

TITLE VIII  
MOTOR FUELCHAPTER 63  
ADMINISTRATION\*

[Prior to 12/17/86, Revenue Department[730]]

**701—63.1(452A) Definitions.** For purposes of this chapter, the following definitions shall govern:

“*Department*” shall mean the Iowa department of revenue or the director of the Iowa department of revenue and the director’s representative.

“*Fuel(s)*” shall mean and include both motor fuel and special fuel as defined in Iowa Code chapter 452A.

“*Licensee*” shall mean anyone who holds an uncanceled distributor’s license or special fuel user’s or dealer’s license.

“*Taxpayer*” shall mean anyone responsible for paying motor vehicle fuel taxes directly to the department of revenue under Iowa Code chapter 452A.

In addition to the preceding definitions, all of the definitions contained in chapter 452A shall govern the rules of this chapter.

This rule is intended to implement Iowa Code chapter 452A.

**701—63.2(452A) Statute of limitations, supplemental assessments and refund adjustments.** Within three years after a return is filed, the department shall examine it, determine fuel taxes due, and give notice of assessment to the taxpayer. If no return is filed, the department may determine the tax due and give notice thereof. See rule 63.5(452A). The period for the examination and determination of the current amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If the assessment or refund adjustment is appealed (protested under rule 701—7.41(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

This rule is intended to implement Iowa Code section 452A.67.

**701—63.3(452A) Taxpayers required to keep records.** The records required to be kept by this rule shall be preserved for a period of three years unless otherwise stated (see subrule 63.3(4)) and shall be open for examination by the department during this period of time. The department, after an audit and examination of the records, may authorize the disposal of the records required to be kept under subrules 63.3(1) and 63.3(2) upon request of the distributor or dealer. The authorization must be in written form.

**63.3(1) Motor fuel distributor.** Every distributor required to file a monthly report under Iowa Code section 452A.8 or 452A.9 (motor fuel) shall keep and preserve the following records relating to the purchase or sale of motor fuel: Also see rule 701—64.6(452A).

- a. Copies of bills of lading or manifests.
- b. Purchase invoices.
- c. Copies of sales invoices.
- d. Exemption certificates.
- e. Purchase records.
- f. Sales records.
- g. Copies of filed distributor reports.
- h. Iowa export schedules.

\*This chapter effective through 12/31/95; see 701—Ch 67, effective 1/1/96.

- i.* Rescinded IAB 10/12/94, effective 11/16/94.
- j.* Canceled checks and check register.

**63.3(2) *Special fuel dealer-user-distributor.*** Every special fuel dealer or special fuel user required to file a monthly report and every special fuel distributor required to file a quarterly report under Iowa Code section 452A.38 shall keep and preserve the following records relating to the purchase or sale of fuel: Also see rule 701—64.6(452A).

- a.* Copies of bills of lading or manifests.
- b.* Purchase invoices.
- c.* Copies of sales invoices.
- d.* Exemption certificates.
- e.* Purchase records.
- f.* Sales records.
- g.* Copies of filed distributor, dealer or user reports.
- h.* Iowa export schedules.
- i.* Rescinded IAB 10/12/94, effective 11/16/94.
- j.* Canceled checks and check register.

**63.3(3) *Terminal operator.*** Every person required to report under Iowa Code subsection 452A.15(2) as an operator of a terminal shall keep and preserve the following records:

- a.* Records to evidence the acquisition of fuel.
- b.* Bills of lading or manifests covering the withdrawal of motor fuel.

**63.3(4) *Motor fuel dealer.*** Every dealer handling motor fuel shall keep and preserve for a period of two years the following relating to the purchase or sale of motor fuel:

- a.* Copies of bills of lading.
- b.* Purchase invoices.
- c.* Copies of sales invoices (if issued).
- d.* Copies of delivery tickets (if issued).
- e.* Canceled checks and check register.

**63.3(5) *Ethanol blended gasoline—records requirements.*** These requirements apply to motor fuel distributors and blenders (includes motor fuel dealers and any other acting as blenders in blending ethanol blended gasoline).

- a.* Maintain records of how much motor fuel and alcohol is used in each blend with blending date and blender's signature.
- b.* Maintain supporting invoices related to all alcohol and blends.
- c.* Keep monthly inventories in gallons to agree with reporting periods for alcohol and motor fuel. See rule 701—64.4(452A) and rule 701—64.8(452A).

**63.3(6) *Microfilm and related record systems.*** Microfilm, microfiche, COM (computer on machine), and other related reduction in storage systems will be referred to as "microfilm" in this rule.

Microfilm reproductions of general books of account, such as a cash book, journals, voucher registers, ledgers, etc., are not acceptable other than those that have been approved by the Internal Revenue Service under Revenue Procedure 76-43, Section 3.02. However, microfilm reproductions of supporting records of detail, such as sales invoices, purchase invoices, etc., may be allowed providing there is no administrative rule or Iowa Code section requiring the original and all the following conditions are met and accepted by the taxpayer.

- a.* Appropriate facilities are provided to ensure the preservation and readability of the films.
- b.* Microfilm rolls are indexed, cross-referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and are systematically filed.
- c.* The taxpayer agrees to provide transcripts of any information contained on microfilm which may be required for purposes of verification of tax liability.
- d.* Proper facilities are provided for the ready inspection and location of the particular records, including modern projectors for viewing and for the copying of records.
- e.* Any audit of "detail" on microfilm may be subject to sample audit procedures, to be determined at the discretion of the director or the director's designated representative.

- f. A posting reference must be on each invoice.
- g. Rescinded IAB 10/12/94, effective 11/16/94.
- h. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in an order by which they readily can be related to the transaction for which exemption is sought.

**63.3(7) Automatic data processing records.** Automatic data processing is defined in this rule as including electronic data processing (EDP) and will be referred to as ADP.

a. An ADP tax accounting system must have built into its program a method of producing visible and legible records which will provide the necessary information for verification of the taxpayer's tax liability.

b. ADP records must provide an opportunity to trace any transaction back to the original source or forwarded to a final total. If detail printouts are not made of transactions at the time they are processed, then the system must have the ability to reconstruct these transactions.

c. A general ledger with source references will be produced as hard copy to coincide with financial reports of tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be produced periodically.

d. Supporting documents and audit trail. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the director or the director's designated representative upon request. The system should be so designed that the supporting documents, such as sales invoices, purchase invoices, etc., are readily available. (An audit trail is defined as the condition of having sufficient documentary evidence to trace an item from source (invoice, check, etc.) to a financial statement or tax return; or the reverse; that is, to have an auditable system.)

e. Program documentation. A description of the ADP portion of the accounting program should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate:

- (1) The application being performed;
- (2) The procedure employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and
- (3) The controls used to ensure accurate and reliable processing. Program and systems changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.

f. Storage of ADP output will be in appropriate facilities to ensure preservation and readability of output.

**63.3(8) General requirements.** If a tax liability has been assessed and an appeal is pending to the department, state board of tax review or district or supreme court, books, papers, records, memoranda or documents specified in this rule which relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

If the requirements of this rule are not met, the records will be considered inadequate and rule 63.5(452A), estimate gallonage, applies.

This rule is intended to implement Iowa Code sections 452A.2, 452A.6, 452A.8 to 452A.10, 452A.15, 452A.17, 452A.36 to 452A.38, 452A.59, 452A.60, 452A.62, 452A.64, and 452A.69.

**701—63.4(452A) Audit—costs.** The department shall have the right and duty to examine or cause to be examined the books, records, memoranda or documents of a taxpayer for the purpose of verifying the correctness of a return filed or determining the tax liability of any taxpayer.

The costs incurred in examining the records of a taxpayer shall be at the taxpayer's expense in the following situations:

a. When the records of a distributor, required to be licensed under Iowa Code section 452A.4 (motor fuel) or licensed under Iowa Code section 452A.36 (special fuel), are kept at an out-of-state location.

b. Special fuel dealers and users when records are kept out of state. (See rule 701—65.19(452A).)

Cost shall include meals, lodging and travel expenses, but shall not include salaries of department personnel. (See 1976 O.A.G. 611.)

This rule is intended to implement Iowa Code sections 452A.10, 452A.36, 452A.37, 452A.55, 452A.62 and 452A.69.

**701—63.5(452A) Estimate gallonage.** It is the duty of the department to collect all taxes on fuel due the state of Iowa. In the event the taxpayer's records are lacking or inadequate to support any report filed by the taxpayer, or to determine the taxpayer's liability, the department shall have the power to estimate the gallonage upon which tax is due. This estimation shall be based upon such factors as, but not limited to, the following: (1) prior experience of the taxpayer, (2) taxpayers in similar situations, (3) industry averages, (4) records of suppliers or customers, and (5) other pertinent information the department may possess, obtain or examine.

This rule is intended to implement Iowa Code section 452A.64.

**701—63.6(452A) Timely filing of reports—remittances—application requests.** The reports, remittances, applications or requests required under Iowa Code chapter 452A shall be deemed filed within the required time if (1) postpaid, (2) properly addressed, and (3) postmarked on or before midnight of the day on which due and payable. Any report that is not signed and any report which does not contain substantially all of the pertinent information shall not be considered "filed" until such time as the taxpayer so signs or supplies the information to the department. *Miller Oil Company v. Abrahamson*, 252 Iowa 1058, 109 N.W.2d 610 (1961), *Severs v. Abrahamson*, 255 Iowa 979, 124 N.W.2d 150 (1963). If the final filing date falls on a Saturday, Sunday or legal holiday, the next secular or business day shall be the final filing date.

All reports, remittances, applications or requests should be addressed to: Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

In the event a dispute arises as to the time of filing, or a return, report or remittance is not received by the department, the provisions of Iowa Code section 622.105 are controlling. This section applies only where the document is not received or the postmark on the envelope is illegible, erroneous or omitted.

This rule is intended to implement Iowa Code section 452A.61.

**701—63.7(452A) Extension of time to file.** The department may grant an extension for the filing of any required report or tax payment or both. The department shall consider the following documents to be subject to a filing time extension under Iowa Code section 452A.61: the reports and remittances required under Iowa Code section 452A.8 (motor fuel distributors); the reports required under Iowa Code section 452A.15(2) (terminal inventory); the reports and remittances required under Iowa Code section 452A.38 (special fuel dealers, users and distributors).

In order for an extension to be granted, the application requesting such extension must be filed, in writing, with the department prior to the due date of the report or remittance. In determining whether an application for extension is timely filed, the provisions of rule 63.6(452A) shall apply. The application for extension must be accompanied by an explanation of the circumstances justifying such extension, and in no event shall the extension period exceed 30 days.

In the event an extension is granted, the penalties under Iowa Code section 452A.65 applicable to late-filed report or remittance shall not accrue until the expiration of the extension period, but the interest on tax due under the same section shall accrue as of the original filing date.

This rule is intended to implement Iowa Code section 452A.61.

**701—63.8(324) Penalty.** Renumbered as 701—10.71(324), IAB 1/23/91.

**701—63.9(324) Waiver of penalty.** Rescinded IAB 1/23/91.

**701—63.10(324) Interest.** Renumbered as 701—10.72(324), IAB 1/23/91.

**701—63.11(452A) Application of remittance.** All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax then due. If a taxpayer remits a payment on or before the due date, but the payment is insufficient to discharge the tax liability, the entire amount of the payment shall apply to the tax, and the penalty and interest shall be based on the unpaid portion of the tax. If the department determines there is additional tax due from a taxpayer, interest and penalty shall accrue on that amount from the date it should have been reported and paid.

This rule is intended to implement Iowa Code sections 452A.59, 452A.65 and 452A.66.

**701—63.12(452A) Reports—records—variations.** The department shall prescribe and furnish all forms upon which reports and applications shall be made and claims for refund presented to the department under Iowa Code chapter 452A.

If the information required in these documents is presented to the department on forms or in a manner other than the prescribed form, the report, application, or claim for refund or credit shall not be deemed “filed.” The forms will be furnished by the department (except those pertaining to the division III interstate operations which are available from the department of transportation) and therefore, the fact that the reporting party does not have the prescribed form shall not be an excuse for failure to file. The reports required under Iowa Code section 452A.15(2) (terminal reports) are discretionary with the department, and therefore, the form of these reports may vary upon agreement between the department and the reporting person.

The department may also prescribe the form of the records which the reporting parties are required to keep in support of the reports they file. The department may approve the form of the records which are being kept by any reporting party and must approve the form of record being kept if that form (1) contains all of the information on the prescribed form, (2) the information is compiled in such a manner as to make it easily ascertainable by department personnel, and (3) substantially complies with the prescribed form.

This rule is intended to implement Iowa Code section 452A.60.

**701—63.13(452A) Form of invoice.** Whenever an invoice is required to be kept or prepared by Iowa Code chapter 452A, the following shall be the minimal requirements which must be complied with:

1. It must include the seller’s name and address or identification number.
2. It must include the purchaser’s name and address.
3. It must contain a serial number of three or more digits.
4. It must include the calendar date of purchase.
5. It must indicate the type of fuel purchased.
6. It must indicate the quantity of fuel purchased in gross gallons.
7. It must indicate the total purchase price.
8. If the purchase is of special fuel, the fact that the fuel tax is included must be indicated.
9. It must be prepared on paper which will prevent erasure or alteration.

This rule is intended to implement Iowa Code sections 452A.17 and 452A.60.

**701—63.14(452A) Credit card invoices.** Credit card invoices are acceptable if they meet substantially all the requirements of rule 63.13(452A). (1968 O.A.G. 592.)

For refund purposes, presentation of a credit card invoice or billing statement is prima facie evidence that the fuel tax has been paid.

This rule is intended to implement Iowa Code section 452A.60.

**701—63.15(452A) Original invoice retained by purchaser—certified copy if lost.** Whenever an invoice is required to be kept under Iowa Code chapter 452A, it must be the original copy which is kept. If the original copy is either lost or destroyed, a copy, certified by the seller as being a true copy of the original, will be acceptable. A copy of any invoice, which is required to be kept by the purchaser, must be kept by the seller for the same period of time.

This rule is intended to implement Iowa Code sections 452A.10, 452A.37 and 452A.60.

**701—63.16(452A) Notice of meter seal breakage.** Whenever a meter is required under Iowa Code chapter 452A, pursuant to the director's power granted under Iowa Code section 452A.59, and said meter is required to be sealed by Iowa Code chapter 452A, (special fuel dealer and user meters and terminal meters) the department must be notified within 24 hours of the breaking of the seal for any reason. The notice shall contain, but not be limited to, the following information:

1. The name, address and license number of the person who controls the meter.
2. The meter number.
3. The type of fuel pumped through the meter.
4. The date of seal breakage.
5. The name and address of the person(s) responsible for the seal breakage.
6. The reason for seal breakage.
7. The meter reading before seal breakage.
8. The meter reading after the meter is resealed.
9. The signature of the person who controls the meter.

For reporting purposes, the meter shall be considered two meters, one before the seal breakage, and one after, and should be reported on that basis, noting the seal breakage on the report. The meter readings of the meter before the seal breakage shall be reported by meter number as usual. The meter readings after the meter was resealed shall be reported by using the meter number plus the letter "A." The two readings must appear on the same report form.

This rule is intended to implement Iowa Code sections 452A.2(5), 452A.3, 452A.15(2), 452A.34, 452A.59 and 452A.62.

**701—63.17(452A) Taxes erroneously or illegally collected.** Any licensee, including licensed motor fuel distributors, licensed special fuel distributors, and licensed special fuel dealers, and licensed special fuel users, is entitled to a return of taxes, penalty, and interest erroneously or illegally collected by the department. The request for the return of the taxes must be (1) in writing, (2) filed with the department within one year of the time the tax was paid, (3) filed by the licensee who remitted the tax to the department, and (4) must be accompanied by the proof required in this rule. If the erroneous collection was the result of a computational error on the part of the taxpayer and that error is discovered by the department, during an examination of the taxpayer's records within three years of the overpayment, the taxes will be credited or refunded and a written request will not be necessary. If the request for credit includes the return of erroneously or illegally collected (assessed) penalty or interest, the interest or penalty shall be refunded in the same proportion as the tax. A refund or credit requested under Iowa Code section 452A.72 shall be reduced by sales tax if applicable. There is no minimum credit or refund amount for credits and refund claimed under the provisions of Iowa Code section 452A.72. See sales tax rule 701—18.37(422,423).

**63.17(1) Motor fuel distributors.** Motor fuel distributors must inform the department upon which bill(s) of lading, by number, and upon which monthly report(s) the tax was erroneously paid.

For periods prior to September 1, 1981. The gallonage upon which a credit is requested by a motor fuel distributor shall be reduced by either 3 or 1¼ percent or a combination of the two, whichever is applicable. If the gross gallonage total for the month for which the credit is claimed remains above 300,000 gallons after being reduced by the gallonage upon which the credit is claimed, the credit will be reduced by 1¼ percent. If the gross gallonage total for the month for which the credit is claimed was below 300,000 gallons, the credit will be reduced by 3 percent. If the gross gallonage total for the month for which the credit is claimed exceeded 300,000 gallons, when the tax was originally paid, the credit request will reduce the gallonage below 300,000 gallons, the gallonage which was originally in excess of 300,000 gallons will be reduced by 1¼ percent, and the remainder of the gallonage upon which the credit is based will be reduced by 3 percent.

For periods after August 31, 1981. The gallonage upon which a credit is requested by a motor fuel distributor shall be reduced by either 2 or 1 percent or a combination of the two, whichever is applicable. If the gross gallonage total for the month for which the credit is claimed remains above 300,000 gallons after being reduced by the gallonage upon which the credit is claimed, the credit will be reduced by 1

percent. If the gross gallonage total for the month for which the credit is claimed was below 300,000 gallons, the credit will be reduced by 2 percent. If the gross gallonage total for the month for which the credit is claimed exceeded 300,000 gallons when the tax was originally paid, the credit request will reduce the gallonage below 300,000 gallons, the gallonage which was originally in excess of 300,000 gallons will be reduced by 1 percent, and the remainder of the gallonage upon which the credit is based will be reduced by 2 percent.

If the error was the result of two persons paying the tax on the same motor fuel, the person requesting the credit must also inform the department which other party paid the tax. If the department determines that the person requesting the credit is the person responsible for the tax, the other person who paid the tax will be entitled to the credit. Motor fuel distributors are entitled to a credit which may be applied against future tax liabilities. (See 701—subrule 64.7(1).) If the request for the return of taxes erroneously paid is in excess of the average monthly tax liability of the taxpayer, computed on the previous 12 tax periods, the taxpayer may request a refund warrant in lieu of a credit.

**63.17(2) *Special fuel distributors.*** Special fuel distributors must inform the department upon which invoices, by invoice number, and upon which monthly or quarterly report(s) the tax was erroneously paid. If the erroneous payment was due to the fact that the distributor sold the fuel tax-paid instead of tax-free, the request for credit must also include the name of the person to whom the fuel was sold and either the (1) purchaser's license number, (2) a statement signed by the purchaser setting forth the reason(s) for nontaxability, or (3) a copy of an exemption certificate signed by the purchaser, whichever is applicable. If the request for return of taxes erroneously paid is in excess of the average quarterly tax liability of the taxpayer, computed on the previous four tax periods, the taxpayer may request a refund warrant; otherwise, the distributor will be allowed a credit.

**63.17(3) *Licensed special fuel dealers and users.*** If a licensed special fuel user or dealer is requesting a return of taxes because of noninclusion of an exemption certificate(s), a copy of the certificate(s) must accompany the request. (The original must be retained by the user or dealer.) If a licensed special fuel user or dealer is requesting a return of taxes because of inaccurate meter readings due to meter repair, an affidavit signed by the persons responsible for the meter repair setting out the affected meter readings must accompany the request. If the request for return of taxes erroneously paid is in excess of the average monthly tax liability of the user or dealer, computed on the previous 12 tax periods, the user or dealer may request a refund warrant; otherwise, the dealer or user will be allowed a credit.

This rule is intended to implement Iowa Code sections 452A.8(7) as amended by 1994 Iowa Acts, Senate File 2057, and 452A.72.

**701—63.18(452A) Credentials and receipts.** Employees of the department have official credentials, and the taxpayer should require proof of the identity of persons claiming to represent the department. No charges shall be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee of the department, the taxpayer should require the employee to issue an official receipt. Such receipt shall show the taxpayer's name, address, and permit or license number; the purpose of the payment; and the amount of the payment. The taxpayer should retain all receipts, and the only receipts which the department will accept as evidence of a cash payment are the official receipts.

This rule is intended to implement Iowa Code section 452A.59.

**701—63.19(452A) Information confidential.** Iowa Code section 452A.63, which makes all information obtained from reports or records required to be filed or kept under Iowa Code chapter 452A confidential, applies generally to the director, deputies, auditors, agents, officers, or other employees of the department. The information may be divulged to the appropriate public officials enumerated in Iowa Code section 452A.63. These public officials shall include (1) member(s) of the Iowa General Assembly, (2) committees of either house of the Iowa Legislature, (3) state officers, (4) persons who have responsibility for the enforcement of Iowa Code chapter 452A, (5) officials of the federal government entrusted with enforcement of federal motor vehicle fuel tax laws, and (6) officials of

other states who have responsibility to enforce motor vehicle fuel tax laws and who will furnish like information to the department. See rule 701—6.3(17A) for procedures for requesting information. The department shall also make the following information public as to each distributor: (1) name, (2) total gallons received, (3) gallons exported or sold for export, (4) gallons sold tax-free to exempt entities, and (5) gallons sold to persons responsible to report and account for the tax. The department shall also make public as to each special fuel user or dealer gallons used and taxes paid.

This rule is intended to implement Iowa Code section 452A.63.

**701—63.20(452A) Delegation to audit and examine.** Pursuant to statutory authority, the director of revenue delegates to the directors of the audit division and the field services division, the power to examine returns and records, make audits, and determine the correct amount of tax due, subject to review by or appeal to the director of revenue. The power so delegated may further be delegated by the directors of the divisions to auditors, clerks, and employees of the divisions.

This rule is intended to implement Iowa Code sections 452A.62 and 452A.76.

**701—63.21(452A) Practice and procedure before the department of revenue.** The practice and procedure before the department is governed by Iowa Code chapter 17A and 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 17A.

**701—63.22(452A) Time for filing protest.** Any person wishing to contest an assessment, denial of all or any portion of a refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding, shall file a protest with the clerk of the hearings section for the department pursuant to rule 701—7.41(17A) within 30 days of the issuance of the assessment, denial, or other department action contested. For notices of assessment or refund denial issued on or after January 1, 1995, the department will consider a protest to be timely filed if filed no later than 60 days following the date of the assessment notice or refund denial, or if a taxpayer failed to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.41(17A) and file a refund claim within the period provided by law for filing such claims.

This rule is intended to implement Iowa Code section 452A.64.

**701—63.23(452A) Bonding procedure.** The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to the tax to file with the department a bond in an amount as the director may fix, or in lieu of the bond, securities approved by the director in an amount as the director may prescribe. Pursuant to the statutory authorization in Iowa Code sections 422.52(3) and 452A.66, the director has determined that the following procedures will be instituted with regard to bonds:

**63.23(1) When required.**

*a. Classes of business.* When the director determines, based on departmental records, other state or federal agency statistics or current economic conditions, that certain segments of the petroleum business community are experiencing above average financial failures such that the collection of the tax might be jeopardized, a bond or security will be required from every licensee operating a business within this class unless it is shown to the director's satisfaction that a particular licensee within a designated class is solvent and that the licensee previously timely remitted the tax. If the director selects certain classes of licensees for posting a bond or security, rule making will be initiated to reflect a listing of the classes in the rules.

*b. New applications for fuel tax permits.* Notwithstanding the provisions of paragraph "a" above, an applicant for a new fuel tax permit will be requested to post a bond or security if (1) it is determined upon a complete investigation of the applicant's financial status that the applicant would be unable to timely remit the tax, or (2) the new applicant held a prior fuel tax license and the remittance record of the tax under the prior license falls within one of the conditions in paragraph "c" below, or (3) the department experienced collection problems while the applicant was engaged in business under the prior license, or (4) the applicant is substantially similar to a person who would have been required to post a



bond under the guidelines as set forth in “c” or such person had a previous fuel tax permit which has been revoked. The applicant is “substantially similar” to the extent that said applicant is owned or controlled by persons who owned or controlled the previous license holder. For example, X, a corporation, had a previous fuel tax permit revoked. X is dissolved and its shareholders create a new corporation, Y, which applies for a fuel tax permit. The persons or stockholders who controlled X now control Y. Therefore, Y will be requested to post a bond or security.

*c. Existing license holders.* Existing license holders will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or filing timely returns during the last 18 months if filing returns on a quarterly basis or have had two or more delinquencies during the last 12 months if filing returns on a monthly basis. The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. See rule 63.27(452A). However, the late filing of the return or the late payment of the tax will not count as a delinquency if the license holder can satisfy one of the conditions set forth in Iowa Code section 421.27.

*d. Waiver of bond.* If a license holder has been requested to post a bond or security or if an applicant for a license has been requested to post a bond or security, upon the filing of the bond or security if the license holder maintains a good filing record for a period of two years, the license holder may request that the department waive the continued bond or security requirement.

**63.23(2) Type of security or bond.** When it is determined that a license holder or applicant for a fuel tax permit is required to post collateral to secure the collection of the motor fuel tax, the following types of collateral will be considered as sufficient: cash, surety bonds, securities or certificates of deposit. “Cash” means guaranteed funds including, but not limited to, the following: (1) cashier’s check, (2) money order or (3) certified check. If cash is posted as a bond, the bond will not be considered filed until the final payment is made, if paid in installments. A certificate of deposit must have a maturity date of 24 months from the date of assignment to the department. An assignment from the bank must accompany the original certificate of deposit filed with the department for the bank to be released from liability. When a license holder elects to post cash rather than a certificate of deposit as a bond, conversion to a certificate of deposit will not be allowed. When the license holder is a corporation, an officer of the corporation may assume personal responsibility, as security for the payment of the fuel tax will be evaluated as provided in (1) above as if the officer applied for a fuel tax permit as an individual.

**63.23(3) Amount of bond or security.** When it is determined that a license holder or applicant for a fuel tax permit is required to post a bond or securities, the following guidelines will be used to determine the amount of the bond, unless the facts warrant a greater amount: If the license holder or applicant will be or is a monthly filer, a bond or securities in an amount sufficient to cover five months’ fuel tax liability will be required. If the applicant or license holder will be or is a quarterly filer, the bond or securities which will be required is an amount sufficient to cover nine months or three quarters of tax liability.

This rule is intended to implement Iowa Code sections 422.52(3) and 452A.66.

**701—63.24(452A) Crediting gas tax refunds.** The department may apply any fuel tax refund payable to a nonlicensee against any other tax liability outstanding on its books which the nonlicensee claimant has not paid.

This rule is intended to implement Iowa Code section 452A.17.

**701—63.25(452A) Time limitations on filing for credits or refunds.**

**63.25(1) Time limits for licensees.**

- a.* Credits for nonhighway use or loss due to casualty or like cause: See 701—subrule 64.7(5).
- b.* Credit for illegal or erroneous collection: See rule 63.17(452A).
- c.* Credits or refund for ethanol blended gasoline blending error: See 701—subrule 64.4(4).

**63.25(2) Time limits for nonlicensees.**

- a.* Refund for nonhighway use: See rule 701—64.8(452A).
- b.* Income tax credit for nonhighway use: See rules 701—42.6(422) and 701—52.6(422).
- c.* Refund for casualty loss: See rule 701—64.12(452A).

**63.25(3)** Refund to the state and political subdivisions and contract carriers who contract with public schools to transport students. See rules 701—64.15(452A) and 701—64.22(452A).

This rule is intended to implement Iowa Code sections 452A.16 and 452A.17.

**701—63.26(452A) Distributor licenses.** There shall be two types of fuel distributor licenses which will be issued. The motor fuel distributor's license will apply to motor fuel-gasoline and motor fuel-aviation. The special fuel distributor's license will apply to special fuel-diesel, and special fuel-LPG. Each license issued will be separate and distinct and must be applied for and issued separately.

**63.26(1) Requirements for license.** In order to become licensed as a fuel distributor, the person must file a written application with the department. The license must be conspicuously displayed, is valid until revoked or canceled, and is nonassignable. The application shall include, but not be limited to, the following information:

- a. The name under which the distributor will transact business in the state.
- b. The location of the principal place of business of the distributor.
- c. The name and address of the owner(s) of the business, or if a corporation or association, the names and addresses of the principal officers.
- d. The type of fuel(s) to be handled.
- e. The approximate volume of fuel(s) to be handled.
- f. The source of the fuel(s).
- g. The type of customers to be served.
- h. Whether the applicant has a license for a different type of fuel, and if so, the license number.

**63.26(2) Assignment of a license.** The following are nonexclusive situations that are considered assignments, and the acquiring distributor must apply for a new license.

- a. A sale of the taxpayer's business, even if the new owner operates under the same name.
- b. A change of the name under which the distributor conducts business.
- c. A merger or other business combination which results in a new or different entity.

**63.26(3) Denial of a license.** The department may deny a license to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax. If the applicant is a partnership, a license may be denied if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a license is a corporation, the department may deny the applicant a license if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. This is in contrast to the situation regarding a partnership. See rule 701—13.16(422) for a characterization of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

For information concerning records to be kept, see rule 63.3(452A).

**63.26(4) Revocation of a license.** The department may revoke the license of any licensee who becomes substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax. If a licensee is a corporation, the department may revoke the license if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. If the licensee is a partnership, the license may not be revoked for a partner's substantial delinquency in paying any tax, penalty, or interest which is not a liability of the partnership. See rule 701—13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

The department may also revoke the license of any licensee who abuses the privileges for which the license was issued, files a false report, or fails to file a report (including supporting schedules), pay the full amount of tax due, produce records requested, or extend cooperation to the department.

This rule is intended to implement Iowa Code sections 452A.4, 452A.5 and 452A.36.

**701—63.27(452A) Reinstatement of license canceled for cause.** A license holder making application to the department for reinstatement of a license canceled for cause shall be charged the fee required by law.

A license canceled for cause shall be reinstated only on such terms and conditions as the cause may warrant. Terms and conditions will include payments of any applicable fuel tax liability including interest and penalty which is due the department.

Pursuant to the director's statutory authority in Iowa Code section 452A.68 to restore licenses after being canceled for cause, the director has determined that upon the cancellation of a motor vehicle fuel tax license the initial time, the license holder will be required to pay all delinquent fuel tax liabilities including interest and penalty, to file reports, and to post a bond and refrain from activities requiring a license under Iowa Code sections 452A.4, 452A.6, 452A.18 and 452A.36 as required by the director prior to the reinstatement or issuance of a new motor vehicle fuel tax license.

As set forth above, the director may impose a waiting period during which the license holder must refrain from activities requiring a license pursuant to the penalties provided in Iowa Code section 452A.74, for a period not to exceed 90 days to restore a license or issue a new license after canceled for cause. The department may require a statement stating that the license holder has fulfilled all requirements of said order canceling the license for cause, and stating the dates on which the license holder refrained from restricted activities.

Each of the following situations will be considered one offense for the purpose of determining the waiting period to reinstate a license canceled for cause or issuing a new license after being canceled for cause unless otherwise noted.

Failure to post a bond as required.

Failure to file a monthly or quarterly report timely.

Failure to pay tax timely (including unhonored checks, failure to pay and late payments).

Failure to file a monthly or quarterly report and pay tax as shown on the report (counts as two offenses).

The administrative law judge or director of revenue may order a waiting period after the cancellation for cause not to exceed:

Five days for one through five offenses.

Seven days for six through seven offenses.

Ten days for eight through nine offenses.

Thirty days for ten offenses or more.

The administrative law judge or director of revenue may order a waiting period not to exceed:

Forty-five days if the second cancellation for cause occurs within 24 months of the first cancellation for cause.

Sixty days if the second cancellation for cause occurs within 18 months of the first cancellation for cause.

Ninety days if the second cancellation for cause occurs within 12 months of the first cancellation for cause.

Ninety days if the third cancellation for cause occurs within 36 months of the second cancellation for cause.

This rule is intended to implement Iowa Code section 452A.68.

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