor vehicles in a jurisdiction. In-jurisdiction miles do not include miles operated on a fuel tax permit or miles exempted from fuel taxation by a jurisdiction.

6. Jurisdiction. "Jurisdiction" means a state of the United States, the District of Columbia or a province or territory of Canada.

7. Licensee. "Licensee" means a person who holds an uncancelled motor fuel user license issued by his base jurisdiction.

8. Motor fuels. "Motor fuels" means diesel fuel and any blend of diesel and other fuel used or suitable for use for the generation of power for propulsion of motor vehicles. Motor fuels shall also include gasoline.

9. Person. "Person" means an individual, corporation, partnership, association, trust or other entity.

10. Qualified motor vehicle. "Qualified motor vehicle" means a truck having a gross weight of 18,000 pounds or more if it is powered by gasoline or 7,000 pounds or more if powered by any other fuel, and passenger vehicles designed to carry 20 passengers or more for hire. "Qualified motor vehicle" does not include recreational vehicles.

11. Recreational vehicle. "Recreational vehicle" means vehicles such as motor homes, pickup trucks with attached campers and buses when used exclusively for personal pleasure by an individual. In order to qualify as a recreational vehicle, the vehicle shall not be used in connection with any business endeavor.

12. Registration. "Registration" means the qualification of motor vehicles normally associated with a prepayment of licensing fees for the privilege of using the highway, such as a weight fee and the issuance of a license plate and a registration card or temporary registration containing owner and vehicle data.

13. Total miles. "Total miles" means the total number of miles operated by a licensee's qualified motor vehicles.

§3293. Taxation of motor fuels

1. Taxable event. For the purposes of this agreement, the taxable event is the consumption of motor fuels used in the propulsion of qualified motor vehicles subject to registration.

2. Basis for assessment. The basis for assessing the tax and measuring use in the agreement will be a volumetric basis. The acceptable methods are on a gallon basis for fuel consumed in the United States and a litre basis for fuel consumed in Canada.

3. Declaration of tax rates. Each applicant jurisdiction will declare the tax rates for its taxable motor fuels by filing with its membership application to this agreement a statement of tax rates for the motor fuels taxes under this agreement.

4. Notification of changes in tax rates. Jurisdictions shall notify every other member jurisdiction of a change in tax rate at least 60 days in advance of the due date of the calendar quarterly report for which a change of tax rate is to be effective. Failure to provide the notice will relieve other jurisdictions from being required to take extraordinary measures to implement the change. Notification shall be by return receipt-requested mail.

5. Taxable motor fuel. All motor fuel acquired which is normally subject to consumption taxation is taxable unless proof to the contrary is provided by the licensee.

§3294. Application of the agreement

1. Persons required to license. Any person operating one or more qualified motor vehicles in 2 or more member jurisdictions is required to license under this agreement.

2. Trip permits; trip fees. Trip permits will be issued by each applicant's base jurisdiction for all member jurisdictions in accordance with the laws of the member jurisdictions on forms as prescribed by the administrative procedure committee. The base jurisdiction shall collect the trip fees for each member jurisdiction. Base jurisdictions shall forward trip permit fees in accordance with section 3298, subsection 5.

3. Reporting. Fuel use reporting under this agreement shall be for qualified motor vehicles as defined in section 3292, subsection 10.

§3295. Fuel user licensing

1. Filing of application. A person shall file an application for licensing with the base jurisdiction. The application shall have the same content as specified in the administrative procedures manual.

2. Operational records. Operational records shall be maintained or be made available for audit in the base jurisdiction.

3. Tax licensing to be in the name of vehicle registrant. Tax licensing under this agreement shall be in the name of the vehicle registrant.

4. Lessors. A lessor who is regularly engaged in the business of leasing or renting motor vehicles without drivers for compensation to licensees or other lessees may be deemed at its option to be the licensee and the lessor may be issued a license if application has been properly filed and approved by the base jurisdiction. Any lessee may exclude miles and gallons from his reports for such motor vehicles of which he is lessee and from his liabilities, but only if the motor vehicles have been leased from a lessor holding a license and operated under the lessor's license.

5. Issuance; exceptions. The base jurisdiction shall review the application and issue the license, unless.

A. The applicant has been previously licensed under this agreement and the license is still under revocation by any member jurisdiction.

B. The application fails to comply with the form and content as specified in the administrative procedures manual, or is fraudulent.

6. Revocation; failure to comply with agreement provisions. Failure to comply with all applicable provisions of this agreement shall be grounds for revocation of the license issued under the agreement.

7. Cancellation on request. A licensee may request that his license be cancelled.

8. Revocation; good faith. The commissioner of the base jurisdiction may revoke the license of the licensee if it is determined that licensee is not demonstrating good faith in complying with this agreement.

9. Appeal. An applicant who has been denied a license and a licensee who has his license revoked may file an appeal in accordance with section 3202.

10. Bonds posted. The base jurisdiction, at its discretion, may require a licensee to post bond for any or all member jurisdictions. Bonds may be required only when a licensee has failed to file timely reports, when tax has not been remitted or when an audit indicates problems severe enough that in the commissioner's discretion, a bond is required to protect the interests of the member jurisdictions.

§3296. Reporting

1. Quarterly report; taxes. The licensee shall file a calendar quarterly report with the base jurisdiction and shall pay all taxes due to all member jurisdictions with one money order or certified or cashier's check to be made payable to the base jurisdiction and included with the return. The tax report shall be for the previous calendar quarter.

2. Due date; report. The report filed by the licensee shall be due on the last day of the month immediately following the close of the quarter for which the report is due. Reports postmarked by the due date shall be considered timely filed. Postmarked means the postal cancellation issued by the United States Post Office.

3. Tax payment; penalty. When any licensee covered by this agreement fails to pay the amount of taxes due all member jurisdictions when the same are payable, a penalty of 10% or \$50, whichever is greater, shall be added to the amount of the tax due and shall be paid at the time of paying the tax.

The penalty shall be retained by the base jurisdiction. The tax, but not penalty, shall bear interest at the rate of 1 1/2% per month or fraction thereof from the due date of the tax to the date of payment. All interest collected on late taxes shall be remitted to the appropriate member jurisdiction or jurisdictions.

4. Waiver of penalty. The commissioner of the base jurisdiction may waive the penalty but not the interest authorized by subsection 3 when it is proven to his satisfaction that the failure to pay any tax on time was due to reasonable cause and was not intentional or due to neglect.

5. Appeal. Licensees against whom a penalty has been levied may file an appeal in accordance with section 3302.

6. Credit claimed. Credit for tax-paid purchases shall be claimed pursuant to existing jurisdictional law.

7. Reporting format. The tax report format used by each member jurisdiction will be as specified in the administrative procedures manual.

§3297. Tax-paid purchases

1. Payment of taxes. Jurisdictions may require payment of motor fuels taxes on sales from retail filling stations of motor fuels delivered into the fuel tank which propels the motor vehicles.

2. Receipt as evidence of payment of tax. In order for the licensee to obtain credit for tax-paid purchases, a receipt or a credit card receipt shall be retained by the licensee showing evidence of these purchases and tax having been paid. The content of the receipt and credit card receipt shall be as specified in the administrative procedures manual.

3. Identification of motor vehicle. In order to obtain credit for tax-paid purchases from retail filling stations, the receipts shall identify the motor vehicle into which the motor fuel was placed.

4. Tax payment on fuel in bulk storage. Jurisdictions may require tax payments of fuel delivered into bulk storage or withdrawn from bulk storage. Motor fuels placed into the fuel tank of a qualified motor vehicle from a licensee's own bulk storage and upon which tax has been paid to the jurisdiction where the bulk fuel is located shall be considered as tax-paid purchases. The licensee's records shall identify the motor vehicle into which the fuel was placed.

§3298. Base-jurisdiction accounting

1. Records for licenses based in jurisdiction. The base jurisdiction shall maintain the record for licenses based in that jurisdiction. The record shall include a copy of tax reports, applications and other documents specified in the administrative procedures manual.

2. Record of motor fuel taxes, tax credits and payments. The base jurisdiction shall maintain a

record of motor fuel taxes, tax credits and payments for each of its licensees for each jurisdiction. The record shall include the results of audits performed by the base jurisdiction and other jurisdictions.

3. Records of funds received from and transmitted to other jurisdictions. Each base jurisdiction shall maintain records of funds received from and transmitted to other jurisdictions. These records shall identify licensees and remittances from each licensee.

4. Uniform account number system. A uniform account number system shall be adopted and used by all member jurisdictions as specified in the administrative procedures manual.

5. Fund transmittal. Each jurisdiction shall forward all funds received to the appropriate jurisdictions once a month. All funds received during each month shall be forwarded by the end of the following month. Reports are required even if no funds are collected. The fund transmittal shall include a remittance listing for each state.

§3299. Motor vehicle identification

1. Evidence of licensing. The base jurisdiction shall issue evidence of licensing under this agreement.

2. Commissioner to issue license. The commissioner of the base jurisdiction or his designee shall issue a license.

3. License form, content and placement. The form, content and placement of the license shall be as specified in the administrative procedures manual.

4. Fees for issuance of license. The base jurisdiction may collect fees for issuance of the license issued to the licensees based in the jurisdiction in accordance with existing jurisdictional laws of the member jurisdictions.

5. Improper use of license; revocation. Improper use of the license by the licensee may be cause for revocation of the license.

§3300. Records requirements

1. Records maintained. Every licensee shall maintain records to substantiate information reported on the calendar quarterly tax report. Record require-

ments shall be as specified in the administrative procedures manual.

2. Records preserved. Every licensee shall preserve the records for a period of 3 years from the date of filing the report. These records shall be made available upon request by any member jurisdiction for audit.

§3301. Auditing

1. Audit committee. The president shall appoint an audit committee of at least 3 members. Members shall be jurisdiction audit supervisors nominated by member jurisdiction commissioners. The audit committee shall have the responsibility of developing and maintaining an audit procedures manual which will contain recommended guidelines, forms and audit methods in accordance with accepted audit practices. The audit procedures manual, and subsequent changes to it, will be approved and adopted in accordance with section 3307. All member jurisdictions shall be in compliance with this manual.

2. Audit of licensees by base jurisdiction. The base jurisdiction shall audit its licensees on behalf of all member jurisdictions. This shall not preclude another jurisdiction from auditing a licensee to determine the liability to that jurisdiction. If another jurisdiction requests to audit a licensee, that jurisdiction shall pay all audit expenses.

3. Documentation of ability to comply with audit policies. A jurisdiction shall not enter this agreement without submitting documentation that it can comply with audit policies and procedures of the agreement and shall also be required to maintain compliance with these policies and procedures. Any change in audit policies and procedures shall not be effective with less than a one-year notification, unless unanimously approved for an earlier date.

4. Reimbursement of base jurisdiction. In the event that the licensee's records are not located in the base jurisdiction and the base jurisdiction shall send auditors to the place records are kept, the base jurisdiction may require the licensee to reimburse the base jurisdiction for reasonable per diem and travel expenses of its auditors as authorized by law.

5. Notification of audit findings. Upon completion of an audit, the commissioner shall notify the licensee and all member jurisdictions in which mile-

age was accrued of the audit findings in the format and on forms as specified in the audit procedures manual.

6. Tax-credit claims for payments of tax on bulk inventory. The base jurisdiction is not required to audit for tax-credit claims for tax payments of fuel taxes upon withdrawal from or delivery into bulk inventory located in another jurisdiction. The base jurisdiction during an audit shall verify the receipts of tax credit claimed for purchases from retail and shall verify that tax payments were made for tax credits claimed on bulk acquisition or withdrawal.

7. Failure to make records available. If any licensee fails to make records available upon proper request or if any licensee fails to maintain records from which his true liability may be determined, a jurisdiction may, 30 days after requesting in writing that the records be made available or receiving notification of insufficient records, determine a tax finding for each jurisdiction based upon the commissioner's determination of the true liability of these licensee. The commissioner may make his determination from information furnished by the licenses and such pertinent information as may be available to the commissioner.

8. Penalties and interest. If the base jurisdiction office or field audits the returns of any licensee the following penalties and interest applies.

A. If any deficiency discovered at time of audit is due to negligence, a penalty of 10% of the amount of the deficiency assessment or \$50, whichever amount is greater, shall be added thereto. If any part of the deficiency for which a deficiency assessment is made is due to fraud or intent to evade a penalty of 25% of the amount of the deficiency assessment shall be added thereto. These penalties shall be retained by the base jurisdiction.

B. The amount of the deficiency assessment, exclusive of penalties shall bear interest at the rate of 1 1/2% per month or fraction thereof from the last day of the month succeeding the quarterly period for which the amount of any portion thereof should have been returned until the date of payment.

C. The commissioner of the base jurisdiction may waive the penalties but not the interest authorized by this section when it is proven to his

satisfaction that the failure to pay any tax on time was due to reasonable cause and was not intentional or due to neglect.

D. The commissioner of the base jurisdiction shall give written notice to any licensee covered by this agreement of any deficiency assessment. If the notice is served by mail, it shall be addressed to the licensee at the address appearing in the records of the base jurisdiction. Except in the case of fraud, intent to evade or failure to submit a return, the notice of a deficiency assessment shall be mailed within 3 years after the last day of the month following the quarterly period for which the amount is assessed or within 3 years after the return for the period is filed, whichever is later.

E. If, prior to the expiration of the time prescribed in paragraph D for the mailing of notice of a deficiency assessment, the taxpayer has consented in writing to the mailing of notice after that time, the notice may be mailed at any time prior to the expiration of the period agreed upon for the mailing. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of that period.

9. Tax collection and enforcement; remedies. Each base jurisdiction may employ any and all legal remedies provided by the laws of the base jurisdiction to collect and enforce the total amount of tax, penalties and interest owed to all member jurisdictions.

§3302. Appeal procedures

1. Appeal; request for hearing. A licensee or applicant may appeal an action or audit finding issued by the commissioner of the base jurisdiction by making a written request for a hearing within 30 days after service of notice of the original action or finding. If the hearing is not requested within 30 days in writing, the original finding or action is final.

2. Hearing; continuation; notice. The hearing shall be held expeditiously but may be continued for reasonable cause being shown by either party. The commissioner shall give at least 10 days' written notice of the time and place of the hearing.

3. Notification; request for additional audits. The commissioners will notify the appellant of the

findings of fact and ruling on the appeal. In the case of any audit, if the licensee is still in disagreement with the original finding, the licensee may request any or every jurisdiction to audit the licensee's records. Each commissioner to whom a request was made may elect to accept or deny the request. Each jurisdiction electing to audit the licensee's records will audit only for its own portion of the licensee's operation. The licensee shall make records available at the office of the commissioner or at a place designated by the commissioner or pay the reasonable per diem and travel expenses associated with conducting an audit at the licensee's place of business.

4. Counsel; witnesses; material. The applicant may appear in person or be represented by counsel at the hearing and is entitled to produce witnesses, documents or other pertinent material to substantiate the appeal.

5. Further appeal. Further appeal of any jurisdiction's findings will proceed in accordance with that jurisdiction's laws.

§3303. Credit and refunds

1. Refunds; request. Refunds need not be made for an overpayment for which records are no longer required under this agreement. A request for refund shall toll the records requirement date until the refund is made or denied.

2. Condition. As a condition to issuance of a motor fuels tax license under this agreement, an applicant will authorize on the application that refunds may be withheld if the licensee is not current on all motor fuel use taxes due to any member jurisdiction.

3. Payment of credits; unpaid taxes, penalties or interest. Credits may be refunded to the licensee only if all motor fuels taxes, penalty and interest governed by this agreement due every other member jurisdiction have been paid, unless the unpaid amount is under proper appeal procedures.

4. Interest; payment. Interest may be paid by a jurisdiction to a licensee for a refund in accordance with jurisdictional law. The rate of interest shall be the rate specified in section 3296, subsection 3.

5. Refunds; payment. Refunds determined to be properly due shall be paid within 90 days after receipt of a request for payment from a licensee.

§3304. Entry and withdrawal

1. Application for membership by jurisdictions. A jurisdiction applying for membership to this agreement shall submit the prescribed adopting resolution to the repository for balloting by member jurisdictions.

2. Ballot for membership. The ballot for membership shall include the following:

A. The estimated number of licensees based in the jurisdiction which could be licensed under this agreement;

B. The number of auditor personnel who will be dedicated to auditing under this agreement;

C. The number of supervisory and clerical personnel who will be dedicated to the receipting, processing and disbursing of funds received under this agreement; and

D. A copy of the enabling statute authorizing the jurisdiction to enter into this agreement.

3. Adopting resolution; unanimous approval required. Membership shall not be granted unless the adopting resolution receives unanimous approval from all member jurisdictions. Failure of jurisdictions to submit their votes on the ballot for new membership within 60 days after receipt shall be deemed to constitute approval of the application for membership. Ballots shall be mailed, return receipt requested, to the commissioner of each member jurisdiction by the repository.

4. Membership; effective date. Membership shall become effective no sooner than 2 complete calendar quarters after approval of the application unless the new and all current members agree to an earlier effective date which shall be stated in the adopting resolution.

5. Withdrawal. A member may withdraw from the agreement by giving at least 2 full calendar quarters' written notice to all member jurisdictions. Each member jurisdiction shall notify each of its licensees of the withdrawal at least one full calendar quarter prior to the withdrawal. Cancellation by one jurisdiction shall not affect this agreement between other jurisdictions. All evidence of motor fuels licensing issued under this agreement by the cancelling jurisdiction shall be valid until the effective date of cancellation.

6. Employment of auditors. As a condition for entry into this agreement, a jurisdiction shall employ sufficient auditors to assure that 25% of the fleets based in the jurisdiction and licensed under this agreement will be audited at least once every 3 years.

§3305. Expulsion of a member

1. Request for expulsion. Any member jurisdiction may seek expulsion of another member jurisdiction. A jurisdiction initiating the request for expulsion of another member shall submit an expulsion resolution in writing for balloting by the member jurisdictions. The resolution for expulsion shall contain detailed reasons for seeking expulsion and examples of noncompliance with this agreement, if applicable.

2. Response. The resolution for expulsion shall be sent to the jurisdiction named in the resolution to prepare a response. This response shall be submitted to all members within 30 days and may contain rebuttal, extenuating circumstances, corrective action initiated or planned or any other information pertinent to the matter.

3. Failure to submit vote. Failure of a member jurisdiction to submit its vote on the ballot for expulsion within 60 days after receipt shall be deemed to constitute a vote against the resolution for expulsion.

4. Written vote; ratification of expulsion resolution. The vote of each jurisdiction on the resolution for expulsion shall be in writing. Adoption of the resolution for expulsion shall require ratification by all member jurisdictions except the member jurisdiction at issue.

§3306. Agreement amendments and interpretations

1. Proposal of amendments. Any member jurisdiction may propose amendments to this agreement.

2. Form; circulation; review period; balloting. The proposed amendment shall be placed in writing and circulated for comment to the member jurisdictions. The comment period shall be at least 90 days from the date of distribution and shall include at least one open meeting of the commissioners. At the conclusion of the review period, the proposed amendment may be distributed for balloting. Each ballot shall contain the proposed amendment and comments submitted in writing by member jurisdictions.

3. Adoption of amendments. Adoption of an amendment to this agreement requires ratification by 3/4 of the member jurisdictions.

4. Amendments; effective date. Amendments shall not be effective for at least one year from the date of notice of adoption. Amendments to be effective at an earlier date require concurrence by all member jurisdictions.

5. Proposed amendments; void. Proposed amendments which have not received sufficient ballots to determine ratification or rejection within 2 years from the date ballots were distributed shall be void.

6. Interpretation; 3/4 membership agreement. Decisions regarding interpretations of any question at issue relating to this agreement shall be reached by agreement of 3/4 of the member jurisdictions using the procedures as specified for adoption of amendments in this section.

7. Amendments or interpretations; vote of commissioner or delegate. Votes on amendments or interpretations shall be cast by the commissioner or a delegate named in writing by the commissioner.

§3307. Adoption of administrative procedures

1. Administrative procedures committee. The president shall appoint an administrative procedures committee of at least 3 members, who shall be jurisdiction supervisors nominated by member jurisdiction commissioners. The administrative procedures committee shall have the responsibility of developing and maintaining an administrative procedures manual, which shall contain procedures and forms. The administrative procedures manual and subsequent changes to it, shall be approved and adopted in accordance with section 3306. All member jurisdictions shall comply with the procedures in this manual.

2. Administrative procedures manual. The administrative procedures committee will develop and maintain an administrative procedures manual to implement the terms of this agreement. Before the manual and revisions to it become effective, they shall be approved by the member jurisdictions.

3. Adoption of procedures; approval of 3/4 of member jurisdiction; review period. Adoption of administrative procedures requires approval of at least 3/4 of the member jurisdictions. Proposed administrative procedures shall be placed in writing and dis-

tributed to the commissioner of every member jurisdiction for review. The review period shall not exceed 60 days.

4. Ballots; voting. At the conclusion of the review period, the committee shall distribute the proposed procedure for balloting. Each ballot shall contain the proposed procedure, comments submitted by member jurisdictions and the earliest and latest voting dates which shall begin the first day after distribution and end not more than 30 days later.

5. Written votes. Each jurisdiction will place its vote in writing. Failure of a jurisdiction to vote shall be construed to be a vote of approval of the proposed procedures.

6. Adopted procedures to become part of agreement. Adopted procedures shall become a part of this agreement and shall be placed in writing in the administrative procedures manual.

7. Effective date of adopted procedure. Unless otherwise specified, the effective date of an adopted procedure shall be 30 days after the final date of voting.

§3308. Administration

1. Regular meetings. The member jurisdictions shall convene a regular meeting at least once every 2 years for the purpose of administration of this agreement. All arrangements for the meeting shall be made by the president of the agreement.

2. President. The member jurisdictions shall elect by majority vote of those present at the regular meeting a member commissioner to be the president for administration of this agreement.

3. Term of president. The term of the president shall be 2 years.

4. Duties of president. The duties of the president shall include the following:

A. Appointing chairmen for the administrative procedures committee, audit committee and other committees;

B. Appointing members to standing committees and ad hoc committees; and

C. Other duties as specified by the members.

5. Membership fee. To help defray some of the expenses associated with being the agreement president, a membership fee shall be levied on each jurisdiction. The fee shall be annual and be based upon a budget adopted by majority vote at a regular meeting. The fee shall be prorated for each member jurisdiction based upon the number of licensees based in the jurisdiction.

6. Vacancy. In the event of a vacancy, a new president shall be elected as soon as practical. The term of the new president shall not be less than 2 years.

7. Removal of president. A president may be removed from office upon a 2/3 vote of all jurisdictions, using the procedure specified in section 3307.

Sec. 13. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act:

1984-85

FINANCE AND ADMINISTRATION,
DEPARTMENT OF

Bureau of Taxation

All Other \$60,000

Pursuant to the Revised Statutes, Title 36, section 3219, the Department of Transportation will reimburse the General Fund for the cost incurred in the administration of the Revised Statutes, Title 36, chapter 463.

Sec. 14. Effective date. This Act shall take effect February 1, 1985, except that section 10 shall take effect January 1, 1985. Section 13 shall take effect on the date on or after February 1, 1984, when the State Tax Assessor certifies to the Secretary of State that he has executed an agreement pursuant to section 6 of this Act.

Effective February 1, 1985, unless otherwise indicated.
