



U.S. Department
of Transportation

Federal Highway
Administration

The Joint Federal/State Motor Fuel Tax Compliance Project

Fiscal Year 1994 Midyear Report

This report was submitted to the following Committees of the Congress on November 2, 1994, as required by Section 1040 of the Intermodal Surface Transportation Efficiency Act of 1991:

Committee on Environment and Public Works of the Senate
Committee on Finance of the Senate
Committee on Ways and Means of the House of Representatives
Committee on Public Works and Transportation of the House of Representatives

The report describes the implementation and results of the Joint Federal/State Motor Fuel Tax Compliance Project funded in part with funds authorized by Section 1040.

A copy of the report is being provided directly to all participants of the project and other interested agencies as listed on the latest version of the Principal Contacts list, which includes Federal Highway Administration offices, Internal Revenue Service offices, State revenue agencies, State transportation agencies, the Department of Justice, the Department of Transportation Office of Inspector General, the Defense Criminal Investigation Service, and other agencies.

Additional copies of the report are available on request from the Federal Highway Administration, Office of Policy Development (HPP-13), 400 Seventh Street, SW., Washington, D.C. 20590, telephone (202) 366-9243.

**THE JOINT FEDERAL/STATE MOTOR FUEL TAX
COMPLIANCE PROJECT**

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Executive Summary

Substantial revenue losses caused by motor fuel tax evasion schemes were discovered in the New York metropolitan area in the mid-1980s. Since that time, motor fuel tax evasion schemes have spread to every region of the country, and many of them are masterminded and controlled by organized crime.

Estimates of losses vary. However, evidence suggests that combined Federal and state motor fuel tax evasion losses exceed \$2 billion annually. Most of this lost revenue was destined for the Highway Trust Fund (HTF) and state transportation and highway funds. Since 6.8 cents of the Federal motor fuel tax is now dedicated to deficit reduction, the General Fund is also impacted.

Section 1040 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (P.L. 102-240) provides \$5 million per year in contract authority from the HTF and authorizes \$2.5 million per year from the General Fund through 1997 for highway use tax evasion projects. Up to \$35 million will be available from fiscal years (FYs) 1992-1997 for this effort. Each year, \$3 million is being allocated to the states for participation in regional motor fuel tax enforcement task forces. The remainder of the funding is provided to the Internal Revenue Service (IRS) for efforts, at its discretion, to supplement motor fuel tax enforcement.

Nine regional motor fuel enforcement task forces have been formed and meet on a periodic basis to develop cooperative enforcement strategies. All of the 48 continental states and the District of Columbia have joined at least 1 of the regional task forces, and all but one of these have entered funding agreements with the Federal Highway Administration (FHWA) to use Section 1040 funds for enhanced fuel tax compliance activities.

Officially known as the "Joint Federal/State Motor Fuel Tax Compliance Project," or Joint Project, the effort is coordinated by a Steering Committee, chaired jointly by FHWA and IRS. The Steering Committee includes representatives of the nine lead states, the Department of Justice, Department of Transportation (DOT) Office of Inspector General (OIG), the Federation of Tax Administrators (FTA), and representatives of the petroleum industry and transportation organizations.

Now in its third year, the Joint Project has demonstrated outstanding success. As a direct result of the Joint Project, over \$43 million in Federal motor fuel taxes have been assessed by the IRS in the lead state district offices. That represents more than \$35 million for the HTF that otherwise would have been unavailable for transportation projects. Since the project began in FY 1991, IRS has assessed nearly \$22 in additional fuel tax per dollar spent on motor fuel tax audits.

Based on 38 state reports for the period September 1992-March 1993, nearly \$53 million in additional state fuel tax revenue was assessed, with an average of about \$13 tax assessed per dollar spent conducting audits and examinations.

Despite these impressive results, it would be premature to declare victory in our effort to eliminate motor fuel tax evasion. In most areas of the country, regional task forces to address the issue were organized only within the past year. Cooperative state and Federal efforts to fight motor fuel tax evasion are still in the very early stages of development. Some very disturbing evidence of motor fuel tax evasion continues to be discovered. For example, the number of motor fuel tax criminal investigations initiated by IRS in 1992 skyrocketed to over 100 cases nationwide from an average of about 35 per year for the previous 3 years. Within the last year alone, Federal fuel tax evasion criminal indictments were issued against 78 individuals with estimated fuel tax losses of over \$200 million.

Congress continues to be concerned with the extent of motor fuel tax evasion. The recently enacted Omnibus Budget Reconciliation Act of 1993 included several provisions to strengthen enforcement of diesel fuel taxes, including moving the point of taxation up to the terminal level (the same as gasoline), allowing only dyed diesel fuel to be removed from the terminal tax-free, and providing substantial penalties for using dyed fuel for taxable purposes.

The Federal requirements to begin dyeing high-sulfur and tax-exempt diesel fuel provide an important opportunity to improve compliance with Federal and state diesel fuel taxes. For the coloring or marking programs to be effective, however, a concerted effort by state and Federal agencies and the petroleum industry will be needed. The Joint Project, through its Steering Committee and regional task forces, provides a forum for cooperative action to implement the new requirements. In addition to continuing the project oversight role, the Steering Committee is focusing its efforts on potential state legislation and enforcement action to "piggyback" on the newly enacted Federal law and regulatory changes.

Chapter 1
History of the Joint Federal/State
Motor Fuel Tax Compliance Project

Introduction

Although estimates of revenue losses from motor fuel tax evasion vary widely, evidence suggests a substantial problem with potential annual losses of hundreds of millions of dollars of Federal revenue on gasoline and diesel excise taxes. Most of this revenue is destined for the Highway Trust Fund (HTF), and the shortfall means that the traveling public is being cheated out of the resources needed to build and maintain the Nation's surface transportation system.

Previous reports to the designated congressional committees [Ref. 1 and 2] reviewed the history of motor fuel evasion in the United States and evidence of the magnitude of the problem. The Federal Highway Administration (FHWA) believes that the current level of gasoline tax evasion is between 3 and 7 percent of gallons consumed, and that the level of diesel fuel tax evasion is between 15 and 25 percent of gallons consumed. Using a 3-percent evasion rate for gasoline, a 20-percent rate for diesel, and the higher Federal fuel tax rates effective October 1, 1993, the total estimated annual revenue loss from Federal fuel tax evasion would be about \$1.6 billion annually, with \$1.1 billion of that amount lost to the HTF and the remainder lost to the General Fund for deficit reduction. Because of similarities in tax rates and procedures, it is likely that the states, in the aggregate, also suffer annual losses of at least \$1 billion in state revenues as a result of motor fuel tax evasion.

The FY 1993 report on the Joint Federal/State Motor Fuel Tax Compliance Project [Ref. 3] described the implementation of a program to fight motor fuel tax evasion. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) was signed into law December 18, 1991. Section 1040 (Appendix 1) authorized FHWA funding for highway use tax evasion projects to enhance motor fuel tax enforcement. This report is the next in a series of reports that describe motor fuel tax enforcement activities funded under this program.

Since 1986, the Internal Revenue Service (IRS) and FHWA have cooperated to reduce fuel tax evasion by supporting changes in tax collection procedures and additional resources for fuel tax enforcement. Participants in these efforts include the U.S. Department of Justice, Federation of Tax Administrators (FTA), petroleum industry organizations, state revenue agencies, and the Office of Inspector General (OIG) of the U.S. Department of Transportation (DOT). FHWA funding for these efforts first became available in FY 1990 and the Joint Federal/State Motor Fuel Tax Compliance Project, subsequently referred to as the Joint Project, was initiated at the first Steering Committee meeting on July 10, 1990. The subsequent DOT appropriation acts

for FY 1991 and FY 1992 provided additional funding. The appropriated funds, along with a supplemental allocation from the FHWA general operating expense budget for FY 1991, were provided to the IRS and 12 states for a pilot motor fuel tax enforcement program. The pilot program included development of IRS data processing tools and the formation of three regional enforcement task forces, comprised of groups of contiguous states and the IRS districts in the lead states of New Jersey, Indiana, and Texas.

In anticipation of nationwide expansion of the program, six additional states were allocated FY 1992 funds to begin organizing motor fuel tax enforcement task forces covering the remaining regions of the country. Some of the appropriated funds were also provided to FTA for development of training seminars for motor fuel tax auditors and investigators. As requested by the Senate Appropriations Committee in Senate Report 102-148 to accompany the DOT appropriations bill for FY 1992, \$250,000 of these funds were used for a study of motor fuel coloring and marking [Ref. 4]. Altogether, some \$2.2 million of FHWA funds were committed to these initial efforts.

ISTEA provides \$5 million per year in contract authority for FYs 1992 through 1997 from the HTF and authorizes \$2.5 million per year from the General Fund for projects to fight motor fuel tax evasion. On March 25, 1992, FHWA published a *Federal Register* (FR) notice describing the funding allocation and administrative procedures for state grants under Section 1040.

FHWA Notice N 4510.276, dated May 27, 1992, allocated a portion of the FY 1992 funds authorized under Section 1040 to all the states and the District of Columbia. By the end of FY 1992, each of the 6 new regional task forces had met at least once to begin organizing for the project, and 34 states had entered agreements to receive FHWA funds. This included 30 states under agreement for the full FY 1992 funding allocation, 3 additional lead states under agreement for the preliminary organization grants, and 1 state still under agreement from the original pilot phase of the project with FY 1991 funds.

The FY 1992 allocations not obligated for state projects by the end of the fiscal year (\$1.2 million in total) were withdrawn from 20 states and the District of Columbia. These funds were added to the FY 1992 IRS allocation of \$2 million, and the FHWA entered a reimbursable agreement in the amount of \$3.2 million with IRS. All available FY 1992 funds for the tax evasion project (\$1 million appropriated and \$5 million authorized by ISTEA) were obligated by September 30, 1992.

In FY 1993, Section 1040 funds were not subject to obligation limitation controls, so the full amount of \$5 million authorized from the HTF was allocated to the states and IRS. An additional \$2.5 million, authorized from the General Fund in Section 1040, was not appropriated. The FY 1993 funds were allocated to the states by FHWA Notice N 4510.291 dated October 23, 1992. The FY 1993 allocation to the states included \$3 million, to provide

\$100,000 to each lead state and \$50,000 to the remaining states and the District of Columbia, plus \$1.2 million to restore the allocations withdrawn from the states that did not obligate the FY 1992 funds. The balance of \$800,000 was provided to IRS by reimbursable agreement.

The FY 1993 allocations not obligated for state projects by the end of the fiscal year (\$1,052,300 in total) were withdrawn from 9 states and the District of Columbia. These funds were added to the initial IRS allocation of \$800,000 for a total of \$1,832,300 provided to the IRS by reimbursable agreement in FY 1993. The full \$5 million authorized by ISTEA from the HTF for the tax evasion project was obligated by September 30, 1993.

By the end of FY 1993, all but five entities (the four states of Alabama, Alaska, Hawaii, and Maryland, and the District of Columbia) had entered funding agreements with FHWA to participate in the project. The State of Alabama is participating on the Florida Task Force but has not entered a funding agreement with FHWA. During FY 1994, Maryland and the District of Columbia joined the New Jersey Task Force and entered funding agreements with FHWA. Several states bordering more than one regional group, including California, Colorado, Connecticut, Georgia, Kentucky, Missouri, Minnesota, Montana, New Mexico, Oregon, Utah, West Virginia, and Wyoming, have joined more than one task force. States are encouraged to join whichever task forces will best meet the needs for cooperative motor fuel tax enforcement efforts.

FY 1994 Funding Allocation

Again, in FY 1994, Section 1040 funds were not subject to obligation limitation controls, so the full amount of \$5 million authorized from the HTF was allocated to the states and IRS. An additional \$2.5 million, authorized from the General Fund in Section 1040, was not appropriated. The FY 1994 funds were allocated to the states by FHWA Notice N 4510.308 dated November 16, 1993 (Appendix 2). The FY 1994 allocation to the states included \$3 million, to provide \$100,000 to each lead state and \$50,000 to the remaining states and the District of Columbia, plus \$1,052,300 to restore the allocations withdrawn from the states that did not obligate the FY 1993 funds. The balance of \$947,700 was provided to IRS by reimbursable agreement.

For states that signed a Grant Agreement with FHWA prior to FY 1994, the additional funds are obligated when the state revenue agency and the FHWA division administrator sign an amended cover sheet (Attachment 2 to FHWA Notice N 4510.308, Appendix 2) or a new project agreement. For states that did not sign a Grant Agreement with FHWA prior to FY 1994, the division administrator approves projects by signing the Grant Agreement when the state has met all of the project requirements. To receive funding under this program, the state revenue agency responsible for enforcing state motor fuel taxes must agree to

participate in at least one of the nine regional motor fuel tax enforcement task forces. The Grant Agreement includes all specific requirements on the use of project funds, including the certification, required by Section 1040(c), to maintain funding (exclusive of Federal funds) for motor fuel tax enforcement activities at least at the average level for the previous two fiscal years. Funds are available at 100 percent Federal share.

Of the two revenue agencies not participating in the Joint Project, the State of Alaska continues to explore participation and may eventually join the Northwest Task Force. The State of Hawaii has been invited to join the California Task Force and continues to receive notices of task force activities. Exhibit 1 summarizes the tax evasion project funding through FY 1997. If the \$2.5 million authorized from the General Fund is appropriated for FYs 1996-1997, the total available funds will be \$35 million.

The intended use of Section 1040 project funds provided to the IRS by reimbursable agreement with FHWA is discussed in a separate report to Congress. As required by Section 1040(d), this report is required to be submitted by the Secretary of the Treasury to the committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. The latest such report to Congress is included in Appendix 3.

For the IRS, the \$2 million annual funding allotment from FHWA provides a sizable supplement to the overall motor fuel tax enforcement effort, but it does not come close to reimbursing the costs of expanded enforcement initiatives. Of the \$2 million annual allotment, \$1.4 million is dedicated to additional examination staffing in IRS district offices in the nine lead states. The FHWA funding covers only about two-thirds of the estimated \$2.2 million for the 28 additional staff-years in 16 IRS district offices. The additional staff-years are provided by reassignment of IRS staff rather than by new hires. The remainder of the FHWA funding, \$0.6 million, is dedicated to criminal investigations. The funds are apportioned to the seven IRS regions based on the current level of enforcement activity for partially funding undercover operations, for supplementing criminal investigations, and for information gathering. Funds are used for case-related travel, overtime, equipment purchases, training, obtaining and processing evidence, data processing, and transcription of tape recordings. With respect to undercover operations, project funds are used for the following types of activities: travel and per diem expenses for undercover agents; payments for information or to informants; various capital expenditures such as purchase of office furniture, facsimile machines, office equipment, and monitoring and recording equipment; and other expenses of operating undercover companies, such as buying, selling, and transporting motor fuels. The FHWA funds are not used for criminal investigation staffing costs even though the resources committed to motor fuel tax investigations have continued to increase by about 15 to 20 staff-years each year since FY 1990. For FY 1993, 81 staff-years (direct staff

Exhibit 1. Section 1040 Tax Evasion Project
Funding Summary, FYs 1992-1997

Cost Items	Lead	Participating States			Total States	IRS	FY Total
		Each	Other	Each			
FY 1992 Allocated	9	\$100,000	42	\$50,000	\$3,000,000	\$2,000,000	\$5,000,000
FY 1992 Actual	6	100,000	24	50,000	1,800,000	3,200,000	5,000,000
FY 1993 Allocated	9	100,000	42	50,000	3,000,000		
Plus restored 1992 Funding	3	100,000	18	50,000	<u>1,200,000</u>		
					4,200,000	800,000	5,000,000
FY 1993 Actual	5 1	100,000 200,000	24 11	50,000 100,000	1,700,000 1,300,000		
			1	98,700	98,700		
			1	49,000	<u>49,000</u>		
					3,147,700	1,852,300	5,000,000
FY 1994 Allocated	9	100,000	42	50,000	3,000,000	2,000,000	5,000,000
Plus restored from prior year funds	2 1	200,000 100,000	5 1	100,000 51,000			
			1	1,300	<u>1,052,300</u>		
					4,052,300	947,700	5,000,000
FY 1995	9	100,000	42	50,000	3,000,000	2,000,000	5,000,000
FY 1996	9	100,000	42	50,000	3,000,000	2,000,000	5,000,000
FY 1997	9	100,000	42	50,000	3,000,000	2,000,000	5,000,000
Total	9	\$600,000	42	\$300,000	\$18,000,000	\$12,000,000	\$30,000,000

Note: If the \$2.5 million per year authorized from the General Fund is appropriated in FY 1996 and 1997, the total available funds will be \$35 million.

time excluding support staff) were devoted to IRS motor fuel excise tax criminal investigations at an estimated cost of \$9.8 million. Staffing devoted to motor fuel tax investigations may continue to increase in FYs 1994 and 1995.

The growing criminal investigation case load is reflected in substantial increased demand for criminal investigation and prosecution resources. These demands are expected to increase in coming years as current investigations spawn even more new leads and prospective cases. The additional examination efforts,

particularly in the IRS districts in lead states, and cases generated from activities of the regional task forces will further increase demands. DOT-OIG, the Department of Justice, and the IRS Criminal Investigation Division are striving to meet these needs as best they can within overall budget constraints.

For DOT-OIG, motor fuel tax compliance is the second highest priority for the investigations staff. Investigators from all of the DOT-OIG regional offices have been trained in motor fuel tax fraud investigations at the FTA motor fuel tax seminars in 1992 and 1993. In FYs 1993 and 1994, four investigators were assigned to work with the regional motor fuel tax enforcement task forces in Texas, New Jersey, Indiana, and California. Budget authority has been proposed for additional positions to provide at least one investigator for each of the nine regional motor fuel task forces. DOT-OIG participation in the fuel tax fraud investigations is critical to safeguarding DOT interests in the enforcement of Federal motor fuel taxes, since the fuel tax revenues fund a major part of the Department's highway and public transportation programs. The impact of tax evasion losses on DOT programs is so widespread that DOT must utilize all available resources to stem the evasion losses and must develop an indepth knowledge of evasion schemes and enforcement countermeasures.

At the Department of Justice, the growing case load related to motor fuel tax enforcement is straining the resources of the Department of Justice Tax Division to the extent that some prosecutions may be unable to continue on schedule. While there have been more resources available for investigation from IRS, FHWA, and Federal Bureau of Investigation (FBI), the corresponding budgets for prosecution have not kept pace. Currently 10 percent of the Tax Division resources are committed to motor fuel enforcement cases, and this figure is increasing. The Department of Justice is seeking additional resources for staffing, travel, and other costs associated with prosecution of motor fuel cases.

Steering Committee Meetings

A project Steering Committee has been established to coordinate activities related to the Joint Project. The committee was initiated to oversee project activities, monitor results, and provide progress reports to Department of Transportation and Treasury officials, the Office of Management and Budget, and the Congress. The committee, chaired jointly by FHWA and IRS, also includes representatives of the lead state from each regional task force. The FTA, the Department of Justice, and representatives of the petroleum industry and transportation organizations serve as ad hoc resources to the committee. The committee includes representatives from the following agencies:

Member Organizations:

- Federal Highway Administration
- Internal Revenue Service
- Massachusetts Department of Revenue

New Jersey Division of Taxation
 North Carolina Department of Revenue
 Florida Department of Revenue
 Indiana Department of Revenue
 Texas Comptroller of Public Accounts
 Nebraska Department of Revenue
 Oregon Department of Transportation
 California State Board of Equalization

Ad Hoc Participants:

American Association of State Highway and Transportation
 Officials
 American Petroleum Institute
 Federation of Tax Administrators
 Independent Liquid Terminals Association
 National Association of Truck Stop Operators
 Petroleum Marketers Association of America
 Society of Independent Gasoline Marketers of America
 U.S. Department of Justice

Since the first Steering Committee meeting on July 10, 1990, the committee has met twice a year, once in the spring in Washington, D.C., and once in the fall in conjunction with the FTA Motor Fuel Section Annual Meeting. The meeting schedule for the Steering Committee is shown in Exhibit 2.

Exhibit 2. Steering Committee Meeting Calendar		
<u>Meeting</u>	<u>Date</u>	<u>Location</u>
First Meeting*	July 10, 1990	Washington, D.C.
Second Meeting*	October 31, 1990	Phoenix, Arizona
Third Meeting*	April 23, 1991	Washington, D.C.
Fourth Meeting*	October 2, 1991	Sarasota, Florida
Fifth Meeting*	April 7, 1992	Washington, D.C.
Sixth Meeting*	November 4, 1992	Baltimore, Maryland
Seventh Meeting*	April 20-21, 1993	Washington, D.C.
Eighth Meeting*	September 22, 1993	Wichita, Kansas
Ninth Meeting*	April 18-19, 1994	Washington, D.C.
Tenth Meeting	September 28, 1994	Salt Lake City, Utah

* Meeting minutes available on request.

Exhibits 3 and 4 summarize the actions of the Steering Committee at the meetings held during FY 1993. One of the principal recommendations of the Steering Committee since its inception in 1990 has been the need for training opportunities for motor fuel auditors and investigators. In FYs 1992 and 1993, FTA, under contract with the FHWA, presented eight motor fuel tax training seminars. More than 600 Federal, state, and local fuel tax examiners and investigators participated in these seminars. At the April and September 1993 meetings, the Steering Committee reaffirmed the need to continue offering a basic training course in fuel tax audit and investigation procedures and further

recommended development of an advanced course. Under the Office of Policy contract research program, FHWA has awarded a contract to FTA for development and presentation of at least two basic and two advanced courses each year through 1997 for state and Federal motor fuel tax auditors and investigators.

Exhibit 3. Summary of Steering Committee Decisions (April 20, 1993)

1. Training Needs

The committee concurred that it was desirable to continue to offer the basic motor fuel tax training course as well as to develop a more advanced course focusing on criminal investigations and audit techniques applicable to computer records. The committee requested that FTA review the current course materials and presentation techniques, and explore the development of a curriculum for an advanced course.

2. Travel Policy

The committee unanimously adopted modifications to the current policy on use of project funds for travel. The new policy, set out in Appendix 4, affirms that project funds may be used for travel to FTA Uniformity Committee meetings, authorizes the proration of costs where task force meetings are held in conjunction with FTA regional meetings, and permits the use of project funds for Steering Committee meetings by other than lead state representatives if such participation is requested by the Steering Committee.

3. Fuel Cost Data

The committee agreed to continue to review and evaluate the role fuel pricing services might play in aiding fuel tax enforcement.

4. Next Steering Committee Meeting

The Steering Committee will hold its next meeting in Wichita, Kansas, on September 22 from 8:30 a.m.-12:00 Noon.

The Steering Committee continues to oversee and recommend expenditure procedures for states receiving FHWA tax evasion project funds. Once these recommendations are endorsed by the FHWA and IRS committee cochairmen, these recommendations become FHWA policy. Two particular project funding issues were addressed by the committee during the 1993 meetings. At the April 1993 meeting, a policy on using grant funds for travel costs was modified. The amended policy (Appendix 4) affirms that funds may be used for travel to the FTA Uniformity Committee meetings and allows for proration of costs where task force meetings are held in conjunction with the FTA regional meetings. In addition, the proposed changes allow the use of travel funds for participation at the Steering Committee meetings by other than lead state representatives when such participation is requested by the Steering Committee. FHWA grant funds are not available to reimburse state travel expenses for participation at the regular annual and regional meetings of the FTA Motor Fuel Section, except for the special case of Steering Committee

Exhibit 4. Summary of Steering Committee Decisions (September 22, 1993)

1. The following activities are endorsed for possible funding under the FHWA project:
 - a. expenditures to prepare for or initiate fuel checks of highway vehicles for tax enforcement purposes, including, for example, testing equipment and salaries;
 - b. the cost of connect time (approximately \$16 per hour) or equipment for use of the FTA TaxExchange network by state motor fuel contacts to facilitate information exchange, as long as each reimbursable user's time is logged or recorded so appropriate charges can be billed to FHWA; and
 - c. the cost of hardware or software for the state to access the IRS Form 637 on-line registrant database through the automated information retrieval system, now available to the states for access to several IRS databases, once required security clearances have been obtained.
2. If additional FHWA funding is unavailable for development and presentation of FTA training courses, the states would consider using a portion of their FHWA grant funds for this purpose.
3. All comments on the August 26, 1993, draft of the next report to the congressional committees are due by October 30, 1993.
4. The next Steering Committee meeting will be held in Washington, D.C., on Monday and Tuesday, April 18-19, 1994, with agenda items to include the Motor Carrier Management Information System (MCMIS) and Research and Special Programs Administration (RSPA) databases, DOT-OIG activities, fuel coloring, Department of Defense (DOD) Fraud Counsel, and a reporting workshop.
5. Up to two additional states per task force may be invited to the next Steering Committee meeting in Washington, D.C., for the purpose of participating in the reporting workshop. Each task force will determine whether to cover reporting at task force meetings or to invite selected states to the next Steering Committee meeting.

members attending the FTA Motor Fuel Section annual meeting as discussed in the travel policy. At the September 1993 meeting, the Steering Committee recommended that FHWA allow project funds to be used to reimburse three specific state activities: 1) expenses for fuel checks of motor vehicles to support the new Federal diesel fuel dyeing requirements, 2) costs of utilizing the FTA TaxExchange electronic communication network for motor fuel tax information exchange, and 3) costs for states to access IRS electronic communication networks for access to IRS motor fuel tax registrant databases. The first item would allow states to gear up for enforcement efforts to ensure that untaxed dyed fuel is not used for taxable purposes. Motor Carrier Safety Assistance Program (MCSAP) funds are not currently available for motor fuel checking. The second item would facilitate information exchange, meeting scheduling, or other communication among the members of the regional task forces. The third item would provide state access to the IRS Form 637 registrant

database. Online access would be available to any state that had qualified for connection to the IRS information retrieval network. The IRS registrant files will be changing substantially during the coming year as a result of the recent modifications to the Federal diesel fuel tax law and procedures.

At the September 1993 meeting, there was also a discussion of the use of FHWA project funds for reimbursement of other state agency expenses in support of the fuel tax enforcement effort, such as funding state police criminal investigations or training. FHWA project funds may be provided to other state agencies in two ways: 1) by directly reimbursing other state agency employees for appropriate training or travel expenses, or 2) by negotiating interagency reimbursable agreements for salary, equipment, or other cost items. In either case, the same recordkeeping is required of the recipient agency to support charges billed to FHWA. These activities can be reimbursed as long as the approved budgets include the appropriate expenditure categories in sufficient amounts before expenses are incurred for these items.

Chapter 2 Update on Motor Fuel Tax Procedures

Changes in Federal Excise Tax on Diesel Fuel

In August 1993, Congress enacted important changes in the Federal excise tax on diesel fuel tax designed to stem evasion. The incentive to evade and the potential revenue losses are likely to increase with the higher Federal fuel tax rates effective October 1, 1993. The current Federal excise tax rates on transportation fuels and the distribution of the tax to various trust funds is shown in Exhibit 5. To address the evasion problem, Section 13242 of the Omnibus Budget Reconciliation Act of 1993 (Pub.L. 103-66), referred to as the "1993 Budget Act," moved the point of taxation for diesel fuel to the terminal rack and provided for dyeing tax-exempt diesel fuel effective January 1, 1994. The relevant sections of the 1993 Budget Act were included as an appendix to the previous report to Congress on the Joint Project [Ref. 3]. The purpose of elevating the point of taxation is to reduce the number of taxpayers, thus making the task of enforcing tax collections easier and less expensive for the tax authorities. The DOT report to Congress on motor fuel dyeing [Ref. 4] indicated that dyeing and marking diesel fuel, as part of a comprehensive package of tax administration improvements, could be a feasible and cost-effective method of differentiating taxable and nontaxable diesel fuel.

On November 30, 1993, IRS issued temporary regulations relating to changes to the diesel fuel excise tax (58 FR 63069). These regulations were included as an appendix to the previous report to Congress on the Joint Project [Ref. 3]. A final rule on the Federal diesel fuel excise tax, issued on June 30, 1994 (59 FR 33656, Appendix 5), modified the dyeing requirements for tax-exempt diesel fuel and specified the use of a single red dye color beginning October 1, 1994. A corresponding interim final rule was issued by the Environmental Protection Agency (EPA) on July 14, 1994 (59 FR 35854, Appendix 6). The EPA and IRS rules provide a coordinated and consistent fuel dyeing program to satisfy the requirements of the Clean Air Act and the 1993 Budget Act.

A principal feature of the new rules is the use of dyes to differentiate taxed and nontaxed fuels. Under the new statute, to be removed from a bulk storage terminal free of tax (i.e., for nontaxable or reduced-tax uses), diesel fuel must be dyed. Tax must be imposed on the removal of undyed fuel from a terminal. (A terminal is a gasoline and diesel storage and distribution facility that is supplied by pipeline or vessel, and from which gasoline and diesel may be removed at a loading rack.) The use of dyes to distinguish between taxable and nontaxable fuels is consistent with the practice of a number of other industrialized countries, including Canada, Denmark, France, Germany, Italy, and the United Kingdom. The new rules, effective January 1, 1994, are summarized below.

Exhibit 5. Federal Excise Taxes on Transportation Fuels¹

OFFICE OF POLICY
FEDERAL HIGHWAY ADMINISTRATION

(CENTS PER GALLON)

APRIL 13, 1994

FUEL TYPE	EFFECTIVE DATE	TAX RATE	DISTRIBUTION OF TAX				LEAKING UNDERGROUND STORAGE TANK TRUST FUND 2/	GENERAL FUND FOR DEFICIT REDUCTION	NOT SPECIFIED
			HIGHWAY ACCOUNT	HIGHWAY TRUST FUND 2/	MASS TRANSIT ACCOUNT	AIRPORT AND AIRWAYS TRUST FUND 2/			
Highway Use									
Gasoline	10/01/93	18.4	10	1.5	-	-	0.1	6.8	-
	10/01/95	18.4	12	2	-	-	0.1	4.3	-
Diesel fuel 3/	10/01/93	24.4	16	1.5	-	-	0.1	6.8	-
	10/01/95	24.4	18	2	-	-	0.1	4.3	-
Diesel fuel used in intercity buses	10/01/93	7.4	1.5	1.5	-	-	0.1	4.3	-
	10/01/95	7.4	1	2	-	-	0.1	4.3	-
Gasohol with 10 percent ethanol 4/	10/01/93	13	4	1.5	-	-	0.1	6.8	0.6
	10/01/95	13	6	2	-	-	0.1	4.3	0.6
Liquefied petroleum gases	10/01/93	18.3	10	1.5	-	-	-	6.8	-
	10/01/95	18.3	12	2	-	-	-	4.3	-
Compressed natural gas 5/	10/01/93	4.3	-	-	-	-	-	4.3	-
Railroad Use									
Gasoline and diesel	10/01/93	6.9	-	-	-	-	0.1	6.8	-
	10/01/95	5.65	-	-	-	-	0.1	5.55	-
	10/01/99	4.3	-	-	-	-	-	4.3	-
Aviation Use									
Noncommercial aviation gasoline	10/01/93	19.4	-	-	15	-	0.1	4.3	-
Noncommercial jet fuel	10/01/93	21.9	-	-	17.5	-	0.1	4.3	-
Commercial aviation gasoline and jet fuel	10/01/95	4.4	-	-	-	-	0.1	4.3	-
Commercial Vessels on Inland Waterways									
Diesel and other fuels	10/01/93	21.4	-	-	-	17	0.1	4.3	-
	01/01/94	23.4	-	-	-	19	0.1	4.3	-
	01/01/95	24.4	-	-	-	20	0.1	4.3	-

1/ This table does not include rates for neat alcohol, nor does it contain exceptions and reductions for certain uses.
 2/ The Leaking Underground Storage Tank and Airport and Airways Trust Fund financing rates are scheduled to terminate January 1, 1996. The Highway Trust Fund financing rate is scheduled to terminate October 1, 1999.
 3/ The point of taxation for diesel fuel is raised from the wholesale level to the terminal rack effective January 1, 1994. Tax exempt number 2 distillate (diesel) is required to be dyed effective January 1, 1994. Farmers and State and local governments may purchase clear fuel tax free from a vendor who has paid the tax.
 4/ Different rates apply to 10 percent gasohol made with methanol and to 7.7 percent and 5.7 percent gasohol.
 5/ The tax on CNG is 48.54 cents per thousand cubic feet, which is roughly equivalent to 4.3 cents per gallon.

TREATMENT OF DYED FUEL

The 1993 Budget Act exempts diesel fuel from tax at the time of removal from the terminal (which is generally the tax collection point for diesel fuel after January 1, 1994) if the IRS determines the fuel is destined for a nontaxable use, and the fuel is dyed (and marked) in accordance with regulations. All fuel dyed and labeled in accordance with the regulations is treated as destined for a nontaxable use.

The regulations require the use of EPA blue dye until October 1, 1994 (if high sulfur fuel), or red dye of a prescribed type and concentration. Other dyes may be used, but only if they are approved by the IRS Commissioner. A transitional rule permits a lower concentration of dye for stocks of fuel previously dyed for EPA purposes. The final IRS rule and EPA interim final rule prescribe the use of only red dye after September 30, 1994. IRS received a number of requests for waivers or delays of the dyeing requirements (although others urged prompt issuance of the regulations). The regulations did not include these suggestions because IRS does not have authority to waive or delay the dyeing requirements.

PENALTY FOR IMPROPER USE OF DYED FUEL

The 1993 Budget Act also provides that dyed diesel fuel (including high sulfur fuel that is dyed to satisfy EPA requirements or is dyed for marketing or other purposes) may be used only for nontaxable purposes, such as heating, use on a farm for farming purposes, and use by a state or local government. For any other use of dyed fuel, the 1993 Budget Act imposes a \$10-per-gallon penalty on the user and on any person who sells the fuel with knowledge that it will be used for a taxable purpose.

Diesel fuel that is dyed blue (high sulfur) may not be used in highway vehicles. Diesel fuel that is dyed red may not be used in the fuel supply tanks of vehicles operated on the highway, except for the following:

- state and local government vehicles,
- local transit buses,
- intercity buses,
- school buses
- vehicles owned by aircraft museums,
- vehicles used by nonprofit educational organizations, and
- Red Cross vehicles.

These exceptions reflect pre-1994 exemptions to the Federal motor fuel excise tax. All of the above uses are either exempt from the Federal motor fuel excise tax or are subject to a reduced rate. Consequently, the use of red, nontaxable diesel fuel in the above vehicles is acceptable, but only if the red dyed fuel meets the EPA sulfur content and other requirements for use in a motor vehicle.

IRS received a number of requests for delays in enforcement of this requirement (although, again, others urged the IRS not to delay). The regulations did not include these suggestions because the IRS does not have authority to delay the enforcement of the penalty.

LABELING REQUIREMENTS FOR DYED FUEL

Terminal operators and others who sell dyed fuel are responsible for informing their customers of the restriction on the use of dyed diesel fuel. The notice must state: "DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" and must appear on bills of lading, invoices, etc., for dyed diesel fuel and on retail fuel pumps where dyed fuel is sold. In addition, the EPA interim final rule specifies that if diesel fuel with visible evidence of red dye is sold or otherwise transferred to another party for use in motor vehicles, the person who sells or otherwise transfers the product shall provide documents, which state that the fuel meets the EPA sulfur content and other requirements for use in diesel-powered motor vehicles.

RELIEF PROVISIONS

IRS requested public comments during the development of the temporary regulations. The regulations include a number of relief provisions adopted in response to the comments received:

- Splash dyeing (i.e., manual mixing of dye in diesel fuel) at the terminal is allowed on a transitional basis. Dye injection systems will not be required until specified by IRS.
- Dyed fuel does not have to contain a colorless marker until specified by IRS.
- Kerosene will not be treated as diesel fuel under the temporary regulations. Thus, kerosene used for heating will not be taxed and will not have to be dyed. However, a person that blends kerosene with diesel fuel after removal from the terminal is liable for tax on the amount of kerosene used in the blend. The treatment of kerosene is under study and may be addressed in a future regulation.
- The person receiving dyed fuel at the terminal rack is not required to be registered by the IRS and is not required to give the terminal operator or position holder (i.e., the person that holds the inventory position for the diesel fuel stored at the terminal, as reflected on the records of the terminal operator) an exemption certificate. However, each terminal operator must keep records sufficient to identify each person that receives dyed diesel fuel at the rack of each terminal it operates.

IMPOSITION OF TAX ON UNDYED FUEL

The 1993 Budget Act provides that diesel fuel is taxed in the same manner as gasoline. Thus, tax is imposed on undyed diesel fuel removed from the terminal at the rack and the position holder is liable for this tax.

CREDIT OR PAYMENTS FOR NONTAXABLE USES

The regulations include rules for claiming a credit or refund with respect to undyed (i.e., taxed) diesel fuel that is used for nontaxable uses. These rules follow the legislative history and the 1993 Budget Act:

- If undyed diesel fuel is used for nontaxable uses other than on a farm for farming purposes or by a state or local government, the ultimate purchaser must make the claim. This rule will apply, for example, to users of home heating oil or users of fuel for construction, logging, etc. To receive a refund, the claimant must have documentation from the seller that the diesel fuel purchased did not contain visible evidence of dye.
- If undyed diesel fuel is sold for use on a farm for farming purposes or by a State or local government, only a registered ultimate vendor may make the claim. This rule enables farmers and state and local governments to purchase undyed diesel fuel at a tax-excluded price. The documentation provided by the seller must indicate that the diesel fuel did not contain visible evidence of dye and that the price excludes the tax.
- As a transitional rule, a person who is registered as a diesel fuel producer on December 31, 1993, generally will be considered to be a registered ultimate vendor during 1994.
- As a condition to making a claim, a registered ultimate vendor must have received a prescribed certificate from the farmer or state or local government to whom it sold the fuel. A transitional rule provides that claims relating to sales before April 1, 1994, may be supported with certain exemption certificates used to support tax-free sales of diesel fuel under the law prior to 1994.

NONCOMMERCIAL BOATS

The 1993 Budget Act provides that diesel fuel used in noncommercial boats is no longer exempt from tax. The pre-1994 exemption continues for diesel fuel used in boats for commercial fishing, transportation of persons or property for compensation or hire, or for business use other than predominately entertainment, amusement, or recreation.

NOTICE OF PROPOSED RULEMAKING

Issued with the temporary regulations was a notice of proposed rulemaking, under which the temporary regulations are issued as proposed regulations. The notice requested comments on the regulations. A public hearing on the proposed regulations was held in Washington, D.C., on March 22, 1994.

AMENDMENTS TO THE TEMPORARY RULES

Subsequent to publication of the temporary regulations, IRS issued notices modifying the requirements or application of the rules. One modification specified reduced concentrations for blue dye. The EPA regulations stipulated that all **high sulfur** diesel be dyed **blue** at the refinery beginning October 1, 1993. However, no specific concentration of blue dye was required by EPA, merely that the dye be "visible." The IRS regulations provided that diesel dyed blue under EPA regulations satisfied the IRS requirement that nontaxed diesel fuel be dyed, provided the blue dye met a specific concentration level. As modified in the subsequent guidance, concentration levels were reduced at the request of the petroleum production and distribution industry until April 1 to allow existing stocks of fuel that did not meet the IRS concentration requirements to be depleted.

The second modification concerned blending of undyed products with dyed diesel fuel. The Internal Revenue Code imposes a penalty for willfully altering the composition or strength of any dyeing done pursuant to the regulations. Recognizing that during cold weather it is necessary to add products such as kerosene to improve the viscosity of diesel fuel sold or used for heating purposes, IRS issued a press release in January which included the following statement:

"IRS District Directors have been advised not to assert the penalty under section 6714 of the Internal Revenue Code in cases where, due to extreme and unexpected weather conditions, dyed diesel fuel is mixed with undyed kerosene or similar products after removal from the terminal, and the resulting fuel is sold or used for heating purposes during the current heating season. The penalty will be asserted, however, against any person using such mixtures for a taxable use."

The final IRS rule specifically indicates that mixtures of diesel fuels, each of which satisfies the dyeing requirements, either the blue dye that may be used until October 1, 1994, or red dye, satisfies the dyeing requirements and is not subject to penalty.

Issues in State Fuel Tax Law and Procedure

The first report to Congress on the Joint Project [Ref. 1] highlighted several of the strategies adopted by the states or Federal government to improve compliance with motor fuel taxes. Many of these strategies require state authorizing legislation.

During the past year, certain strategies have become the focus of state efforts to improve motor fuel tax compliance. These strategies are being adopted by state legislatures because of widespread support among the states, the cooperative spirit between state revenue administrators and the petroleum marketing industry to fight fuel tax evasion, and the improved information exchange between state and Federal revenue agencies fostered by FTA programs and the regional motor fuel task forces. Success in adopting these programs could not be achieved without the cooperation and support of the petroleum marketing industry. Petroleum product producers and marketers have seen in recent years that the economic vitality of the entire industry can be threatened if fuel tax evasion is allowed to continue unchecked. As one state petroleum industry association president stated in a letter to his colleagues:

"When evasion occurs it is the marketers who are hurt first. We have to compete against the 'tax cheats' on the street. There is no way an honest marketer can successfully match the prices of someone who is evading the tax."

The issues receiving the most attention for state improvements in state motor fuel tax legislative initiatives are discussed in the following sections.

STATE UNIFORMITY

Motor fuel tax administration procedures vary widely among the states and IRS. Procedural inconsistencies further complicate enforcement by making it difficult to exchange information among the states or between the states and the IRS. This is particularly true with respect to comparing imports and exports of fuel crossing state lines. Ideally, an export from one state should be reported as an import to another state, with each state exchanging and verifying the quantity involved. Because of differences in the point of taxation and in reporting procedures for imports and exports, such verification is not always possible, even when states have agreed to exchange information.

To promote greater uniformity among states, FTA adopted an 11-point plan to address motor fuel tax evasion at the annual meeting in July 1993. The plan was developed by the Uniformity Committee of the FTA Motor Fuel Section, which is comprised of representatives from 13 state revenue agencies and from 13 petroleum industries or their associations. Although an initial 11-point plan was adopted by the FTA Motor Fuel Section in 1987, it was not until the Uniformity Committee was enlarged in September 1991 under the chairmanship of Mr. James Poe, Indiana Department of Revenue, that a sustained effort was mounted to facilitate the operation and promote the adoption of the plan among the states.

Throughout 1992 and 1993, the expanded Uniformity Committee refined the plan and developed the definitions and reporting schedules that would give substance and direction to the tenets

of the plan. The meeting schedule for the Uniformity Committee since the expansion authorized in September 1991 is shown in Exhibit 6.

Exhibit 6. FTA Uniformity Committee Meeting Calendar

<u>Meeting</u>	<u>Date</u>	<u>Location</u>
Reorganization Meeting	September 29, 1991	Sarasota, Florida
First Meeting*	December 13-14, 1991	Indianapolis, Indiana
Second Meeting*	May 1-2, 1992	St. Louis, Missouri
Third Meeting*	September 11-12, 1992	Indianapolis, Indiana
Fourth Meeting*	November 1, 1992	Baltimore, Maryland
Fifth Meeting*	March 5-6, 1993	Indianapolis, Indiana
Sixth Meeting*	June 11-12, 1993	St. Louis, Missouri
Seventh Meeting*	September 19, 1993	Wichita, Kansas
Eighth Meeting*	December 17, 1993	Indianapolis, Indiana
Ninth Meeting*	March 27-28, 1994	Indianapolis, Indiana
Tenth meeting*	June 17-18, 1994	Indianapolis, Indiana
Eleventh Meeting	September 24, 1994	Salt Lake City, Utah

* Meeting minutes available on request.

Appendix 7 is a copy of the Fuel Tax Evasion 11-Point Plan, uniform schedules for reporting motor fuel tax information, and standard definitions for "import" and "export." The reporting schedules adopted under the plan include:

- Terminal Report (22-Oct-93)
- Terminal Operator Schedule of Receipts (SCHEDULE 2A, 22-Oct-93)
- Terminal Operator Schedule of Disbursements (SCHEDULE 4A, 22-Oct-93)
- Distributors Schedule of Disbursements (Revision Date 5/03/94)
- Distributors Schedule of Receipts (Revision Date 5/03/94)

The Uniformity Committee continues to promote the implementation of the 11-point plan and encourage the adoption of the uniform reporting schedules and standard definitions in all states. At the next FTA Motor Fuel Section annual meeting in September 1994, the Common and Contract Petroleum Products Carrier Report and the Common Carrier Schedule of Deliveries will be recommended for adoption. The committee is considering adoption of additional uniform reports including a terminal operator schedule of inventories, retailer's fuel reports, bulk dealer's reports, and distributor's fuel tax return. Committee members have been assigned to work in six subcommittees:

- Uniform Forms
- Fuel Accountability Working Group
- Uniform Legislation
- Advisory Groups
- Information Sharing
- Electronic Reporting

FHWA and IRS also participate on the committee to foster coordination with activities of the Joint Project and the IRS implementation of the dyed diesel fuel regulations. Because of the importance of the uniformity effort in fighting fuel tax evasion, FHWA encourages states receiving project funds under Section 1040 of ISTEA to use them for travel and other costs associated with participation in the Uniformity Committee and other efforts to foster implementation of the 11-point plan in all states. This may include, for example, technical assistance visits to states considering legislative or regulatory changes to implement provisions of the 11-point plan.

POINT OF TAXATION

Raising the point of taxation to a higher level in the motor fuel distribution chain can facilitate enforcement by reducing the number of taxpayers, which allows more thorough monitoring of taxpayers and more frequent audits of taxpayer accounts. When clear evidence of widespread evasion has been documented, changing the point of taxation is often the first item considered. For example, at the Federal level, when the initial reports of massive motor fuel tax evasion surfaced in the mid-1980s, Congress changed the point of taxation for the gasoline excise tax from the wholesale distributor to the terminal level. This change reduced the number of taxpayers from an estimated 8,000 to less than 900.

For diesel fuel, the issue is far more complex. Unlike gasoline where nearly all of the product is sold for taxable use, taxable diesel fuel represents less than 50 percent of the total production of No. 2 distillate fuel. The higher in the distribution chain the tax is imposed, the more fuel destined for nontaxable use becomes taxed and subject to refund. The lower in the distribution chain the tax is imposed (closer to the point of final use), the more likely that untaxed fuel will be diverted to taxable use.

The point of taxation for the Federal tax on diesel fuel was shifted from the retail to the wholesale level effective April 1, 1988. The refiner and importer could sell tax-free to the wholesaler if the parties were registered by the IRS on Form 637. Moving the point of taxation to the wholesale level reduced the number of taxpayers from about 60,000 to an estimated 23,000. Unfortunately, reports of substantial motor fuel tax evasion continued despite this change.

Although immediate increases in Federal gasoline and diesel tax collections were noted following the changes in point of collection, the specific impact attributable to these changes is difficult to separate from revenue fluctuations caused by economic conditions and changes in the treatment of exemptions for diesel fuel.

The continuing pressure to address the diesel fuel tax evasion problem, particularly from the segments of the petroleum

marketing industry that were being driven out of business by unfair competition from tax evaders, resulted in the subsequent change in the point of taxation to the terminal level effective January 1, 1994, as discussed earlier in this chapter. To preclude tax-exempt users from having to pay the tax subject to later refund, provisions were made for purchasing fuel tax-free at the terminal as long as the fuel was dyed (and marked with an invisible chemical marker if such a marker is required by IRS in the future.) This change will ultimately reduce the number of diesel fuel taxpayers to less than 2,000.

States likewise have experimented with different points of taxation. FTA completed an analysis of recent changes in the state point of taxation for diesel fuel (Appendix 8). The following discussion is a summary of information presented in this report.

As more states have become aware of serious diesel fuel tax evasion problems and developed their own fuel tax compliance initiatives, debate has continued on the most effective point in the distribution chain to impose fuel taxes. Many state tax administrators favor taxing at the highest level of distribution --first import into the state, at the terminal, or at the refinery. The main arguments in support of this approach are the greatly reduced number of taxpayers, reduced administrative burden on the revenue agency, and the stricter standards of accountability and reporting that can be imposed on a limited number of taxpayers. The principal problems with this approach have always been the treatment of tax-exempt fuel users, resistance from wholesalers who lose the tax "float" (funds held prior to remittance to the revenue agency), and diversion of tax-exempt fuel to taxable use below the point of taxation.

Some administrators favor a point of taxation at the user end of the distribution chain, where the ultimate use of the fuel is known. This would involve most commonly collecting the tax from the retailer where fuel is introduced into the supply tank of a highway vehicle, or, as some states require, directly from the diesel fuel user. Although the predominant trend among the states has been to move collection up the distribution chain, at least one state (New Jersey) moved the collection from the wholesale to the retail level. The advantage in collecting the tax closer to the end user is that tax is collected only for the taxable uses, determined at the time of sale for ultimate use. Furthermore, because the tax liability is dispersed to a greater number of physical locations where fuel is delivered for end use, it is more difficult to accumulate the enormous tax liability common when tax is collected from relatively few wholesalers. Through bonding of individual locations, sealing and reading pump meters, and attaching physical assets of delinquent taxpayers, there can be a stronger physical chain of evidence to identify and recover lost tax receipts than the typical paperwork trail common to "daisy chain" evasion schemes at the wholesale level. The difficulty in this approach is being able to control all the possible outlets where fuel is stored or sold for ultimate use.

Based on the survey of 13 states with recent experience in examining the point of taxation for diesel fuel, the FTA study concluded that the majority of state fuel tax administrators believe the most effective point of collection for diesel fuel is at the terminal level. This position was significantly reinforced by the recent changes in the Federal tax law, despite strong opposition from some major industry associations. Although the focus of the analysis was on the point of taxation, one very important finding became obvious during the study. In every instance where state legislation moved the point of taxation, several other statutory and administrative changes were made concurrently. Changing the point of taxation, therefore, needs to be considered only as one of several important elements in developing an effective strategy to improve motor fuel tax compliance.

Another issue involving state legislation related to the change in the point of taxation for the Federal diesel excise tax was addressed in recent Georgia legislation known as the Georgia float bill. Georgia House Bill No. 797, approved April 13, 1993, provides for the right of a party paying certain Federal manufacturer's excise taxes, such as the motor fuel excise taxes, to have the option to delay payment of those taxes to the seller until one day prior to the due date for those taxes. The effect of this act is to shift the benefit of the float (that is, the use of funds prior to remittance to the IRS) to the purchaser rather than the seller of the fuel.

CRIMINAL PENALTIES

Motor fuel tax fraud has become more lucrative with the increases in state and Federal motor fuel tax rates. Despite the demonstrated magnitude of criminal tax evasion in many areas of the country, many states do not, as yet, have criminal penalties or a criminal investigation unit to investigate motor fuel tax fraud. As a result, some states find it useful to work with the IRS and U.S. attorney's offices for investigation and prosecution of criminal fraud cases.

Several states have recently increased penalties, both monetary and criminal, for fuel tax evasion. For example, Alabama Act No. 92-703, signed by the governor in October 1992, extended the tax liability plus a 100-percent penalty to "any person purchasing or acquiring motor fuel from a licensed distributor for the operation of a motor vehicle upon the highways of this state without advising the distributor of his or her intention to use the motor fuel for that purpose." The act further states: "It shall be unlawful for any person to sell for use or to use motor fuel in the operation of a motor vehicle over the highways of this state, upon which the tax levied by chapter 17 of Title 40, Code of Alabama 1975, has not been paid or the payment thereof assumed by a distributor, storer, or user licensed by the Department of Revenue. Any person who willfully fails to comply with the provisions of said chapter shall for each failure be subject to a penalty imposed by the Department of Revenue of not

less than one hundred dollars (\$100) nor more than ten thousand dollars (\$10,000)."

In Virginia, H. 1960, approved March 19, 1993, strengthened the civil and criminal penalties to deter fuels tax evasion. The act provided for:

- seizure of fuel and property used in illegal operations;
- personal liability of individual company and corporate officers for willful nonpayment of fuels taxes;
- Class 6 felony offenses for failure to remit motor fuel taxes, tampering with meters, illegal importation of motor fuels; and other specified offenses with the intent to evade the tax, and
- Class 1 misdemeanor offenses for remitting or maintaining false or forged records, refusing to permit authorized seizures, or for transporting fuels without proper shipping documents.

When the Texas Office of the Comptroller of Public Accounts initiated a major campaign to investigate and prosecute motor fuel tax fraud in 1989, the legislature enacted stronger penalty provisions for fuel tax fraud, including second-degree felony provisions (instead of misdemeanor) for five types of motor fuel tax violations. Under the felony provisions, convictions can bring prison sentences of 2 to 20 years. Effective September 1, 1993, a 75-percent tax fraud penalty could be assessed on top of any tax, penalty, and interest due for motor fuel felony convictions.

Indiana House Enrolled Act No. 1001, adopted June 30, 1993, substantially revised the collection of diesel fuel taxes in Indiana. Under this act, failure or refusal to pay to the state the tax on special fuel at the time required, or fraudulent withholding or appropriation, or other use of the money belonging to the state for the special fuel tax, is designated a Class D felony.

DESTINATION STATE ON FUEL SHIPMENTS

Since motor fuel tax rates vary widely from state to state, another common evasion scheme involves paying taxes in a state with low tax rates and shipping the fuel across state lines for sale in a state with higher tax rates. Such "bootlegging" is suspected even within a state, such as Florida, where local option taxes are imposed at varying rates by city or county jurisdictions. Many of the tenets of the 11-point plan are aimed at improving state information exchange to address this problem.

One way to track interstate shipments of motor fuel is the requirement for terminal operators to provide customers removing fuel at the loading rack of a terminal with a bill of lading showing the intended destination state for the shipment, and by requiring the transporter of the fuel to carry such documentation on board. Penalties can be imposed on shippers who fail to carry the required documentation or who divert shipments to a state

other than that indicated on the shipping papers. Penalties can be imposed as well on parties who accept shipments of motor fuel when the shipping papers indicate a different destination state. States that adopted destination state requirements during the past year include Virginia (S. 973, adopted March 18, 1993), Georgia (LC 18 5461, signed by the governor April 27, 1993), Indiana (House Enrolled Act No. 1001, adopted June 30, 1993), and Wisconsin (1993 Wisconsin Act 16, signed into law in September 1993).

DIESEL FUEL DYEING

As described earlier in this chapter, Congress enacted a diesel fuel dyeing requirement effective January 1, 1994. Dyeing of some diesel fuel actually began earlier in 1993. As part of the national effort to reduce sulfur content in diesel fuel for highway vehicles, EPA adopted a final rule [Ref. 5], effective October 1, 1993, whereby diesel fuel that does not meet the standards for sulfur content of fuel used in highway vehicles must be dyed. Only fuel that does not show visible evidence of being dyed with the specified chemical additive (which causes a characteristic blue-green color in diesel fuel) shall be considered available for use in diesel motor vehicles on the highway. The EPA interim final rule published July 14, 1994 (Appendix 6), changed the dye color to red for this program with no blue dye to be used after September 30, 1994.

Indiana was the first state to enact a dyed fuel requirement for diesel fuel, thereby taking advantage of the fact that EPA had already required a substantial amount of nonhighway diesel fuel to be dyed. Indiana House Enrolled Act No. 1001, adopted June 30, 1993, required all diesel fuel exempt from the special fuel tax for nonhighway purposes to be dyed effective January 1, 1994. The requirement is met by adding the dye specified by the EPA regulations or by adding dye with specifications and amounts as required by the Indiana Department of Revenue. The act further prohibits the operation of any motor vehicle on the public highways in Indiana with special fuel in the fuel supply tank of the vehicle that contains dye. For violation of this prohibition, the department imposes a civil penalty of \$200 for each of the first two occurrences in a calendar year and \$5,000 for each subsequent offense in a calendar year.

The Federal dyed fuel programs of EPA and IRS will have an impact on state taxation of special fuel that may require administrative or legislative changes in procedures. Issues that the states will need to address include:

- procedures for allowing tax-free sales to purchasers exempt from state motor fuel tax, in particular for states that had formerly accepted Federal exemption certificates that have now been eliminated;
- whether to exempt dyed fuel from state motor fuel tax;

- whether to consider changes in the point of taxation to match Federal taxation at the terminal level;
- whether to modify recordkeeping requirements for reporting and tracking sales and use of dyed tax-exempt fuel; and
- if dyed fuels are exempt from state motor fuel taxes, how to prohibit and enforce restrictions on using dyed fuel on the highway for taxable purposes.

Prohibiting dyed fuel from highway use and effective enforcement to discourage highway use will be critical to the success of the dyed-fuel program. Because of the magnitude of an effort to check fuel use on the highway, an effective program will require coordination among IRS, the state revenue agencies, and other enforcement agencies. In fact, IRS has already solicited the cooperation of interested states to participate in the sampling and testing of fuel used in highway vehicles.

The FHWA report to Congress on motor fuel dyeing and marking [Ref. 4] identified the Motor Carrier Safety Assistance Program (MCSAP), administered by the Office of Motor Carriers (OMC) of the FHWA, as an obvious mechanism for conducting roadside fuel inspections. Visual inspections and marker tests could be performed by state personnel as part of ongoing roadside safety inspections. With training and some basic equipment for obtaining samples and performing tests, current inspection personnel could assume this responsibility. Based on the extent of evasion problems in a particular area, states could devise appropriate enforcement strategies and determine the percentage of vehicle inspections that would include fuel inspection.

Federal authorizing legislation would be needed to include fuel inspections as an eligible expense under MCSAP. Since the study estimated that it would cost about \$10.3 million annually to add fuel inspections to 20 percent of the 1.5 million annual roadside safety inspections, additional funding would also need to be authorized. To put that figure into perspective, the ISTEA of 1991 authorizes \$76 million for MCSAP in FY 1993 and \$80 million in FY 1994, but the Congress imposed obligation ceilings of \$65 million and \$68 million, respectively.

State authorizing legislation and a penalty structure, similar to that enacted in Indiana, would also be needed in most states to prohibit and penalize the use of dyed fuel for taxable highway purposes. Two additional states (Montana and Wisconsin) already enacted dyed fuel restrictions and penalties in 1993. The Uniform Legislation subcommittee of the FTA Motor Fuel Section Uniformity Committee agreed at the December 1993 meeting to develop suggested state authorizing language to assist other states in considering such legislation. In the meantime, an initial draft was prepared by FHWA for discussion at regional task force meetings (Appendix 9).

Since state and Federal MCSAP authorizing legislation in support of the dyed fuel program may not be in place for several years, some shorter term strategies need to be considered as well. One such activity already underway is a public information program aimed at the motor carrier industry. So far, information on the dyed fuel requirements has been provided to the motor carrier industry through the national and regional truckers' associations. FHWA also developed an information brochure for truckers to be distributed through OMC. Other important tasks are alerting the state enforcement community to the requirements and establishing avenues for exchange of information. Initially, these are done by OMC through various MCSAP meetings and conferences such as the Motor Carrier Advisory Committee meetings. Ultimately, these activities could include training programs for enforcement personnel on dyed fuel requirements, possible indicators of fuel tampering, and fuel sampling techniques.

Recent Changes in State Laws

The previous reports to Congress on the Joint Project [Ref. 1-3] described changes in state laws to improve compliance with motor fuel taxes. The following sections summarize changes in state laws since the last report.

ARIZONA

On January 1, 1993, Arizona moved the point of taxation for diesel fuel to the distributor level. The Use Fuel (Diesel) Excise Tax is imposed when the distributor sells fuel for taxable purposes. Sales to other licensed distributors and to licensed certified bulk purchasers (requires 80 percent of fuel consumed to be nonhighway use) are exempt. Credits or refunds can be claimed to adjust for fuel actually used on Arizona highways. Effective January 1, 1994, an 8-cent-per-gallon use tax surcharge went into effect. The surcharge is reported directly on fuel user tax reports and is not collected by distributors.

GEORGIA

The Georgia Oilmen's Association supported passage of a motor fuel tax antievasion bill in the 1993 session. The bill passed the General Assembly and was signed into law on April 27, 1993. The bill was drafted using the principles listed in the FTA 11-point plan.

The primary objective of the bill was to tighten the provisions of the present motor fuel tax statutes to improve the detection and punishment of motor fuel tax evasion. The bill includes three principal changes to the prior law:

- to improve uniform tax treatment of interstate fuel movements by incorporating the 11-point plan definitions of "import" and "export," along with the widely accepted definitions for "terminal" and "loading rack";

- to provide the means for tracking interstate shipments of motor fuel by requiring terminal operators to provide customers removing fuel at the loading rack with a bill of lading showing the intended destination state for the shipment, and by requiring the transporter of the fuel to carry such documentation on board; and
- to add penalties for importing or exporting motor fuel without the required documentation showing the intended destination state and further imposing joint liability on anyone accepting shipments of fuel with a bill of lading showing an intended destination state other than Georgia.

INDIANA

In addition to the requirement to dye untaxed diesel fuel, mentioned earlier in this chapter, Indiana House Enrolled Act No. 1001, adopted June 30, 1993, enacts a comprehensive revision of the diesel fuel tax designed to reduce tax evasion. The point of taxation for diesel is moved from the retail to the terminal level, effective October 1, 1993, while the point of taxation for gasoline remains at the wholesale level. To preserve the tax float with the purchaser, the act provides that the purchaser may delay paying the tax to the seller until the date that tax is required to be remitted to the state by the supplier. All suppliers who collect and remit special fuel tax are required to be licensed, and the Department of Revenue is required to investigate each applicant and shall refuse to issue licenses for reasonable cause determined during the investigation. The department may require a surety bond for any supplier in an amount of at least \$2,000 or up to two months' tax liability as estimated by the commissioner. Failure or refusal to pay to the state the special fuel tax and fraudulent withholding, appropriation, or other use of such tax money are classified as a Class D felony.

Also effective October 1, 1993, transporters of motor fuel are required to be licensed and to carry onboard shipping papers, issued by the terminal operator, setting out the destination state of the fuel being transported. A person transporting special fuel without the required documentation is subject to a \$200 civil penalty for each occurrence, and furthermore, the vehicle and its cargo are subject to impoundment, seizure, and subsequent sale.

The changes in the Indiana special fuel law are expected to generate at least \$20 million in additional fuel tax revenue annually.

MONTANA

House Bill 539, effective January 1, 1994, changed the point of taxation on special fuel from the retail to the distributor level. All distributors are required to be licensed and to file security as required by the state in an amount up to twice the

estimated amount of special fuel taxes that will be paid to the state each month. Transporters of special fuels are required to file monthly information reports on shipments of special fuel.

As a result of House Bill 15 of the Special Session (November 1993), Montana became the second state (after Indiana) to exclude dyed diesel fuel from payment of the state special fuel tax and to prohibit use of dyed diesel fuel for the operation of a motor vehicle on the public highways within the state. Violation of this prohibition is classified as a misdemeanor punishable by a fine of \$500 for the first offense, \$1,000 for the second offense, and \$2,000 for each subsequent offense. These provisions became effective January 1, 1994.

WISCONSIN

The 1993 budget bill (1993 Wisconsin Act 16), signed into law in September 1993, simplifies the collection of gasoline and diesel fuel taxes and adopts tough new measures to ensure that all fuel taxes are paid and deposited in Wisconsin's segregated transportation fund. The Wisconsin law builds on the experience of other states and the Federal government in adopting aggressive laws to combat fuel tax evasion. The new law repeals the current definitions of motor fuel and special fuel, and establishes in their place a motor vehicle fuel tax (covering gasoline and diesel) and an alternate fuels tax (covering all other fuels used to power a motor vehicle). The definition of motor vehicle fuel includes gasoline (including gasohol and transmixon) and diesel (including No. 1 and No. 2 fuel oils but not K-1 kerosene, unless blended with diesel fuel for use in a motor vehicle). All alternate fuels, for example, compressed natural gas (CNG) and liquid propane gas (LPG) are taxed at the same rate per gallon as gasoline and diesel.

The act changes the collection point for the excise tax on gasoline and diesel fuel. The gasoline tax, formerly remitted by wholesalers, is remitted under the new law by suppliers at the terminal or refinery level. Suppliers also include producers or importers of alcohol and alcohol derivatives. The diesel fuel tax, formerly paid by dealers and users, is also paid by suppliers at the terminal or refinery level under the new law. Motor vehicle fuel withdrawn from a terminal or refinery is taxed when the fuel is metered out at the terminal or refinery loading rack. The tax on gasoline and diesel imported by any means other than pipeline or marine vessel is also required to be paid by the supplier. To preserve the float at the wholesale level under the new law, wholesale distributors may delay paying the state fuel tax to the supplier until the date the tax is due to the state, subject to certain conditions such as payment by electronic funds transfer (EFT) and filing of a surety bond in cases where the wholesaler has failed to make timely remittal of delayed tax payments.

The changes in the new law took effect on April 1, 1994. Wisconsin became the third state to exempt dyed diesel fuel

specifically from payment of the state motor fuel tax. Dyed diesel fuel can be sold only for exempt purposes such as heating oil, use in trains, or other nonhighway use. Licensed motor vehicles found to have any diesel fuel in the supply tanks powering the vehicle may be seized by the Wisconsin Department of Transportation (State Patrol) or the Wisconsin Department of Revenue.

The law provides that persons who sell tax-paid fuel to certain exempt customers can obtain a tax refund or tax credit, and other unlicensed users of motor fuels can obtain a refund of the tax paid on gasoline and diesel fuel used for an exempt purpose.

All suppliers and terminal operators (except those who do not own any of the petroleum products handled by the terminal) are required to be registered with the Department of Revenue. Under the new law, an amount of security up to three times the average monthly motor fuel tax liability may be required of any licensee. Licensees who fail or refuse to pay to the state the tax on motor vehicle fuel or who fraudulently withhold, appropriate, or otherwise use such funds are guilty of the crime of theft and may be punished accordingly under state law.

Fuel tax payments will be required by EFT, and beginning sometime in 1994, fuel tax reports and schedules will be required to be filed by computer-generated electronic media, such as magnetic tape or computer diskette, by terminal operators and suppliers.

Transporters of motor vehicle, aviation, or alternate fuels by truck, either into or out of Wisconsin, are required to be registered with the Department of Revenue. Any untaxed motor vehicle fuel received by a person other than a licensee is subject to seizure along with the vehicle. Any motor vehicle fuel, along with the transporting vehicle, brought into Wisconsin for use, distribution, storage, or sale that is not supported by a manifest is also subject to seizure either by the Wisconsin Department of Transportation (State Patrol) or by the Wisconsin Department of Revenue.

The change in the point of taxation is expected to reduce the number of taxpayers from over 3,000 to less than 100, and to increase revenues by \$13 million for the FYs 1993 through 1995.

WYOMING

As of July 1, 1993, fuel tax is due when the fuel leaves the storage of the wholesaler for delivery to the retailer. Retailers are no longer permitted to sell tax-exempt fuel.

Chapter 3 Joint Project Results

Funding History of the Joint Project

Congress authorized funds from the Highway Trust Fund (HTF) in FYs 1990 and 1991 to be administered by FHWA to support motor fuel tax enforcement activities of IRS and the states. The initial funds were used to organize task forces in three pilot regions to encourage cooperative motor fuel tax enforcement efforts and exchange enforcement information. Twelve states in the pilot regions entered funding agreements with FHWA in FY 1991 to begin the first three task forces. Barely a year after the first task forces were organized, ISTEA authorized \$5 million per year through FY 1997 from the HTF and \$2.5 million per year from the General Fund for efforts to fight fuel tax evasion. The \$5 million annual authorization from the HTF, with contract authority, was used to expand the project to all regions of the country in FYs 1992 and 1993. (The \$2.5 million annual authorization was not appropriated for FYs 1992-1994.) With the support and cooperation of the FHWA and IRS field offices and six new lead states, from May 1992 to June 1993, 35 additional states, 11 more IRS district offices in lead states, the DOT Office of Inspector General regional offices, and IRS criminal investigation units in all regions of the country were mobilized for the project.

Of the \$5 million annual authorization from the HTF, \$3 million is allocated to the states. All but two states have now joined one or more of the nine regional motor fuel tax enforcement task forces. The remaining funds, at least \$2 million per year, are provided to the IRS for additional motor fuel tax examinations in lead states and for expenses related to motor fuel tax criminal investigations. Aside from the FHWA funding, IRS examination and criminal investigation staffing has increased substantially in recent years, as will be discussed later.

In addition to funding for state and Federal revenue agencies, the Steering Committee at the second meeting in November 1990 recommended that funds be set aside for development and presentation of a series of motor fuel tax training seminars. Under the direction of the FTA, and with the cooperation of industry, state, and IRS instructors, eight seminars were offered from July 1992 through March 1993, just as the 35 additional states were entering initial funding agreements with FHWA. The combination of the available project funding and the comprehensive course agenda covering audit and criminal investigation enforcement led to the outstanding success of this training effort, with over 600 registered participants including state, Federal, and local agency auditors, investigators, and prosecutors. FHWA has allocated \$75,000 from the Office of Policy contract research funds in FY 1994 to continue the training effort in FYs 1994 and 1995.

The other miscellaneous item funded under the Joint Project was a study of the feasibility and desirability of using motor fuel dyes and markers for reducing consumer fraud and tax evasion. The study, requested by Congress, was completed in August 1993 at a cost of \$250,000, after a fuel coloring requirement for diesel fuel had already been enacted in the Omnibus Budget Reconciliation Act of 1993. Nevertheless, the study report contains useful information about the enforcement strategies that will need to accompany implementation of the Federal dyeing program.

Exhibit 7. Joint Project Funding History

	Funds to IRS	Task Forces	States Funded	State Funding	Other Funds	FY Total
FY 1990	\$ 300,000					\$ 300,000
FY 1991	506,000	3	12	\$ 298,300	\$ 64,000	868,300
FY 1992	3,770,000	9	34	1,950,000	280,000	6,000,000
FY 1993	1,852,300	9	46	3,147,700		5,000,000
FY 1994	1,559,700	9	48	3,440,300	68,350	5,068,350
TOTAL	\$7,988,000	9	48	\$8,836,300	\$412,350	\$17,236,650

Exhibit 7 summarizes the project funding history from the initial appropriation in FY 1990. Exhibit 8 shows the rapid growth of the project, from a pilot project of 12 states in FY 1991 to a nationwide program encompassing 48 states and the District of Columbia by FY 1994. The remaining sections of this chapter summarize the project results reported by IRS and by the states participating in the Joint Project.

IRS Examination Results

IRS began tabulating results of examinations from the Joint Project in FY 1991 for the first five participating districts in the lead states of Indiana, Texas, and New Jersey (Exhibit 9). Although few examinations were completed the first year,

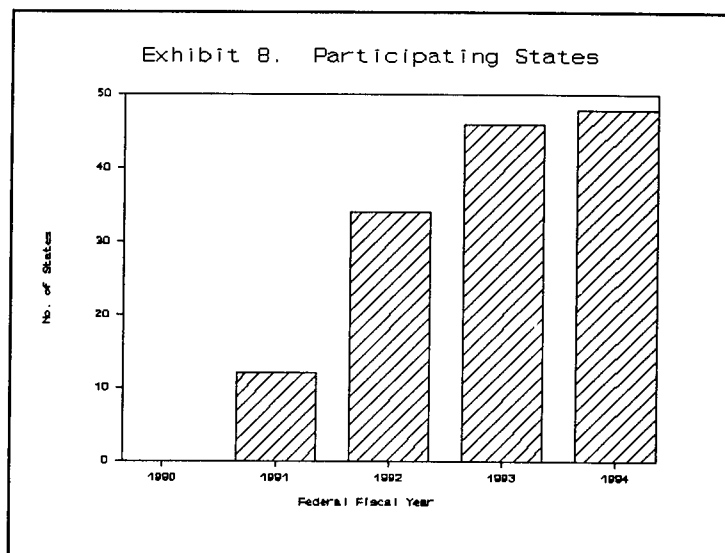


Exhibit 9. Joint Project IRS Examination Results

FY	Number of Districts	Hours Total/Closed	Returns Closed	Dollars Assessed	Tax Assessed/\$ Cost
1991	5	11,960/ 948	170	\$ 1,202,833	12.7
1992	5	11,938/ 7,863	626	23,793,697	39.0
1993	16	38,298/16,576	1,416	18,146,025	14.0
1994*	16	14,869			
Totals	16	77,065/25,387	2,212	\$43,142,555	21.8

* Through February 28, 1994.

Exhibit 10. Joint Project IRS Examination Results (FY 1993)

Location	Hours Applied	Returns Closed	Hours Closed	Dollars Closed
Massachusetts	2,833			
North Atlantic Region (MA)		69	669	\$ 42,326
Newark	2,089			
Mid-Atlantic Region (NJ)		5	99	157,832
North Carolina	2,435			
Florida*	4,149			
Southeast Region (NC, FL)		173	1,239	499,804
Indianapolis	4,493			
Central Region		121	2,132	1,416,313
Texas†	8,020			
Southwest Region		297	4,236	13,720,331
Nebraska	4,185			
Midwest Region		208	3,920	1,584,955
Oregon	2,217			
California‡	7,877			
Western (OR, CA)		543	4,282	725,428
Other districts				
Totals	38,298	1,416	16,576	\$18,146,025

\$12,815 dollars per return.
 \$ 1,095 dollars per hour.
 \$ 78 estimated cost per hour.
 14:1 yield to cost ratio.

- * Florida includes Jacksonville and Ft. Lauderdale districts.
- † Texas includes Austin, Dallas, and Houston districts.
- ‡ California includes Laguna Niguel, Los Angeles, Sacramento, San Francisco, and San Jose districts.

the results were favorable, with assessed tax of \$12.70 per dollar spent in conducting the examinations. Additional cases were completed the second year, with even more impressive results of \$39.00 assessed tax per dollar spent. The FY 1993 results

(Exhibit 10) cover an additional 11 districts in the new lead states, with assessments still showing a very favorable return of over \$14.00 assessed per dollar spent. At the end of FY 1993, an additional 1,100 returns were still in the examination process. From the examination results, 45 cases were referred for criminal investigation, of which 16 were accepted.

Type of Tax	Returns Closed	Hours Closed	Dollars Assessed	Dollars per Hour
Diesel	1,144	11,575	6,576,386	568
Gasoline	165	3,677	11,140,964	3,030
Other	107	1,324	428,675	324
Totals	1,416	16,576	18,146,025	1,095

The distribution of assessments by fuel type is shown in Exhibit 11. Although gasoline accounts for 75 percent of Federal motor fuel tax revenues, gasoline tax accounted for 61 percent of the assessments in FY 1993. The nearly 40 percent of the assessments attributed to diesel fuel (relative to about 25 percent of the motor fuel tax revenues) is indicative of the continuing evasion problem for diesel fuel in recent years.

The data reported by IRS under the Joint Project covers only examination activities undertaken by the supplemental staff assigned to the project in lead state district offices. This represents only a fraction of the total IRS examination effort in motor fuel tax enforcement. Every IRS district has motor fuel tax examination activity under the excise tax administration function. An estimate of the overall IRS effort was reported at a congressional subcommittee hearings in May 1992 and August 1994 (Exhibit 12).

Since FY 1989, the examination staff effort in motor fuel has increased substantially. Diesel tax examination effort in particular had more than doubled by FY 1991. The total gasoline and diesel fuel tax assessments from these activities exceeded \$100 million nationwide in FY 1993.

IRS Criminal Investigations

With respect to criminal investigations, during the last two FYs (1992 and 1993), some of the largest motor fuel tax evasion schemes ever investigated led to indictments and prosecutions. The cases indicted and prosecuted are the culmination of months or even years of investigation work. Most of the investigations leading to prosecutions in FY 1992 were supported in part by the FHWA funds provided to IRS. The increased attention generated by

Exhibit 12. Summary of IRS Motor Fuel Tax Enforcement Activities (Examination)

	FY 1989	FY 1990	FY 1991	FY 1992	FY 1993
Registration Staff Years	68	66	88	87	97
Gasoline Tax Staff Years	17	15	21	16	12
Diesel Tax Staff Years	46	72	122	100	106
Additional Tax Assessed (Millions of Dollars)	53.2	68.3	93.1	79.9	108.6
Percentage of Returns Examined	10.5	9.1	11.9	N/A	N/A

the Joint Project, widespread news coverage of criminal cases, congressional subcommittee hearings, and industry support have sparked a dramatic increase in the IRS criminal investigation effort (Exhibit 13). Over 100 investigations were initiated by IRS during each of FYs 1992 and 1993. Eight of the new cases in 1992 were referred for criminal investigation from the targets examined by the IRS during that year, and the others resulted from spinoffs of other investigations, tips from informants, or undercover operations. Publicity on each new indictment or prosecution usually results in numerous leads from concerned motor fuel marketers who believe similar schemes are operating elsewhere.

Exhibit 13. Summary of IRS Motor Fuel Tax Enforcement Activities (Criminal Investigation)

	FY 1989	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994*
Investigations initiated	19	47	40	108	144	35
Convictions	6	16	16	23	37	26
Total cases pending as of Sept. 30	46	41	58	104	96	96
Staff years applied to motor fuel cases	27	31	45	61	81	41
Estimated staffing cost (Millions of Dollars)	2.226	2.556	4.317	7.185	9.805	4.963

* As of March 31, 1994.

Cases are currently under investigation in all 7 IRS regions and in 27 of the 63 IRS districts. The majority of these investigations are concentrated in the States of New York, New Jersey, Pennsylvania, Georgia, Florida, Indiana, Texas, Nebraska, Colorado, Nevada, and California. Prior to 1988, most motor fuel excise tax evasion schemes were contrived to steal the excise tax due on gasoline. Since that time, the changes to the tax law and regulations moving the point of taxation to the terminal rack have apparently reduced opportunities to steal the gasoline tax by restricting the number of entities permitted to purchase fuel tax free. With the exception of the New York metropolitan area, most regions have seen a decline in the number of gasoline excise tax fraud cases. Gasoline schemes currently represent approximately 35 percent of the case inventory, and diesel fuel schemes constitute the remaining 65 percent. IRS estimates that current cases under investigation involve at least \$310 million in evaded motor fuel taxes.

Exhibit 14 lists convictions during FY 1993 for fuel tax evasion cases. Of 36 persons sentenced during FY 1993, 22 persons (61 percent) received prison sentences. Prison terms range from 4 months to 10 years, with an average of about 30 months.

Exhibit 14. Federal Convictions for Motor Fuel Tax Evasion (FY 1993)

New York		Tennessee	
Marat Balagula*	120 months	John Tackett, Jr.	Probation
John Barberio*	36 months		
Connecticut		Missouri	
Dean C. Seniff	Pending	Donald Loethen	Probation
		Leonard Loethen	Probation
Kentucky		Ohio	
Ronnie Gene Messer*	23 months	Frank Sims, Jr.	4 months
Edna Rose Messer*	Probation	Jackson O. Dilts	33 months
Byron Woolum*	15 months		
James P. Mitchell*	3 months	Wisconsin	
Evelyn B. Mitchell*	6 months	Gerald E. Ort, Jr.	Pending
Patricia Ann Stringer*	Probation		
C. Hóbert Mills*	Probation	California	
Jack B. Centers	6 months	Robert Freeman	6 months
Terry L. Centers	Probation		
Jackie Centers	Probation	Texas	
Issac W. Hensley	Probation	Joe H. Beadles	87 months
Peggy M. King	4 months	R.C. Martin	48 months
Willie B. Mills	4 months	David Townsend	14 months
Phillip Darnell	Probation	Houston M. Wisenbaker*	60 months
Deborah A. Aslin	Probation	Alvy T. McQueen*	60 months
William Shacklette	Probation	Donald L. Smith*	31 months
Joseph C. Dever	7 months		

* Conviction also listed in the previous report [3].

Much of the success of recent criminal investigations and prosecutions of motor fuel cases is a result of the development of innovative investigative techniques. These include the use of undercover operations, beginning in 1991 with Operation Texcise; asset forfeitures used extensively in late 1992 in a crackdown on truck stops in several mid-Atlantic states; and the prosecution of individuals involved in these schemes under racketeering and money laundering statutes. Since Operation Texcise, undercover operations have been initiated in all seven IRS regions. During FY 1993, 27 seizure investigations were undertaken. In cooperation with other law enforcement agencies nationwide, IRS served search, seizure, and arrest warrants at hundreds of locations. These operations resulted in the seizure of tons of records; millions of gallons of fuel; more than \$15 million in cash and assets; some 60 fuel trucks and trailers; an 850,000-barrel fuel barge; and assorted luxury cars, jewels, and firearms. In FY 1993, at least 75 individuals have been indicted on motor fuel tax evasion charges as a result of these operations, with over \$200 million in estimated Federal fuel tax losses (Exhibit 15).

The numerous indictments generated considerable news coverage throughout the year. The July 1993, September 1993, December 1993, and February 1994 issues of "Fuel Tax Evasion Highlights" (Appendixes 10, 11, 12, and 13) summarize recent news articles of fuel tax fraud cases. Convictions resulting from these cases will be reported in future reports on the Joint Project. The "Highlights" report is produced by FHWA and distributed to over 1,200 project contacts comprised of Federal and state officials, and industry representatives dedicated to stopping fuel tax evasion.

State Data Summaries

Results of state motor fuel enforcement activities are equally impressive. The first 12 states funded under the pilot program began reporting fuel tax enforcement information on a quarterly basis in FY 1991. Under the expanded program of nine regional task forces, states report twice a year. The reports include a two-part data summary, expenditures table, and narrative highlights. The data summaries are limited to those activities that can be quantified, are reasonably uniform among the states, and have associated tax assessment or loss estimates. These include four categories of enforcement activities: office reconciliation, office audit, field audit, and criminal investigation (Exhibit 16). The reporting forms are provided in Appendixes 14 and 15. The state reports include the total motor fuel tax enforcement effort in the four categories, not just the effort funded by the FHWA grant, and the resulting tax assessments or estimated tax loss for each function.

It is important to note that states are involved in many additional enforcement activities for which the results are not as readily quantified. These include, for example, investigating taxpayer registration requests, taxpayer information and

Exhibit 15. Federal Motor Fuel Tax Fraud and Related Indictments (FY 1993)

Location (Date)	Est. Tax Loss (\$Millions)	Location (Date)	Est. Tax Loss (\$Millions)
Philadelphia (3/29/93)	\$14.8	Brooklyn (5/27/93)	\$34.0
Indicted:		Indicted:	
Jacob Dobrer* (Staten Island, NY)		Victor M. Orena	
David Shuster (Fairlawn, NJ)		Joseph Reisch	
Gerald DiTursi (Hudson, FL)		Jacob Dobrer* (Staten Island, NY)	
Nadezhda Shnayderman (Brooklyn, NY)		Vyachesla Dobrer*	
Richard McNaughton (W. Chester, PA)		Rami Segal	
David Savage (New Port Richey, FL)		Yehuda Shaked	
Brian Savage (New Port Richey, FL)		Frank Sciortino	
David Guido* (Kingston, NY)		Frank Campione	
Russell Longo (Phillipsburg, NJ)		Joseph Audino (Ridgewood, NY)	
Roberta Longo (Brooksville, FL)		Frederick Adrion (Brooklyn, NY)	
Dmitry Belokopytov (Brooklyn, NY)		Micheal Varzar*	
Vladimir VanDyke (Brooklyn, NY)		Michael Pikover	
Ronald Kandel (Brooklyn, NY)		Paul Sharp	
Igor Veksler (Fox Point, WI)		Martin Nociforo	
Boris Tartakovsky (Brooklyn, NY)		David Guido* (Kingston, NY)	
CO/NE/WY (4/06/93)	7.6	Michael Manzi	
Indicted:		Mark Mizrami	
Thomas Quintin		Ted Cohen	
Sandra Westphal Quintin		Hammond, IN (6/23/93)	N/A
Newark (5/05/93)	60.0	Indicted:	
Indicted:		Robert J. Schilling (Merrillville)	
Victor Zilber (North Brunswick, NJ)		John T. Schilling (St. John, IN)	
Igor Roizman		Houston (6/24/93)	N/A
Mela Rubinov		Indicted:	
Arkaday Seifer		Richard D. Gatten	
Jacob Dobrer* (Staten Island, NY)		Larry F. West	
Vyachesla Dobrer*		Thomas L. Massey	
George Doddy (Cherry Hill, NJ)		Brooklyn (6/30/93)	85.0
Anthony Morelli (Boca Raton, FL)		Indicted:	
Joseph Maritato		Joseph A. Macchia	
Edward Dougherty		Joseph L. Macchia	
John Brogna		Lawrence Macchia	
Anthony Zummo		George Macchia	
Gregory Federico		Marat Balagula	
Camden (5/27/93)	N/A	Viktor Batuner	
Indicted:		Michael Varzar*	
Christopher Grungo* (Phila., PA)		John Barberio	
Frank Grungo (Tabernacle, NJ)		Trenton (7/13/93)	0.3
Brenda Grungo (Southampton, NJ)		Indicted:	
Paul McDaniel (West Chester, PA)		Christopher Grungo* (Phila., PA)	
Irving Berkowitz (Hasbrouck Heights, NJ)		Houston (9/02/93)	3.0
Patrick Fisher (Hammonton, NJ)		Indicted:	
James Barbone (West Berlin, NJ)		Charles L. Henke (Houston, TX)	
Russel Cerminara (Cherry Hill, NJ)		Thomas E. Huitt (Houston, TX)	
Ronald Musser (Bristol Pike, PA)		John A. Moritz (Houston, Tx)	
Gerald Olkus (Philadelphia, PA)		Larry F. West (Houston, TX)	
Nicholas Cirillo Jr. (Bedford, NY)			
Basil Vespe (Haddonfield, NJ)			
		Total	72 persons \$204.7

* Indicted in 2 or more cases.

Exhibit 16. State Motor Fuel Tax Enforcement Activities

Definitions

Criminal Investigation--	Investigation of criminal intent to defraud the state of tax revenue
Field Audit	-- An audit performed at the taxpayer's place of business
Office Audit	-- An audit performed at the revenue agency using data supplied by phone or mail
Office Reconciliation	-- Verification of taxpayer returns against other data reports

assistance, auditing refund claims, improved uniformity of state procedures in accordance with the 11-point plan, prosecution of fraud cases, and monitoring motor carrier and other end user tax adjustment returns. All of these are important elements of the overall enforcement program. Many states have included, in the narrative portion of their reports, information about new initiatives in these areas to improve compliance. These are summarized in the following chapter for each of the nine task forces.

From the very first data reports submitted in FY 1991, the positive revenue-generating benefits of motor fuel tax audit and examination activities have been clearly demonstrated (Exhibit 17). The initial reports from 12 states estimated nearly \$21 in fuel tax assessed per dollar spent on audits and reconciliations. For the first full year covered by the reports in FY 1992, the tax assessment to cost ratio was over \$14 per dollar spent, and \$18.50 per dollar spent if penalties and interest are included. In FY 1993, with 38 states included in the tabulation for the period October 1992-March 1993, the results are just over \$13 tax assessed per dollar spent and over \$18 assessed, including interest and penalties. The data for all states showed a positive assessment to cost ratio of about \$2 per dollar spent or greater, with a few states reporting assessments of more than \$100 per dollar spent. Clearly, the results will fluctuate over time within a state, but now that 38 states are reporting, the overall average of \$13 tax assessed per dollar spent will probably remain relatively constant. In total, the 38 states reported \$52.5 million in fuel tax assessments for the six-month period, and \$85.0 million including interest and penalties. (Not all of the difference is interest and penalties since some states were unable to report the tax separately from the total assessment.)

Exhibit 18 summarizes the data for seven task forces for the period October 1992-March 1993. The remaining two task forces began submitting data reports for the period beginning April 1993, and will be included in the next report in this

Exhibit 17. State Motor Fuel Tax Enforcement Results

	States	Audit or Exam Staff Hours	Assessed Tax	Tax+ P&I	Tax/ Staff Hr.	Tax/ Cost	Tax+P&I/ Cost
FY 1991 (2 Qtr.)	12	73,525	\$38,045,445	N/A	\$516	\$20.7	N/A
FY 1992 (4 Qtr.)	12	141,669	\$30,594,496	\$61,745,825	\$335	\$14.3	\$18.5
FY 1993 (2 Qtr.)	38	193,001	\$52,504,650	\$84,957,261	\$321	\$13.2	\$18.8

P&I - Penalties and Interest.

series. Note also that the data reported are assessments, not actual collections. The amount of the tax assessments is requested in Part 1 to accumulate information showing the actual lost tax revenue. This information is essential for estimating the magnitude of lost motor fuel tax revenue that is the target of increased enforcement efforts. Interest and penalties are, therefore, reported separately. Some states have suggested using collections instead of assessments. If collections are a good approximation of the assessments, and are more readily available, they may be used in lieu of assessments for Part 1. If, on the other hand, a large amount of the assessments are not collected, collections would be a poor indicator of actual tax lost and, for consistency with other states' reports, should not be used. In general, most states indicate that assessments from audits and examinations have a high collection rate since these activities are focused on established businesses that, for the most part, intend to remain in business.

Any assessments that are ultimately reversed cannot be considered a tax loss and assessments should be reduced accordingly. They may be credited in the period they occur, rather than adjusting the period of the original assessment. Some states have procedures that automatically issue assessments for certain administrative deficiencies (e.g., failure to attach supporting schedules). Most of these will ultimately be reversed when the deficiency is corrected. States may choose not to report these assessments, since it would incorrectly inflate the assessment totals and require substantial subsequent adjustments.

The data reports provide a good indication of how the overall enforcement effort is divided among the four identified activities (Exhibit 19.) As expected, field audit is the mainstay of nearly all state motor fuel tax programs. In total, field audit accounts for more than half of the staff hours and more than half of the total tax assessed (excluding interest and penalties, except for the states that could not report it separately). Office reconciliation is also a very common activity (29 of 38 states), accounting for about 30 percent of

Exhibit 18. State Motor Fuel Tax Enforcement Activities
(For the Reporting Period October 1992-March 1993)

Task Force	Cost per Hour	Fuel	Rec./Audit		Interest and Penalty	Assessment		B/C	B/C Including Pen./Int.	Crim. Inv.	
			Staff Hours	Assessment		Plus Interest and Penalty	\$Tax/Staff Hr.			Active Cases	Convicted
New Jersey	\$20 (Avg.)	Gas	6,711	\$ 5,738,944	\$ 1,845,863	\$ 7,584,807	\$855	43.3	57.3	1	0
	20 (Avg.)	Diesel	13,891	5,181,003	617,089	5,798,092	373	18.9	21.1	29	1
	20 (Avg.)	Total	21,008*	12,873,069*	2,983,468*	15,856,537*	613	31.0	38.2	30	1
North Carolina	19 (Avg.)	Gas	7,713	3,188,326	194,275	3,141,176	413	22.3	22.9	5	0
	19 (Avg.)	Diesel	12,046	1,564,044	158,091	1,648,873	130	7.0	7.8	12	4
	19 (Avg.)	Total	21,962*	4,752,370	413,126*	6,383,634*	241	13.0	15.7	14*	4
Indiana (PUBLICUS)	32 (Avg.)	Gas	23,547	9,046,748	568,496	9,615,244	384	12.1	12.8	16	0
	32 (Avg.)	Diesel	31,591	4,244,189	1,310,407	5,554,595	134	4.2	5.5	70	2
	32 (Avg.)	Total	68,050*	13,290,936	1,878,903	21,785,327*	241	7.6	10.1	75*	2
Texas	21 (Avg.)	Gas	7,705	2,864,787	151,789	3,751,522	488	22.9	32.0	23	1
	21 (Avg.)	Diesel	16,098	5,456,083	253,202	6,855,776	744	34.8	31.3	45	5
	21 (Avg.)	Total	23,803	8,320,869	404,991	10,607,298	631	29.5	31.6	50*	5*
Nebraska (NETASK)	26 (Avg.)	Gas	13,482	1,516,108	528,060	2,044,168	112	4.4	5.9	6	0
	26 (Avg.)	Diesel	20,787	1,088,280	164,116	1,252,396	52	2.0	2.3	5	1
	26 (Avg.)	Total	34,453*	2,604,388	692,176	3,296,564	76	3.0	3.7	8*	1
Northwest	23 (Avg.)	Gas	10,309	3,053,019	283,076	3,336,095	261	11.5	12.6	7	0
	23 (Avg.)	Diesel	17,652	1,948,412	263,869	2,212,281	109	4.8	5.5	7	0
	23 (Avg.)	Total	29,516*	5,001,431	546,945	5,548,376	169	7.5	8.3	7*	0
California	31 (Avg.)	Gas	13,666	7,421,562	4,070,883	11,492,445	543	17.7	27.3	4	0
	31 (Avg.)	Diesel	8,842	783,090	76,812	12,779,230	153	5.0	47.0	3	0
	31 (Avg.)	Total	22,508	8,204,652	4,147,695	24,271,675	437	14.2	35.1	4*	0
National Total (38 States)	24 (Avg.)	Gas	70,266	30,934,039	7,452,146	38,879,706	443	18.2	23.1	55	1
	24 (Avg.)	Diesel	105,660	19,617,489	2,784,798	35,394,844	210	8.6	14.6	167	13
	\$24 (Avg.)	Total	193,001*	\$52,504,650*	\$10,818,220*	\$84,957,261*	\$321	13.2	18.8	181*	13*

* Total is not additive for gasoline and diesel since some activities involving both fuels could not be separated by gas or diesel and are included only in the total.

the total tax assessed. It is surprising that 21 of the 38 states now report staff hours devoted to criminal investigation, with 10 percent of the overall effort directed to this activity, and 6 states have estimated some tax losses due to criminal fuel tax evasion. Exhibit 20 shows the level of effort by each task force for the seven task forces submitting reports for the October 1992-March 1993 reporting period. The remaining two task forces have begun submitting reports for the period beginning April 1993 and will be included in future reports.

Recent indictments and convictions (in eight states) show estimated losses and assessments of over \$7 million (Exhibit 21). Several states have used the FHWA grant funds for staffing new or expanded criminal investigation efforts. Indictments and estimates of criminal tax evasion losses are expected to increase in future reports, since a total of 181 cases are reported to be under investigation in 21 states. The table of recent state

Exhibit 19. Level of Effort for State Fuel Tax Enforcement Activities
(For the Reporting Period October 1992-March 1993)

Activity	Number of States	Hours	Tax Assessed (or Est. Tax Loss)
Office Reconciliation	29	59,270	\$18,852,995
Office Audit	15	14,608	6,074,999
Field Audit	37	120,988	37,337,682
Criminal Investigation	21	22,836	6,918,916*
Total	38	217,702	\$69,184,592

* Estimated losses reported in 6 states.

convictions and indictments is not indicative of the states' total criminal investigation effort. Many states participate with Federal agents in investigations but defer to Federal prosecution because it may result in stiffer penalties and because Federal prosecutors (with the assistance and support of the Tax Division of the Justice Department) are more experienced in the prosecution of these difficult cases. For example, state investigators participated in almost all of the recent Federal criminal indictments listed earlier in this chapter. At least two states report difficulties in getting prosecutors to take fuel tax fraud cases. The State of Texas, which has indicted 31 individuals and convicted 9 (from September 1989 through August 1992) for motor fuel tax fraud, created and staffed a special prosecution unit in Travis County to handle the case load. Total fines and restitution of \$4.1 million were realized from this effort.

As mentioned above, the data reports summarized here cover only the easily quantified activities of reconciliations, audits, and criminal investigations. The narrative reports provide information on other task force and state initiatives. Some of the most frequently noted items in the reports for the first six months of FY 1993 are training, joint audits and investigations, telephone hotlines to report suspected fraud, industry outreach, and information sharing with other enforcement agencies.

Overall, the IRS and state data summaries present a very impressive picture of the states' efforts to improve compliance with Federal and state motor fuel taxes. By every measure, the progress is positive--substantial tax assessments resulting from audit and examination activities, increasing numbers of indictments and convictions for criminal fraud, growing resources

Exhibit 20. Level of Effort for State Fuel Tax Enforcement Activities by Task Force
(For the Reporting Period October 1992-March 1993)

Task Force	Fuel	Enforcement Staff Hours					Tax Assessed and Estimated Tax Loss From			
		Reconcile	Office Audit	Field Audit	Criminal Invest.	Total	Reconciliation	Office Audit	Field Audit	CI
New Jersey	Gas	1,786	53	5,551	235	7,624	\$ 1,964,338	0	3,774,606	0
	Diesel	2,914	36	10,941	3,964	17,855	2,427,555	0	2,753,448	367,000
	Total	4,719	139	16,828*	5,265*	26,951*	4,400,076*	\$1,883,391*	\$ 6,589,602*	\$ 367,000
North Carolina	Gas	1,409	1,920	4,384	25	7,738	910,246	81,805	2,196,275	0
	Diesel	4,031	1,405	6,610	833	12,879	731,821	115,344	716,879	107,758
	Total	5,440	5,224*	11,298*	1,118*	23,080*	1,642,067	1,267,278*	3,061,163*	107,758
Indiana (PUBLICUS)	Gas	12,003	2,153	6,491	385	21,032	5,961,712	860,052	2,225,034	0
	Diesel	8,928	2,216	22,660	3,501	37,304	408,663	503,220	3,332,306	588,832
	Total	27,201*	4,369*	36,480*	9,216*	77,266*	10,269,103*	1,363,272	8,274,099*	588,832
Texas	Gas	3,211	457	5,077	0	8,745	129,420	619,017	2,870,556	2,643,901
	Diesel	4,025	311	11,909	1,305	17,550	77,783	154,754	6,396,220	3,154,742
	Total	7,236	768	16,986	4,049*	29,039*	207,203	773,771	9,266,775	5,798,643
Nebraska (NETASK)	Gas	7,469	0	6,013	317	13,799	899,291	0	617,287	852
	Diesel	2,508	0	18,279	393	21,180	382,333	0	705,946	55,831
	Total	9,977	0	24,476*	3,030*	37,483*	1,281,624	0	1,323,233	56,683
Northwest	Gas	5,035	1,879	3,395	0	10,309	563,077	717,159	1,772,784	0
	Diesel	2,312	976	14,364	0	17,652	160,104	27,603	1,760,704	0
	Total	7,347	2,855	19,314*	1,429*	30,945*	723,181	744,762	3,533,488	0
California	Gas	3,549	2,827	7,290	0	13,666	1,153,546	644,173	5,623,844	0
	Diesel	730	233	7,879	0	8,842	26,780	82,831	673,479	0
	Total	4,279	3,060	15,169	894*	23,402*	1,180,326	727,004	6,297,323	0
National (38 States)	Gas	29,523	7,482	32,080	645	69,729	10,891,149	2,237,727	18,559,890	2,644,753
	Diesel	23,458	5,177	79,385	9,831	117,851	4,054,935	883,752	15,851,475	4,274,163
	Total	59,270*	14,608*	120,988*	22,836*	217,702*	\$18,852,995*	\$6,074,999*	\$37,337,682*	\$6,918,916*

* Total is not additive for gasoline and diesel because some activities involving both fuels could not be separated by gas or diesel, and are included only in the total.

and staffing dedicated to the effort, better trained and equipped personnel, and more states and enforcement agencies actively participating in the task force efforts.

**Exhibit 21. State Motor Fuel Tax Fraud Indictments/Convictions
(For the Period October 1992-March 1993)**

<u>Location</u>	<u>Date</u>	<u>Persons Indicted/ Convicted</u>	<u>Estimated Tax Loss</u>
<u>Indicted</u>			
Philadelphia	7/12/93	1	\$ 300,000
Fort Wayne, Indiana	7/20/93	1	80,000
West Virginia	5/10/93	1	80,662
West Virginia	1/21/93	1	65,000
Texas	N/A	8	N/A
<u>Convicted</u>			
DuPage County, Illinois	3/26/93	2	588,832
New Jersey	N/A	1	367,000
North Carolina	N/A	4	107,758
Iowa	N/A	1	6,114
Texas	N/A	5	5,798,643
Totals		25	\$7,394,009

Chapter 4 Status of the Regional Task Forces

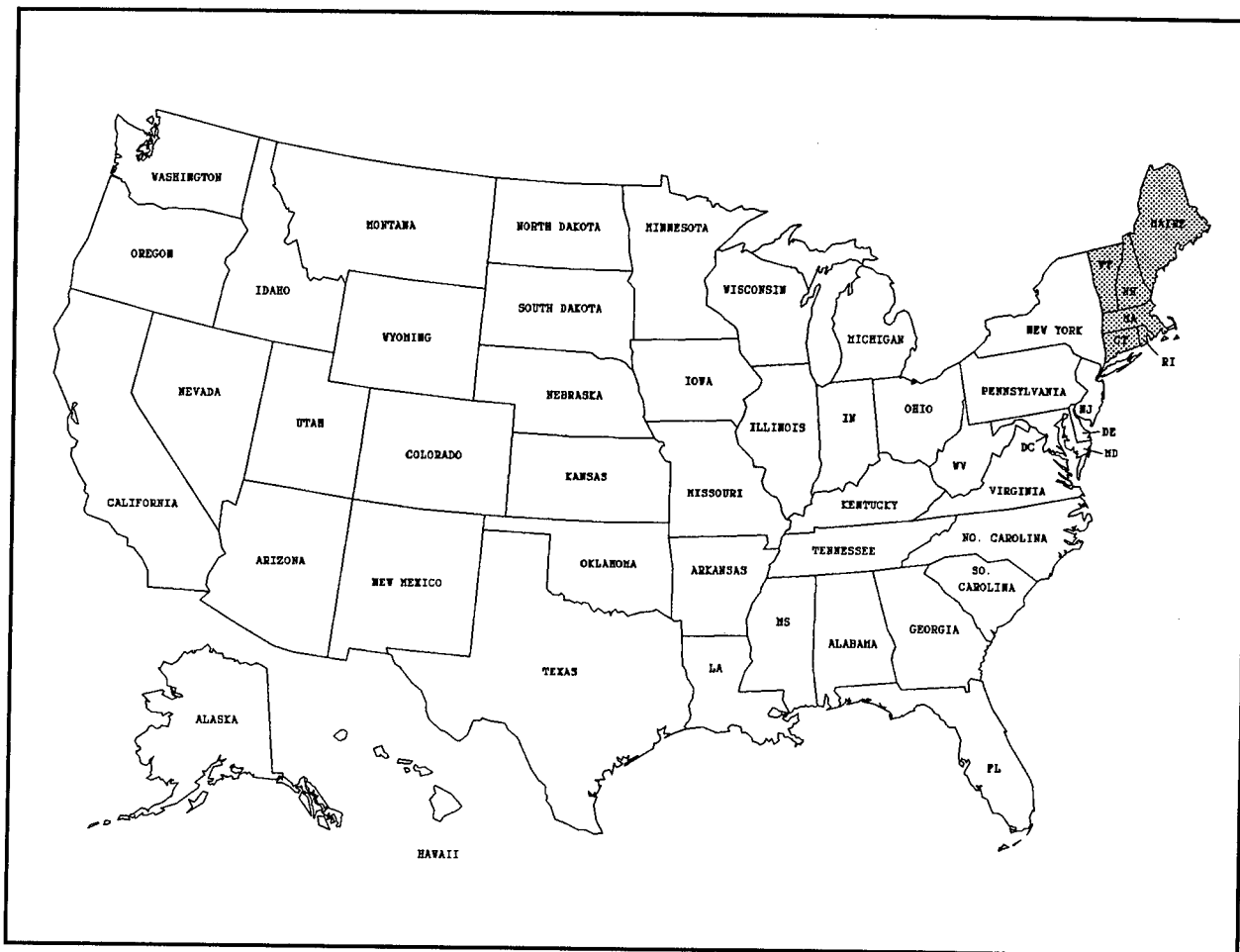
Nine regional motor fuel tax enforcement task forces have been formed to promote cooperative enforcement efforts between groups of neighboring states and IRS. Much of the success in organizing the regional motor fuel tax enforcement task forces can be attributed to the efforts of the revenue agencies and IRS district offices in the lead states.

The first three task forces, centered in the lead states of New Jersey, Texas, and Indiana, were organized in 1991 under the pilot phase of the Joint Project. The Texas Task Force, the Indiana Task Force (known as "Publicus"), and the New Jersey Task Force have been operating for more than three years. Three additional states (Missouri, Minnesota, and Wisconsin) joined the Indiana Task Force in 1992. The Texas Task Force has continued with the same five states since the task force first met in 1990. Connecticut joined the original four states in the New Jersey Task Force early in 1993, and Maryland and the District of Columbia joined in 1994.

Six additional task forces were formed in the remaining regions of the country in 1992 when additional Joint Project funding became available under ISTEA. During the initial meetings in the summer of 1992, FHWA project administration procedures were discussed and a Memorandum of Understanding (MOU) was negotiated for each task force. By the end of 1992, most of the states in four of the new task forces had signed the Memorandum of Understanding and entered the Grant Agreement with the FHWA. These four task forces held meetings in the fall of 1992 to begin developing cooperative strategies for motor fuel tax enforcement.

The Nebraska Task Force, known as "NETASK," is one of the largest groups with nine participating states. The North Carolina Task Force included six states from West Virginia to Georgia and Kentucky is joining in 1994. The Northwest Task Force included six states, and California joined in 1993. Alaska has also been invited to join. The California Task Force was initiated with four states in August 1992. Three additional states have joined the group, Colorado and Oregon in 1993 and New Mexico in 1994. The State of Hawaii has been invited to join. In the remaining two task forces, the New England Task Force (including the six New England states) and the Florida Task Force (including four states), most states did not enter Grant Agreements with the FHWA until December 1992 or January 1993.

Seven of the task forces provided data reports for the period October 1992-March 1993. The remaining two task forces, the New England and Florida task forces, began submitting reports for the period beginning April 1993. The remainder of this chapter discusses the status of each task force and a data summary for the task forces that submitted reports for the period October 1992-March 1993.



New England Task Force

The New England Task Force consists of the six New England states. As shown in Exhibit 22, all of the states entered funding agreements with FHWA early in FY 1993. The first data reports from the task force were provided for the reporting period ending September 30, 1993, and the results will be included in the next semiannual report.

Exhibit 22. FHWA Funding Summary for New England Task Force

State	MOU Signed	Funding Eff. Date	FY 91-92 Approp.	FY 92-94 ISTE A	Total Obligated	Unobligated (6/30/94)
Massachusetts*	04-Aug-92	13-Aug-92	\$25,000	\$ 300,000	\$ 325,000	\$0
Connecticut	12-Aug-92	12-Jan-93		150,000	150,000	0
Maine	06-Aug-92	11-Jan-93		150,000	150,000	0
New Hampshire	06-Aug-92	11-Mar-93		150,000	150,000	0
Rhode Island	06-Aug-92	23-Oct-92		150,000	150,000	0
Vermont	18-Aug-92	24-Nov-92		150,000	150,000	0
Total			\$25,000	\$1,050,000	\$1,075,000	\$0

* Lead state.

The task force meets regularly on a quarterly basis (Exhibit 23). In May 1994, the Massachusetts Department of Revenue hosted the Northeastern States Regional Conference of the FTA Motor Fuel Tax Section in Boston. The Regional Conference also provided an opportunity for a joint meeting of the New England and New Jersey Task Forces on May 18, 1994.

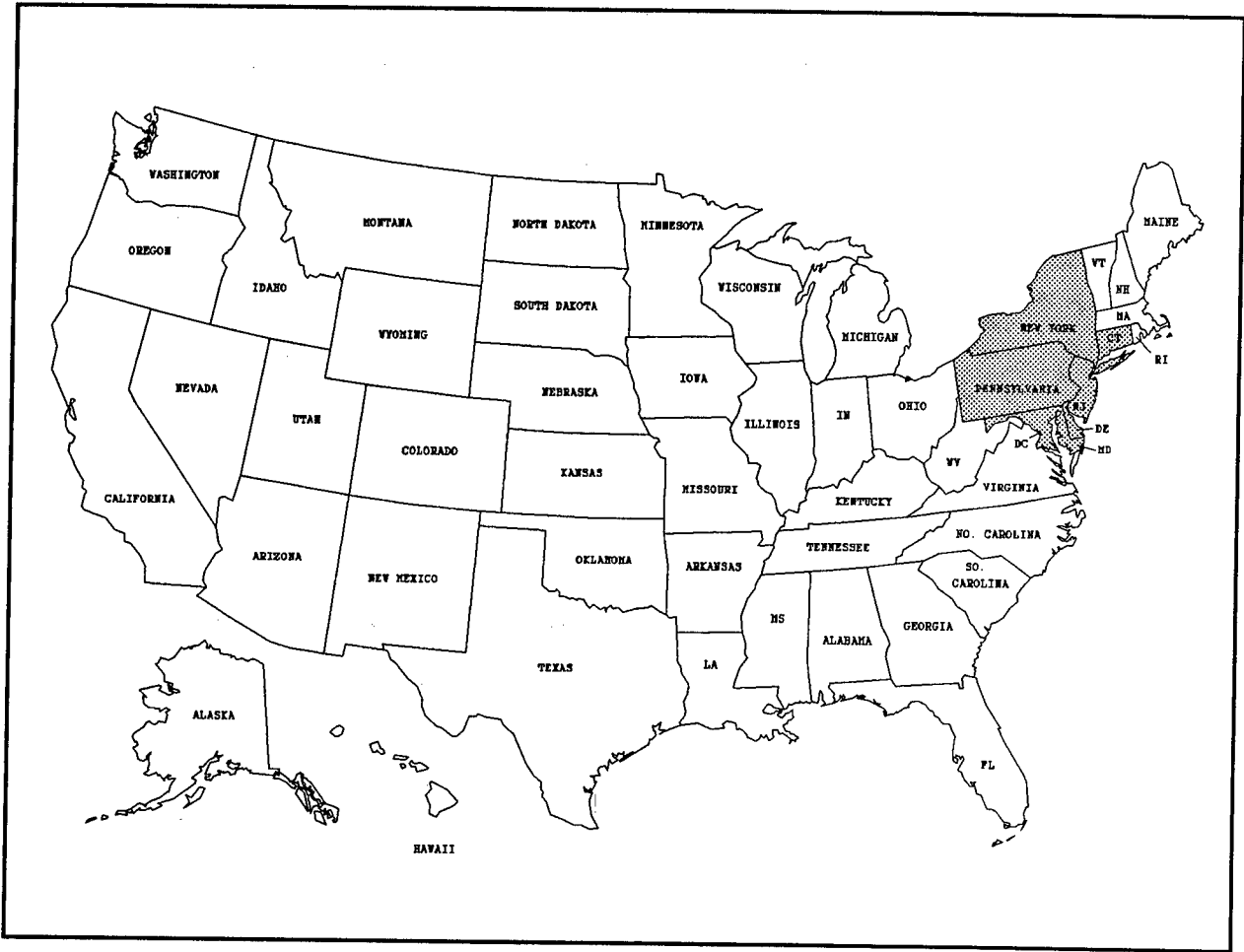
Exhibit 23. New England Task Force Meeting Calendar		
<u>Meeting</u>	<u>Date</u>	<u>Location</u>
First Meeting	September 16, 1992	Cambridge, Massachusetts
Second Meeting*	January 7, 1993	Cambridge, Massachusetts
Third Meeting*	April 28, 1993	Concord, New Hampshire
Fourth Meeting*	July 28, 1993	Boxborough, Massachusetts
Fifth Meeting*	November 10, 1993	Boxborough, Massachusetts
Sixth Meeting	March 18, 1994	Boxborough, Massachusetts
Seventh Meeting*	May 18, 1994	Boston, Massachusetts
Eighth Meeting	October 14, 1994	Boxborough, Massachusetts

* Meeting minutes available on request.

Some of the activities of the New England Task Force during the first year included updating the contact lists for exchange of information on motor fuel imports and exports among the states, training of motor fuel auditors and investigators, establishing contacts between state and Federal revenue agencies, developing cooperative audits and enforcement activities with other agencies, and improving information exchange with the petroleum industry on motor fuel tax procedures and industry practices.

The early meetings in 1993 included discussions of the Part 1 and Part 2 data reports for providing state information on overall motor fuel tax enforcement efforts and results. All of the states submitted the data reports for the six-month period ending September 1993. Preliminary data tabulations were discussed at the March 1994 task force meeting, and the final results will be included in the next report in this series.

Planned activities in the coming year include compiling and exchanging information on various audit techniques and computer applications, and coordinating state and Federal initiatives related to implementation of the new Federal dyed fuel requirements for diesel fuel.



New Jersey Task Force

The New Jersey Task Force Task Force was initiated in 1991 with the three states of New Jersey, New York, and Delaware. The task force has since expanded (Exhibit 24) to include Pennsylvania, Connecticut, Maryland, and the District of Columbia.

Exhibit 24. FHWA Funding Summary for New Jersey Task Force

State	Rev. MOU Signed	Funding Eff. Date	FY 91-92 Approp.	FY 92-94 ISTE A	Total Obligated	Unobligated (6/30/94)
New Jersey*	30-Jan-93	30-Jul-92	\$50,000	\$ 300,000	\$ 350,000	\$0
Connecticut	09-Feb-93	12-Jan-93		150,000	150,000	0
Delaware	20-Jan-93	01-Jul-93	20,000	150,000	170,000	0
Dist. of Columbia	30-Jun-94	30-Jun-94		150,000	150,000	0
Maryland	20-Apr-94	13-Jun-94		150,000	150,000	0
New York	22-Jun-93	10-Aug-92	5,685	150,000	155,685	0
Pennsylvania	12-Feb-93	07-Aug-92		150,000	150,000	0
Total			\$75,685	\$1,200,000	\$1,275,685	\$0

* Lead state.

Exhibit 25. New Jersey Task Force Meeting Calendar

<u>Meeting</u>	<u>Date</u>	<u>Location</u>
First Meeting*	August 16, 1990	Trenton, New Jersey
Second Meeting*	November 14, 1990	Trenton, New Jersey
Third Meeting*	February 1, 1991	Trenton, New Jersey
Fourth Meeting*	March 7, 1991	Trenton, New Jersey
Fifth Meeting*	May 22, 1991	Wilmington, Delaware
Sixth Meeting*	November 18, 1991	Trenton, New Jersey
Seventh Meeting	November 24, 1992	Trenton, New Jersey
Eighth Meeting*	May 19, 1993	Wilmington, Delaware
Ninth Meeting*	June 22, 1993	Philadelphia, Pennsylvania
Tenth Meeting	October 13, 1993	New York, New York
Eleventh Meeting	February 2, 1994	Harrisburg, Pennsylvania
Twelfth Meeting*	May 18, 1994	Boston, Massachusetts

* Meeting minutes available on request.

The New Jersey Task Force efforts were interrupted for several months in 1992 when the Miscellaneous Tax Section of the New Jersey Division of Taxation was abolished. A completely revised motor fuel tax statute was adopted, effective July 1, 1992, and a reorganized Motor Fuel Section was formed. In November 1992, the New Jersey Task Force met to develop a revised Memorandum of Understanding (since the initial agreement had expired) and the expanded task force began regular quarterly meetings (Exhibit 25).

Four of the states in the New Jersey Task Force submitted the six-month data report for the period October 1992 through March 1993. Connecticut began reporting for the period April-September 1993 and will be included in the next report summary. Maryland and the District of Columbia, which joined the task force in 1994, will begin submitting data reports in 1995. The data for October 1992-March 1993 is summarized in Exhibit 26.

All of the Part 1 data forms had enough information to produce benefit-cost ratios for audit and examination activities. The benefit-cost ratio is the dollars of tax assessed per dollar spent on audits and reconciliations. All of the calculated benefit-cost ratios are favorable, with tax assessments of at least \$2 per dollar spent. The average tax assessment for the four states reporting is about \$31 tax assessed per dollar spent. In total, nearly \$13 million of tax was assessed in the six-month period, and an additional \$3 million in penalties and interest was assessed.

With respect to criminal investigations, two states reported active investigations, and New Jersey reported one conviction and the associated estimated tax loss. As of the end of the reporting period (March 31, 1993), a total of 30 criminal cases are active, 29 involving diesel and 1 gasoline.

Exhibit 26. New Jersey Task Force Motor Fuel Tax Enforcement Summary
(For the Reporting Period October 1992-March 1993)

State	Cost per Hour	No. Qtrs. Rptd.	Fuel	Rec./Audit		Assessment	Interest & Penalties	Assessment Plus Interest and Penalties	Tax/ Staff Hr.	B/C	B/C Including Int./Pen.	Crim. Inv.	
				Staff Hours	Assessment							Active Cases	Con- victed
New Jersey (Lead state)	\$20	2	Gas	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0	0
	20		Diesel	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	28	1
	20		Total	406	\$ 1,953,122	\$ 520,516	\$ 2,473,638	\$4,817	240.8	305.0	28	1	
Delaware	18	2	Gas	438	18,020	5,880	23,900	41	2.3	3.0	0	0	
	18		Diesel	593	24,543	8,143	32,686	41	2.3	3.1	0	0	
	18		Total	1,031	42,563	14,023	56,586	41	2.3	3.1	0	0	
New York	25	2	Gas	4,305	4,619,622	1,802,805	6,422,427	1,073	42.9	59.7	N/A	N/A	
	25		Diesel	8,865	3,190,491	476,889	3,667,380	360	14.4	16.5	N/A	N/A	
	25		Total	13,170	7,810,113	2,279,694	10,089,807	593	23.7	30.6	N/A	N/A	
Pennsylvania	16	2	Gas	1,968	1,101,302	37,178	1,138,480	560	34.9	36.1	1	0	
	16		Diesel	4,433	1,965,969	132,057	2,098,026	443	27.7	29.5	1	0	
	16		Total	6,401	3,067,271	169,235	3,236,506	479	29.9	31.5	2	0	
Regional Total	20 (Avg.)		Gas	6,711	5,738,944	1,845,863	7,584,807	855	43.3	57.3	1	0	
	20 (Avg.)		Diesel	13,891	5,181,003	617,089	5,798,092	373	18.9	21.1	29	1	
	\$20 (Avg.)		Total	21,008*	\$12,873,069*	\$2,983,468*	\$15,856,537*	\$ 613	31.0	38.2	30	1	

* Total is not additive for gas and diesel because some activities involving both fuels could not be separated by gas and diesel, and are included only in the total.

B/C - Benefit-cost ratio, i.e. assessments divided by agency cost for reconciliations and audits.

Exhibit 27 shows how each state's enforcement effort is allocated to the three reconciliation/audit functions and criminal investigation, and the resulting tax assessments (or estimated tax loss for criminal cases) attributed to each function. Criminal investigation accounts for a sizeable portion of the total enforcement effort, nearly 20 percent of the total enforcement hours. Both New Jersey and Pennsylvania report substantial hours devoted to criminal investigation.

Exhibit 28 is a reprint from *Pennsylvania Tax Update*, which estimates \$17 to \$20 million in additional fuel tax revenue attributed to enhanced enforcement and collection activities.

Exhibit 27. New Jersey Task Force Motor Fuel Tax Enforcement Level of Effort
 (For the Reporting Period October 1992-March 1993)

State	Fuel	Enforcement Staff Hours					Tax Assessed and Estimated Tax Loss From			
		Reconcile	Office Audit	Field Audit	Criminal Invest.	Total	Reconcil- iation	Office Audit	Field Audit	Criminal Invest.
New Jersey (Lead)	Gas	N/A	N/A	N/A	0	0	N/A	N/A	N/A	0
	Diesel	N/A	N/A	N/A	2,258	2,258	N/A	N/A	N/A	\$367,000
	Total	20	50	336	2,258	2,664	\$ 8,183	\$1,883,391	\$ 61,548	367,000
Delaware	Gas	95	53	290	0	438	0	0	18,020	
	Diesel	169	36	388	0	593	0	0	24,543	
	Total	264	89	678	0	1,031	0	0	42,563	
New York	Gas	1,013	0	3,293	N/A	4,305	1,964,338	0	2,655,284	
	Diesel	2,745	0	6,120	N/A	8,865	1,427,555	0	762,936	
	Total	3,758	0	9,413	N/A	13,170	4,391,893	0	3,418,220	
Pennsylvania	Gas	678	0	1,968	235	2,881	N/A	0	1,101,302	
	Diesel	0	0	4,433	1,706	6,139	N/A	0	1,965,969	
	Total	678	0	6,401	3,007*	10,086	N/A	0	3,067,271	
Regional Total	Gas	1,786	53	5,551	235	7,624	1,964,338	0	3,774,606	0
	Diesel	2,914	36	10,941	3,964	17,855	2,427,555	0	2,753,448	367,000
	Total	4,719	139	16,828*	5,265*	26,951*	\$4,400,076*	\$1,883,391*	\$6,589,602*	\$367,000

* Total is not additive for gas and diesel because some activities involving both fuels could not be separated by gas and diesel, and are included only in the total.

Exhibit 28. Initiatives Bring in More Fuel Tax Revenue

**PENNSYLVANIA
TAX UPDATE**

Initiatives Bring in More Fuel Taxes

The Bureau of Motor Fuel Taxes has seen its tax collections increase an astonishing \$178 million in fiscal year 1992-93. While much of the increase is the result of a 1991, 5-cent-a-gallon increase in the Oil Franchise Tax, the Bureau estimates that fully \$17 to \$20 million can be attributed to enhanced collection and enforcement activities.

Bureau Director Jack Crago said this is not a flash in the pan but a sustained effort developed by identifying and tightening up the weaknesses in the tax reporting and collecting system.

"Revenues will definitely continue to go up," Crago promised. One of the most important areas targeted by the Bureau is the excise tax on diesel fuel.

In the 1990s both the Internal Revenue Service and the PA Department of Revenue saw a marked increase in networks of groups organized to evade excise taxes on diesel fuel. The commodity is ripe for abuse because diesel fuel and home heating oil can be used interchangeably but only diesel fuel

in January 1990 to 46 cents a gallon today.

Indicative of both the reduced level of economic activity and those organized efforts to evade taxes, the reported diesel fuel sold in Pennsylvania fell from 963.5 million gallons in fiscal year 1989-90 to 932.7 million gallons in 1991-92, representing a significant loss of tax revenue.

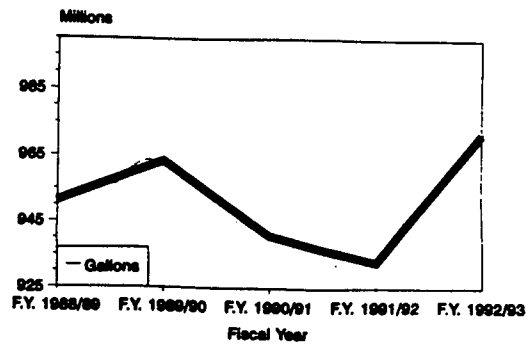
Less revenue reduces the money available to the Motor License Fund, from which the Liquid Fuel Tax funds are disbursed to the state's 67 counties and municipalities to use to maintain roads and fix pot holes.

To stop the leakage in fuel tax collections, the Department initiated a number of measures to combat organized crime networks. Among them are:

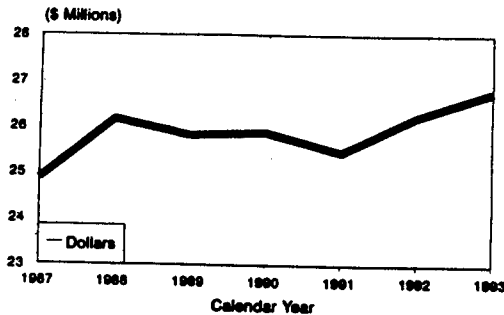
* Cooperating in several federal grand jury investigations conducted in Pittsburgh, Philadelphia and Trenton, NJ, which resulted in dozens of indictments against various individuals and companies implicated in fuel tax evasion networks.

As a result of those investigations, the Commonwealth is in line to share the proceeds from assets seized and forfeited to the federal government from

Taxable Diesel Fuel



**Liquid Fuels Tax Fund
ALLOCATION FOR COUNTIES**



used on the highways is subject to tax. A series of state and federal tax rate hikes increased the allure for organized crime networks to pocket the tax collected from diesel fuel users and suppliers.

The combined state and federal taxes climbed from 32.5 cents a gallon

* The Bureau participation in cooperative efforts with other agencies, such as the IRS and its Compliance 2000 effort.

* Working with the Joint Federal-State Motor Fuel Compliance Project.

* Networking with surrounding states to exchange information and conduct investigations.

* Creating special liaisons with industry representatives, such as the National Association of Truck Stop Operators, the PA Propane Association, the PA Petroleum Association, the National Association of Weights and Measures and the PA Motor Truck Association.

the networks' illegal activities. Those funds will be returned to the Department and be used to further enhance fuel tax enforcement.

* Expansion of the Motor Carrier Report Program. The Bureau has been involved with the Federal Tax Administrators Uniformity Committee to develop universally accepted report forms.

* Upgrading its computer system to take advantage of new technology to further enhance collection and enforcement activities.

* Initiated a pre-license investigation program.

* Utilized new enforcement powers to issue citations for tax violations and with assistance from the PA State Police to confiscate vehicles used to illegally import fuel with the intent of evading taxes.



North Carolina Task Force

The North Carolina Force Task Force includes six southeastern states, from Virginia to Georgia. Georgia participates on both the North Carolina and Florida Task Forces. Kentucky, which participates in the Indiana Task Force, is also joining the North Carolina Task Force in 1994 (Exhibit 29).

Exhibit 29. FHWA Funding Summary for North Carolina Task Force

State	Rev. MOU Signed	Funding Eff. Date	FY 91-92 Approp.	FY 92-94 ISTEIA	Total Obligated	Unobligated (6/30/94)
North Carolina*	31-Aug-92	31-Jul-92	\$25,000	\$ 300,000	\$ 325,000	\$0
Georgia	07-Oct-92	13-Nov-92		150,000	150,000	0
Kentucky	Pending			150,000	150,000	0
South Carolina	21-Oct-92	11-Jan-93		150,000	150,000	0
Tennessee	29-Sep-92	09-Dec-92		150,000	150,000	0
Virginia	22-Sep-92	28-Oct-92		150,000	150,000	0
West Virginia	23-Sep-92	31-Jul-92		150,000	150,000	0
Total			\$25,000	\$1,050,000	\$1,075,000	\$0

* Lead state.

Exhibit 30. North Carolina Task Force Meeting Calendar

<u>Meeting</u>	<u>Date</u>	<u>Location</u>
First Meeting*	June 17, 1992	Louisville, Kentucky
Second Meeting*	November 18-19, 1992	Raleigh, North Carolina
Third Meeting*	June 23, 1993	Wilmington, North Carolina
Fourth Meeting*	November 16-17, 1993	Richmond, Virginia
Fifth Meeting*	February 16-18, 1994	Atlanta, Georgia
Sixth Meeting*	June 22-23, 1994	Charleston, West Virginia
Seventh Meeting	November 1-2, 1994	Raleigh, North Carolina

* Meeting minutes available on request.

Since the task force was organized in June 1992, meetings have been held twice a year (Exhibit 30). All of the states in the North Carolina Task Force began submitting the six-month reports for the period October 1992 through March 1993. The data for the six states are summarized in Exhibit 31. The Kentucky data will be included in the summary for the next reporting period.

All of the Part 1 data forms had enough information to produce the benefit-cost ratios for audit and examination activities. The benefit-cost ratio is the dollars of tax assessed per dollar spent on audits and reconciliations. For states that did not provide an estimate of hourly audit cost (Georgia and West Virginia), the hourly cost from the subsequent report has been used. For Tennessee, all of the audit hours, though identified as "Combined," were shown as "Diesel" for calculating the benefit-cost ratio since all assessments were for diesel fuel tax. For West Virginia, only the benefit-cost ratio, including penalties and interest, is calculated since the tax assessment could not be separated from the total assessment.

All of the benefit-cost ratios calculated are very favorable, with tax assessments of at least \$2 per dollar spent. The average tax assessment for five states was \$13 tax assessed per dollar spent. In total, more than \$6 million of tax, interest, and penalties were assessed in the six-month period.

With respect to criminal investigations, four states report active investigations, and North Carolina reports estimated tax loss and assessments resulting from criminal cases. For the four states reporting criminal cases (North Carolina, South Carolina, Tennessee, and Virginia), a total of 14 cases were active, 5 of those involving gasoline and 12 of those involving diesel. (The sum does not add to 14 because some cases involved both fuel types under the same case.)

Exhibit 32 shows how each state's enforcement effort is allocated to the three reconciliation/audit functions and criminal investigation, and the resulting tax assessments (or estimated tax loss for criminal cases) attributed to each function.

Exhibit 31. North Carolina Task Force Motor Fuel Tax Enforcement Summary
(For the Reporting Period October 1992-March 1993)

State	Cost per Hour	No. Qtrs. Rptd.	Fuel	Rec./Audit Staff Hours	Assessment	Interest & Penalties	Assessment Plus Interest and Penalties	Tax/ Staff Hr.	B/C	B/C Including Int./Pen.	Crim. Inv.	
											Active Cases	Con- victed
North Carolina (Lead state)	\$24	2	Gas	1,257	\$2,196,259	\$ 95,765	\$2,292,024	\$1,747	71.9	75.0	0	0
	24		Diesel	2,875	244,416	29,655	274,071	85	3.5	3.9	2	4
	24		Total	4,132	2,440,675	125,420	2,566,095	591	24.3	25.6	2	4
Georgia#	23	2	Gas	296	241,425	N/A	N/A	816	35.3	N/A	0	0
	23		Diesel	664	73,262	N/A	N/A	110	4.8	N/A	0	0
	23		Total	960	314,687	60,760	375,447	328	14.2	16.9	0	0
South Carolina	15	2	Gas	660	543,242	36,290	579,532	823	54.9	58.5	0	0
	15		Diesel	1,120	209,661	14,427	224,088	187	12.5	13.3	1	0
	15		Total	1,780	752,903	50,717	803,620	423	28.2	30.1	1	0
Tennessee	19	2	Gas	0	0	0	0	N/A	N/A	N/A	2	0
	19		Diesel	2,147+	656,676	0	656,676	306	15.9	15.9	2	0
	19		Total	2,147	656,676	0	656,676	306	15.9	15.9	3*	0
Virginia	18	2	Gas	5,500	207,400	62,220	269,620	38	2.1	2.7	3	0
	18		Diesel	5,240	380,029	114,009	494,038	73	4.0	5.2	7	0
	18		Total	10,740	587,429	176,229	763,658	55	3.0	3.9	8*	0
West Virginia	11	2	Gas	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0	0
	11		Diesel	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0	0
	11		Total	2,203	N/A	N/A	1,218,138	N/A	N/A	49.4	0	0
Regional Total	19 (Avg.)		Gas	7,713	3,188,326	194,275	3,141,176	413	22.3	22.9	5	0
	19 (Avg.)		Diesel	12,046	1,564,044	158,091	1,648,873	130	7.0	7.8	12	4
	\$19 (Avg.)		Total	21,962*	\$4,752,370	\$413,126*	\$6,383,634*	\$ 241	13.0	15.7	14*	4

* Total is not additive for gas and diesel because some activities involving both fuels could not be separated by gas and diesel, and are included only in the total.

Participates in more than one task force. Data is included in each regional total but only once in the national summary.

+ Reported as "Combined," but all hours are shown as "Diesel" because all assessments were for diesel fuel.

B/C - Benefit-cost ratio, i.e. assessments divided by agency cost for reconciliations and audits.

About half of the total fuel tax enforcement effort is devoted to the traditional field audit function. Four states reported hours devoted to criminal investigation, which accounts for about 5 percent of the total regional effort.

From the state narrative summaries, most states report sending participants to the FTA training seminars and attending regional task force meetings. Other highlights from the narratives and data reports are as follows:

Exhibit 32. North Carolina Task Force Motor Fuel Tax Enforcement Level of Effort
(For the Reporting Period October 1992-March 1993)

State	Fuel	Enforcement Staff Hours					Tax Assessed and Estimated Tax Loss From			
		Reconcile	Office Audit	Field Audit	Criminal Invest.	Total	Reconciliation	Office Audit	Field Audit	Criminal Invest.
North Carolina (Lead)	Gas	1,068	&	189	0	1,257	\$ 261,570	&	\$1,934,689	0
	Diesel	1,162	&	1,713	335	3,210	50,909	&	193,507	\$107,758
	Total	2,230	&	1,902	335	4,467	312,479	&	2,128,196	107,758
Georgia	Gas	251	0	45	0	296	235,460	0	5,965	
	Diesel	649	0	15	0	664	71,519	0	1,743	
	Total	900	0	60	0	960	306,979	0	7,708	
South Carolina	Gas	90	420	150	0	660	413,216	\$ 81,805	48,221	
	Diesel	90	805	225	473	1,593	48,572	115,344	45,745	
	Total	180	1,225	375	473	2,253	461,788	197,149	93,966	
Tennessee	Gas	0	0	0	25	25	0	0	0	
	Diesel	2,130+	0	17+	25	2,172	560,821	0	95,855	
	Total	2,130	0	17	270*	2,417*	560,821	0	95,855	
Virginia	Gas	0	1,500	4,000	0	5,500	0	0	207,400	
	Diesel	0	600	4,640	0	5,240	0	0	380,029	
	Total	0	2,100	8,640	40*	10,780*	0	0	587,429	
West Virginia	Gas									
	Diesel									
	Total	0	1,899	304	0	2,203	0	1,070,129	148,009	
Regional Total	Gas	1,409	1,920	4,384	25	7,738	910,246	81,805	2,196,275	0
	Diesel	4,031	1,405	6,610	833	12,879	731,821	115,344	716,879	107,758
	Total	5,440	5,224*	11,298*	1,118*	23,080*	\$1,642,067	\$1,267,278*	\$3,061,163*	\$107,758

* Total is not additive for gas and diesel because some activities involving both fuels could not be separated by gas and diesel, and are included only in the total.

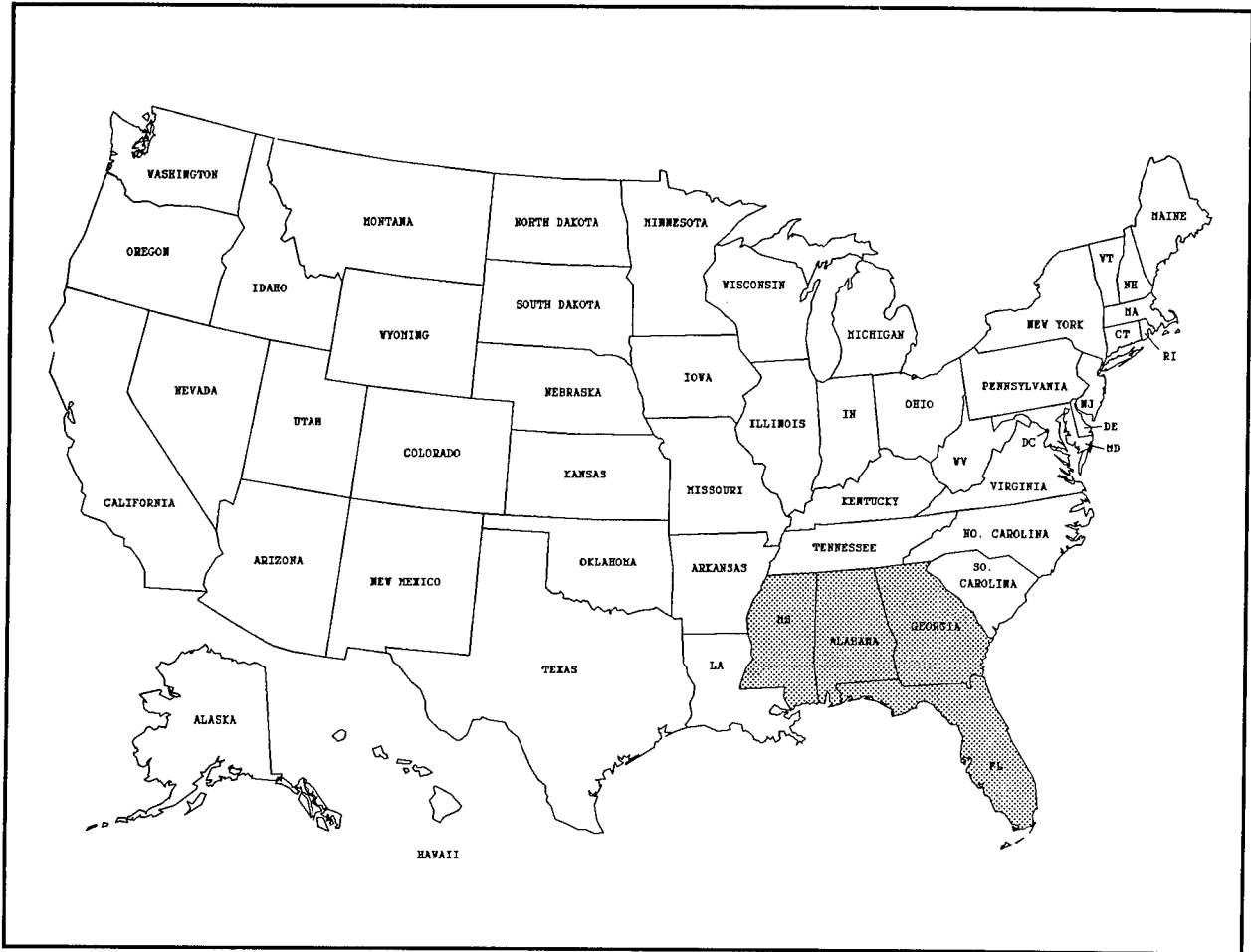
Participates in more than one task force. Data is included in each regional total but counted only once in the national summary.

& "Office Audit" included with "Reconciliation."

+ Reported as "Combined," but all hours are shown as "Diesel" since all assessments were for diesel fuel.

- North Carolina reports 129 audits of diesel fuel bulk users, resellers, and end users, which resulted in an additional assessment of \$110,856 in tax.
- Tennessee reported that the State Revenue Special Investigations Unit and the IRS Criminal Investigation Division formed a joint task force to investigate fuel tax evasion. This resulted in two cases referred for investigation, including a possible undercover operation.

- West Virginia arranged a toll-free number for reporting motor fuel tax evasion leads and distributed posters publicizing the number. The state also reported working with Ohio on joint audits that began in April 1993. Several newspapers carried stories on the toll-free number and increased state fuel tax enforcement efforts. A press release in May 1993 and subsequent news articles announced tax assessments and liens filed against two truck stops.



Florida Task Force

The Florida Task Force includes four southeastern states from Mississippi to Florida. As shown in Exhibit 33, most of the states entered funding agreements with FHWA early in FY 1993. The first data reports from the task force were provided for the reporting period ending September 30, 1993, and the results will be included in the next report. Alabama participates in the task force but has not entered a funding agreement with FHWA.

Exhibit 33. FHWA Funding Summary for Florida Task Force

State	MOU Signed	Funding Eff. Date	FY 91-92 Approp.	FY 92-94 ISTE A	Total Obligated	Unobligated (6/30/94)
Florida*	Dec-92	31-Jul-92	\$25,000	\$300,000	\$325,000	\$ 0
Alabama	Pending				0	150,000
Georgia	Dec-92	13-Nov-92		150,000	150,000	0
Mississippi	Dec-92	16-Dec-92		100,000	100,000	50,000
Total			\$25,000	\$550,000	\$575,000	\$200,000

* Lead state.

Exhibit 34. Florida Task Force Meeting Calendar

<u>Meeting</u>	<u>Date</u>	<u>Location</u>
First Meeting*	June 17, 1992	Louisville, Kentucky
Second Meeting*	December 10-11, 1992	Atlanta, Georgia
Third Meeting*	February 25-26, 1993	Orlando, Florida
Fourth Meeting*	May 24-25, 1993	Atlanta, Georgia
Fifth Meeting*	October 4-6, 1993	Montgomery, Alabama
Sixth Meeting*	February 16-18, 1994	Atlanta, Georgia
Seventh Meeting*	June 1-3, 1994	Orlando, Florida
Eighth Meeting	November 16-18, 1994	Atlanta, Georgia

* Meeting minutes available on request.

In addition to quarterly meetings of the four states in the Florida Task Force (Exhibit 34), the Florida Department of Revenue and the two Florida IRS districts meet every four to six weeks to coordinate their enforcement efforts. Florida was one of the first states to recognize the significance of the fuel tax evasion problem and had adopted a series of aggressive strategies to attack the problem even before the Joint Project was organized in 1990. Some of the strategies included computerized reporting and reconciliation of motor fuel tax returns, strengthened bonding requirements, background checks on companies and individuals seeking motor fuel tax registration, and a training program for motor fuel tax auditors. Representatives from the Florida Department of Revenue have testified at congressional hearings in support of strengthened Federal motor fuel tax statutes and have offered assistance to Federal and state officials in other motor fuel tax enforcement initiatives, such as the development of the FTA motor fuel tax training seminars.

This aggressive posture toward fighting fuel tax evasion has continued with the formation of the Florida Task Force in December 1992. Data reports on audit and investigation activities will be included in the next report. Some of the highlights of task force activities in the first year are as follows:

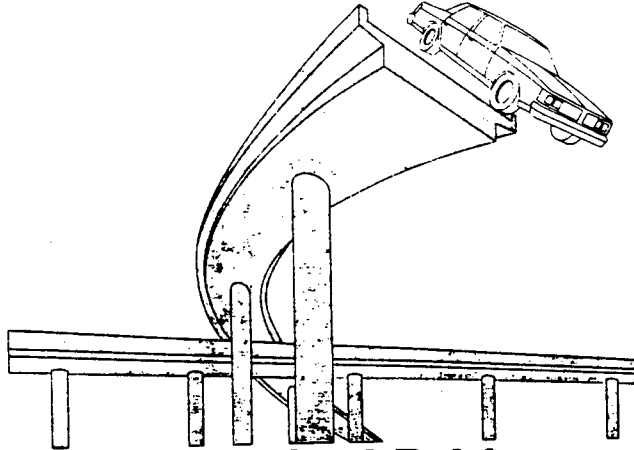
- Extensive outreach and assistance programs to the petroleum industry on changes in fuel tax laws and regulations
- Opening channels of communication and information exchanges with other state and Federal agencies such as:
 - U.S. Army Corps of Engineers
 - U.S. Customs Service
 - U.S. and Florida Departments of Transportation
 - Florida and Georgia Departments of Agriculture
 - U.S. Environmental Protection Agency
 - Florida Department of Natural Resources
 - Florida Department of Environmental Regulation
 - U.S. Department of Defense
 - Florida Marine Patrol

U.S. Coast Guard
First Coast Environmental Crimes Task Force
Federal Bureau of Investigation
Georgia Public Service Commission
Florida Department of Law Enforcement

- Development of an audit techniques manual with specialized procedures for different types of petroleum distribution businesses and users
- Cooperative Georgia Department of Revenue and IRS project to automate state motor fuel transaction records
- Initiation of a strategic planning process in Florida to systematically identify and terminate fuel tax evasion schemes within specified time frames to minimize revenue losses

The Alabama Department of Revenue established a toll-free hotline to report motor fuel tax evasion. A poster (Exhibit 35) and bumper sticker have been widely distributed to publicize the hotline. The State of Mississippi issued the first indictment for fuel tax evasion in December 1993, alleging nearly \$400,000 in unpaid state petroleum taxes.

GASOLINE AND MOTOR FUEL TAX EVASION AFFECTS YOU!



**Roads And Bridges
Cannot Be Built Without Tax Dollars**

**Use, Possession Or Delivery Of
Untaxed Gasoline And Motor Fuel
For On-Road Use In Alabama Is A
CRIME!**

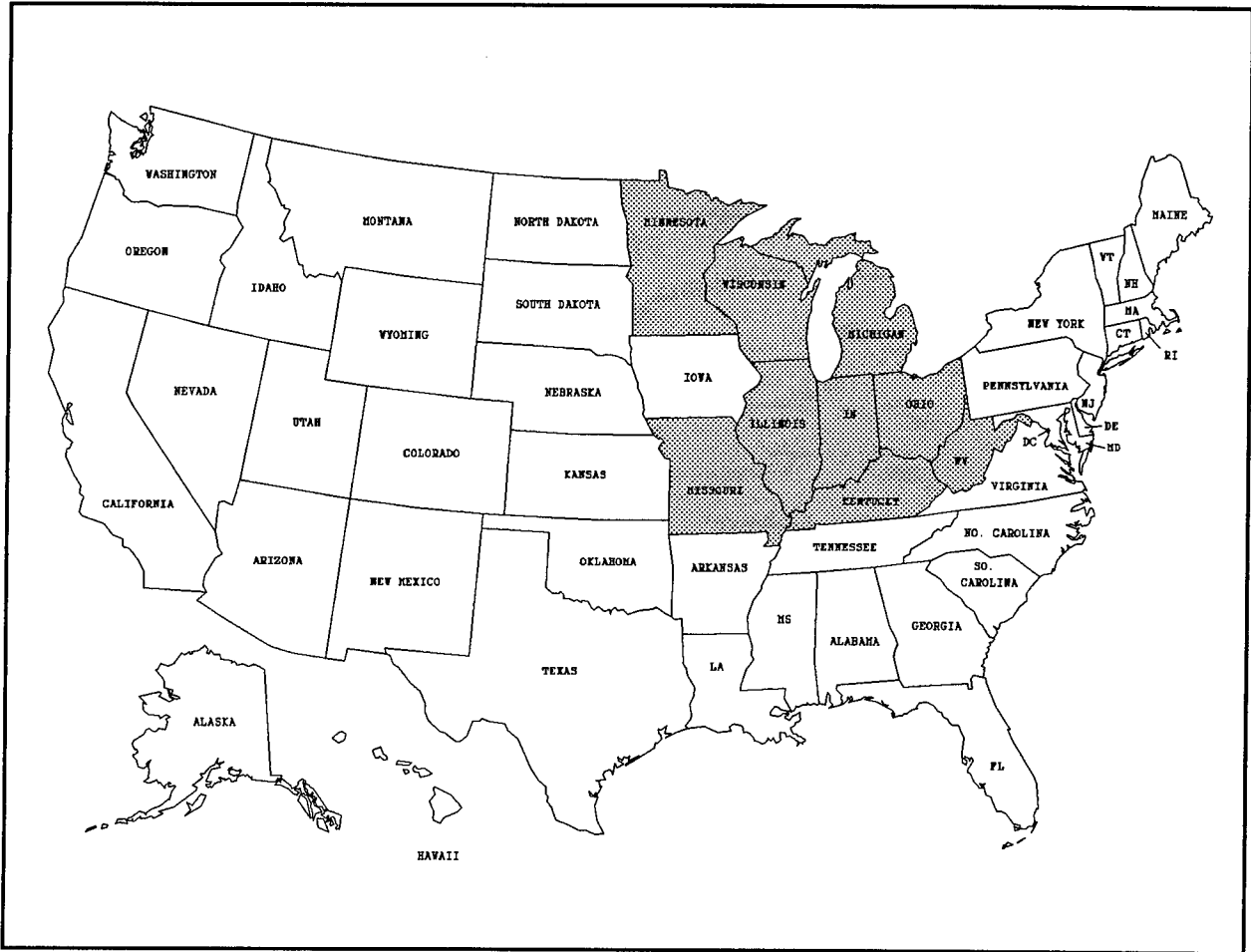
Notify the ALABAMA DEPARTMENT OF REVENUE

Natural Resources And License Tax Division
Motor Fuels Section
P.O. Box 327540
Montgomery, Alabama 36132-7540

1-800-EVASION or 1-800-235-7616

REWARD

Section 40-12-202, Code of Alabama 1975 provides that any person, except a state officer, a part of whose duties is the enforcement of this article, who shall furnish information leading to the arrest and conviction of any person violating the provisions of this article, shall be entitled to 25 percent of the amount of the fine assessed against such offender; provided, that not more than one reward will be paid in any one case



Indiana Task Force (Publicus)

The Indiana Task Force (Publicus) was initiated in 1991 with the four states of Indiana, Illinois, Kentucky, and Ohio. The task force has since expanded (Exhibit 36) to include nine states.

Exhibit 36. FHWA Funding Summary for Indiana Task Force (Publicus)

State	Rev. MOU Signed	Funding Eff. Date	FY 91-92 Approp.	FY 92-94 ISTE A	Total Obligated	Unobligated (6/30/94)
Indiana*	09-Feb-94	15-Jul-92	\$ 50,000	\$ 300,000	\$350,000	\$0
Illinois	Undated	01-Oct-92	20,000	150,000	170,000	0
Kentucky	16-Feb-94	26-Jun-92	20,000	150,000	170,000	0
Michigan	Undated	03-Aug-92		150,000	150,000	0
Minnesota	11-Feb-94	13-Jul-92		150,000	150,000	0
Missouri	17-Mar-94	20-Jul-92		150,000	150,000	0
Ohio	11-Mar-94	22-Jul-92	20,000	150,000	170,000	0
West Virginia	07-Apr-94	31-Jul-92		150,000	150,000	0
Wisconsin	15-Feb-94	10-Jul-92		150,000	150,000	0
Total			\$110,000	\$1,500,000	\$1,610,000	\$0

* Lead state.

Exhibit 37. Indiana Task Force (Publicus) Meeting Calendar

<u>Meeting</u>	<u>Date</u>	<u>Location</u>
First Meeting*	August 21, 1990	Indianapolis, Indiana
Second Meeting*	December 5, 1990	Indianapolis, Indiana
Third Meeting*	June 27, 1991	Indianapolis, Indiana
Fourth Meeting*	March 18, 1992	Indianapolis, Indiana
Fifth Meeting*	November 16, 1992	Indianapolis, Indiana
Sixth Meeting*	May 4, 1993	Indianapolis, Indiana
Seventh Meeting*	November 16-17, 1993	Merrillville, Indiana
Eighth Meeting*	April 26-27, 1994	Lexington, Kentucky

* Meeting minutes available on request.

The Indiana Task Force (Publicus) meets twice a year (Exhibit 37). The original four states in the task force (Indiana, Illinois, Ohio, and Kentucky) were instrumental in developing the reporting format (Parts 1 and 2) ultimately adopted for use by all states participating in the Joint Project. The 1991 and 1992 data from the original states were summarized in previous reports to Congress [Ref. 1, 3]. The 1993 summary (Exhibit 38) includes the data from eight states in the expanded task force for the period October 1992 through March 1993.

All of the Part 1 data forms had enough information to estimate the benefit-cost ratios for audit and examination activities. The benefit-cost ratio is the dollars of tax assessed per dollar spent on audits and reconciliations. For the Ohio data, which included audit or reconciliation hours for "Combined" fuel types, the combined hours were added to the hours for gasoline so that all hours would be accounted for in calculating the benefit-cost ratios.

All of the benefit-cost ratios calculated are favorable with tax assessments of at least \$1 per dollar spent (except for the Minnesota audits and reconciliations of diesel fuel returns, which was 0.7 including interest and penalties.) The average tax assessment for all eight states is about \$7.60 tax assessed per dollar spent. In total, nearly \$22 million of tax, including interest and penalties, was assessed in the six-month period.

All but 2 states report criminal cases under way, with a total of 75 cases active at the end of the period. Sixteen of these involve gasoline and 70 involve diesel fuel. Illinois reports two individuals convicted and estimated tax losses of nearly \$600,000. The reported cost of the investigation is \$83,505, for a benefit-cost ratio of 7.1 counting estimated tax only, and 12.5 counting interest and penalties. Indiana reports one investigation discontinued because it was not accepted for prosecution and four discontinued for lack of evidence. Two individuals were indicted in one case resulting from a joint investigation with IRS.

Exhibit 38. Indiana Task Force (Publicus) Motor Fuel Tax Enforcement Summary
(For the Reporting Period October 1992-March 1993)

State	Cost per Hour	No. Qtrs. Rptd.	Rec./Audit Fuel	Staff Hours	Assessment	Interest & Penalties	Assessment Plus Interest and Penalties	Tax/ Staff Hr.	B/C	B/C Including Int./Pen.	Crim. Inv.	
											Active Cases	Con- victed
Indiana (Lead state)	\$25	2	Gas	1,544	\$ 70,080	\$ 25,963	\$ 96,043	\$ 45	1.8	2.5	1	0
	25		Diesel	6,242	950,917	365,693	1,316,609	152	6.1	8.4	11	0
	25		Total	7,786	1,020,996	391,656	1,412,652	131	5.2	7.3	12	0
Kentucky#	17	2	Gas	853	772,318	136,865	909,183	905	52.5	61.9	0	0
	17		Diesel	5,766	1,655,713	268,385	1,924,098	287	16.7	19.4	0	0
	17		Total	6,619	2,428,031	405,250	2,833,281	367	21.3	24.8	0	0
Illinois	52	2	Gas	N/A	N/A	N/A	N/A	N/A	N/A	N/A	8	0
	52		Diesel	N/A	N/A	N/A	N/A	N/A	N/A	N/A	17	2
	52		Total	3,003	N/A	N/A	1,680,308	N/A	N/A	10.8	19*	2
Michigan	52	2	Gas	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0	0
	52		Diesel	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0	0
	52		Total	9,909	N/A	N/A	4,935,180	N/A	N/A	9.6	0	0
Missouri#	14	2	Gas	6,416	719,356	0	719,356	112	7.8	7.8	0	0
	14		Diesel	4,538	321,790	132	321,922	71	5.0	5.0	9	0
	14		Total	10,954	1,041,146	132	1,041,278	95	6.7	6.7	9	0
Minnesota#	40	2	Gas	4,860	579,759	57,977	637,736	119	3.0	3.3	2	0
	40		Diesel	4,032	96,372	9,597	105,969	24	0.6	0.7	0	0
	40		Total	8,892	676,131	67,574	743,705	76	1.9	2.1	2	0
Ohio (est.)	32	2	Gas	7,496+	6,733,884	342,401	7,076,285	898	28.2	29.7	2	0
	(est.) 32		Diesel	3,744	126,427	29,176	155,603	34	1.1	1.3	30	0
	(est.) 32		Total	11,240	6,860,311	371,577	7,231,888	610	19.2	20.2	30*	0
Wisconsin	23	2	Gas	2,378	171,351	5,290	176,641	72	3.2	3.3	3	0
	23		Diesel	7,269	1,092,970	637,424	1,730,394	150	6.7	10.6	3	0
	23		Total	9,647	1,264,321	642,714	1,907,035	131	5.8	8.8	3*	0
Regional Total	32 (Avg.)		Gas	23,547	9,046,748	568,496	9,615,244	384	12.1	12.8	16	0
	32 (Avg.)		Diesel	31,591	4,244,189	1,310,407	5,554,595	134	4.2	5.5	70	2
	\$32 (Avg.)		Total	68,050*	\$13,290,936	\$1,878,903	\$21,785,327*	\$241	7.6	10.1	75*	2

* Total is not additive for gas and diesel because some activities involving both fuels could not be separated by gas and diesel, and are included only in the total.

Participates in more than one task force. Data is included in each regional total but only once in the national summary.

+ Some hours reported as "Combined" are included with the hours for "Gasoline" for calculating the benefit-cost ratio.

B/C - Benefit-cost ratio, i.e. assessments divided by agency cost for reconciliations and audits, diesel, and are included only in the total.

Exhibit 39 shows how each state's enforcement effort is allocated to the three reconciliation/audit functions and criminal investigation, and the resulting tax assessments (or estimated tax loss for criminal cases) attributed to each function. Field

**Exhibit 39. Indiana Task Force (Publicus) Motor Fuel Tax Enforcement
Level of Effort (For the Reporting Period October 1992-March 1993)**

State	Fuel	Enforcement Staff Hours					Tax Assessed and Estimated Tax Loss From			
		Reconcile	Office Audit	Field Audit	Criminal Invest.	Total	Reconciliation	Office Audit	Field Audit	Criminal Invest.
Indiana	Gas	0	0	1,544		1,544	\$ 0	\$ 0	\$ 70,080	
(Lead)	Diesel	0	0	6,242		6,242	0	0	950,917	
	Total	0	0	7,786	3,900*	11,686*	0	0	1,020,996	
Kentucky#	Gas	352	233	268	0	853	320,640	213,694	237,984	
	Diesel	627	416	4,723	0	5,766	322,793	215,195	1,117,725	
	Total	979	649	4,991	0	6,619	643,433	428,889	1,355,709	
Illinois	Gas				68	68				
	Diesel				875	875				\$588,832
	Total	0	0	3,003	1,874	4,877	0	0	1,680,308@	588,832
Michigan	Gas	3,380	&		0	3,380				
	Diesel	2,213	&		0	2,213				
	Total	5,593	&	4,316*	0	9,909*	3,898,728@	&	1,036,452@	
Missouri#	Gas	4,496	1,920	0	0	6,416	72,998	646,358	0	
	Diesel	2,536	1,800	202	1,662	6,200	32,895	288,025	870	
	Total	7,032	3,720	202	1,662	12,616	105,893	934,383	870	
Minnesota#	Gas	1,980	0	2,880	317	5,177	159,904	0	419,855	
	Diesel	0	0	4,032	164	4,196	0	0	96,372	
	Total	1,980	0	6,912	711*	9,603	159,904	0	516,227	
Ohio	Gas	0	0	1,216	0	1,216	5,250,145	0	1,483,739	
	Diesel	3,090	0	654	800	4,544	0	0	126,427	
	Total	9,360*	0	1,880*	800	12,040*	5,250,145	0	1,610,166	
Wisconsin	Gas	1,795	&	583	0	2,378	158,025@	&	13,376	
	Diesel	462	&	6,807	0	7,269	52,975@	&	1,039,995	
	Total	2,257	&	7,390	269*	9,916*	211,000@	&	1,053,371	
Regional	Gas	12,003	2,153	6,491	385	21,032	5,961,712	860,052	2,225,034	0
Total	Diesel	8,928	2,216	22,660	3,501	37,304	408,663	503,220	3,332,306	588,832
	Total	27,201*	4,369*	36,480*	9,216*	77,266*	\$10,269,103*	\$1,363,272	\$8,274,099*	\$588,832

* Total is not additive for gas and diesel because some activities involving both fuels could not be separated by gas and diesel, and are included only in the total.

Participates in more than one task force. Data is included in each regional total but counted only once in the national summary.

& "Office Audit" included with "Reconciliation."

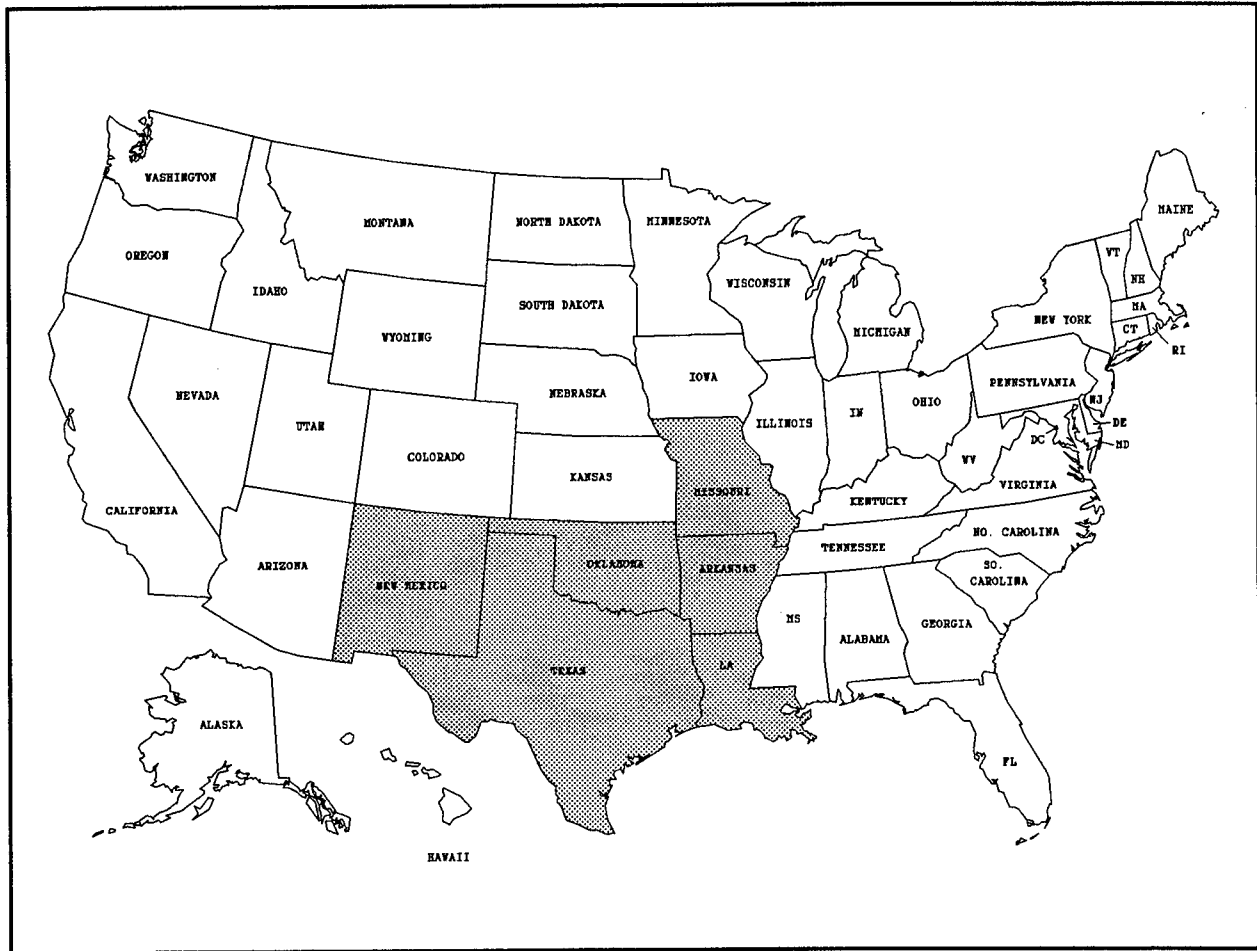
@ Includes interest and penalties.

audit accounts for nearly half of the total fuel tax enforcement effort. Six states reported hours devoted to criminal investigation, which accounts for about 12 percent of the total regional effort. The summary of tax assessments attributed to

each function shows the importance of reconciliation as an enforcement tool. For the region as a whole, tax assessments from reconciliation exceeded the assessments from field audit.

From the narrative highlights submitted with the data, most states report sending participants to the FTA training seminars and attending regional task force meetings. Other highlights from the narratives are as follows:

- Indiana reports several joint criminal investigations with IRS are continuing and nearing completion. Planning is under way for joint Federal and state audits of selected motor fuel taxpayers.
- Kentucky reports training has been completed for new auditors and an audit supervisor, with a consequent increase in audit activity and assessments.
- Illinois reports increased joint investigations with IRS in the Chicago area, including an undercover operation. The first motor fuel tax fraud trial was successfully prosecuted by the Illinois Attorney General's office during March 1993 and received good press coverage.
- Michigan reports a cooperative project with IRS on a model motor fuel tracking project now that the point of taxation for the Michigan and Federal fuel tax will be concentrated at the terminal level. Work is also under way on several joint audits with IRS.
- Wisconsin reported that the Excise Tax Field Audit Section discussed the Joint Project activities at the semiannual staff meeting in October 1992. Discussion included indicators of fraud, possible criteria for referring cases for criminal investigation, and results of previous criminal prosecutions. Plans were made for developing a new information pamphlet for special fuel taxpayers that would include the tax fraud referral hotline phone number.



Texas Task Force

The Texas Task Force, consisting originally of five states, was initiated in 1991 as one of the initial pilot regions for the Joint Project. Missouri joined the task force in December 1992 (Exhibit 40). The Texas Task Force generally meets twice a year (Exhibit 41). The 1991 and 1992 data from the participating

Exhibit 40. FHWA Funding Summary for Texas Task Force

State	MOU Signed	Funding Eff. Date	FY 91-92 Approp.	FY 92-94 ISTEPA	Total Obligated	Unobligated (6/30/94)
Texas*	24-Jan-91	27-Jul-92	\$ 50,000	\$300,000	\$350,000	\$0
Arkansas	15-Nov-90	01-Jul-92	10,496	150,000	160,496	0
Louisiana	29-Jan-91	10-Jul-92	12,098	150,000	162,098	0
Missouri	29-Dec-92	20-Jul-92		150,000	150,000	0
New Mexico	24-Jul-92	24-Jul-92	20,000	150,000	170,000	0
Oklahoma	22-Aug-90	03-Aug-92	20,000	150,000	170,000	0
Total			\$112,594	\$1,050,000	\$1,162,594	\$0

* Lead state.

Exhibit 41. Texas Task Force Meeting Calendar

<u>Meeting</u>	<u>Date</u>	<u>Location</u>
First Meeting*	August 7, 1990	Austin, Texas
Second Meeting*	October 15-18, 1990	Kerrville, Texas
Third Meeting*	March 21, 1991	Austin, Texas
Fourth Meeting	February 6, 1992	Austin, Texas
Fifth Meeting	August 18, 1992	Austin, Texas
Sixth Meeting	June 15, 1993	Austin, Texas
Seventh Meeting	January 25, 1994	Austin, Texas

* Meeting minutes available on request.

states were summarized in the previous reports to Congress [Ref. 1, 3]. The 1993 summary (Exhibit 42) includes the data for the period October 1992 through March 1993. Missouri, which joined the task force in the middle of this reporting period, will be included in the Texas Task Force summary for the next reporting period from April through September 1993.

All of the Part 1 data forms provided enough information to estimate the benefit-cost ratios for audit and examination activities. The benefit-cost ratio is the dollars of tax assessed per dollar spent on audits and reconciliations. For Oklahoma, the benefit-cost ratio is estimated based on tax plus interest and penalties, since the tax component of the assessments could not be segregated from interest and penalties in the state's summary reports. For Arkansas and Louisiana, the benefit-cost ratio was estimated for only a portion of the overall audit and examination effort because staff hours were not available for some components of the overall effort. For New Mexico, this is the first report that includes information on diesel fuel tax collection and enforcement from retailers. Prior to January 1, 1993, diesel fuel taxes were collected directly from motor carriers and other diesel fuel users based on the reported use of diesel fuel in the state.

All of the benefit-cost ratios calculated are favorable with tax assessments of at least \$4 per dollar spent (except for the Arkansas diesel fuel activities, which is based on reconciliation assessments only, and excludes over \$26,000 in field audit assessments since the field audit hours could not be provided). Because of the very high ratios for Texas, over \$40 assessed per dollar spent, the overall regional average is nearly \$30. Approximately \$10 million in tax was assessed for the six-month period for the five states tabulated (including the penalties and interest for Oklahoma).

Only Texas reported criminal investigations under way during the reporting period. Texas has had an aggressive criminal investigation and prosecution program for motor fuel tax fraud since 1989. Part of this effort included special funding for a centralized prosecution unit in Travis County (which includes the

Exhibit 42. Texas Task Force Motor Fuel Tax Enforcement Summary
(For the Reporting Period October 1992-March 1993)

State	Cost per Hour	No. Qtrs. Rptd.	Fuel	Rec./Audit Staff Hours	Assessment	Interest & Penalties	Assessment Plus Interest and Penalties	Tax/ Staff Hr.	B/C	B/C Including Int./Pen.	Crim. Inv.	
											Active Cases	Convicted
Texas	\$30	2	Gas	1,437	\$2,180,287	N/A	\$ 2,180,287&	\$1,517	50.5	N/A	23	1
(Lead state)	30		Diesel	4,688	5,280,652	N/A	5,280,652&	1,126	37.5	N/A	45	5
	30		Total	6,125	7,460,938	N/A	7,460,938&	1,218	40.6	N/A	50*	5*
Arkansas	12	2	Gas	781@	41,315@	N/A	41,315&	53	4.3	N/A	0	0
	12		Diesel	1,171@	1,470@	N/A	1,470&	1	0.1	N/A	0	0
	12		Total	1,952@	42,785@	N/A	42,785&	22	1.8	N/A	0	0
Louisiana	21	2	Gas	988+	196,569+	\$ 43,602	240,191	199	9.3	11.4	0	0
	21		Diesel	880+	74,718+	27,016	101,734	85	4.0	5.4	0	0
(est.)	21		Total	1,868+	271,307+	70,618	341,925	145	6.8	8.6	0	0
Oklahoma	25	2	Gas	1,838	N/A	N/A	734,946	N/A	N/A	16.0	0	0
	25		Diesel	8,768	N/A	N/A	1,146,491	N/A	N/A	5.2	0	0
	25		Total	10,606	N/A	N/A	1,881,437	N/A	N/A	7.1	0	0
New Mexico	18	2	Gas	2,661	446,596	108,187	554,783	168	9.3	11.6	0	0
	18		Diesel	591	99,243	226,186	325,429	168	9.3	30.6	0	0
	18		Total	3,252	545,839	334,373	880,212	168	9.3	15.0	0	0
Regional Total	21 (Avg.)		Gas	7,705	2,864,787	151,789	3,751,522	488	22.9	32.0	23	1
	21 (Avg.)		Diesel	16,098	5,456,083	253,202	6,855,776	744	34.8	31.3	45	5
	\$21 (Avg.)		Total	23,803	\$8,320,869	\$404,991	\$10,607,298	\$ 631	29.5	31.6	50*	5*

* Total is not additive for gas and diesel because some activities involving both fuels could not be separated by gas and diesel, and are included only in the total.

@ Hours and assessments for "Office Reconciliation" only. (Audit staff hours not available.)

+ Hours and assessments for "Field Audit" only. ("Office Reconciliation" staff hours not available.)

& Excludes interest and penalties.

B/C - Benefit-cost ratio, i.e. assessments divided by agency cost for reconciliations and audits. diesel, and are included only in the total.

state capital at Austin and where the majority of the motor fuel cases are prosecuted), and strengthened criminal penalties. Five specific motor fuel tax violations were upgraded from misdemeanor to second degree felony offenses, with possible prison sentences of 2 to 20 years. Through August 1992, 31 individuals had been indicted and 9 individuals convicted in motor fuel tax evasion cases. Fines and restitution of over \$4 million had been assessed. For the 6-month period ending March 1993, 5 individuals were convicted and 50 cases remain under investigation. The estimated tax loss from 6 cases prosecuted during the period was nearly \$5.8 million. An additional assessment of \$8.2 million of interest, fines, and penalties resulted from these cases. With an estimated cost of less than

Exhibit 43. Texas Task Force Motor Fuel Tax Enforcement Level of Effort
(For the Reporting Period October 1992-March 1993)

State	Fuel	Enforcement Staff Hours					Tax Assessed and Estimated Tax Loss From			
		Reconcile	Office Audit	Field Audit	Criminal Invest.	Total	Reconciliation	Office Audit	Field Audit	Criminal Invest.
Texas	Gas	0	0	1,437	0	1,437	\$ 0	\$ 0	\$2,180,287	\$2,643,901
	Diesel	0	0	4,688	1,305	5,993	0	0	5,280,652	3,154,742
	Total	0	0	6,125	4,049*	10,174*	0	0	7,460,938	5,798,643
Arkansas	Gas	781	0	N/A	0	781	41,315	0	19,260	
	Diesel	1,171	0	N/A	0	1,171	1,470	0	26,183	
	Total	1,952	0	N/A	0	1,952	42,785	0	45,443	
Louisiana	Gas	1,040	0	988	0	2,028	N/A	0	196,589	
	Diesel	147	0	880	0	1,027	N/A	0	74,718	
	Total	1,187	0	1,868	0	3,055	N/A	0	271,307	
Oklahoma	Gas	0	457	1,381	0	1,838	0	619,017	115,929	
	Diesel	2,707	311	5,750	0	8,768	76,313	154,754	915,424	
	Total	2,707	768	7,131	0	10,606	76,313	773,771	1,031,353	
New Mexico	Gas	1,390	0	1,271	0	2,661	88,105	0	358,491	
	Diesel	0	0	591	0	591	0	0	99,243	
	Total	1,390	0	1,862	0	3,252	88,105	0	457,734	
Regional	Gas	3,211	457	5,077	0	8,745	129,420	619,017	2,870,556	2,643,901
Total	Diesel	4,025	311	11,909	1,305	17,550	77,783	154,754	6,396,220	3,154,742
	Total	7,236	768	16,986	4,049*	29,039*	\$207,203	\$773,771	\$9,266,775	\$5,798,643

* Total is not additive for gas and diesel because some activities involving both fuels could not be separated by gas and diesel, and are included only in the total.

@ Includes interest and penalties.

\$50,000 for these cases, the return on the state's investment is over \$115 per dollar spent (counting only the fuel tax losses) and more than \$280 per dollar spent (counting tax, interest, fines, and penalties). As of September 1993, an additional fraud penalty of up to 75 percent of the tax, penalty, and interest can be assessed.

Exhibit 43 shows the staff hours devoted to reconciliation, office audit, field audit, and criminal investigation, and the resulting tax assessments (or estimated tax loss for criminal cases) attributed to each function. Field audit accounts for nearly 60 percent of the total fuel tax enforcement effort. Because of the substantial criminal investigation effort in Texas, hours devoted to criminal investigation account for about 14 percent of the total regional effort. The summary of tax assessments and tax losses attributed to each function shows the importance of criminal investigation to the overall effort. The estimated tax losses from six criminal cases in Texas account for more than a third of the identified tax deficiencies (civil assessments and estimated criminal tax loss) reported this period.



Nebraska Task Force (NETASK)

The Nebraska Task Force (NETASK) is one of the largest groups, with nine participating states (Exhibit 44).

Exhibit 44. FHWA Funding Summary for Nebraska Task Force (NETASK)

State	MOU Signed	Funding Eff. Date	FY 91-92 Approp.	FY 92-94 ISTE A	Total Obligated	Unobligated (6/30/94)
Nebraska*	29-Jun-92	12-Feb-92	\$25,000	\$ 300,000	\$ 325,000	\$0
Colorado	10-Jul-92	27-Jul-92		150,000	150,000	0
Iowa	03-Aug-92	09-Sep-92		150,000	150,000	0
Kansas	06-Jul-92	01-Aug-92		150,000	150,000	0
Minnesota	28-Aug-92	13-Jul-92		150,000	150,000	0
Montana	15-Oct-92	19-Aug-92		150,000	150,000	0
North Dakota	07-Jul-92	04-Aug-92		150,000	150,000	0
South Dakota	27-Jul-92	30-Jul-92		150,000	150,000	0
Wyoming	01-Jul-92	16-Jul-92		150,000	150,000	0
Total			\$25,000	\$1,500,000	\$1,525,000	\$0

* Lead state.

Exhibit 45. Nebraska Task Force (NETASK) Meeting Calendar

<u>Meeting</u>	<u>Date</u>	<u>Location</u>
First Meeting	May 15, 1992	Lincoln, Nebraska
Second Meeting	October 2, 1992	Omaha, Nebraska
Third Meeting	October 26-27, 1992	Omaha, Nebraska
Fourth Meeting*	May 17, 1993	Denver, Colorado
Fifth Meeting*	June 24-25, 1993	Omaha, Nebraska
Sixth Meeting*	January 20-21, 1994	Des Moines, Iowa
Seventh Meeting*	May 12-13, 1994	Minneapolis, Minnesota
Eighth Meeting	October 1994	Vail, Colorado

* Meeting minutes available on request.

The Nebraska Task Force (NETASK) meets three or four times a year as needed (Exhibit 45). All of the states submitted the first six-month data reports for the period October 1992 through March 1993 (Exhibit 46).

All of the Part 1 data forms provided enough information to estimate benefit-cost ratios for audit and examination activities, except in Colorado, which reported no completed audits or reconciliations during the period. The benefit-cost ratio is the dollars of tax assessed per dollar spent on audits and reconciliations. For Wyoming, which reported audit hours for "Combined" fuel types, the combined hours were split between gasoline and diesel for the purpose of calculating benefit-cost ratios for each fuel type. The hours were split in the ratio of the gallons of each fuel type taxed during the reporting period.

Most of the calculated benefit-cost ratios calculated are favorable. The average tax assessment for the eight states (excluding Colorado) is about \$3 tax assessed per dollar spent. In total, more than \$2.6 million of tax was assessed in the six-month period. Including interest and penalties, more than \$3.2 million was assessed.

With respect to criminal investigations, five states report active investigations with a total of eight cases under way. Iowa reports more involvement in investigating criminal cases since the FTA motor fuel tax training seminar in Omaha in February 1993. The state reported one conviction for the period.

Exhibit 47 shows the staff hours devoted to the reconciliation, office audit, field audit, and criminal investigation, and the resulting tax assessments (or estimated tax loss for criminal cases) attributed to each function. Field audit accounts for nearly 65 percent of the total fuel tax enforcement effort. The balance of the reported hours are split between reconciliation (27 percent) and criminal investigation (8 percent). The tax assessments are split roughly in half between field audit and office audit. Estimated tax losses of nearly \$57,000 from criminal cases were reported for Iowa and South Dakota.

Exhibit 46. Nebraska Task Force (NETASK) Motor Fuel Tax Enforcement Summary
(For the Reporting Period October 1992-March 1993)

State	Cost per Hour	No. Qtrs. Rptd.	Fuel	Rec./Audit Staff Hours	Assessment	Interest & Penalties	Assessment Plus Interest and Penalties	Tax/ Staff Hr.	B/C		Crim. Inv.	
									B/C	Int./Pen.	Active Cases	Con-victed
Nebraska (Lead state)	\$23	2	Gas	281	\$ 6,271	\$ 4,829	\$ 11,100	\$ 22	1.0	1.7	0	0
	23		Diesel	1,553	77,970	36,109	114,079	50	2.2	3.2	0	0
	23		Total	1,834	84,241	40,938	125,179	46	2.0	3.0	0	0
Colorado#	30	2	Gas	0	0	0	0	N/A	N/A	N/A	1	0
	30		Diesel	0	0	0	0	N/A	N/A	N/A	0	0
	30		Total	0	0	0	0	N/A	N/A	N/A	1	0
Iowa	22	2	Gas	2,017	236,743	47,349	284,092	117	5.3	6.4	0	0
	22		Diesel	1,183	116,763	23,353	140,116	99	4.5	5.3	2	1
	22		Total	3,200	353,506	70,702	424,208	110	5.0	6.0	2	1
Kansas	26	2	Gas	2,378	275,988	258,834	534,822	116	4.4	8.5	2	0
	26		Diesel	821	158,953	28,878	187,831	194	7.3	8.6	2	0
	26		Total	3,199	434,941	287,712	722,653	136	5.1	8.5	2*	0
Minnesota#	40	2	Gas	4,860	579,759	57,977	637,736	119	3.0	3.3	2	0
	40		Diesel	4,032	96,372	9,597	105,969	24	0.6	0.7	0	0
	40		Total	8,892	676,131	67,574	743,705	76	1.9	2.1	2	0
Montana#	14	2	Gas	1,038	181,708	79,631	261,339	175	12.4	17.9	0	0
	14		Diesel	9,309	115,432	17,763	133,195	12	0.9	1.0	0	0
	14		Total	10,347	297,140	97,394	394,534	29	2.0	2.7	0	0
North Dakota	24	2	Gas	1,249	135,383	65,074	200,457	108	4.5	6.6	0	0
	24		Diesel	1,249	257,891	31,500	289,391	206	8.5	9.6	0	0
	24		Total	2,498	393,274	96,574	489,848	157	6.5	8.1	0	0
South Dakota	21	2	Gas	939	38,441	0	38,441	41	1.9	1.9	0	0
	21		Diesel	1,920	193,399	0	193,399	101	4.8	4.8	0	0
	21		Total	2,859	231,840	0	231,840	81	3.9	3.9	0	0
Wyoming#	30	2	Gas	720	61,815	14,366	76,181	76	2.60	3.20	1	0
	30		Diesel	720	71,500	16,916	88,416	88	3.00	3.70	1	0
	30		Total	1,624*	133,315	31,282	164,597	82	2.8	3.4	1*	0
Regional Total	26 (Avg.)		Gas	13,482	1,516,108	528,060	2,044,168	112	4.4	5.9	6	0
	26 (Avg.)		Diesel	20,787	1,088,280	164,116	1,252,396	52	2.0	2.3	5	1
	\$26 (Avg.)		Total	34,453*	\$2,604,388	\$692,176	\$3,296,564	\$ 76	3.0	3.7	8*	1

* Total is not additive for gas and diesel because some activities involving both fuels could not be separated by gas and diesel, and are included only in the total.

Participates in more than one task force. Data is included in each regional total but only once in the national summary.

@ Hours for combined audits are split between gasoline and diesel for calculating the B/C ratio.

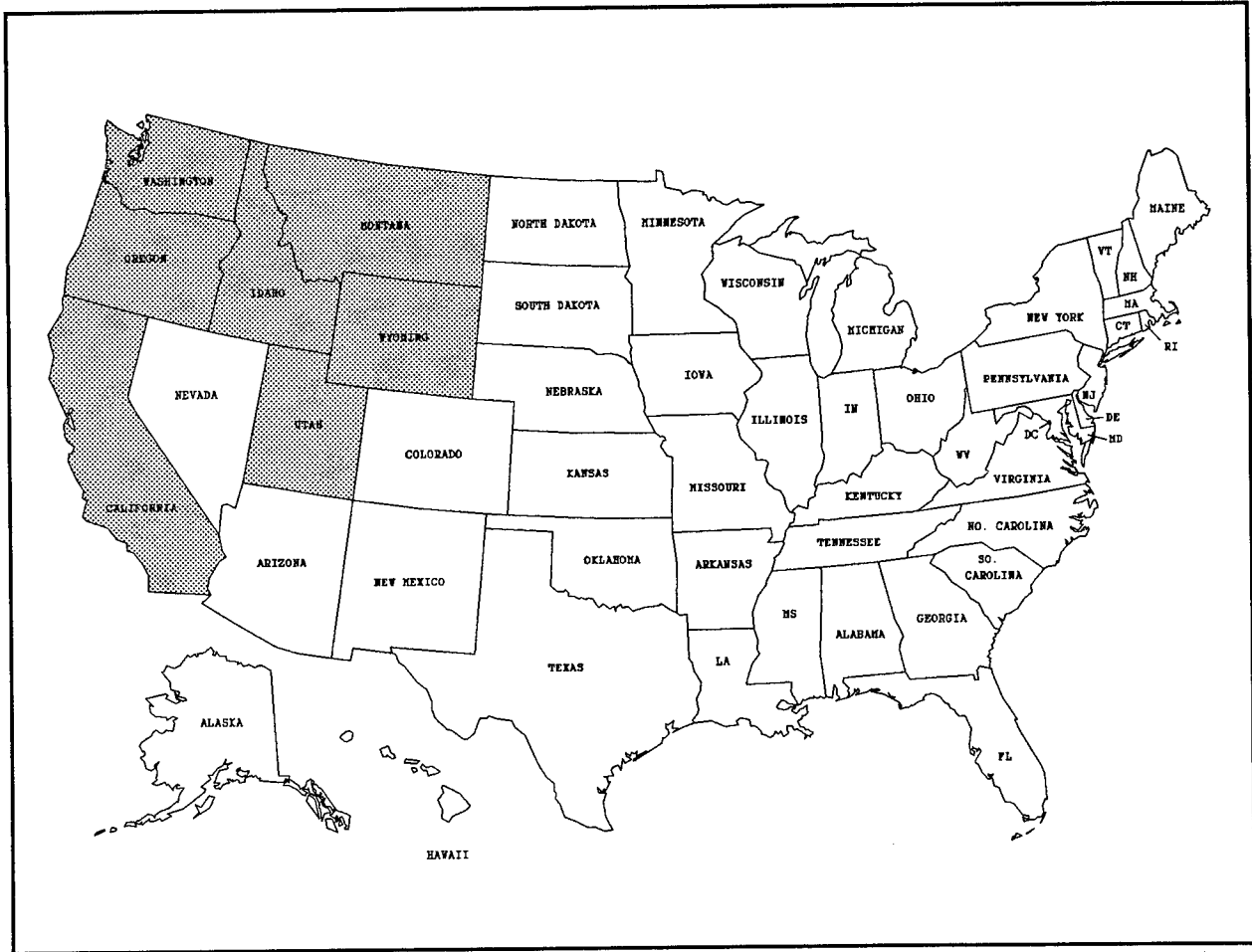
B/C - Benefit-cost ratio, i.e. assessments divided by agency cost for reconciliations and audits. diesel, and are included only in the total.

**Exhibit 47. Nebraska Task Force (NETASK) Motor Fuel Tax Enforcement
Level of Effort (For the Reporting Period October 1992-March 1993)**

State	Fuel	Enforcement Staff Hours					Tax Assessed and Estimated Tax Loss From			
		Reconcile	Office Audit	Field Audit	Criminal Invest.	Total	Reconcil- iation	Office Audit	Field Audit	Criminal Invest.
Nebraska	Gas	0	0	281	0	281	\$ 0	\$0	\$ 6,271	
(Lead)	Diesel	0	0	1,553	18	1,571	0	0	77,970	
	Total	0	0	1,834	888*	2,722*	0	0	84,241	
Colorado#	Gas	0	0	0	0	0	0	0	0	
	Diesel	0	0	0	0	0	0	0	0	
	Total	0	0	0	350*	350*	0	0	0	
Kansas	Gas	2,364	0	14	0	2,378	275,988	0	0	
	Diesel	124	0	697	0	821	24,009	0	134,944	
	Total	2,488	0	711	270*	3,469*	299,997	0	134,944	
Iowa	Gas	743	0	1,274	0	2,017	115,901	0	120,842	
	Diesel	0	0	1,183	211	1,394	0	0	116,763	\$ 6,114
	Total	743	0	2,457	211	3,411	115,901	0	237,605	6,114
Minnesota#	Gas	1,980	0	2,880	317	5,177	159,904	0	419,855	
	Diesel	0	0	4,032	164	4,196	0	0	96,372	
	Total	1,980	0	6,912	711*	9,603*	159,904	0	516,227	
Montana#	Gas	1,038	0	0	0	1,038	181,708	0	0	
	Diesel	1,040	0	8,269	0	9,309	87,850	0	27,582	
	Total	2,078	0	8,269	0	10,347	269,558	0	27,582	
North Dakota	Gas	624	0	625	0	1,249	130,000	0	5,853	
	Diesel	624	0	625	0	1,249	225,000	0	32,891	
	Total	1,248	0	1,250	0	2,498	355,000	0	38,744	
South Dakota	Gas	0	0	939	0	939	0	0	38,441	852
	Diesel	0	0	1,920	0	1,920	0	0	193,399	49,717
	Total	0	0	2,859	40*	2,899*	0	0	231,840	50,569
Wyoming#	Gas	720	0	0	0	720	35,790	0	26,025	
	Diesel	720	0	0	0	720	45,474	0	26,025	
	Total	1,440	0	184*	560*	2,184*	81,264	0	52,050	
Regional	Gas	7,469	0	6,013	317	13,799	899,291	0	617,287	852
Total	Diesel	2,508	0	18,279	393	21,180	382,333	0	705,946	55,831
	Total	9,977	0	24,476*	3,030*	37,483*	\$1,281,624	\$0	\$1,323,233	\$56,683

* Total is not additive for gas and diesel because some activities involving both fuels could not be separated by gas and diesel, and are included only in the total.

Participates in more than one task force. Data is included in each regional total but counted only once in the national summary.



Northwest Task Force

The Northwest Task Force, with Oregon as the lead state, began with six states in 1992 and added California in 1993 (Exhibit 48). Alaska has also been invited to join.

Exhibit 48. FHWA Funding Summary for Northwest Task Force

State	MOU Signed	Funding Eff. Date	FY 91-92 Approp.	FY 92-94 ISTE A	Total Obligated	Unobligated (6/30/94)
Oregon*	20-Jul-92	28-Jul-92	\$25,000	\$ 188,000	\$ 213,000	\$112,000
Alaska						150,000
California	04-Jan-93	05-Aug-92	25,000	300,000	325,000	
Idaho	20-Nov-92	24-Nov-92		150,000	150,000	0
Montana	27-Jul-92	19-Aug-92		150,000	150,000	0
Utah	23-Jul-92	11-Aug-92		150,000	150,000	0
Washington	23-Jul-92	18-Aug-92		150,000	150,000	0
Wyoming	27-Oct-92	16-Jul-92		150,000	150,000	0
Total			\$50,000	\$1,238,000	\$1,288,000	\$262,000

* Lead state.

Exhibit 49. Northwest Task Force Meeting Calendar

<u>Meeting</u>	<u>Date</u>	<u>Location</u>
First Meeting	May 31, 1992	Austin, Texas
Second Meeting	November 30- December 2, 1992	Olympia, Washington
Third Meeting	September 8-9, 1993	Portland, Oregon
Fourth Meeting*	June 29, 1994	Cheyenne, Wyoming

* Meeting minutes available upon request.

The Northwest Task Force generally meets twice a year (Exhibit 49). All of the states in the Northwest Task Force submitted the first six-month data reports for the period October 1992 through March 1993. The data for the original six states in the task force are summarized in Exhibit 50. The regional summary for the next reporting period will also include the data from California, which joined the task force in 1993. All of the Part 1 data forms provided information to estimate the benefit-cost ratios for audit and examination activities. The benefit-cost ratio is the dollars of tax assessed per dollar spent on audits and reconciliations. For Oregon and Utah, which did not provide an estimate of hourly audit cost, the overall regional average was used. For Washington and Wyoming, which reported audit or reconciliation hours for "Combined" fuel types, the combined hours were split between gasoline and diesel so that all hours would be accounted for in calculating the benefit-cost ratios for each fuel type. The hours were split in the ratio of the gallons of each fuel taxed during the period.

Most of the calculated benefit-cost ratios are favorable with tax assessments ranging from about \$2 per dollar spent to over \$25 per dollar spent. (One exception was the Utah audits and reconciliations of gasoline returns, which resulted in a net refund of tax). The average tax assessment for all six states is about \$7.50 tax assessed per dollar spent. In total, over \$5 million of tax was assessed in the six-month period, and an additional \$0.5 million in penalties and interest was assessed.

With respect to criminal investigations, three states (Utah, Washington, and Wyoming) reported active investigations, but none have yet reached the indictment or prosecution stage. A total of seven cases were active as of the end of the reporting period, all of them involving both gasoline and diesel fuels.

Exhibit 51 shows the staff hours devoted to the reconciliation, office audit, field audit, and criminal investigation, and the resulting tax assessments (or estimated tax loss for criminal cases) attributed to each function. Field audit accounted for about 62 percent of the total regional fuel tax enforcement effort. Criminal investigation accounted for about 5 percent, with the balance split between reconciliation and office audit.

Exhibit 50. Northwest Task Force Motor Fuel Tax Enforcement Summary
(For the Reporting Period October 1992-March 1993)

State	Cost per Hour	No. Qtrs. Rptd.	Rec./Audit Staff Fuel Hours	Assessment	Interest & Penalties	Assessment Plus Interest and Penalties	Tax/ Staff Hr.	B/C		Crim. Inv.	
								B/C	Incl. Int./Pen.	Active Cases	Con-victed
Oregon#	\$23	2	Gas 4,623	\$1,109,122	\$ 38,322	\$1,147,444	\$240	10.6	10.9	0	0
(Lead state)	23		Diesel 289	100,321	14,512	114,833	347	15.3	17.5	0	0
(est.)	23		Total 4,912	1,209,443	52,834	1,262,277	246	10.8	11.3	0	0
Idaho	17	2	Gas 1,316	43,674	4,457	48,131	33	1.9	2.1	0	0
	17		Diesel 1,068	184,773	3,228	188,001	173	10.1	10.3	0	0
	17		Total 2,384	228,447	7,685	236,132	96	5.6	5.8	0	0
Montana#	14	2	Gas 1,038	181,708	79,631	261,339	175	12.4	17.9	0	0
	14		Diesel 9,309	115,432	17,763	133,195	12	0.9	1.0	0	0
	14		Total 10,347	297,140	97,394	394,534	29	2.0	2.7	0	0
Utah#	31	2	Gas 1,626	(36,950)	0	(36,950)	(23)	-0.7	-0.7	3	0
	31		Diesel 897	263,986	0	263,986	294	9.6	9.6	3	0
(est.)	31		Total 2,523	227,036	0	227,036	90	2.9	2.9	3*	0
Washington	30	2	Gas 986	1,693,650	146,300	1,839,950	746	24.9@	27.0@	3	0
	30		Diesel 5,369	1,212,400	211,450	1,423,850	222	7.4@	8.7@	3	0
	30		Total 7,726*	2,906,050	357,750	3,263,800	376	12.5	14.1	3*	0
Wyoming#	30	2	Gas 720	61,815	14,366	76,181	76	2.6@	3.2@	1	0
	30		Diesel 720	71,500	16,916	88,416	88	3.0@	3.7@	1	0
	30		Total 1,624*	133,315	31,282	164,597	82	2.8	3.4	1*	0
Regional Total	23 (Avg.)		Gas 10,309	3,053,019	283,076	3,336,095	261	11.5@	12.6@	7	0
	23 (Avg.)		Diesel 17,652	1,948,412	263,869	2,212,281	109	4.8@	5.5@	7	0
	\$23 (Avg.)		Total 29,516*	\$5,001,431	\$546,945	\$5,548,376	\$169	7.5	8.3	7*	0

* Total is not additive for gas and diesel because some activities involving both fuels could not be separated by gas and diesel, and are included only in the total.

Participates in more than one task force. Data is included in each regional total but only once in the national summary.

@ Hours for combined audits are split between gasoline and diesel for calculating the B/C ratio.

B/C - Benefit-cost ratio, i.e. assessments divided by agency cost for reconciliations and audits. diesel, and are included only in the total.

Field audit accounted for more than 70 percent of the tax assessments during the period.

From the narratives accompanying the data reports, most states report sending participants to the FTA training seminars and attending regional task force meetings. Other highlights from the narratives are as follows:

- Oregon reports conducting several joint audits with the IRS excise tax examiners.

Exhibit 51. Northwest Task Force Motor Fuel Tax Enforcement Level of Effort
(For the Reporting Period October 1992-March 1993)

State	Fuel	Enforcement Staff Hours					Tax Assessed and Estimated Tax Loss From			
		Reconcile	Office Audit	Field Audit	Criminal Invest.	Total	Reconcil-iation	Office Audit	Field Audit	Criminal Invest.
Oregon# (Lead)	Gas	61	1,807	2,755	0	4,623	\$341,223	\$684,479	\$ 83,420	
	Diesel	229	0	60	0	289	24,268	0	76,053	
	Total	290	1,807	2,815	0	4,912	365,491	684,479	159,473	
Idaho	Gas	1,116	72	128	0	1,316	0	32,680	10,994	
	Diesel	132	56	880	0	1,068	0	3,603	181,170	
	Total	1,248	128	1,008	0	2,384	0	36,283	192,164	
Montana#	Gas	1,038	0	0	0	1,038	181,708	0	0	
	Diesel	1,040	0	8,269	0	9,309	87,850	0	27,582	
	Total	2,078	0	8,269	0	10,347	269,558	0	27,582	
Utah#	Gas	1,140	0	486	0	1,626	(28,144)	0	(8,805)	
	Diesel	1	0	896	0	897	2,512	0	261,474	
	Total	1,141	0	1,382	544*	3,067*	(25,632)	0	252,669	
Washington	Gas	960	0	26	0	986	32,500	0	1,661,150	
	Diesel	190	920	4,259	0	5,369	0	24,000	1,188,400	
	Total	1,150	920	5,656*	325*	8,051*	32,500	24,000	2,849,550	
Wyoming#	Gas	720	0	0	0	720	35,790	0	26,025	
	Diesel	720	0	0	0	720	45,474	0	26,025	
	Total	1,440	0	184*	560*	2,184*	81,264	0	52,050	
Regional	Gas	5,035	1,879	3,395	0	10,309	563,077	717,159	1,772,784	
Total	Diesel	2,312	976	14,364	0	17,652	160,104	27,603	1,760,704	
	Total	7,347	2,855	19,314*	1,429*	30,945*	\$723,181	\$744,762	\$3,533,488	

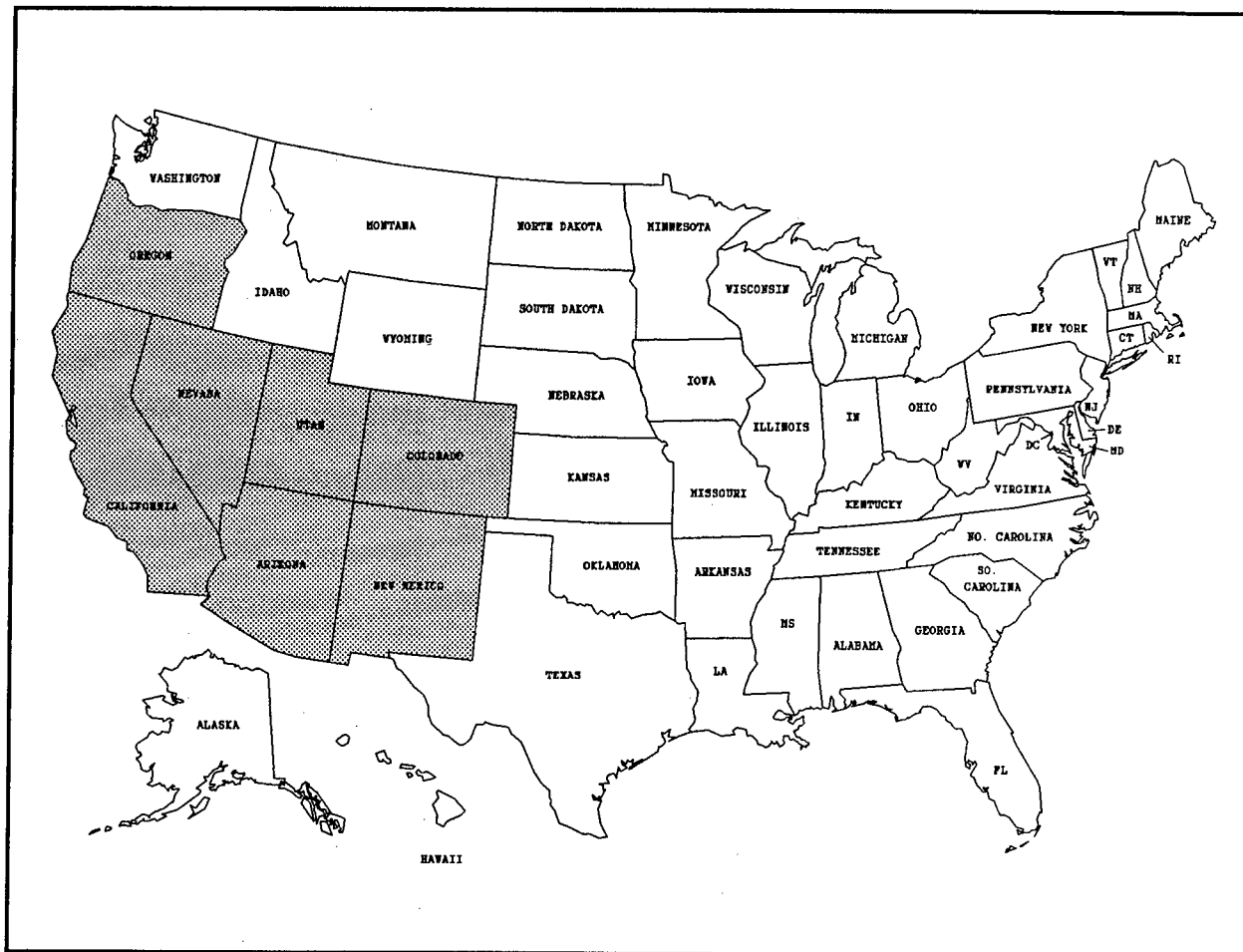
* Total is not additive for gas and diesel because some activities involving both fuels could not be separated by gas and diesel, and are included only in the total.

Participates in more than one task force. Data is included in each regional total but counted only once in the national summary.

- Idaho reports hiring one additional clerical staff to reconcile reports of the fuel tax distributors with pipeline reports. Training is under way for this person, and additional revenue assessments are expected in the next reporting period.
- Montana reports that joint audits with IRS have been undertaken. The state also participates actively in the FTA Motor Fuel Section Uniformity Committee.
- Utah reports hiring a designated employee for fuel tax criminal investigations. One case is under investigation in cooperation with IRS and the Department of Transportation Office of Inspector General, and another intrastate case may

be presented to a local county attorney for a criminal complaint.

- Washington reports that a Fuel Tax Investigator position has been created and filled effective March 1, 1993. Three cases are under investigation in cooperation with IRS. A large-scale surveillance project was conducted during the summer of 1993 on fuel shipments into the state.
- Wyoming participated in a joint investigation with Colorado, Nebraska, and IRS, which resulted in the indictment of two individuals in April 1993.



California Task Force

The California Task Force was initiated with four states in 1992. Three states from neighboring task forces joined in 1993 and 1994

Exhibit 52. FHWA Funding Summary for California Task Force

State	MOU Signed	Funding Eff. Date	FY 91-92 Approp.	FY 92-94 ISTE A	Total Obligated	Unobligated (6/30/94)
California*	04-Aug-92	05-Aug-92	\$25,000	\$ 300,000	\$ 325,000	\$ 0
Arizona	22-Oct-92	07-Aug-92		150,000	150,000	0
Colorado	23-Aug-93	27-Jul-92		150,000	150,000	0
Hawaii						150,000
Nevada	08-Oct-92	19-Nov-92		150,000	150,000	0
New Mexico	02-May-94	24-Jul-92	20,000	150,000	170,000	0
Oregon	19-May-93	28-Jul-92	25,000	188,000	213,000	112,000
Utah	26-Oct-92	11-Aug-92		150,000	150,000	0
Total			\$70,000	\$1,238,000	\$1,308,000	\$262,000

* Lead state.

Exhibit 53. California Task Force Meeting Calendar

<u>Meeting</u>	<u>Date</u>	<u>Location</u>
First Meeting*	August 28, 1992	Sacramento, California
Second Meeting*	October 8, 1992	Carson City, Nevada
Third Meeting*	January 14-15, 1993	Phoenix, Arizona
Fourth Meeting*	May 5, 1993	Salt Lake City, Utah
Fifth Meeting	September 8-9, 1993	Portland, Oregon
Sixth Meeting*	January 12, 1994	Tempe, Arizona
Seventh Meeting*	June 29, 1994	Cheyenne, Wyoming

* Meeting minutes available on request.

for a total of seven participating states (Exhibit 52). Hawaii has also been invited to join.

The California Task Force generally meets quarterly (Exhibit 53). All of the states in the California Task Force submitted the required six-month report for the period October 1992 through March 1993. The data forms are summarized in Exhibit 54. New Mexico, the most recent addition to the task force, will be included in the next data summary.

The data from Part 1 are used to produce the estimated benefit-cost ratios for audit and examination activities. All of the states, except Colorado, reported completed audit and examination activities that were used to calculate benefit-cost ratios. Since penalties and interest could not be separated from tax assessments for diesel fuel in California, only the benefit-cost ratio including penalties and interest was calculated for the California diesel fuel data. The benefit-cost ratio is the dollars of tax assessed, or tax plus interest and penalties, per dollar spent on audits and reconciliations. For states that did not provide an estimate of hourly audit cost (Oregon and Utah), the overall average of \$31 per hour was used.

All of the benefit-cost ratios calculated are very favorable with tax assessments of at least \$2 per dollar spent (except for the Utah audits and reconciliations of gasoline returns, which resulted in refunds of tax). The average tax assessment for all five states (excluding California diesel fuel assessments) is about \$14 tax assessed per dollar spent. In total, more than \$8.2 million of tax was assessed in the six-month period (excluding California diesel fuel tax). Counting California diesel fuel tax and all interest and penalties, more than \$24 million was assessed. California reports extraordinary success of a greatly expanded audit program for special use fuel tax, with nearly \$12 million assessed as a result of 135 audits. The estimated benefit-cost ratio for this effort is \$114 assessed per dollar spent.

With respect to criminal investigations, Colorado and Utah reported active investigations, with a total of three cases.

Exhibit 54. California Task Force Motor Fuel Tax Enforcement Summary
(For the Reporting Period October 1992-March 1993)

State	Cost per Hour	No. Qtrs. Rptd.	Rec./Audit Fuel	Staff Hours	Assessment	Interest & Penalties	Assessment Plus Interest and Penalties	Tax/ Staff Hr.	B/C	B/C Including		Crim. Inv. Active Con-	
										Int./Pen.	Cases	victed	
California# (Lead state)	\$28	2	Gas	3,234	\$4,967,527	\$3,742,154	\$ 8,709,681	\$1,536	54.9	96.2	0	0	
	28		Diesel	3,732	N/A	N/A	11,919,328	N/A	N/A	114.1	0	0	
	28		Total	6,966	4,967,527	3,742,154	20,629,009	N/A	N/A	105.8	0	0	
Arizona	35	2	Gas	2,812	1,106,618	237,301	1,343,919	394	11.2	13.7	0	0	
	35		Diesel	1,268	83,812	16,763	100,575	66	1.9	2.3	0	0	
	35		Total	4,080	1,190,430	254,064	1,444,494	292	8.3	10.1	0	0	
Colorado#	30	2	Gas	0	0	0	0	N/A	N/A	N/A	1	0	
	30		Diesel	0	0	0	0	N/A	N/A	N/A	0	0	
	30		Total	0	0	0	0	N/A	N/A	N/A	1	0	
Nevada	30	2	Gas	1,371	275,245	53,106	328,351	201	6.7	8.0	0	0	
	30		Diesel	2,656	334,971	45,537	380,508	126	4.2	4.8	0	0	
	30		Total	4,027	610,216	98,643	708,859	152	5.1	5.9	0	0	
Oregon# (est.)	23	2	Gas	4,623	1,109,122	38,322	1,147,444	240	10.6	10.9	0	0	
	23		Diesel	289	100,321	14,512	114,833	347	15.3	17.5	0	0	
	23		Total	4,912	1,209,443	52,834	1,262,277	246	10.8	11.3	0	0	
Utah# (est.)	31	2	Gas	1,626	(36,950)	0	(36,950)	(23)	-0.7	-0.7	3	0	
	31		Diesel	897	263,986	0	263,986	294	9.6	9.6	3	0	
	31		Total	2,523	227,036	0	227,036	90	2.9	2.9	3*	0	
Regional Total	31 (Avg.)		Gas	13,666	7,421,562	4,070,883	11,492,445	543	17.7	27.3	4	0	
	31 (Avg.)		Diesel	8,842	783,090	76,812	12,779,230	153	5.0	47.0	3	0	
	\$31 (Avg.)		Total	22,508	\$8,204,652	\$4,147,695	\$24,271,675	\$ 437	14.2	35.1	4*	0	

* Total is not additive for gas and diesel because some activities involving both fuels could not be separated by gas and diesel, and are included only in the total.

Participates in more than one task force. Data is included in each regional total but only once in the national summary.

B/C - Benefit-cost ratio, i.e. assessments divided by agency cost for reconciliations and audits. diesel, and are included only in the total.

Exhibit 55 shows the staff hours devoted to reconciliation, office audit, field audit, and criminal investigation, and the resulting tax assessments (or estimated tax loss for criminal cases) attributed to each function. Field audit accounted for about 65 percent of the total regional fuel tax enforcement effort. Criminal investigation accounted for about 4 percent, with the balance split between reconciliation and office audit. Field audit accounted for more than 75 percent of the tax assessments during the period.

From the narrative portion of the form, most states report sending participants to the FTA training seminars and attending

Exhibit 55. California Task Force Motor Fuel Tax Enforcement Level of Effort
(For the Reporting Period October 1992-March 1993)

State	Fuel	Enforcement Staff Hours					Tax Assessed and Estimated Tax Loss From			
		Reconcile	Office Audit	Field Audit	Criminal Invest.	Total	Reconciliation	Office Audit	Field Audit	Criminal Invest.
California# (Lead)	Gas	0	0	3,234	0	3,234	\$ 0	\$ 0	\$4,967,527	
	Diesel	0	0	3,732	0	3,732	0	0	N/A	
	Total	0	0	6,966	0	6,966	0	0	4,967,527	
Arizona	Gas	1,080	1,020	712	0	2,812	621,812	(40,306)	525,112	
	Diesel	500	233	535	0	1,268	0	82,831	981	
	Total	1,580	1,253	1,247	0	4,080	621,812	42,525	526,093	
Colorado#	Gas	0	0	0	0	0	0	0	0	
	Diesel	0	0	0	0	0	0	0	0	
	Total	0	0	0	350*	350*	0	0	0	
Nevada	Gas	1,268	0	103	0	1,371	218,655	0	56,590	
	Diesel	0	0	2,656	0	2,656	0	0	334,971	
	Total	1,268	0	2,759	0	4,027	218,655	0	391,561	
Oregon#	Gas	61	1,807	2,755	0	4,623	341,223	684,479	83,420	
	Diesel	229	0	60	0	289	24,268	0	76,053	
	Total	290	1,807	2,815	0	4,912	365,491	684,479	159,473	
Utah#	Gas	1,140	0	486	0	1,626	(28,144)	0	(8,805)	
	Diesel	1	0	896	0	897	2,512	0	261,474	
	Total	1,141	0	1,382	544*	3,067*	(25,632)	0	252,669	
Regional	Gas	3,549	2,827	7,290	0	13,666	1,153,546	644,173	5,623,844	
Total	Diesel	730	233	7,879	0	8,842	26,780	82,831	673,479	
	Total	4,279	3,060	15,169	894*	23,402*	\$1,180,326	\$727,004	\$6,297,323	

* Total is not additive for gas and diesel because some activities involving both fuels could not be separated by gas and diesel, and are included only in the total.

Participates in more than one task force. Data is included in each regional total but counted only once in the national summary.

regional task force meetings. Other highlights from the narratives are as follows:

- California reports that the January 1993 regional task force meeting in Phoenix, Arizona, included a terminal tour to improve understanding of terminal operations. In addition to regional task force meetings, several meetings have been held with the five IRS district offices to provide for the organization and exchange of information. The legislature funded 50 new positions for a diesel fuel and sales tax compliance project. A special enforcement section has been established and staffed. A training course has been developed for the supervisors and lead auditors. The Part 1 data report

is based on the excise tax on gasoline and special fuels (Use Fuel Tax). Sales tax on motor fuels was not included but may be included in future reports.

- Arizona reports that, in October 1992, the Arizona DOT established a seven-member team dedicated to audits of fuel distributors. Effective January 1, 1993, improved licensing controls were implemented. All applicants renewing or requesting new distributor license tax accounts are asked to complete a five-page application form. A separate format has been developed for "Individual Sole Proprietorships," "Corporations," and "General or Limited Partnerships." A copy of the form used for "General or Limited Partnerships" is provided in Appendix 16 as an example. Similar forms are used for the other types of applicants. The forms are reviewed by audit and recommended for acceptance or rejection. In February 1993, Arizona and Nevada audit staff conducted a joint audit of an Arizona distributor. To improve audit staff understanding of the petroleum industry, audits of major oil suppliers are scheduled in the coming year. Diesel fuel price software has been evaluated by audit staff and was found to be a useful tool for monitoring fuel price trends and identifying potential areas for investigation.
- Oregon reports conducting several joint audits with the IRS excise tax examiners.
- Nevada and Arizona audit staff, as mentioned above, conducted a joint audit of an Arizona distributor in February 1993.
- Utah reports hiring a designated employee for fuel tax criminal investigations. One case is under investigation in cooperation with IRS and the Department of Transportation Office of Inspector General, and another intrastate case may be presented to a local county attorney for a criminal complaint.

Chapter 5 Future Program Activities

Overall, the data summarized in this report present a very impressive picture of efforts to improve compliance with Federal and state motor fuel taxes. By every measure, the progress is positive--substantial tax assessments resulting from audit and examination activities, increasing numbers of indictments and convictions for criminal fraud, growing resources and staffing dedicated to the effort, better trained and equipped personnel, more state enforcement agencies participating in the regional task forces.

With all measures of success showing positive results, fuel tax evasion should be decreasing. In fact, preliminary reports from the states concerning increases in diesel fuel tax revenues for the first few months since the EPA and IRS fuel dyeing requirements went into effect suggest that this is the case. For the 4-month period, January through April 1994, 11 states showed double-digit percentage increases in the reported use of special fuels. An additional six states showed double-digit increases for the first three months of the year compared to 1993. Because of the commingled effects of increased consumption and changes in tax administration, however, not all of these increases can be attributed to improved enforcement. While the trend is promising, it cannot be taken as an absolute indicator of the effect of increased fuel tax compliance activity at the Federal and state levels.

On the other hand, the increased fuel tax rates authorized by Congress, effective October 1, 1993, provide an even greater incentive to cheat. If taxes were evaded on the same number of gallons annually before and after October 1, tax evasion losses would actually increase by about \$300 million in 1994. The previous FHWA estimate of \$1.3 billion in annual Federal motor fuel excise tax losses [Ref. 1] would grow to \$1.6 billion, with about \$1.1 billion of that lost to the Highway Trust Fund and the remainder lost to the Federal general revenue account for deficit reduction. To put that figure into perspective, FHWA's annual contribution to the fuel tax compliance effort of \$5 million would be equal to less than the Federal fuel tax evasion losses that occur every two days.

It would be premature to declare victory in our effort to eliminate motor fuel tax evasion. In most areas of the country, regional task forces to address the issue were organized only within the past year. Cooperative state and Federal efforts to fight motor fuel tax evasion are still in the very early stages of development. Some very disturbing evidence of motor fuel tax evasion continues to be discovered. For example, the number of motor fuel tax criminal investigations initiated by IRS in 1992 and 1993 skyrocketed to over 100 cases nationwide from an average of about 35 per year for the previous 3 years. The prominent involvement of the so-called Russian Mafia in these schemes is particularly disturbing. Much remains to be done. The Federal

requirements to dye high-sulfur and tax-exempt diesel fuel provide another opportunity to improve compliance.

Dyed Diesel Fuel Enforcement Programs

With the transition to a new point of taxation and fuel dyeing, evasion schemes will also change. It is not difficult to envision the types of evasion schemes that will become more prevalent after the dyed fuel programs and imposition of tax at the terminal are fully implemented under the final regulations issued in 1994. Many of these are problems now and are likely to grow in significance as other schemes, such as daisy chains and diversion of tax-free fuel to highway use, become more difficult. Schemes such as those described below will continue to require traditional criminal investigation methods.

Undoubtedly, there will be attempts to remove or dilute the dye. Canadian provinces have experienced several rather significant schemes to remove dye [Ref. 6]. Blending of nontaxed products into taxable fuel to evade the tax will likely increase. A prime example is the situation with kerosene, a common blend stock for diesel and home heating fuel in cold climates. Under the IRS temporary regulations [Ref. 7], kerosene is not treated as diesel fuel and is not taxed. However, the regulations require any user who blends kerosene into taxed diesel fuel to pay tax on the kerosene volume. Future IRS rules will respond to comments on how kerosene should be treated.

Daisy chain activity at the wholesale level is eliminated with the change in the point of taxation to the terminal. The possibility of daisy chains operating within the terminal is also greatly reduced by the position holder rule, which clearly establishes the tax liability upon removal of fuel from the terminal. Organized crime, however, may attempt to increase its presence within the terminal fuel storage system. If this occurs, there may be an increase in gasoline tax evasion, as well as in diesel fuel tax evasion. Other schemes may seek to avoid moving fuel through the terminal at all, thereby completely avoiding the taxation point. This could be done, for example, by offloading fuel at unregulated locations from waterborne carriers or by importing by truck across international borders.

Opportunities for refund fraud with the Ultimate Vendor and Ultimate Purchaser situation may also increase. The new refund provisions for diesel fuel tax are discussed on page 14. Finally, as the Federal law becomes more stringent, fraudulent activity on state motor fuel taxes may become more attractive.

For the coloring or marking programs to be effective, a concerted effort by state and Federal agencies and the petroleum industry will be needed. In the FHWA report to Congress on the feasibility and desirability of using motor fuel dyes and markers to reduce consumer fraud and motor fuel tax evasion [Ref. 4], motor fuel coloring, in combination with other compliance measures, was found to be a cost-effective strategy for

increasing fuel tax collections, but it is not a substitute for a strong enforcement program. Dyeing the tax-exempt fuel can be an effective enforcement tool since it makes everyone, who is involved in diverting it to a taxable use, a knowing participant in the crime, and because it will be easier for competitors and associates to identify and report tax fraud abuses. However, the estimated enforcement costs associated with fuel coloring, as discussed in the report, are substantial (Exhibit 56). Four principal enforcement programs would be needed: fuel check of motor carriers, dye enforcement at the terminal, random check of end users who use both dyed and undyed fuel, and administration and review of refund claims for exempt or tax-reduced uses of undyed diesel fuel. Since Congress did not authorize resources specifically for these programs, state and Federal agencies and the industry will need to work together to implement effective enforcement mechanisms.

Enforcement Strategy	Suggested Agency	Estimated Cost (Annual)
Fuel check of motor carriers	MCSAP	\$10,335,000
Dye enforcement at the terminal	IRS	13,737,000
Random check of end users	IRS	29,600,000
Process and audit refund claims	IRS	18,200,000
Total		\$71,872,000

For example, the report identified the Motor Carrier Safety Assistance Program (MCSAP) as a logical way to enforce the restrictions on using the dyed or marked fuels for over-the-road motor carriers with diesel engines. The study proposed adding a fuel tank inspection to 1 in 5 trucks currently inspected under the MCSAP program. Such a program was estimated to cost \$10.3 million annually for the necessary testing equipment, additional staff time to take samples, and supplementary lab tests for samples that fail the visible inspection. Legislative authority would be needed to include motor fuel inspections as an eligible expense under MCSAP, and supplemental funding would need to be authorized to cover the estimated additional costs of the fuel inspections. State statutory changes would also be needed to define violations and penalty provisions for improper use of dyed or marked fuel in highway vehicles.

State Coordination with Federal Procedures

As discussed in Chapter 3, the Federal dyed fuel programs of EPA and IRS will have an impact on state taxation of special fuel, which may require administrative or legislative changes in procedures. Issues that the states will need to address include:

- procedures for allowing tax-free sales to purchasers who are exempt from state motor fuel tax, in particular for states that formerly had accepted Federal exemption certificates that have now been eliminated;
- whether to exempt dyed fuel from state motor fuel tax;
- whether to consider changes in the point of taxation to match Federal taxation at the terminal level;
- whether to modify recordkeeping requirements for reporting and tracking sales and use of dyed tax-exempt fuel; and
- if dyed fuels are exempt from state motor fuel taxes, how to prohibit and enforce restrictions on using dyed fuel on the highway for taxable purposes.

State authorizing legislation and a penalty structure, similar to that enacted in Indiana, would also be needed in most states to prohibit and penalize the use of dyed fuel for taxable highway purposes. Two additional states (Montana and Wisconsin) already enacted dyed fuel restrictions and penalties in 1993. The Uniform Legislation subcommittee of the FTA Motor Fuel Section Uniformity Committee agreed at the December 1993 meeting to develop suggested state authorizing language to assist other states in considering such legislation. Legislative proposals are under consideration in several states and the status will be included in future reports to Congress on the Joint Project.

Motor Fuel Tax Training Programs

FTA and FHWA entered a contract in May 1994 for additional fuel tax training courses. The contract provides for FTA to update the materials used in the basic motor fuel tax evasion training courses conducted in 1992 and 1993, and to offer two presentations of the basic course during 1994. The contract further provides for development of an advanced course focusing on criminal investigation, automated records analysis, and advanced audit techniques. IRS and state motor fuel tax specialists will assist FTA in developing the course curriculum and resource materials. The course will be available for presentation beginning in 1995.

REFERENCES

1. Federal Highway Administration, "Fuel Tax Evasion and the Joint Federal/State Motor Fuel Tax Compliance Project," FHWA-PL-92-028, U.S. Department of Transportation, 1992.
2. Federal Highway Administration, "The Joint Federal/State Motor Fuel Tax Compliance Project, Fiscal Year 1992 Status Report," FHWA-PL-93-021, U.S. Department of Transportation, 1993.
3. Federal Highway Administration, "The Joint Federal/State Motor Fuel Tax Compliance Project, Fiscal Year 1993 Report," FHWA-PL-94-017, U.S. Department of Transportation, 1994.
4. Federal Highway Administration, "Study of the Feasibility and Desirability of Using Motor Fuel Dyes and Markers," FHWA-PL-93-022, U.S. Department of Transportation, 1993.
5. Environmental Protection Agency, "Regulation of Fuels and Fuel Additives: Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years; Final Rule," 55 FR 34120, August 21, 1990. (Amended 57 FR 19535, May 7, 1992.)
6. Marley, J.T., "Enforcement of Ontario's Fuel and Gasoline Tax Legislation," Ministry of Finance, Province of Ontario, September 20, 1993.
7. Internal Revenue Service, "Diesel Fuel Excise Tax," 58 FR 63069, November 30, 1993.

GLOSSARY OF ACRONYMS

ANSI	American National Standards Institute
B/C	Benefit-cost ratio, i.e. assessments divided by agency cost for reconciliations and audits
CI	criminal investigation
CNG	compressed natural gas
DOD	the Department of Defense
DOT	the U.S. Department of Transportation
DOT-OIG	Department of Transportation--Office of Inspector General
EFT	electronic funds transfer
EPA	the Environmental Protection Agency
FBI	the Federal Bureau of Investigation
FHWA	the Federal Highway Administration
FR	the <i>Federal Register</i>
FTA	the Federation of Tax Administrators, the national association of State revenue agencies with offices located in Washington, D.C., (not to be confused with the Federal Transit Administration, the agency within the U.S. Department of Transportation responsible for the administration of the Federal transit assistance programs)
FY	fiscal year, the Federal fiscal year beginning October 1 and ending the following September 30
HTF	the Highway Trust Fund, to which most of the revenues from the Federal highway user taxes are transferred for use in financing Federal highway and transit programs
IFTA	the International Fuel Tax Agreement
IRS	the Internal Revenue Service
ISTEA	the Intermodal Surface Transportation Efficiency Act of 1991 (Pub.L. 102-240)
LPG	liquified petroleum gas
MCMIS	the Motor Carrier Management Information System
MCSAP	the Motor Carrier Safety Assistance Program

MOU Memorandum of Understanding
OMC the FHWA Office of Motor Carriers
RSPA the Research and Special Programs Administration

**Appendix 1. Section 1040 of the Intermodal Surface
Transportation Efficiency Act of 1991**

105 STAT. 1992

PUBLIC LAW 102-240—DEC. 18, 1991

23 USC 101 note. SEC. 1040. HIGHWAY USE TAX EVASION PROJECTS.

(a) **IN GENERAL.**—The Secretary shall use funds made available by subsection (e) to carry out highway use tax evasion projects in accordance with this section. Such funds may be allocated to the Internal Revenue Service and the States at the discretion of the Secretary. The Secretary shall not impose any condition on the use of funds allocated to the Internal Revenue Service under this section.

(b) **LIMITATION ON USE OF FUNDS.**—Funds made available to carry out this section shall be used only to expand efforts to enhance motor fuel tax enforcement, fund additional Internal Revenue Service staff but only to carry out functions described in this subsection, supplement motor fuel tax examinations and criminal investigations, develop automated data processing tools to monitor motor fuel production and sales, evaluate and implement registration and reporting requirements for motor fuel taxpayers, reimburse State expenses that supplement existing fuel tax compliance efforts, and analyze and implement programs to reduce tax evasion associated with other highway use taxes.

(c) **MAINTENANCE OF EFFORT.**—The Secretary may not make a grant to a State under this section in a fiscal year unless the State certifies that aggregate expenditure of funds of the State, exclusive of Federal funds, for motor fuel tax enforcement activities will be maintained at a level which does not fall below the average level of such expenditure for its last 2 fiscal years.

(d) **REPORTS.**—

(1) **IN GENERAL.**—On September 30 and March 31 of each year, the Secretary shall transmit to the Committee on Environment and Public Works and the Committee on Finance of the Senate and the Committee on Public Works and Transportation and the Committee on Ways and Means of the House of Representatives a report on motor fuel tax enforcement activities under this section and the expenditure of funds made available to carry out this section, including expenses for the hiring of additional staff by any Federal agency.

(2) **USE OF REVENUES FOR ENFORCEMENT OF HIGHWAY TRUST FUND TAXES.**—The Secretary of the Treasury shall, at least 60 days before the beginning of each fiscal year (after fiscal year 1992) for which funds are to be allocated to the Internal Revenue Service under this section, submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate detailing the increased enforcement activities to be financed with such funds with respect to taxes referred to in section 9503(b)(1) of the Internal Revenue Code of 1986.

(e) **USE OF DYE AND MARKERS.**—

(1) **STUDY.**—The Secretary, in consultation with the Internal Revenue Service, shall conduct a study to determine the feasibility and the desirability of using dye and markers to aid in motor fuel tax enforcement activities and other purposes.

(2) **REPORT.**—Not later than 1 year after the effective date of this section, the Secretary shall transmit to Congress a report on the results of the study conducted under this subsection.

(f) **FUNDING**—

(1) **HIGHWAY TRUST FUND.**—There shall be available to the Secretary for carrying out this section, out of the Highway Trust Fund (other than the Mass Transit Account), \$5,000,000 for each of fiscal years 1992, 1993, 1994, 1995, 1996, and 1997. Such sums shall be available for obligation in the same manner and to the same extent as if such sums were apportioned under chapter 1 of title 23, United States Code; except that the Federal share for projects carried out under this section shall be 100 percent and the sums shall remain available until expended.

(2) **GENERAL FUND.**—There are authorized to be appropriated to carry out this section \$2,500,000 per fiscal year for each of fiscal years 1992 through 1997. Such sums shall remain available until expended.

(g) **STATE DEFINED.**—For purposes of this section, the term "State" means the 50 States and the District of Columbia.

**Appendix 2. FHWA Notice N 4510.308, Allocation of
Fiscal Year (FY) 1994 Funds for Highway Use Tax
Evasion Projects**



U.S. Department
of Transportation
**Federal Highway
Administration**

Notice

Subject

**ALLOCATION OF FISCAL YEAR (FY) 1994
FUNDS FOR HIGHWAY USE TAX EVASION PROJECTS**

Classification Code

Date

N 4510.308

November 16, 1993

EXPIRATION DATE: SEPTEMBER 30, 1994

1. **PURPOSE.** To allocate funds to the States for highway use tax evasion projects authorized for FY 1994 pursuant to Section 1040 of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 (Pub. L. No. 102-240) and to provide obligation authority for these funds.

2. **AVAILABILITY**
 - a. The funds resulting from this allocation, as shown in Attachment 1, are available, up to the limitation amount, for obligation until June 30, 1994, at which time any amounts not obligated will be withdrawn. Allocations withdrawn on June 30, 1994, will be replaced next fiscal year with future year funds to the extent available.
 - b. Obligation authority is provided for 100 percent of the amount allocated to the States with this Notice. The obligation authority being distributed with this Notice is to support the obligation of "non-formula" funds. Division Administrators should ensure that this obligation authority is included in any required notification of the status of funds obligated in FY 1994.
 - c. The Federal share for projects authorized with these funds is 100 percent.
 - d. The Program Code for these funds is 334 and the project prefix is TCP.

3. **AUTHORITY.** Section 1040 of the ISTEA authorized \$5 million per year for FY 1992 through 1997 from the Highway Trust Fund, and \$2.5 million per year from the General Fund for highway use tax evasion projects. A portion of these funds is being allocated to the States for participation in regional motor fuel tax enforcement task forces.

DISTRIBUTION: Level 2: Headquarters
Regions
Divisions
Level 3: MPO's (Through Divisions)

OF HPP-13

4. BACKGROUND. Nine regional motor fuel tax enforcement task forces have been organized under the coordination and leadership of the Internal Revenue Service district offices and State revenue agencies in the States of Massachusetts, New Jersey, North Carolina, Florida, Indiana, Nebraska, Texas, California, and Oregon. The FY 1992 and FY 1993 funds for tax evasion projects were allocated to the States and the District of Columbia to encourage participation in these task forces. Nearly all States obligated the available FY 1992 and 1993 funds, which were allocated to the States by Federal Highway Administration (FHWA) Notices N 4510.276 (May 27, 1992) and N 4510.291 (October 23, 1992) respectively. Allocations not obligated were withdrawn. The amounts withdrawn in FY 1993 are restored in the allocations provided with this Notice.

5. PROJECT REQUIREMENTS

- a. The funds allocated with this Notice shall be identified under Program Code 334 and will follow the same FHWA-37 reporting procedures formerly established for Appropriation Code 94C in the February 7, 1991, memorandum from the Chief of the Program Analysis Division, subject: "FMIS Manual Prepublication Notification." Funds are available at 100-percent Federal share to the State agency responsible for enforcement of motor fuel taxes. However, as specified in Section 1040, States wishing to receive funds for tax evasion projects must certify that the aggregate expenditure of funds of the State, exclusive of Federal funds, for motor fuel tax enforcement activities will be maintained at a level which does not fall below the average level of such expenditures for its last 2 fiscal years. To receive funding under this program, the State revenue agency responsible for enforcement of State motor fuel taxes shall comply with the procedures published in the Federal-Aid Policy Guide (FAPG) G 3016.4, dated July 30, 1992, including signing the Memorandum of Understanding agreeing to participate in at least one of the regional motor fuel tax enforcement task forces, preparing a project budget, complying with intergovernmental review requirements, and signing the Grant Agreement.
- b. Payments to the States will follow normal Federal-aid procedures. These projects will use normal accounting codes for State projects, that is, Object Code 4105. Please be reminded that payments under \$10,000, outside the Current Billing System, cannot be made through the electronic fund transfer system.

6. ACTION. The Division Administrator may approve projects by signing the Grant Agreement (Form FHWA-1548) distributed to the region and division offices with the June 9, 1992, memorandum from the Director, Office of Policy Development, subject: "Highway Use Tax Evasion Projects." One copy with original signatures shall be returned to the State and one copy with original signatures shall be forwarded to the Washington Headquarters (HPP-13), either directly or through the regional office as directed by the Regional Administrator. For States which have already signed the Grant Agreement in FY 1993, additional funds may be obligated and the period of performance extended when the State and division office sign an amended cover sheet, Attachment 2 (Form FHWA-1549). If some States or division offices prefer to enter a new Grant Agreement with a different project number for the FY 1994 or subsequent fiscal year funds, the funds should be expended from the former grant(s) first and the earlier project(s) should be closed as soon as possible. For the States which did not enter a Grant Agreement for the FY 1993 funds, a new project must be approved using the Grant Agreement format.



Rodney E. Slater
Federal Highway Administrator

Attachments

U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION

ALLOCATION OF FUNDS FOR HIGHWAY USE TAX EVASION
 PROJECTS FOR FISCAL YEAR 1994

<u>STATE</u>	<u>FY 1994 ALLOCATION</u>	<u>RESTORED FUNDS FROM PRIOR YEARS</u>	<u>TOTAL ALLOCATION</u>	<u>OBLIGATION LIMITATION</u>
ALABAMA	50,000	100,000	150,000	150,000
ALASKA	50,000	100,000	150,000	150,000
ARIZONA	50,000		50,000	50,000
ARKANSAS	50,000		50,000	50,000
CALIFORNIA	100,000		100,000	100,000
COLORADO	50,000		50,000	50,000
CONNECTICUT	50,000		50,000	50,000
DELAWARE	50,000		50,000	50,000
DISTRICT OF COLUMBIA	50,000	100,000	150,000	150,000
FLORIDA	100,000	200,000	300,000	300,000
GEORGIA	50,000		50,000	50,000
HAWAII	50,000	100,000	150,000	150,000
IDAHO	50,000		50,000	50,000
ILLINOIS	50,000		50,000	50,000
INDIANA	100,000		100,000	100,000
IOWA	50,000		50,000	50,000
KANSAS	50,000		50,000	50,000
KENTUCKY	50,000		50,000	50,000
LOUISIANA	50,000		50,000	50,000
MAINE	50,000	1,300	51,300	51,300
MARYLAND	50,000	100,000	150,000	150,000
MASSACHUSETTS	100,000		100,000	100,000
MICHIGAN	50,000		50,000	50,000
MINNESOTA	50,000		50,000	50,000
MISSISSIPPI	50,000		50,000	50,000
MISSOURI	50,000		50,000	50,000
MONTANA	50,000		50,000	50,000
NEBRASKA	100,000		100,000	100,000
NEVADA	50,000	51,000	101,000	101,000
NEW HAMPSHIRE	50,000		50,000	50,000
NEW JERSEY	100,000		100,000	100,000
NEW MEXICO	50,000		50,000	50,000

FHWA NOTICE N 4510.308
 November 16, 1993
 ATTACHMENT 1

<u>STATE</u>	<u>FY 1994 ALLOCATION</u>	<u>RESTORED FUNDS FROM PRIOR YEARS</u>	<u>TOTAL ALLOCATION</u>	<u>OBLIGATION LIMITATION</u>
NEW YORK	50,000		50,000	50,000
NORTH CAROLINA	100,000		100,000	100,000
NORTH DAKOTA	50,000		50,000	50,000
OHIO	50,000		50,000	50,000
OKLAHOMA	50,000		50,000	50,000
OREGON	100,000	200,000	300,000	300,000
PENNSYLVANIA	50,000		50,000	50,000
RHODE ISLAND	50,000		50,000	50,000
SOUTH CAROLINA	50,000		50,000	50,000
SOUTH DAKOTA	50,000		50,000	50,000
TENNESSEE	50,000		50,000	50,000
TEXAS	100,000	100,000	200,000	200,000
UTAH	50,000		50,000	50,000
VERMONT	50,000		50,000	50,000
VIRGINIA	50,000		50,000	50,000
WASHINGTON	50,000		50,000	50,000
WEST VIRGINIA	50,000		50,000	50,000
WISCONSIN	50,000		50,000	50,000
WYOMING	50,000		50,000	50,000
STATE TOTAL	3,000,000	1,052,300	4,052,300	4,052,300
IRS	2,000,000	(1,052,300)	947,700	947,700
GRAND TOTAL			5,000,000	5,000,000

AMENDED GRANT AGREEMENT FOR THE JOINT FEDERAL/STATE MOTOR FUEL TAX COMPLIANCE PROJECT

Between the Federal Highway Administration, hereinafter referred to as the FHWA, and the _____,
acting through its motor fuel tax enforcement agency as a [] Lead / [] Participating State, hereinafter referred to as the
State.

Prior Agreement Amount: _____ dollars (\$ _____)

Additional Federal Funds: _____ dollars (\$ _____)

Total Agreement Amount: _____ dollars (\$ _____)

Period of Performance is extended through: _____

State Agency

*Address (Principal place of work for this
agreement)*

City, State, ZIP

Authorized Representative

Title

I hereby certify that the aggregate expenditure
of funds of the State, exclusive of the Federal
funds provided under this agreement, for motor
fuel tax enforcement activities will be
maintained at a level which does not fall below
the average level of such expenditure for its last
2 fiscal years.

Signature

Date

Federal Highway Administration

Address

City, State, ZIP

Name

Division Administrator

Signature

Date

All of the provisions of the original Grant Agreement in Sections I. through V. and the General Provisions numbered 1. through 19. remain in
effect for this amendment.

Attachment 1 -- Budget

Revised October 13, 1992

FHWA NOTICE 4510.308
November 16, 1993
ATTACHMENT 2

List of Provisions from the original
Grant Agreement:

- I. AUTHORITY AND PURPOSE
- II. OBJECTIVE
- III. STATEMENT OF WORK
- IV. ALLOWABLE COST AND PAYMENT
- V. SUBMISSION OF REPORTS

General Provisions

- 1. DEFINITIONS
- 2. REGULATION-REQUIREMENTS
- 3. AUDITS
- 4. MODIFICATIONS
- 5. SUBCONTRACTS FOR PROFESSIONAL SERVICES
- 6. STANDARDS FOR FINANCIAL REQUIREMENTS
- 7. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS

- 8. EQUIPMENT
- 9. DEBARMENT CERTIFICATION
- 10. MINORITY BUSINESS ENTERPRISE REQUIREMENTS
- 11. SUSPENSION OR TERMINATION FOR CAUSE
- 12. TERMINATION REVIEW PROCEDURE
- 13. TERMINATION BY MUTUAL AGREEMENT
- 14. AGREEMENT CLOSE OUT AND COLLECTION OF AMOUNTS DUE
- 15. NONDISCRIMINATION
- 16. MANDATORY ENERGY EFFICIENCY STANDARDS
- 17. CERTIFICATION REGARDING A DRUG-FREE WORKPLACE
- 18. LIMITATION ON THE USE OF FUNDS FOR LOBBYING
- 19. CLEAN AIR AND WATER REQUIRMENTS

**Appendix 3. IRS Report on the Joint Federal/State Motor Fuel Tax
Compliance Project**

**Report on the Joint
Federal/State Motor Fuel
Tax Compliance Project**

Fiscal Year 1994



**Department of the Treasury
Internal Revenue Service**

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Executive Summary

Section 1040(d) of the Intermodal Surface Transportation and Efficiency Act of 1991 (ISTEA), P.L. 102-240, provides for the funding by the Department of Transportation of IRS and state motor fuel excise tax compliance projects. This report details the increased IRS enforcement activities for FY 1994 to be financed by Department of Transportation funds. The report was prepared by the Internal Revenue Service at the direction of the Congress pursuant to Section 1040(d)(2) of ISTEA.

Increasing voluntary compliance is an objective of the IRS' strategic business plan. We are meeting this objective with a two-pronged approach that emphasizes helping those who want to comply and taking enforcement actions against those who do not want to comply.

In order to combat the problems of motor fuel tax noncompliance, the Federal Highway Administration (FHWA), the IRS and the states have established the Joint Federal/state Motor Fuel Tax Compliance Project during FY 1990. The Joint Project forms the framework for a coordinated, multi-agency attack on motor fuel tax evasion.

The projected allocation of ISTEA funds in FY 1994 from the FHWA to IRS is as follows:

<u>SOURCE</u>	<u>TOTAL AMOUNT</u>	<u>EXAMINATION PORTION</u>	<u>CRIMINAL INVESTIGATION PORTION</u>
HIGHWAY TRUST FUND	\$ 2,000,000	\$ 1,400,000	\$ 600,000
GENERAL FUND	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
TOTAL	\$ 2,000,000	\$ 1,400,000	\$ 600,000

This report details the increased civil and criminal enforcement activities to be financed with such funds for FY 1994.

IRS Examination plans to use their portion, \$1.4 million, to partially fund direct examination time applied to examine cases included in the Joint Project. IRS Criminal Investigation plans to use their portion, \$600,000, to partially fund undercover operations, and to supplement criminal investigations and information gathering activities.

Chapter 1

Background

During the mid-1980s, substantial noncompliance with the Federal excise tax on gasoline and diesel fuel was identified in the New York City area and a joint Federal/state task force was established to investigate criminal involvement. IRS also suspected noncompliance in other parts of the country.

Examination initiated test projects in FY 1985 in which IRS civil examiners and State fuel tax examiners would jointly develop strategies to determine and reduce noncompliance in the gasoline area and diesel fuel area. These projects ended in FY 1987 and revealed that motor fuel noncompliance was a problem.

These projects also revealed that while the total amount of motor fuel noncompliance could not be determined, it could be better identified through close Federal/state cooperation. Each IRS district was requested to review their Federal/state exchange agreements to ensure the structure was present for cooperative actions and sharing of information concerning motor fuels.

The point of taxation for gasoline was changed from the wholesale distributor level to the terminal, effective January 1, 1988, and for diesel fuel from the user level to the wholesale distributor level, effective March 1, 1988. These changes caused new market segments to be liable for the Federal excise tax. Despite the legislative changes, the levels of noncompliance may not have materially diminished. The focus of motor fuel noncompliance merely shifted from gasoline to diesel fuel. While a substantial part of the IRS Examination excise tax resources were applied to motor fuels, the FHWA sought to encourage even greater Federal and state compliance efforts by funding increased civil and criminal compliance activity from the Highway Trust Fund (HTF).

The FHWA was aware that the 1985-1987 IRS fuel project produced tax assessments well in excess of the estimated cost to make the assessments. Due to this cost effectiveness and the suspected continuing motor fuel tax noncompliance, the FHWA sought and received approval from the Office of Management and Budget (OMB) to use money from the HTF to enhance compliance with the Federal excise taxes on fuels that make up the revenue of the HTF. The FHWA entered into agreements with IRS and certain selected states to increase motor fuel tax compliance activities by increasing resource application above baseline levels.

The IRS, the FHWA, the participating states and the Federation of Tax Administrators agreed to coordinate their efforts to combat motor fuel tax noncompliance by establishing the Joint Project. The objective of the Joint Project is to increase the revenue available for highway programs by using HTF receipts to expand tax compliance efforts by the IRS and states, with emphasis on motor fuel taxes. IRS Examination, IRS Criminal Investigation and the FHWA developed general guidelines for implementing the Joint Project. These guidelines formed the basis for an inter-agency agreement with the FHWA to provide funding in return for agreed to actions. Examinations were initiated under this agreement by the IRS beginning in FY 1991. The project was expected to work similarly to the prior gasoline and diesel fuel projects conducted during 1985 - 1987.

The Joint Project was implemented in the IRS districts located in the initial three lead states of Texas, Indiana and New Jersey. Subsequently, reimbursement for this project was legislated by the Intermodal Surface Transportation and Efficiency Act of 1991 (ISTEA).

Section 1040 of ISTEA provides that for FY 1992 through FY 1997, five million dollars from the HTF be made available annually to expand Federal and state efforts to enhance motor fuel tax enforcement. FHWA has allocated \$3 million annually for use by the states and approximately \$2 million annually for use by IRS. A reimbursable agreement has been entered into between IRS and FHWA for \$2 million for FY 1993 and is expected to be amended annually through FY 1997 for additional amounts.

In addition, ISTEA authorizes that \$2.5 million from the General Fund may be appropriated each year for fiscal years 1992 through 1997. None of these funds was appropriated during fiscal years 1992 and 1993, and we have been informed by the FHWA that the \$2.5 million has not been included in their budget request for fiscal year 1994 due to other programs considered by FHWA to be of higher priority.

ISTEA limits the use of funds that it authorizes for highway use tax evasion projects to the following:

1. Expand efforts to enhance motor fuel tax enforcement;
2. Fund additional IRS staff to carry out functions described in ISTEA;
3. Supplement motor fuel tax examinations and criminal investigations;
4. Develop automated data processing tools to monitor motor fuel production and sales;

5. Evaluate and implement registration and reporting requirements for motor fuel taxpayers;
6. Reimburse state expenses that supplement existing fuel tax compliance efforts; and,
7. Analyze and implement programs to reduce tax evasion associated with other highway use taxes.

Chapter 2

Planned Examination ActivitiesIn General

The IRS conducts motor fuel examinations and registration compliance checks in each of the 63 Internal Revenue Districts nationwide. Only a portion of these activities are carried out under the aegis of the Joint Project and receive ISTEPA funding. The remainder is supported through IRS appropriated funds. The FHWA financed motor fuel compliance activities under the Joint Project supplement the ongoing district efforts in the motor fuel area.

The compliance activities in all districts also include taxpayer assistance and education efforts, and locally initiated projects. These compliance efforts differ in each district, and generally depend on the type of businesses and information available.

Motor fuel examinations can result from registration compliance checks where it is determined the registrant may not be complying with the excise tax law. Districts also initiate local compliance projects where third party information indicates there may be noncompliance for a particular taxpayer or in a particular market segment. Information is also obtained from states or other government functions to assist in determining compliance. In addition, there are general IRS guidelines for examining returns, using internal IRS information and selecting workload for compliance efforts.

Examination Activities Under the Joint Project

During FY 1994, Examination plans to enhance motor fuel tax enforcement under the aegis of the Joint Project as follows:

1. Dedicate staffing in 16 IRS districts to Joint Project activities;
2. Implement and expand use of the Excise Tax Registration Validation System (See Chapter 4);
3. Continue preliminary planning to test possible methods and techniques of using automated data processing tools to monitor motor fuel production and sales (See Chapter 5).

Funding Availability:

The projected availability of funds in FY 1994 from the FHWA to IRS and Examination is as follows:

<u>SOURCE</u>	<u>TOTAL AMOUNT</u>	<u>EXAMINATION PORTION</u>
HIGHWAY TRUST FUND	\$ 2,000,000	\$ 1,400,000
GENERAL FUND	<u>-0-</u>	<u>-0-</u>
TOTAL	\$ 2,000,000	\$ 1,400,000

Application of FY 1994 ISTEAs Funds:

The IRS is committed to reducing motor fuel noncompliance and has agreed with the FHWA to use the FY 1994 ISTEAs funds for the Joint Project in all districts by dedicating up to two Examination excise tax specialists in each of the 16 IRS districts located in a lead state. To meet this commitment, Examination has allocated direct Examination staff years in the excise tax portion of the draft annual FY 1994 examination plan.

Examination Staff Years Dedicated to the Joint Project:

<u>LEAD STATES</u>	<u>IRS DISTRICTS</u>	<u>ALLOCATED STAFF YEARS</u>		
		<u>FY 1992</u>	<u>FY 1993</u>	<u>FY 1994</u>
1. New Jersey	*1. Newark	2.0	2.0	2.0
2. Indiana	*2. Indianapolis	2.0	2.0	2.0
3. Texas	*3. Austin	2.0	2.0	2.0
	*4. Houston	2.0	2.0	2.0
	*5. Dallas	2.0	2.0	2.0
4. Florida	6. Jacksonville		2.0	2.0
	7. Ft. Lauderdale		2.0	2.0
5. North Carolina	8. Greensboro		2.0	2.0
6. Nebraska	9. Omaha		2.0	2.0
7. California	10. Sacramento		1.0	1.0
	11. San Francisco		1.0	1.0
	12. San Jose		1.0	1.0
	13. Laguna Niguel		1.0	1.0
	14. Los Angeles		2.0	2.0
8. Oregon	15. Portland		2.0	2.0
9. Massachusetts	16. Boston		2.0	2.0
	TOTALS	10.0	28.0	28.0

* Original Districts

In allocating these staff years to the Joint Project, Examination requested each district located in a Lead State, except for the five IRS districts located in California to dedicate at least two staff years to examinations and compliance checks. Examination believed that each of the potential Lead States needed a minimum of two examiners with at least one dedicated examiner in each lead state district. In the five California districts, Examination planned for a total of at least six dedicated examiners. Each participating district was also requested to continue compliance activities in the motor fuel area outside the Project.

The IRS Examination function for districts not located in a lead state will participate in the Project by working collateral examinations, related returns and leads resulting from Project cases. A collateral examination is the examination of another taxpayer for an issue of tax consequence in a district other than in the Lead State. In a motor fuel examination, tax-free sales may be made by a taxpayer located in a Lead State to a taxpayer located in another district. The examiner may desire to "follow the fuel" and examine the taxpayer in the other district. The examiner may request and receive permission to travel to the other district or, to minimize costs, may request that the other district conduct the examination.

The districts located in the lead states are expected to implement the project, monitor activity, and receive reimbursement for direct examination time applied by the excise tax specialists to the extent of funding from FHWA. It is noted that in each year Project staff years have been planned, actual staff years applied have exceeded planned staff years.

Cost of the FY 1994 Staff Years Planned for the Joint Project:

	<u>Number of Staff Years</u>	<u>Cost</u>
Original districts	10	\$ 780,000
New districts	<u>18</u>	<u>1,404,000</u>
Total districts	28	\$2,184,000

That portion of the \$2,184,000 total that exceeds the \$1,400,000 funded by FHWA under ISTEA is financed by IRS appropriated funds.

Chapter 3

Planned Criminal Investigation Activities**Background:**

The ability to investigate and prosecute those who perpetrate schemes designed to steal Federal and state motor fuel excise tax revenue is an essential component of any comprehensive strategy to enhance excise tax compliance.

Criminal Investigation's involvement in motor fuel excise tax evasion investigations began in the mid-1980's. It was discovered that certain fuel dealers in the New York Metropolitan area had joined with organized criminal elements in perpetrating several extremely ambitious evasion schemes. Intelligence gained from the investigation of these schemes raised the suspicion that the scope of the noncompliance was more widespread.

In response to this problem, Criminal Investigation established a national motor fuel excise tax project in 1986. Currently, there are motor fuel excise investigations in each of the seven Internal Revenue Service regions and, in 26 of our 63 districts.

Changes in the Federal Laws and Regulations governing the taxation of gasoline (effective 1/1/88) and diesel fuel (effective 4/1/88), moved the point of taxation further up the distribution chain. These changes, to a certain extent, have limited the opportunities to steal excise tax revenue by reducing the number of taxpayers who are permitted to purchase these fuels tax free. Most regions have reported a decline in the number of schemes involving the evasion of the excise tax due on gasoline. Unfortunately, there has been corresponding rise in the number of diesel fuel schemes.

Most of the schemes currently under investigation are located in major metropolitan areas or along major interstate transportation routes, where there are well developed refining, storage, and distribution facilities, to serve high demand markets for gasoline and diesel fuel. Gasoline and diesel fuel excise tax revenues are being evaded using a variety of methods. The most ambitious schemes are the result of the activities of organized criminal elements seeking to expand their operations. However, many schemes are of a local origin where the perpetrators are ostensibly legitimate, long standing members of the business community.

The following table summarizes the results of our efforts in the gasoline and motor fuel excise tax area during fiscal years 1987 - 1993.

In the table, "Pending in Inventory" describes those cases that were initiated during the current or preceding fiscal years and are still under active investigation at year's end. As motor fuel excise tax investigations are generally complex, it is not uncommon for them to require more than one year or even several years to complete. This statistic gives a general overview of the work in process at the end of a given fiscal year.

"Pending in Legal Pipeline" refers to those investigations, which have been completed and are under legal review by the IRS Chief Counsel or the Department of Justice for sufficiency of evidence prior to prosecution being instituted.

"Seizure Investigations" are a distinct type of investigation initiated for the purpose of developing the requisite evidence to seize and forfeit property, which has been used to perpetrate motor fuel evasion schemes or represents the "fruit of " other crimes over which the IRS has investigatory jurisdiction. Once property has been seized, the government must produce evidence in court to justify its forfeiture. These judicial proceedings may occur at the same time or separate from any related criminal proceedings.

SUMMARY OF CRIMINAL INVESTIGATIONS

	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>
Investigations Initiated:	26	33	19	47	40	108	143
Convictions:	6	12	6	16	16	23	37
Pending in Inventory: (as of 9/30)	27	33	46	41	58	104	95
Pending in Legal Pipeline:			40	59	43	62	109
Seizure Investigations	N/A	N/A	N/A	N/A	N/A	N/A	27

During FY 1993, 36 persons were sentenced for participating in excise tax evasion schemes. Of those sentenced, 22 received terms of imprisonment which ranged from a maximum of 10 years to a minimum of four months, the average sentence being 30.1 months.

In Fiscal Year 1993, 148 excise tax cases were recommended for criminal prosecution; and 71 indictments have been returned in motor fuel evasion cases.

The following table summarizes the costs of the special agents staff years expended on motor fuel excise tax investigations, including staff support during FY 1990 - 1993:

<u>Fiscal Year</u>	<u>Staff Years</u>	<u>Staffing Costs</u>
1989	27	(information not available)
1990	31	\$2,556,000
1991	45	\$4,317,000
1992	61	\$7,185,000
1993 (Estimated)	8	\$9,805,307

During FY 1992, Criminal Investigation expended \$218,000 for direct costs in support of its undercover operations. These costs are not indicative of the total costs attributable to these operations. A substantial portion of these costs were paid by utilizing the offset authority of other law enforcement agencies, under which the proceeds from an undercover operation may be used to offset necessary and reasonable expenses incurred in the operation.

During the period FY 1987 - FY 1993, our commitment of staffing and other resources to combat motor fuel excise tax evasion has steadily increased. Our current inventory of motor fuel cases (132) has never been greater. In FY 1992, we completed several ambitious undercover operations. During the period March - May 1993, three major indictments were handed down in Pennsylvania, New Jersey, and New York, which charged 46 reputed members of organized crime with participating in motor fuel evasion schemes which collectively stole \$109 million of revenue. These investigations are continuing and further indictments are expected.

Criminal Investigation Strategy and Planned Activities:

The strategy which will govern criminal enforcement activities in the near to mid-term recognizes the need to concentrate the majority of our efforts in those major metropolitan areas where the evasion schemes are currently most prevalent. A concerted effort is planned to train special agents nationwide in the techniques necessary to successfully investigate motor fuel evasion schemes. This will enable them to effectively participate in the Joint Federal/State Motor Fuel Enforcement Task Forces which are being organized by each of the lead states. Continuing Federal and State cooperation is paramount in any effort to bring the motor fuel excise tax evasion problem under control.

By implementing our strategy, we hope to generate the maximum number of significant prosecutions in high noncompliance areas, while ensuring that the necessary resources are available to deter any attempts by noncompliant persons to expand their operations to new and currently unaffected markets.

Motor fuel evasion schemes are a national problem and not limited only to those areas where traditional organized criminal elements have infiltrated the fuel industry. Therefore, we plan to also commit resources to geographic areas where the evasion schemes may be regional or local in scope.

FHWA Funding Availability:

The projected availability of funds in FY 1994 from the FHWA to IRS and Criminal Investigation is as follows:

<u>SOURCE</u>	<u>TOTAL AMOUNT</u>	<u>CRIMINAL INVESTIGATION PORTION</u>
HIGHWAY TRUST FUND	\$ 2,000,000	\$ 600,000
GENERAL FUND	<u>-0-</u>	<u>-0-</u>
TOTAL	\$ 2,000,000	\$ 600,000

Application of FY 1994 ISTEAs Funds:

The portion of FY 1994 ISTEAs funds that is planned to be available for use by the IRS Criminal Investigation function is \$600,000. Since all criminal motor fuel project investigations are a part of the Joint Federal/State Excise Tax Compliance Project, it is our intent to use the funding provided by the FHWA in FY 1994 as follows:

1. to partially fund undercover operations;
2. to supplement criminal investigations; and,
3. for information gathering activities.

These activities maximize the success of our enforcement efforts nationwide, by capitalizing on whatever opportunities present themselves. Historically, criminal investigations of motor fuel excise taxes have proven themselves to be both labor and resource intensive. They are also among the most complex, difficult and costly types of activities which we conduct. Therefore, we intend to allow our regional and district leadership the widest possible latitude in using the project funds consistent with the ISTEAs limitations, since they are in best position to judge how resources can most effectively be used to enhance a particular operation(s)

Project funds will be used to support and enhance investigations, related undercover operations, and information gathering activities.

We anticipate that the Project funds will be used to defray the following costs: case related travel, overtime, equipment purchases, training, the costs of obtaining and processing evidence, ADP costs, and transcription costs. Further, Project funds will be used for the following costs attributable to undercover operations: travel and per diem expenses for undercover agents; payments for information or to informants; various capital expenditures to include the purchase of office furniture, fax machines and other office equipment, monitoring and recording equipment; and other costs of establishing and operating undercover entities such as the expenses incurred when purchasing, selling and transporting motor fuels.

The project funds which Criminal Investigation will receive in FY 1994 will be apportioned to each of our 7 Regions based on their current level of enforcement activities and consistent with the strategic objectives previously stated.

Chapter 4

Excise Tax Registration Validation System (ExTRVS)Background:

A common element of many evasion schemes is the misuse or abuse of Form 637, Registration for Tax-Free Transactions. Previously, there was no centralized system for checking whether taxpayers in any district were valid registrants without calling that district office on the telephone and getting a manual search and verification.

Charles H. Brennan, then Deputy Commissioner, testified on October 26, 1989, at hearing before the Subcommittee on Investigations and Oversight of the House Public Works and Transportation Committee that the IRS was hoping to automate manual procedures and create a national database. He indicated that this was to be accomplished by working with the FHWA.

In July 1990, IRS and FHWA entered into a reimbursable agreement. In this agreement, FHWA agreed to reimburse a portion of the costs (\$300,000) associated with the design, development, testing, and installation of an automated national database for IRS Form 637 registrations.

Accomplishments and Plans:

A national registration validation system has been developed that allows IRS district office personnel to determine the current registry status of Form 637 motor fuel registrants on line. Gasoline and gasohol registrants nationwide have been loaded on the database which can be accessed by all IRS districts. Diesel registrants will be added to the database during FY 1994. In addition, we are working with our Chief Counsel to develop provisions for drafting a revenue procedure that will require businesses that wish to sell Federal excise tax-free, to obtain a trading partner validation number to clearly pass the incidence and liability for tax to a properly registered customer.

ExTRVS allows districts to research the current validity of a registration number for industry (sellers of their buyers registry status) and during examinations, to determine if businesses hold a valid registration where tax-free sales have been made by the company under audit. Systemic improvements and modifications along with annual operating costs are planned to be funded by the annual IRS budget appropriation. Funding for the development and implementation of this effort was provided prior to FY 1993.

Chapter 5

Excise Fuel Information Reporting System (ExFIRS)Background:

Effective December 1, 1990, Section 4101 of the Internal Revenue Code permitted the Secretary of Treasury to require information reporting with respect to the motor fuel excise tax on gasoline, diesel fuel and aviation fuel. Effective December 18, 1991, Section 1040 of ISTEA prescribed that HTF money be used, among other things, to develop automated data processing tools to monitor fuel production and sales. ISTEA also authorized that up to \$2.5 million per year for each fiscal year 1992 through 1997 could be appropriated from the General Fund but have not been for fiscal years 1992 - 1994.

The FHWA provided \$575,831 of pre-ISTEA funds to IRS for preliminary planning, system development, and work plan development to support the implementation of a gasoline distribution tracking system.

Accomplishments and Plans:

The first motor fuel industry work group meeting on information systems for motor fuel reporting was held in May 1992. The IRS, FHWA and the fuel industry formed this work group to explore possible methods and techniques of using automated data processing tools to monitor motor fuel production and sales while reducing the reporting burden on industry. Industry representatives were pleased with the opportunity to have input, at the inception stage, into the design and development of IRS systems that affect their businesses and volunteered to assist us in any way possible.

The work group has met several times to discuss and explore approaches. The most feasible of which was to develop and test a pilot system that would closely parallel the Federal rules. Consideration was given to using an outside contractor or to work with a state that might have a vested interest in such a system.

The state of Michigan changed their motor fuel law, effective January 1993 to impose and collect the tax on gasoline at a similar tax point as the Federal law and would need to develop new forms and reporting/monitoring systems. The State of Michigan also had a relatively small and representative business community and has historically worked well with other Fed/state exchange programs. As such, a unique opportunity was presented for joint cooperation.

At this time, we are pursuing a procurement with the State of Michigan and plan to use the FY 1992 money in an effort to develop and test a pilot fuel information reporting system. Future activities, if approved by the IRS Executive Committee, are planned to be funded from the ISTEA money appropriated from the General Fund.

Appendix 4. Policy on Use of Project Funds for Travel

Because of several inquiries about using the FHWA project funds for travel to the FTA Motor Fuel Section annual meeting, FHWA developed a policy governing use of project funds for travel expenses. It is not the intent of the FHWA project to provide funding to replace the states' former expenses to participate in FTA Motor Fuel Section business meetings. The FHWA project funds are very limited and should be reserved for the principal purposes of Section 1040 such as training for motor fuel tax enforcement, participation in task force meetings, and other cooperative fuel tax enforcement efforts in accordance with the following policy statement:

Eligible Travel Expenses -

The FHWA project funds may be used to reimburse state travel costs for motor fuel tax examination and criminal investigation training including:

- o FTA-sponsored training courses and seminars,
- o state or Task Force sponsored training courses and seminars,
- o IRS-sponsored training courses and seminars such as the Motor Fuel Excise Tax Symposium, November 4-7, 1991, in Indianapolis, Indiana, and
- o other publicly-sponsored or commercially available training courses that would enhance the effectiveness of motor fuel tax examiners and investigators.

The FHWA project funds may be used to reimburse state travel costs for participation at regional task force meetings and other Task Force activities such as joint audits and investigations.

On a case-by-case basis, the FHWA project funds may be used to reimburse state travel costs for other cooperative state efforts to foster motor fuel tax compliance, such as the meetings of the Uniformity Committee to discuss model state legislation and uniform motor fuel tax filing and reporting procedures.

The FHWA project funds may be used to reimburse state travel costs for participation of lead state representatives to the Steering Committee, and for representatives from other states when requested by the Steering Committee or to participate in other special activities arranged by the Steering Committee. When Steering Committee meetings are held in conjunction with another FTA function, the FHWA project may reimburse the expenses for the total trip. Note that this applies only to the officially designated Committee members and alternates from the lead states.

For regional task force meetings held in conjunction with FTA Motor Fuel Section regional meetings, the portion of the costs of the trip attributed to participation at the regional task force meeting may be charged to the FHWA project. Costs may be determined by dividing the total expenses for the trip in the ratio of time spent on FTA regional meeting business and the time spent on task force

business, or by any other acceptable allocation procedures established between the state and the FHWA division office.

Ineligible Travel Expenses -

The FHWA project funds may not be used to reimburse the state costs for participation at general FTA or other association functions and business meetings such as the Motor Fuel Section annual meeting and regional meetings. The only exception is for the designated Steering Committee members and alternates from lead states, as discussed in the previous section, when a Steering Committee meeting is scheduled in conjunction with the FTA function.

**Appendix 5. IRS Final Regulations; Diesel Fuel Excise Tax;
Dye Color and Concentration (59 FR 33656)**

33656 Federal Register / Vol. 59, No. 125 / Thursday, June 30, 1994 / Rules and Regulations

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[TD 8550]

RIN 1545-AP48; 1545-AS32

Diesel Fuel Excise Tax; Dye Color and Concentration

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to dye color and concentration requirements for tax-exempt diesel fuel. These regulations implement changes made by the Omnibus Budget Reconciliation Act of 1993 and affect refiners, importers, terminal operators, and throughputters. **EFFECTIVE DATE:** These regulations are effective January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Frank Boland, (202) 622-3130 (not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 4081 was amended to apply to diesel fuel by the Omnibus Budget Reconciliation Act of 1993. Temporary regulations relating to the diesel fuel excise tax imposed by section 4081 were published in the *Federal Register* on November 30, 1993, (58 FR 63069) along with a notice of proposed rulemaking (PS-52-93) cross-referencing the temporary regulations (58 FR 63131). Amendments to these temporary regulations (relating to dye color and concentration) were published in the *Federal Register* on December 27, 1993, (58 FR 68304) along with a notice of proposed rulemaking (PS-76-93) cross-referencing those amendments (58 FR 68338).

Written comments responding to these notices were received and a public hearing was held on March 22, 1994. After consideration of the comments relating to the exemption from the

diesel fuel tax imposed by section 4081, § 48.4082-1 (as proposed in PS-52-93 and PS-76-93) is adopted as revised by this Treasury decision and the corresponding temporary regulations are removed. The comments and revisions are discussed below. Other sections of the proposed and temporary regulations remain in force until final regulations on those topics are issued.

Existing IRS and EPA Regulations

Effective October 1, 1993, Environmental Protection Agency (EPA) regulations (40 CFR 80.29) make it unlawful for any person to manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce diesel fuel that contains a concentration of sulfur in excess of 0.05 percent (by weight) (high-sulfur diesel fuel) unless the fuel contains visible evidence of the blue dye 1,4 dialkylamino-anthraquinone. A substantial penalty applies to the use of high-sulfur diesel fuel in motor vehicles.

Effective January 1, 1994, the Federal excise tax on diesel fuel imposed by section 4081 does not apply to removals of diesel fuel that is indelibly dyed (or dyed and marked) in accordance with IRS regulations. Section 48.4082-1T(b) of the Manufacturers and Retailers Excise Tax Regulations and a transitional rule in Notice 94-21, 1994-11 Internal Revenue Bulletin 32, provide that diesel fuel that is required to be dyed blue pursuant to EPA's high-sulfur diesel fuel program satisfies the IRS dyeing requirement only if it contains blue dye of the prescribed concentration level. Diesel fuel that is not required to be dyed blue pursuant to EPA's high-sulfur diesel fuel program satisfies the IRS dyeing requirement only if it contains a red dye of a prescribed type and concentration. In addition, the Commissioner is given authority to modify the dyeing requirements by approving the use of other dyes.

Safety Issues Regarding Aviation Gasoline

No Federal regulations require the dyeing of aviation gasoline (avgas). However, avgas is dyed by refiners to differentiate various grades of the fuel and to distinguish avgas from clear, kerosene-based jet fuel. As a result of this practice, more than 90 percent of domestic avgas is dyed blue or green. Extensive training has been conducted within the aviation community to assure that pilots, mechanics, fuel service personnel, and vendors are thoroughly familiar with the meaning and use of color in fuels. This training is important

because contamination of avgas by even small amounts of other fuel can cause an engine failure.

The Federal Aviation Administration, EPA, and IRS are concerned that blue-dyed diesel fuel might be mistaken for blue or green avgas. Of particular concern is the possibility of misfuelings in remote locations where fuels are dispensed into nonstandard containers or where different fuels are stored in similar containers in close proximity to each other.

Public Comments

The IRS received comments from refiners, pipeline and terminal operators, and others in the diesel fuel distribution system concerning the dye color and concentration requirements of the temporary and proposed regulations. In general, these comments suggested that the blue dye concentration level should be lower than that scheduled to go into effect on July 1, 1994, and the red dye concentration should be lower than the current requirement (3.9 pounds per thousand barrels (ptb) when expressed as a solid dye standard). The comments expressed concern that the required concentration level might cause sedimentation in pipelines and engines and make the petroleum industry's tests for cloud point and haze more difficult to conduct. A comment from a dye manufacturer indicated, however, that the required red dye is completely soluble in fuel and noted that an independent laboratory had no difficulty in conducting the cloud point and haze test. The IRS carefully considered these public comments in developing the final regulations.

IRS Concerns

In addition to its concerns about aviation safety, the IRS believes that enforcement of the diesel fuel excise tax will be impaired unless the dye in fuel is visible when that fuel is diluted as part of any practicable plan of large-scale tax evasion. In determining the appropriate dye color and concentration requirements to address this concern, the IRS inspected numerous samples of diesel fuel containing various colors and concentrations of dye. Many of these samples were independently produced by the IRS and others were provided by the petroleum industry and dye manufacturers.

Explanation of Final Regulations

In order to avoid any possible confusion with blue or green avgas, these final regulations provide that beginning October 1, 1994, diesel fuel can no longer be dyed blue for tax exemption purposes. Rather, red dye

will be used to identify all tax-exempt diesel fuel, regardless of the sulfur content of that fuel. The Commissioner will retain the authority to modify this requirement by approving the use of other dyes, but will not permit the use of dyes that could cause diesel fuel to be mistaken for avgas. In addition, a transitional rule will permit tax-free removals of high-sulfur diesel fuel that was dyed blue before October 1, 1994.

The red dye concentration required by the final regulations is the equivalent of the red dye concentration currently required by IRS for tax-exempt low-sulfur diesel fuel. In the final regulations, however, the required red dye concentration is expressed in terms of a solid dye standard, which is uniform among dye manufacturers, rather than in terms of the dye's active ingredient. This change does not impose any additional requirements on diesel fuel that was dyed red under the rules in effect before the issuance of the final regulations. Thus, diesel fuel that was dyed red in accordance with those rules will satisfy the solid dye standard in the final regulations.

Based on its inspection of dyed diesel fuel samples, the IRS believes the 3.9 ptb concentration required by the final regulations is necessary to address its concerns regarding dilution. In many cases involving the diesel fuel dyed with less than 3.9 ptb, the dye was not visible when the fuel was diluted. Thus, a required concentration level of less than 3.9 ptb could result in considerable diesel fuel tax evasion.

The IRS understands the petroleum industry's concerns on the concentration issue and will continue to monitor the effectiveness of the 3.9 ptb standard.

Action by EPA

In conjunction with these IRS final regulations, EPA is issuing regulations in a future issue of the Federal Register that require high-sulfur diesel fuel to be dyed red rather than blue. The EPA rule and the IRS rule have the same effective dates.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue

Code, the notices of proposed rulemaking preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Frank Boland, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 48

Excise taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 48 is amended as follows:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Paragraph 1. The authority citation for part 48 is amended by removing the entry for "Sections 48.4082-1T and 48.4082-2T" and adding the following entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 48.4082-1 and 48.4082-2T also issued under 26 U.S.C. 4082(c). * * *

Par. 2. Section 48.4082-1T is removed and § 48.4082-1 is added to read as follows:

§ 48.4082-1 Diesel fuel tax; exemption.

(a) Exemption. Tax is not imposed by section 4081 on the removal, entry, or sale of any diesel fuel if—

- (1) The person otherwise liable for tax is a taxable fuel registrant;
- (2) In the case of a removal from a terminal, the terminal is an approved terminal; and
- (3) The diesel fuel satisfies the dyeing and marking requirements of paragraph (b) of this section.

(b) *Dyeing and marking requirements*—(1) *Dyeing; high sulfur fuel before June 28, 1994.* Diesel fuel that is required to be dyed blue pursuant to the Environmental Protection Agency's high sulfur diesel fuel requirement (40 CFR 80.29) satisfies the dyeing requirement of this paragraph (b) only if it contains—

- (i) For periods before April 1, 1994, the blue dye 1,4 dialkylamino-anthraquinone in a concentration of at least 1.2 pounds of active ingredient (exclusive of the solvent) per thousand barrels of diesel fuel;

(ii) For periods after March 31, 1994, and before June 28, 1994, the blue dye 1,4 dialkylamino-anthraquinone (Color Index Solvent Blue 98) in a concentration of at least 4 pounds of active ingredient (exclusive of the solvent) per thousand barrels of diesel fuel; or

(iii) Any dye of a type and in a concentration that has been approved by the Commissioner.

(2) *Dyeing; low sulfur fuel before June 28, 1994.* Before June 28, 1994, diesel fuel that is not described in paragraph (b)(1) of this section satisfies the dyeing requirement of this paragraph (b) only if it contains—

(i) The dye Solvent Red 164 at a concentration spectrally equivalent to 3.9 pounds per thousand barrels of the solid dye standard Solvent Red 26; or

(ii) Any dye of a type and in a concentration that has been approved by the Commissioner.

(3) *Dyeing; all diesel fuel after June 27, 1994.*

(i) After June 27, 1994, and before October 1, 1994, diesel fuel satisfies the dyeing requirement of this paragraph (b) only if it—

(A) Is required to be dyed pursuant to the Environmental Protection Agency's high-sulfur diesel fuel program (40 CFR 80.29) and contains the blue dye 1,4 dialkylamino-anthraquinone (Color Index Solvent Blue 98) in a concentration of at least 4 pounds of active ingredient (exclusive of the solvent) per thousand barrels of diesel fuel;

(B) Contains the dye Solvent Red 164 at a concentration spectrally equivalent to 3.9 pounds per thousand barrels of the solid dye standard Solvent Red 26;

(C) Is a mixture of diesel fuels each of which satisfies the dyeing requirement described in paragraph (b)(3)(i)(A), (B), or (D) of this section; or

(D) Contains any dye of a type and in a concentration that has been approved by the Commissioner.

(ii) After September 30, 1994, diesel fuel (regardless of sulfur content) satisfies the dyeing requirement of this paragraph (b) only if it—

(A) Contains the dye Solvent Red 164 at a concentration spectrally equivalent to 3.9 pounds per thousand barrels of the solid dye standard Solvent Red 26;

(B) Is required to be dyed pursuant to the Environmental Protection Agency's high-sulfur diesel fuel program (40 CFR 80.29) and contains the blue dye 1,4 dialkylamino-anthraquinone (Color Index Solvent Blue 98) that was added to the fuel, in a concentration of at least 4 pounds of active ingredient (exclusive of the solvent) per thousand barrels of diesel fuel, before October 1, 1994;

(C) Is a mixture of diesel fuels each of which satisfies the dyeing requirement described in paragraph (b)(3)(ii) (A), (B), or (D) of this section; or

(D) Contains any dye of a type and in a concentration that has been approved by the Commissioner.

(4) *Marking.* [Reserved]

(c) *Effective date.* This section is effective January 1, 1994.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: June 17, 1994.

Leslie Samuels,
Assistant Secretary of the Treasury.

[FR Doc. 94-15799 Filed 6-28-94; 2:29 am]

BILLING CODE 4830-01-U

**Appendix 6. EPA Interim Final Rule; Highway Diesel Fuel
(59 FR 35854)**

35854 Federal Register / Vol. 59, No. 134 / Thursday, July 14, 1994 / Rules and Regulations

40 CFR Part 80

[AMS-FRL-5012-8]

Regulation of Fuels and Fuel Additives; Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years; Interim Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule.

SUMMARY: EPA regulations currently require that diesel fuel for use in motor vehicles ("on-highway") meet a sulfur content standard, as well as standards for cetane index or in the alternative for aromatic content, and be free of visible evidence of the blue dye, 1,4-dialkylamino-anthraquinone. This rule implements provisions to change the blue dye specified in EPA's regulations to the red dye solvent red 164. The use of dye solvent red 164 for high sulfur diesel would mitigate aviation safety concerns raised because of the use of blue dye in certain aviation gasoline. Based on the time needed for refiners and importers to obtain adequate supplies of dye solvent red 164 for diesel fuel and deplete current inventories of blue dye held by the oil industry, this rule provides that after October 1, 1994 no refiner or importer shall add blue dye to off-highway diesel fuel. Until that date either blue or dye solvent red 164 could be used to dye high sulfur off-highway diesel fuel. Under this rule, downstream parties can continue to use existing supplies of blue dyed diesel fuel. This timing represents a balance between the need to address the safety issue as quickly as possible and provide a reasonable lead time for the affected industries to implement this change. This rule also provides requirements and defenses related to violations based on the presence of dye solvent red 164 in on-highway diesel fuel, including an exception for certain tax-exempt on-highway fuel dyed red pursuant to Internal Revenue Service (IRS) regulations. IRS regulations generally require tax-exempt high sulfur diesel fuel to be dyed blue. In a related rulemaking, and for similar reasons, the IRS is changing its regulations to call for the use of dye solvent red 164 instead of blue dye.

DATES: As discussed more fully herein, EPA is issuing this as an interim final rule effective July 14, 1994 except for § 80.29(c). The information requirements in 40 CFR 80.29(c) have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved

them and an announcement of effective date is published in the **Federal Register**. EPA will accept written comments on any appropriate changes to this rule up to 30 days from July 14, 1994.

ADDRESSES: Written comments on this rule should be submitted to Public Docket A-94-36 at the following address. Materials relevant to this rule change are also contained in Public Docket A-94-36, located at Room M-1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m., Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Paul N. Argyropoulos, Field Operations and Compliance Policy Branch, Field Operations and Support Division, U.S. Environmental Protection Agency, (202) 233-9004.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA regulations currently require that diesel fuel for use in motor vehicles ("on-highway") meet a sulfur content standard, as well as standards for cetane index or in the alternative for aromatic content, and be free of visible evidence of the blue dye, 1,4-dialkylamino-anthraquinone. These requirements apply at all points in the distribution system. The regulations also provide that diesel fuel which is free of visible evidence of the blue dye shall be considered available for use in motor vehicles and therefore subject to the low sulfur and other standards. Diesel fuel that is not for use in motor vehicles ("off-highway") is not subject to these standards, and the blue dye is typically added by the refiner or importer to differentiate it from the diesel fuel subject to the low-sulfur standard.

Aviation gasoline (avgas) is dyed to ensure that pilots, maintenance personnel, vendors and fuel handlers correctly service piston powered aircraft. Although red dye is also used, more than 90% of all avgas is dyed blue or green. Blue dyes now being injected into off-highway diesel fuels create fuels which may be similar in color to either blue or green avgas. The aviation community, through the Federal Aviation Administration (FAA), has raised concerns that the blue dyed diesel fuel might be confused with blue or green avgas, leading to aircraft misfueling and result in a serious aviation accident.

This rule is designed to quickly resolve the safety concerns regarding the potential misidentification of diesel fuel as avgas, based on the similar dye color used in these fuels. EPA's rule changes the dye used in the diesel fuel program from a blue color to a red color, and prohibits refiners and importers from producing diesel fuel with the use of the blue dye after October 1, 1994 in on-highway diesel fuel. However, under this rule, downstream parties can continue to use existing supplies of blue dyed diesel fuel. EPA believes this provides a reasonable time period to address the safety concern and for industry to obtain dye solvent red 164 and draw down supplies of blue dye. The IRS is undertaking a similar rulemaking to change the color of dye used in tax-exempt high sulfur diesel fuel from blue to red. Since, under IRS regulations all fuel is dyed, some of which can be used on-highway, EPA's rule also contains an exception allowing the use of red dye in this small category of on-highway diesel fuel, if certain conditions are met.

EPA is taking this action after extensive discussion with the FAA, IRS, and the affected industries, including dye manufacturers. This rule reflects a reasonable balancing of the various interests involved, giving primary importance to the aviation safety issue. EPA invites comment on all issues raised by this rule, however, because of the critical safety issue involved, it is necessary to promulgate a final rule requiring the color change as quickly as possible and therefore without prior formal notice and comment. It is EPA's intention to expeditiously review all comments and determine whether it would be appropriate to make any change to this final rule.

II. Background

EPA published regulations concerning diesel fuel on August 21, 1990. 54 FR 35276. Under these regulations, beginning October 1, 1993, the sulfur content of on-highway diesel fuel could not exceed 0.05 wt. percent. EPA also specified standards for cetane index or aromatic content and required that on-highway diesel fuel be free of visible evidence of the blue dye 1,4-dialkylamino-anthraquinone. The standards established by EPA are designed to help control air pollution, especially particulate emissions from diesel motor vehicles and engines, and to coincide with EPA's heavy duty engine particulate standards which begin with the 1994 model year engines.

EPA's regulations do not require the dyeing of off-highway diesel fuel. Instead, all diesel fuel that is free of

visible evidence of the blue dye is presumed to be available for use in motor vehicles and, therefore, subject to the sulfur content and other standards. Refiners and others routinely dye off-highway diesel fuel to identify it as such, and avoid being subject to the standards applicable to on-highway diesel fuel.

This program began in the fall of 1993, with the industry quickly achieving a high rate of compliance with all of the requirements. In early January 1994, EPA staff was contacted by individuals in the aviation community raising concerns that blue dyed diesel fuel might be mistaken for blue avgas, resulting in aircraft misfueling and a potentially serious aviation accident. This was identified as a particular concern in small and/or remote airfields where small aircraft operate and the handling procedures for fuel are less sophisticated or controlled. EPA was informed that the incident which triggered this concern occurred when a fuel handler on an airfield in Alaska encountered a delivery of blue fuels and claimed that he could not determine with any certainty which was diesel or avgas.

Concern over this issue escalated quickly and EPA and various segments of the aviation community, including the FAA, various aviation associations, several airlines, the Coordinating Research Council (CRC) of the American Society of Testing and Materials (ASTM) and others quickly began to investigate this matter. FAA issued a "Notice to Airmen" on January 7, 1994 and subsequent safety notice on January 11, 1994 to alert the aviation community to this concern. However, EPA, the FAA and others believed a more permanent solution was necessary.

The aviation industry has used dyes in aviation fuels since the early 1940's to ensure the proper fueling of aircraft. Aircraft engines are particularly sensitive to engine wear problems and performance requirements specified by the manufacturers and thus it is critical that the proper fuel be used at all times. Aviation gasolines are currently dyed red, green or blue, at relatively low concentrations, to distinguish grades by octane and other specifications. Blue avgas is the most predominant and widely used in the United States. In addition, the dyeing of avgas provides an obvious distinction from jet fuel which is clear kerosene type fuel and is often located in the proximity of avgas. Standard aircraft pre-flight procedures require a fuel color check to ensure proper fueling because of this particular sensitivity.

While there is no specific federal requirement for the dyeing of aviation fuel, industry practice is to follow the aviation fuel dye specifications in the ASTM Standard D 910. The ASTM standard specifies dye color and concentration and other critical aviation gasoline properties, including octane. Further requirements regarding fuels, transportation and storage apply under the National Fire Protection Association Standard 207.

Dyeing of certain motor vehicle fuels is a relatively common practice. In the United States, however, on-highway and off-highway diesel fuel have generally not been dyed, except for the limited use of specific dyes in certain premium diesel fuels by various segments of the industry. Diesel fuels are commonly dyed in other countries, including Canada. The term diesel fuel covers a relatively broad spectrum of fuels, with a wide range of base colors. For example, undyed diesel fuel may vary from clear to a brownish color with nearly every shade in between. EPA's regulations have led to widespread use of the blue dye in off-highway diesel fuel, comprising approximately one half of all diesel fuel. In addition, IRS regulations issued on November 30, 1993 (58 FR 63069) and subsequently amended December 27, 1993 (58 FR 68304) adopt EPA's blue dye requirement to identify tax-exempt high sulfur diesel. The IRS regulations specify minimum dye concentration levels in order to meet the additional purposes of the IRS tax program.

The tax exemption for diesel fuel applies primarily to off-highway fuel, but also includes a small segment of on-highway diesel fuel use such as for certain buses, vehicles operated by state and local governments and non-profit educational organizations. Tax exempt uses comprise approximately 5% of the total diesel fuel market. Only a portion of this fuel will be dyed where downstream facilities have installed and utilize dye injection equipment. Motor fuel highway tax must be paid on this on-highway diesel fuel unless it is dyed. Under the IRS regulations, this on-highway fuel may be dyed with the dye solvent red 164 at minimum specified concentrations. If sold undyed, taxes must be paid and the appropriate parties can apply for tax refunds.

The safety issue described earlier arises even though blue or green avgas may not look very similar to the majority of blue dyed diesel fuel. Some off-highway diesel fuels, including home heating oils, when dyed blue may look very similar to blue or green avgas. This diesel fuel may also be used in and around small airfields. The inadvertent

mixing of diesel fuels with avgas is of particular concern since even small levels of contamination can cause aviation engine failures.

III. Discussion of EPA's Rule

EPA and other federal agencies have been examining various possible options to resolve the safety issue raised by the use of blue dye in diesel fuel. EPA and the other federal agencies considered whether the dye used in avgas should be changed given the much greater quantity of diesel fuel used annually than avgas. However, any change to the avgas colors was rejected since it is unlikely that the substantial understanding of fuel colors developed by pilots, fuel handlers, vendors and maintenance crews over nearly 50 years could be quickly undone without creating additional and possibly even greater safety risks. EPA and the other agencies, therefore, focused on the range of possible diesel fuel dye color changes.

EPA believes a dye should meet two significant criteria for use in its diesel fuel program. These are (1) Dyed diesel fuel should be clearly distinguishable from undyed fuel throughout the range of base colors found in diesel fuel, and (2) dyed diesel fuel must be clearly distinguishable from any of the avgas colors. IRS has an additional requirement that the dye must be discernible in diesel fuel when diluted by a factor of five with undyed diesel throughout the range of base diesel colors. This additional criteria is important to the purpose of the IRS program since potential tax evaders can realize significant illegal profits by mixing taxed and untaxed fuels in those proportions. EPA's regulatory program is structured differently. The requirement that on-highway diesel fuel be free of visible evidence of the dye applies not just to a single taxpayer, but to all persons in the distribution chain. This builds a strong incentive into the program to not mix dyed and un-dyed diesel fuel. Other issues of concern in choosing an appropriate dye include cost, health effects, equipment compatibility, pipeline concerns and availability to the public of the dye(s) to be selected. At the concentrations required to meet EPA's standard of "visible evidence" which is approximately one pound per thousand barrels, these concerns are not significant since industry has been using dyes in diesel fuels for some time at concentrations of approximately three pounds per thousand barrels without significant adverse effects in these areas. EPA staff, other government officials, and industry experts have examined

hundreds of dyed and undyed fuel samples. At several large meetings of industry and government personnel, diesel fuels dyed red, green and purple were studied in various concentration levels throughout the range of possible base colors. In addition, EPA and IRS field compliance personnel as well as aviation fuel users examined fuel samples from the perspective of each agency's program purposes. Industry experts provided further analyses of the colors and concentration options considered from the perspective of various industry concerns.

After considering all the evidence, EPA believes that red dye for high sulfur diesel fuel is the most appropriate for meeting the different agency concerns. It is easily distinguishable from undyed fuel, and from avgas at the concentrations that IRS requires. Purple was considered but rejected, because it was only distinguishable in very light base diesel fuel colors. At sufficient concentrations in darker base colors, purple creates significant routine product quality test problems for pipeline carriers. Green was also seriously considered, but was also rejected because it very closely resembled many of the undyed diesel fuels when diluted five times and is often too close in color to green avgas. The aviation community did not consider red to have the same problem at the concentrations considered since "red" avgas is actually pink and readily distinguishable from red dyed diesel fuel. The ASTM is currently preparing to rename red avgas pink. Since EPA's dye standard is based on the lack of "visible evidence", the dye requirement is easily met at relatively low concentrations.¹

With respect to cost, EPA does not believe the change from blue to red dye would cause any significant increase in cost, given the amount that would be used and the comparative cost of the dyes. Based on industry information, the cost of the red dye as specified, dye solvent red 164, is slightly less than the blue at similar concentrations, it is non-proprietary and is currently available from both Morton International and United Color Manufacturing. Based on discussions with these manufacturers, EPA believes that October 1, 1994 is a feasible date by which adequate supplies of the red dye can be manufactured and distributed, and

¹ Under the current regulations for diesel fuel, refiners use approximately 1 lb of blue dye per 1000 barrels of diesel fuel. EPA expects that approximately the same amount of red dye would be used under this final regulation to show visible evidence of the red dye.

made ready for use in dyeing off-highway diesel fuel.

Similarly, EPA believes that an October 1, 1994 date for a changeover from blue to red dye will allow a reasonable period of time for refiners and others that use the blue dye to use up most, if not all, of their current inventory of blue dye. This is based on discussions with representatives of the oil industry. EPA does not expect that equipment compatibility will be a problem for the pipelines and others that transport and store diesel fuel based on the relatively low concentration needed to show visible evidence of the dye. Pipeline representatives have indicated their support for this belief at meetings on these issues. While EPA has not conducted testing of the effects of the dye solvent red 164 on boilers, furnaces, and other equipment that use off-highway diesel fuel, EPA is not aware of any indications that the red dye would cause problems, or would be any different in that regard than blue dye. Finally, with respect to health effects, EPA has preliminarily looked at this issue but has not reached any conclusion that dye solvent red 164 is either better or worse compared to the blue dye currently specified in EPA's regulations, or compared to other possible substitutes for blue dye.

It is worth noting that blue dyed diesel fuel will continue to be in existence in storage facilities at all levels significantly past the October 1, 1994 date even though refiners and importers are prohibited from adding blue dye to off-highway diesel fuel. Therefore, these regulations do not make downstream parties liable for the continued use of existing supplies of blue dyed diesel fuel nor the mixtures of blue and red that will result. This diesel fuel could remain available for off-highway use for a period of time and, therefore, presents some risk to aviation safety. However, EPA is not aware of any feasible way to remove the blue dyed diesel fuel from the distribution and storage system. This rule is therefore aimed not at removing already dyed diesel fuel from the system, but at changing the practice of dyeing diesel fuel blue and thereby preventing the creation of additional supplies of this fuel. The EPA and other federal agencies encourage the rapid depletion of existing supplies of blue dyed diesel and the use of dye solvent red 164 as soon as possible.

EPA believes this change over from blue to red dye as of October 1, 1994 is reasonable in light of all of the above factors. It quickly moves to address the safety issue, while recognizing the need for a reasonable period of time for

refiners and importers to obtain supplies of dye solvent red 164 and draw down the inventory of blue dye. The red dye is considered the best choice as a substitute for blue dye, given the information EPA has available at this time regarding coloring characteristics, cost, equipment compatibility, non-proprietary nature of the dye and health effects.

The use of red dye for off-highway diesel fuel involves an additional concern for EPA with respect to that segment of on-highway diesel fuel that is tax-exempt and also dyed red under IRS regulations. EPA would prefer a unique color for the tax-exempt low sulfur fuel so as to retain a clear distinction from the dyed high sulfur as does various segments of the industry which supply and/or use this product under the IRS regulations. However, this is not feasible because, as discussed earlier, there was no other color that met all of the criteria adequately so as to meet the different agency requirements.

Under EPA's current regulations, on-highway diesel fuel for certain tax-exempt users must be free of visible evidence of blue dye, however, the IRS regulations allow for this fuel to be dyed red. As a result, EPA is providing a limited exemption that would allow this tax-exempt on-highway diesel fuel to be dyed red under certain conditions. Specifically, EPA will allow distributors to supply low sulfur on-highway diesel fuel that is dyed red if it meets the following conditions: (1) It must be provided for tax exempt use under IRS rules, (2) the diesel fuel must meet the standards for sulfur content and cetane index or aromatic content. In addition, supplier must provide transfer documents which certify that the fuel meets the applicable standards and the party receiving such fuel must retain these documents. Suppliers of red dyed diesel fuel for use in motor vehicles would have to provide and retain such transfer documents and suppliers and users of this fuel would also have to present such documents to establish a defense under the regulations if EPA discovers a violation. EPA does not believe that this creates a significant additional burden since bills of lading, invoices or some form of transfer document is already standard industry practice and this would merely require the additional designation on this documentation indicating the fuel meets EPA standards. In any case, a terminal has the option to either dye the on-highway diesel fuel red or in the alternative pay the required taxes and seek a refund. If regulated parties instead choose to dye the diesel fuel, or accept dyed diesel fuel for use in motor

vehicles, and not pay the tax, the above requirements establish a reasonable structure that places the burden on the user or supplier to show the exception applies in their case.

IV. Environmental and Economic Impact

The environmental impact of this rule would not differ in any significant way from the current regulations. EPA expects that this rule change will provide a reasonable resolution to the aviation safety concerns caused by the use of blue dye in diesel fuel. Given the comparable cost of the two dyes, and the leadtime allowed to obtain supplies of dye solvent red 164 and draw down supplies of blue, EPA believes there is no significant economic impact associated with the use of red rather than blue dye. Since fuel suppliers already provide transfer documents to customers, it will require only a minimal additional effort to indicate on such invoices that the fuel meets EPA requirements. Therefore, EPA believes that there will also be no significant economic impact associated with that requirement.

V. Public Participation

EPA is issuing this final rule without prior notice and comment. This expedited rulemaking procedure is based on the need to act expeditiously to resolve the aviation safety risk caused by the presence of blue dyed diesel fuel and avgas. In support of this action, EPA has contacted and received detailed input from a significant number of interested parties, including other federal agencies. EPA believes these circumstances provide good cause under 5 U.S.C. 553(b) and CAA § 307(d)(1) to expedite this rulemaking. EPA finds that notice and comment procedures under § 307(d) are impracticable and contrary to the public interest based on these circumstances.

At the same time EPA is providing 30 days for submission of public comments. EPA will consider all written comments submitted in the allotted time period to determine if any change to this rule is necessary.

Any proprietary information being submitted for the Agency's consideration should be clearly distinguished from other submittals and clearly labeled "Confidential Business Information." Proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that it is not inadvertently placed in the docket. Information thus labeled and directed shall be covered by a claim of confidentiality and will be disclosed by

EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, it may be made available to the public without further notice to the submitter.

For the aviation safety reasons noted above, this rule is effective upon publication. EPA finds these circumstances provide good cause under 5 U.S.C. 553(d) for this expedited effective date.

VI. Statutory Authority

The authority for this action is sections 114, 211, and 301 of the Clean Air Act, as amended, 42 U.S.C. 7414, 7545, and 7601.

VII. Administrative Designation and Regulatory Analysis

A. Executive Order 12866

Pursuant to Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant action" because this rule might interfere with an action taken or planned by another agency. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, et seq., requires that federal agencies examine the effects of this proposal and identify significant adverse impacts of federal regulations

on a substantial number of small entities. However, Section 605(b) of the RFA provides that an analysis is not required when the head of an agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

Because the RFA does not provide concrete definitions of "small entity," "significant impact," or "substantial number," EPA has established guidelines setting the standards to be used in evaluating impacts on small businesses.² For purposes of this rule, a small entity is any business which is independently owned and operated and not dominant in its field as defined by SBA regulations under section 3 of the Small Business Act.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects primarily petroleum refiners and suppliers of the required dye. While some of these parties may have existing inventories of blue dye after October 1, 1994, this rule will not adversely affect a significant number of small entities. However, EPA invites comment on the question of significant impacts on small entities.

C. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The information requirements are not effective until OMB approves them and a technical amendment is published in the Federal Register. A separate Federal Register notice will be published requesting comments on the information collection.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Diesel fuel, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

² U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, "Compliance with the Regulatory Flexibility Act," EPA Office of Policy, Planning, and Evaluation, 1984. In addition, U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, "Agency's Revised Guidelines for Implementing the Regulatory Flexibility Act," Office of Policy, Planning, and Evaluation, 1992.

Dated: July 7, 1994.

Carol M. Browner,
Administrator.

For the reasons set forth in the preamble, EPA is amending part 80 of title 40 of the Code of Federal Regulations as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. Section 80.29 is revised to read as follows:

§ 80.29 Controls and prohibitions on diesel fuel quality.

(a) Prohibited activities.

(1) Beginning October 1, 1993, no person, including but not limited to, refiners, importers, distributors, resellers, carriers, retailers or wholesale purchaser-consumers, shall manufacture, introduce into commerce, sell, offer for sale, supply, dispense, offer for supply or transport any diesel fuel for use in motor vehicles unless the diesel fuel:

(i) Has a sulfur percentage, by weight, no greater than 0.05 percent;

(ii)(A) Has a cetane index of at least 40; or

(B) Has a maximum aromatic content of 35 volume percent; and

(iii) Is free of visible evidence of:

(A) The dye 1,4-dialkylamino-anthraquinone; and

(B) Beginning October 1, 1994;

(1) The dye solvent red 164; unless

(2) It is used in a manner that is tax-exempt as defined under § 4082 of the Internal Revenue Code.

(2) In the case of any diesel fuel not intended for use in motor vehicles, no refiner or importer shall add or introduce any amount of the dye 1,4-dialkylamino-anthraquinone into such fuel beginning October 1, 1994.

(b) Determination of compliance. Any diesel fuel which does not show visible evidence of being dyed with either 1,4-dialkylamino-anthraquinone (which has a characteristic blue-green color in diesel fuel) or dye solvent red 164 (which has a characteristic red color in diesel fuel) shall be considered to be available for use in diesel motor vehicles and motor vehicle engines, and shall be subject to the prohibitions of paragraph (a) of this section.

Compliance with the standards listed in paragraph (a) of this section shall be determined by use of one of the sampling methodologies specified in appendix G to this part.

(c) *Transfer documents.*

(1) Any person that transfers custody or title of diesel fuel for use in motor vehicles which contains visible evidence of the dye solvent red 164 shall provide documents to the transferee which state that such fuel meets the applicable standards for sulfur and cetane index or aromatic content under these regulations and is only for tax-exempt use in diesel motor vehicles as defined under § 4082 of the Internal Revenue Code.

(2) Any person that is the transferor or the transferee of diesel fuel for use in motor vehicles which contains visible evidence of the dye solvent red 164, shall retain the documents required under paragraph (c)(1) of this section for a period of five years from the date of transfer of such fuel and shall provide such documents to the Administrator or the Administrator's representative upon request.

(d) *Liability.* Liability for violations of paragraph (a)(1) of this section shall be determined according to the provisions of § 80.30. Any person that violates paragraphs (a)(2) or (c) of this section shall be liable for penalties in accordance with paragraph (e) of this section.

(e) *Penalties.* Penalties for violations of paragraphs (a) or (c) of this section shall be determined according to the provisions of § 80.5.

3. Section 80.30 is amended by adding paragraph (g)(7) as follows:

§ 80.30 Liability for violations of diesel fuel control and prohibitions.

* * * * *

(g) * * *

(7) In the case of any distributor or reseller that would be in violation under paragraph (e)(2) or (f)(2) of this section or any wholesale purchaser-consumer or retailer that would be in violation under paragraph (e)(1) or (f)(1) of this section for diesel fuel for use in motor vehicles which contains visible evidence of the dye solvent red 164, the distributor or reseller or wholesale purchaser-consumer or retailer shall not be deemed in violation if he can:

(i) Demonstrate that the violation was not caused by him or his employee or agent,

(ii) Demonstrate that the fuel has been supplied, offered for supply, transported or available for tax-exempt use as defined under § 4082 of the Internal Revenue Code, and

(iii) Provide evidence from the supplier in the form of documentation that the fuel met the applicable standards under paragraph (a)(1) of this section for sulfur and cetane index or

aromatics content for use in motor vehicles.

[FR Doc. 94-17001 Filed 7-13-94; 8:45 am]

BILLING CODE 6560-60-P

**Appendix 7. Fuel Tax Evasion 11-Point Plan,
Uniform Schedules, and Standard Definitions**

**FUEL TAX EVASION
11 Point Plan**

As adopted by the FTA Motor Fuel Tax Section
Baltimore, Maryland November 3, 1992

1. State adoption/implementation of the Uniform Reporting Guidelines
 - a) Mechanism for the states to share the information with other states.
 - b) Identification by fuel type.
2. State adoption/implementation of the uniform definitions for imports and exports. Require licensing of and reporting by importers and exporters.
3. Incorporate the Federal Employer Identification Number (FEIN), Social Security Number (SSN), or Canadian Social Insurance Number as a reference for reporting and exchange of information between jurisdictions.
4. Require licensing of all resellers or entities who obtain tax-free inventory for ultimate resale.
5. State adoption/implementation of procedures to achieve total accountability of fuel to include:
 - a) Types of fuel that all states wish to account for or tax.
 - b) Schedules of accountability for fuels which may be subject to the tax.
 - c) Total accountability should be both on audit and on the required schedules filed with the states.
 - d) Reporting gallons as required by the uniform reporting guidelines.
 - e) Report of commingled inventories held by multiple owners in a common terminal facility to be reported by the terminal operator.
 - f) Review uniform cut-off time alternatives for declaring receipts and sales.

6. Allow for uniform electronic reporting systems.
 - a) Adoption of the Florida magnetic tape format and specifications as a national standard.
 - b) Adoption of the Florida specifications for use of floppy disk for a personal computer as a national standard.
 - c) Adoption of an electric data transfer system using ANSI X 12 standards.
7. Regional workshops for auditing and investigative techniques to identify tax evasion schemes.
 - a) Education of the states by the industry with regard to accounting procedure and terminal/wholesaler distribution practices.
 - b) Review of Case Studies which inform administrators and auditors of weaknesses in state laws, reporting procedures and auditing techniques. Also, suggestions on how to prevent evasion schemes.
8. Review confidentiality laws of the states and implement the steps necessary for states to provide fuel tax licensing information (including identification numbers) to other jurisdictions and industry representatives.
9. Require third party reporting on the movement of fuel.
 - a) Transporter reports should include the movement of fuel by common or contract carriers.
 - b) Adoption of uniform report form(s) for third party reporting.
10. Establishment of a fuel tax advisory group in each state to be comprised of state and industry representatives. The purpose of this group will be the implementation of this plan and to review and try to resolve new issues as they occur.
11. Encourage states to establish and adequately maintain a compliance staff dedicated to fuel tax enforcement.

Terminal Report

To be filed by all for hire terminal operators.

Terminal

Name of Terminal	Month/Year	Terminal Code
Location		

Operator

Name	FEIN Number	License Number	
Address	City	State	Zip Code
Phone Number:			

Transactions For The Month

	Schedule No.	Net Gallons		
		Gasoline	Diesel	Other Products
1. Beginning Inventory				
2. Total Receipts	2A			
3. Total Gallons Available				
4. Total Disbursements	4A			
5. Gallons Available (Less Disbursement)				
6. Stock Gains & Losses				
7. Actual Ending Inventory				

Signature of Terminal Operator	Title	Date
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INSTRUCTIONS

TERMINAL REPORT - SCHEDULE OF RECEIPTS

General Instructions

Schedule 2A provides detail in support of the amount(s) shown as Receipts on the Terminal Report.

Each receipt of product into the terminal should be listed on separate lines.

Identifying Information

Company Name and FEIN-Enter the name and number for the terminal operator shown on the Terminal Report.

Terminal Code-(to be developed)

Column Instructions

Column (1) & (2):

Carrier-Enter the name and FEIN of the company that transports the product into the terminal.

Column (3):

Mode of Transport-Enter the mode of transport from the terminal. Use one of the following.

J - Truck PL - Pipeline B - Barge R - Rail
S-Ship (Great Lakes or ocean marine vessel)

Column (4) & (5):

Position Holder-Enter the name and FEIN of the company that owns the product that is being withdrawn from the terminal according to the terminal operator's records.

Column (6):

Date Received-Enter the date on which the product was received into the terminal.

Column (7):

Document Number-Enter the identifying number from the document issued at the terminal when product is removed over the rack. In the case of pipeline or barge movements, enter the pipeline or barge ticket number.

Column (8):

Net Gallons-Enter the net amount of gallons received into the terminal. The total of all amounts entered in this column should agree to the amount shown for Receipts on the Terminal Report.

INSTRUCTIONS

TERMINAL REPORT - SCHEDULE OF DISBURSEMENTS

General Instructions

Schedule 4A provides detail in support of the amount(s) shown as Disbursements on the Terminal Report.

Each withdrawal of product from the terminal should be listed on separate lines.

Identifying Information

Company Name and FEIN-Enter the name and number for the terminal operator shown on the Terminal Report.

Terminal Code-(to be developed)

Column Instructions

Column (1) & (2):

Carrier-Enter the name and FEIN of the company that transports the product from the terminal.

Column (3):

Mode of Transport-Enter the mode of transport from the terminal. Use one of the following.

J - Truck PL - Pipeline B - Barge R - Rail
S-Ship (Great Lakes or ocean marine vessel)

Column (4):

Destination State-Enter the state, territory, or foreign country to which any reportable motor fuel is directed for delivery into any storage facility, receptacle, container, or any type of transportation equipment, for purpose of resale or use.

Column (5) & (6):

Position Holder-Enter the name and FEIN of the company that owns the product that is being withdrawn from the terminal according to the terminal operator's records.

Column (7):

Date Shipped-Enter the date the carrier leaves the terminal with the product.

Column (8):

Document Number-Enter the identifying number from the document issued at the terminal when product is removed over the rack. In the case of pipeline or barge movements, enter the pipeline or barge ticket number.

Column (9):

Net Gallons-Enter the net amount of gallons withdrawn from the terminal. The total of all amounts entered in this column should agree to the amount shown for Disbursements on the Terminal Report.

Column (10):

Gross Gallons-Enter the gross amount of gallons withdrawn from the terminal.

5-2-94

**INSTRUCTIONS
DISTRIBUTOR REPORT - SCHEDULE(S) OF DISBURSEMENTS**

GENERAL INSTRUCTIONS

This schedule(s) provides detail in support of the amount(s) shown as disbursements on the Distributor Report.

Each disbursement of product should be listed on separate lines.

IDENTIFYING INFORMATION

COMPANY NAME, FEIN and LICENSE NUMBER

Enter the name and numbers for the distributor shown on the distributor report.

SCHEDULE TYPE

Enter one of the following numbers.

- 5 Gallons Delivered Tax-Collected
- 6 Gallons Delivered to Licensed Motor Fuel Distributors Tax Not Collected
- 7 Gallons Exported to State of _____
- 8 Gallons Delivered to U.S. Government Tax-Exempt
- 9 Gallons Delivered to State and Local Government Tax-Exempt
- 10 Gallons Delivered to Other Tax-Exempt Entities

OPTIONAL SCHEDULES:

Sub-schedules can be used under each schedule if additional information is needed. Sub-schedules must equal total of major schedule number.

Schedule code "5A" should be used for "Gallons delivered for import -- tax collected".

Schedule code "7A" should be used for "Gallons delivered for export -- destination state tax collected"

COLUMN INSTRUCTIONS

Column (1) & (2): CARRIER

Enter the name and FEIN of the company that transports the product.

INSTRUCTIONS
DISTRIBUTOR REPORT - SCHEDULE(S) OF DISBURSEMENTS

Column (3): **MODE OF TRANSPORT**

Enter the mode of transport. Use one of the following:

J - Truck PL - Pipeline
 B - Barge R - Rail
 S - Ship (Great Lakes or ocean marine vessels)

Column (4): **POINT OF ORIGIN/DESTINATION**

Enter the location the product was transported from/to. When disbursements are received from a terminal, use uniform terminal codes.

Column (5) & (6): **SOLD TO**

Enter the name and FEIN of the company the product was sold to.

Column (7): **DATE SHIPPED**

Enter the date the product was shipped.

Column (8): **DOCUMENT NUMBER**

Enter the identifying number from the document issued at the terminal when product is removed over the rack. In the case of pipeline or large movements it is the pipeline or barge ticket.

Column (9): **NET GALLONS**

Enter the net amount of gallons disbursed.

Column (10): **GROSS GALLONS**

Enter the gross amount of gallons disbursed.

Column (11): **BILLED GALLONS** (use only if required by reporting state)

Enter the number of gallons billed to the customer (should equal either net or gross gallons).

Provide a grand total for columns 9, 10 and 11 on the last page of each schedule type for that schedule. Carry the total forward (either net, gross or billed as required by the reporting state) to the appropriate disbursements line on the Distributor Report.

5-2-94

**INSTRUCTIONS
DISTRIBUTOR REPORT - SCHEDULE(S) OF RECEIPTS**

GENERAL INSTRUCTIONS

This schedule(s) provides detail in support of the amount(s) shown as receipts on the Distributor Report.

Each receipt of product should be listed on separate lines.

IDENTIFYING INFORMATION

COMPANY NAME, FEIN and LICENSE NUMBER

Enter the name and numbers for the distributor shown on the distributor report.

SCHEDULE TYPE:

Enter one of the following numbers.

- 1 Gallons Received Tax-Paid
- 2 Gallons Received From Licensed Motor Fuel Distributors Tax-unpaid
- 3 Gallons Imported From Another State Direct to Customer
- 4 Gallons Imported From Another State Into Tax-Free Storage

OPTIONAL SCHEDULES:

Sub-schedules can be used under each schedule if additional information is needed. Sub-schedules must equal total of major schedule number.

Schedule code "3A" should be used for "Gallons sold for Import -- tax collected".

COLUMN INSTRUCTIONS:

Column (1) & (2): **CARRIER**

Enter the name and FEIN of the company that transports the product.

Column (3): **MODE OF TRANSPORT**

Enter the mode of transport. Use one of the following:

- | | |
|--|---------------|
| J - Truck | PL - Pipeline |
| B - Barge | R - Rail |
| S - Ship (Great Lakes or ocean marine vessels) | |

INSTRUCTIONS
DISTRIBUTOR REPORT - SCHEDULE(S) OF RECEIPTS

Column (4): POINT OF ORIGIN/DESTINATION

Enter the location the product was transported from/to. When received into or from a terminal, use uniform terminal codes

Column (5) & (6): ACQUIRED FROM/SELLERS FEIN

Enter the name and FEIN of the company the product was acquired from.

Column (7): DATE RECEIVED

Enter the date the product was received.

Column (8): DOCUMENT NUMBER

Enter the identifying number from the document issued at the terminal when product is removed over the rack. In the case of pipeline or large movements it is the pipeline or barge ticket.

Column (9): NET GALLONS

Enter the net amount of gallons received.

Column (10): GROSS GALLONS

Enter the gross amount of gallons received.

Column (11): BILLED GALLONS (use only if required by reporting state)

Enter the number of gallons billed (should equal either net or gross gallons).

Provide a grand total for columns 9, 10 and 11 on the last page of each schedule type for that schedule. Carry the total forward (either net, gross or billed as required by the reporting state) to the appropriate receipts line on the distributor report.

Standard Definitions for State Motor Fuel Tax Purposes

EXPORT

Motor fuel delivered out-of-state by or for the seller constitutes an export by the seller.

Motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

IMPORT

Motor fuel delivered into (name of State) from out-of-state by or for the seller constitutes an import by the seller.

Motor fuel delivered into (name of State) out-of-state by or for the purchaser constitutes an import by the purchaser.

**UP AND DOWN THE CHAIN:
MOVING THE POINT OF TAXATION
ON DIESEL FUEL**

Published by:
**Federation of Tax Administrators
444 North Capitol Street, N.W.
Washington, D.C. 20001
Ph. (202) 624-5890**

Research Report Number 142

November 1993

Foreword

In September 1993, the Federation of Tax Administrators conducted a study which focused on the point of taxation on diesel fuel. Much of the research material for the study came from responses to a questionnaire sent to 13 states. The states (below) selected for the survey had either had recent legislation which changed the point of taxation, or were considering a change in the future:

Arizona	Kansas	New York
California	Michigan	Tennessee
Florida	Missouri	Virginia
Indiana	Nevada	Wisconsin
	New Jersey	

The survey collected information on the entity responsible for collection of the tax; events that prompted the change; other changes that were made in conjunction with the change in point of taxation, such as penalties, registration and licensing requirements, reporting requirements, and bonding; and the revenue impact of the change.

Appendix A exhibits in tabular form the responses to each of the survey questions. Appendix B provides the narrative responses provided by each state.

This research report was prepared by Ed Collins, FTA Motor Fuel Tax Associate and Administrator, State and Federal Programs, Texas Comptroller of Public Accounts.

FTA expresses its thanks to the state tax administrators who provided the information on which this report is based.

Harley T. Duncan
Executive Director

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Up and Down the Chain: Moving the Point of Taxation on Diesel Fuel

(A Report of an FTA Survey)

Introduction

In recent years, motor fuel taxes have become the focus of compliance efforts by a large number of state tax administrators as well as the federal government. The nature of motor fuel—a fungible product—and the system of distribution and marketing, contribute to the relative ease with which dishonest people have been able to evade taxation.

Diesel fuel presents an especially difficult problem because of the large number of tax exempt uses, the variety of state tax laws, varying registration and reporting requirements, and the significant tax rate (combined state and federal) compared to product cost. The Federal Highway Administration estimates diesel fuel tax evasion is between 15 and 25 percent of gallons consumed nationwide, compared to a range of three to seven percent of gallons consumed for gasoline.¹

To obtain a more precise picture of how the states collect the tax on diesel fuel and the reasons for selecting the methods used, FTA conducted a survey of 13 states which have recently passed legislation to change the point of taxation or are considering a change at some future date. This report summarizes the results of the survey. Information was gathered on the following criteria:

- Point of taxation on diesel fuel;
- Administrative impact of legislative changes;
- Changes in penalties;
- Opposition and support for the change;
- Expected impact on revenue, voluntary compliance and evasion;
- Impact on exchange of information; and
- Effect of the federal fuel dyeing program (OBRA '93).

Point of Taxation: Moving Up and Down the Chain

The point of taxation on diesel fuel as a factor in evasion is an issue of long standing controversy. Beginning in the mid-1980s with Indiana, New York and other states, enhanced enforcement efforts were launched against dishonest and criminal elements in the industry who have stolen literally billions of dollars in state and federal fuel taxes. As more states have become aware of the problem and have developed their own motor fuel tax compliance programs, debate has continued on the most effective point in the distribution chain to impose fuel taxes.

Many tax administrators favor taxing diesel at the highest level of distribution—first import, the terminal rack, or the refinery—based on the presence of production and refining operations within a state. One of the main arguments for this approach is that normally, the number of taxpayers or license holders is greatly reduced as there are significantly fewer businesses at this level of distribution. Reducing the number of taxpayers filing reports obviously eases the administrative burden on state government. Also, it generally follows that taxation at the top of the distribution chain results in a stricter standard of accountability for bulk users (e.g. construction companies, mineral extractors, etc.), exporters and others who are typically not required to collect and remit the tax. This higher level of accountability enables states to track the movement of fuel from the refinery or terminal rack to the retail outlet or final consumer.

¹The FHWA Joint Federal/State Motor Fuel Tax Compliance Project, Fiscal Year 1992 Report to Congress.

Moving the point of taxation usually produces an increase in revenues because of stricter reporting requirements and possibly, as one state tax official described it, "It takes the crooks a few months to change their ways of stealing taxes." Eleven of the 13 states responding to the survey reported higher revenues, or expected an increase after moving the point of taxation to a higher level. Five of the survey states now tax diesel on first import into the state or at the terminal rack. In addition, California is considering legislation to move the point of taxation to the terminal. Michigan reported diesel tax collections rose 21.3 percent during the first six months after moving the tax to the terminal (effective January 1, 1993). Indiana moved to the terminal effective October 1, 1993, and projects an increase of \$20 million in collections over the two year budget cycle. Wisconsin will move to the terminal rack effective April 1, 1994 and estimates additional revenues of \$13 million over a two year period.

At the opposite end of the distribution chain is the large population of fuel retailers. Eighteen states currently require retailers (or users as they are sometimes referenced) to collect and remit the tax on diesel, compared to only three states that require retailers to collect and remit the tax on gasoline.² While most state tax agencies have been working to pass legislation to move the point of taxation on diesel away from the retail level (e.g. to the wholesale distributor or terminal rack) a few states have either moved the point of tax back down to the retail level or are studying this system's advantages. New Jersey moved its point of taxation on diesel from wholesale to retail in July 1992. During the first year, New Jersey reported collections of almost \$30 million more than the same period prior to the change. Florida is considering moving from wholesale to retail to improve enforcement through better fuel tracking. However, there is concern about increasing delinquencies if more tax is collected at the retail level. Many tax administrators share this concern that increasing the number of taxpayers (retailers) would greatly increase the opportunities for tax evasion.

In the federal arena, the Omnibus Budget Reconciliation Act of 1993 moved the point of taxation on diesel fuel to the terminal rack effective January 1, 1994.³ Concurrently, the Act requires dyeing of tax exempt distillate fuel. Imposing the federal tax at the terminal level will reduce the number of taxpayers to fewer than 2,000. Federal administrators believe that raising the point of taxation will accomplish three important goals:

- reduce the number of tax-free transactions, resulting in a shorter audit trail;
- reduce the number of taxable transactions; and
- reduce the number of persons eligible to purchase fuel tax free.¹

"Middleman" Evasion

In 35 states the wholesale distributor is responsible for collecting and remitting the tax on diesel fuel.² Aggressive compliance programs in New York, New Jersey, Indiana, Florida, Texas and other states have demonstrated that a large portion of the abuse occurs at this level. The number of exempt uses allowed by states creates an environment for tax evasion to flourish at this point in the distribution chain. One particular problem is the common provision for tax free sales between wholesale distributors. "Daisy chains" and "burn companies" which thrive on the availability of tax free sales like these have been the meat and potatoes of tax crooks for many years.

In a daisy chain scheme, one or more dummy corporations (often called paper companies or "burn companies") are created using nothing more

² FTA Bulletin B-298, "Survey of State Motor Fuel Tax Programs," July 1992.

³ Section 13242, Omnibus Budget Reconciliation Act of 1993.

than a telephone and a mail box. State fuel tax permits are obtained in the names of the burn companies as well as federal exemption authorizations (Form 637). These permits and forms enable the crooks to purchase fuel tax free through the bogus companies. Fuel orders are sold from one burn company to another, generating tremendous amounts of paperwork in the process, before the final sale to a retailer or user (many times legitimate, sometimes part of the conspiracy) using an invoice that claims taxes have been paid or are included in the sales price. Of course, the taxes are collected but never reported or remitted. The burn company's names are then changed to avoid detection or the company simply disappears, leaving state and federal authorities to chase a "paper trail" that leads nowhere. Despite these problems, many tax administrators feel that taxation at this level is more effective than at the retail level because there are significantly fewer license holders.

Exemptions and Abuses

Virtually every state provides for tax-free (or reduced tax) sales of diesel fuel. Most exemptions are for off-road consumption of diesel, which correlates to the primary purpose of fuel taxes to provide funding for construction and maintenance of roads and highways. Off-road exempt uses include:

- construction;
- agriculture;
- marine and inland waterway uses;
- home heating;
- power take-off equipment (i.e. auxiliary equipment with a separate fuel supply not used for propulsion of the vehicle);
- aviation;
- electrical power generation; and
- railroads.

Sales to the U.S. government, state and local governments and mass transit systems are either fully or partially exempt. In addition, diesel sold for export outside a state and sales between wholesale distributors are often tax free.

As previously noted, the large number of tax exemptions for diesel fuel provides many opportunities for tax evasion. Tax-free sales hidden in "daisy chains" of paper or "burn companies" are one of the largest problems. Misuse of exemption certificates allegedly issued for off-road consumption is also a problem. A third category of abuse is tax-free sales for immediate export. Exports are especially troublesome among contiguous states with significant differences in fuel tax rates.

For example, Georgia taxes diesel fuel at \$.075 per gallon, Florida at \$.21 per gallon and North Carolina at \$.223 per gallon. Kentucky's rate is \$.124 per gallon compared to \$.21 in Ohio and \$.2035 in West Virginia.⁴ The extreme difference in rate combined with often inadequate fuel tracking systems and information exchanges between states creates a ripe environment for evasion.

Opposition to, and Support for, Moving the Point of Taxation

Regardless of whether the point of taxation is moved upstream or downstream, opposition and support appear from all segments of the industry. In states which impose the tax at the wholesale level, wholesalers collect the tax from their customers at the time of sale, but are not required to remit the tax until 20 or sometimes 30 days after the month in which the tax was collected. This provides wholesalers with a "float" — "free" money from tax receipts which can be used for investment or other short-term cash needs. Moving the point of taxation to the terminal rack removes the "float" for wholesalers and shifts the benefit from use of these tax receipts to the terminal operator or refiner. As might be expected, opposition from the wholesale distribution segment of the industry has been strong against some state legislative efforts. Opposition to the federal law change was led by the Petroleum Marketers

⁴ FHWA Publication No. FHWA-PL-93-018, pages 3-6, Table MF-102, "State Taxation of Special Fuels" (status as of January 1, 1993).

Association of America (PMAA), the Texas Oil Marketers Association (TOMA), the National Association of Texaco Wholesalers, and former IRS Commissioner Shirley Peterson who advocated an alternative proposal to move the point of taxation downward to the retail level.⁵

For similar reasons farmers, construction companies, home heating oil distributors, and other exempt off-road users are frequently opposed to taxing fuel at the terminal because they will be required pay the tax up front and then claim a refund. Many of these industries are also "dual users" — those who use both taxable and nontaxable fuel in their operations. Such dual users may find it necessary, for federal purposes primarily, to maintain separate storage facilities for undyed taxable fuel and nontaxable dyed fuel.

Up-front payments of the federal tax by these exempt users will eventually be eliminated or reduced as a result of the fuel dyeing program which will result in tax-free sales of all dyed fuel. Realistically, however, it may be some time before dyeing is in place on a nation-wide basis. States such as Indiana and Wisconsin which will tax diesel fuel at the same level as the federal government are planning to establish their own diesel fuel dyeing programs to closely match the federal program. And at least one state, Montana, has proposed legislation to mirror the federal program since it was adopted.

Moving the point of taxation from the retail to the wholesale level is often opposed for reasons similar to those stated above. These industry concerns have been resolved in a variety of ways. In Kansas, compromises were made on the requirements for exemption permits. The original version of the law did not allow dual users to receive an exemption permit. The law was revised so that dual users may now qualify for an exemption permit. In Missouri, opposition from the trucking association and retail stations resulted in exemptions being added for railroads, home heating oil, farm machinery and power take-off equipment. The statute was also revised to allow

users with monthly purchases of 60,000 gallons or more to become licensed distributors so they may purchase fuel tax free and remit the tax with their monthly distributor reports.

One active supporter of taxing diesel fuel at the terminal rack has been the National Association of Truck Stop Operators (NATSO, Inc.) whose leaders and members have aggressively pursued legislation. NATSO maintains that "moving the point of tax collection up the stream greatly increases fuel tax compliance. It evens out the price of fuel and levels the playing field for all NATSO truck stops."⁴ Indiana's shift to taxation at the terminal was supported by most large oil companies, jobbers and trucking associations, but compromises were needed concerning the "float." It was preserved through a provision allowing tax-free sales to licensed exporters for export and sales to the U.S. Government, tax on inventory for non-suppliers (installment pay-out) and collection allowances. In Michigan there was general support from major oil companies, wholesale distributors, marketers and retail dealers. Differences that did exist were resolved by allowing wholesale distributors to buy fuel tax free at the terminal using exemption certificates and requiring them to remit the tax on their own returns for tax-free purchases in excess of their tax-free sales to government, non-highway users, etc.

Additional Changes and Administrative Impact

Of the 13 states surveyed, 10 have passed legislation within the last four years to move the point of taxation on diesel fuel. With the exception of New Jersey, all of these changes moved the collection point upstream. In every case, additional statutory or administrative changes were made concurrently:

⁵ NATSO *Stop Watch*, Vol. 6, No. 7, September 1993.

- Six of 10 states reported increased penalties for fuel tax violations including seizure and forfeiture authority, felony provisions and higher monetary penalties;
- Seven states said that reporting requirements had been expanded to improve the tracking of fuel movement; and
- Eight of 10 strengthened their registration and licensing requirements, increased bond requirements, and authorized highway stops and weigh station checks for shipping documents (bills of lading) and dyed fuel.

The survey demonstrated that the administrative consequences of changing the point of taxation are significant. As would be expected, moving the point of taxation up the distribution chain results in a reduction of taxpayers required to collect and remit the tax.

- California estimates the number of license holders will drop from 90,000 at present to fewer than 1,000;
- Most respondents indicated that reporting requirements had been or will be expanded to improve tracking fuel movement;
- Kansas saw no significant change in the number of distributor licenses but exemption permits increased dramatically to over 35,000;
- Michigan implemented licensing of terminal operators, exporters, refineries and home heating oil distributors, as well as continued licensing of retail dealers;
- All 10 survey states which had recent changes, reported revisions in report forms and schedules;
- Six states expanded their compliance and investigation programs; and

- Five states have new or enhanced computer mainframes, personal computer equipment and software.

The changes in federal law to move the point of taxation to the terminal and establishing a dyeing program for diesel fuels have also been encouraging to state fuel tax administrators:

- Six states indicated they plan to use the federal dyeing program as an enforcement tool;
- Seven of the respondents felt that the changes in federal law would be an incentive for states to move the point of taxation to the terminal;
- Twelve states indicated that a terminal tax would be beneficial to the states in tracking and exchanging information on interstate fuel movements; but
- Only one state felt that state diesel fuel tax exemptions should match the federal exemptions to assist in enforcement.

The majority of the survey respondents were optimistic about the changes in state fuel tax laws and the progress they represent in fighting evasion. Eleven states have experienced or expect significant growth in fuel tax revenues and nine states believe that voluntary compliance will improve.

Conclusion

The study demonstrates that the majority of state fuel tax administrators believe the most effective point of collection for diesel fuel is at the terminal rack. This position was significantly reinforced by the recent changes in federal law, despite strong opposition from several major industry associations. One conclusion is very clear — virtually all state and federal fuel tax administrators believe that fuel tax evasion is a significant problem that may never be entirely eradicated despite the increased efforts to combat it. Aware-

Moving the Point of Taxation on Diesel Fuel

ness and action are the key initiatives that have received tremendous support through the Federal Highway Administration's Joint Federal/State Motor Fuel Tax Compliance Project. Aggressive state actions have also contributed to the overall increase in enforcement initiatives.

The advantages of moving the point of taxation to the terminal are significant:

- Fewer taxpayers responsible for collecting and remitting the tax;
- Ease of administration for state administrators and industry;
- Fewer exempt sales;
- Improved ability to track the movement of fuel; and
- Real progress towards leveling the playing field for honest taxpayers.

Although the focus of this analysis is on the point of taxation, one very important finding became obvious and is a key question of whether a common or "best" point of taxation for diesel fuel is the answer to reducing tax evasion. In every instance where state legislation moved the point of tax, several other statutory and administrative changes were made concurrently. Reporting requirements were expanded to include industry segments not specifically responsible for collecting and remitting tax. This elevated accountability and improvement in state systems for "total accountability" helps track the movement of fuel and enhance the exchange of infor-

mation among the states. Registration and bonding qualifications were increased to assure the honesty and financial responsibility of applicants and to protect states against individuals who use short-lived paper companies to steal tax revenues.

Increases in penalties and felony provisions raise the risks of participating in evasion schemes and violating state fuel tax laws. Requiring shipping documents to accompany all movements of fuel, along with the ability to seize fuel, vehicles and other assets provides solid enforcement tools to state field agents. Expanded audit and investigation programs and aggressive prosecution policies help to expose and punish negligent and criminal activities. Finally, growing support from all areas of the motor fuel industry, together with the expansion of joint, cooperative efforts among the states, local law enforcement, Internal Revenue Service and other federal agencies, clarifies the common goal of eliminating the drain on state and federal fuel tax revenues.

A comment by Peter Steffens of the Florida Department of Revenue appropriately summarizes the findings of this study:

"Moving the point of taxation by itself will not solve the problem in the long term ...Tax evasion on diesel will be a problem no matter where the tax is collected.... The actions that would be most damaging to tax crooks are uniformity of report forms and schedules, uniformity of definitions and terminology, increased and enforced bonding requirements and strengthened licensing and registration requirements."

APPENDIX A
RESPONSES BY STATES TO THE SURVEY
(Tabular Form)

SURVEY QUESTION	AZ	CA	FL	IN	KS	MI	MO	NV	NJ	NY	TN	VA	WI
Taxation point for diesel:													
Refinery or first import									✓	✓	✓		
Terminal rack				✓		✓							✓
Wholesale distributor	✓	✓	✓		✓		✓					✓	
Retailer								✓	✓				
Exemptions:													
Sales to licensed distributors	✓	✓	✓		✓	✓			✓				
Off road use (construction, agriculture, commercial fishing, home heating, power take-off equipment, aviation, etc.)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sales for export		✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
U.S. Government	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
State or political subdivisions	✓					✓	✓	✓		✓	✓	✓	✓
Public school transportation		✓	✓			✓		✓		✓	✓	✓	✓
Mass transit		✓	✓	✓		✓		✓		✓	✓	✓	✓
Common carrier of passengers				✓		✓				✓			
For exempt sales, do taxpayers pay the tax and apply for refund/credit?	Y	NA	S	Y	Y	Y	Y	Y	Y	Y	Y	S	Y
Main reasons for changing the point of taxation:													
Easier to administer.	✓							✓			✓		✓
Industry and government concerns about tax evasion.		✓				✓	✓	✓	✓	✓		✓	✓
Better fuel tracking; improved enforcement.	✓		✓	✓	✓	✓	✓	✓			✓	✓	
Increased revenue without raising tax rate.				✓		✓			✓				

APPENDIX A (Contd.)

SURVEY QUESTION	AZ	CA	FL	IN	KS	MI	MO	NV	NJ	NY	TN	VA	WI
Who opposed the change?													
Refiners, blenders, importers		✓											
Terminal operators			✓										
Wholesale distributors	✓				✓	✓							✓
Fuel marketers (retailers)		✓				✓	✓						
Bulk users (trucking, etc.)						✓	✓						
Exempt users (construction, farming, mining, timber, other off-road users)	✓	✓	✓	✓		✓							
Within own agency			✓										
Who supported the change?													
Refiners, blenders, importers				✓		✓			✓	✓			
Terminal operators						✓			✓	✓			
Wholesale distributors				✓	✓	✓		✓	✓	✓			
Fuel marketers (retailers)				✓	✓	✓		✓	✓	✓			✓
Trucking industry (bulk users)			✓	✓				✓	✓	✓			
How have differences been resolved?													
License, exemption permit or refund permit for off-road use and/or dual storage (bulk purchases).	✓				✓	✓	✓						
Prepayments and income tax credits for farmers.		✓											
"Float" concessions - pay out in installments.				✓									✓
Collection allowance (discount on return).				✓									✓
Current penalties:													
-Failure to file or pay:													
Fine \$10 to \$500 maximum	✓			✓				✓					✓
Percentage of tax - ranges from 5% to 50% maximum	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Interest 10% to 12%	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

APPENDIX A (Contd.)

SURVEY QUESTION	AZ	CA	FL	IN	KS	MI	MO	NV	NJ	NY	TN	VA	WI
-False/fraudulent return: Penalties up to 100% plus other penalties and interest	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Misdemeanor with fines or imprisonment or both		✓								✓		✓	✓
Felony with fines or imprisonment or both		✓							✓	✓		✓	✓
-Operating without a license or permit: Misdemeanor with fines or imprisonment or both		✓										✓	✓
Felony with fines or imprisonment or both		✓		✓		✓			✓	✓		✓	✓
Seizure and forfeiture of fuel, trucks, other assets				✓		✓			✓	✓			✓
-False or no bill of lading: Misdemeanor with fines or imprisonment or both				✓								✓	✓
Felony with fines or imprisonment or both		✓		✓		✓			✓	✓		✓	✓
Seizure and forfeiture of fuel, trucks, other assets				✓		✓			✓	✓			✓
-Misuse of exemption certificate: Penalties	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
Misdemeanor with fines or imprisonment or both													
Felony with fines or imprisonment or both				✓			✓		✓	✓		✓	
Were penalties changed in conjunction with the change in point of taxation?	N	Y	NA	Y	N	Y	Y	N	N	N	NA	Y	Y
Administrative impact of changing point of taxation: Revisions to report forms and schedules; new forms.													
Improved tracking of fuel movement (expanded reporting requirements).	✓				✓	✓	✓	✓	✓	✓			✓

APPENDIX A (Contd.)

SURVEY QUESTION	AZ	CA	FL	IN	KS	MI	MO	NV	NJ	NY	TN	VA	WI
Reduction in number of taxpayers or permit holders.		✓	✓				✓	✓		✓			✓
Increase in number of taxpayers or permit holders.					✓	✓	✓	✓	✓	✓			✓
Increase in number of refund claims.							✓						
Strengthened registration and licensing requirements.	✓			✓	✓	✓	✓		✓	✓			
Higher bond requirements.	✓			✓	✓								
Expanded audit and investigation programs.				✓	✓		✓		✓	✓			✓
New or enhanced computer or PC systems				✓	✓	✓	✓			✓			✓
Highway and weigh station checks for shipping papers and dyed fuel.				✓									✓
Did revenue increase significantly, or is it expected to increase?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	NA	NA	Y
Do you expect voluntary compliance to improve?	Y	U	NA	Y	Y	Y	Y	Y	Y	Y	NA	NA	Y
Do you expect evasion to be reduced?	Y	Y	NA	Y	U	Y	Y	U	Y	Y	NA	NA	Y
Would taxation at the terminal help States in exchanging information on interstate fuel movement?	Y	Y	M	Y	N	Y	Y	Y	Y	Y	Y	Y	Y
Do you plan to use the federal dyeing program as an enforcement tool?	Y	U	Y	Y	Y	N	N	U	M	U	U	N	Y
Do you think state exemptions should match federal exemptions?	NA	U	N	Y	N	N	N	U	U	U	U	N	N
Do you think the dyeing program will encourage the States to move the point of taxation to the terminal?	Y	U	Y	Y	U	Y	Y	U	N	Y	U	U	Y

Y=yes; N=no; U=unknown; S=some; M=maybe; NA=not answered or not applicable.

APPENDIX B RESPONSES BY STATES TO THE SURVEY (Narrative Form)

1. Briefly describe how diesel (or special fuel) is taxed in your state. What exemptions are allowed for diesel? For exempt sales, are taxpayers required to pay the tax and then apply for a refund or credit?

ARIZONA - On January 1, 1993, Arizona moved the point of taxation for Use Fuel (diesel) to the distributor level. The Use Fuel Excise Tax is imposed when the distributor sells Use Fuel for taxable purposes. Exemptions to the Use Fuel Excise Tax sales include:

- Use Fuel sales to other licensed distributors.
- Use Fuel sales to holders of Certified Bulk Purchaser (CBP) license, which requires consumption of 80 percent of Use Fuel off-highway.

Taxpayers can claim credits for Use Fuel Excise Tax paid at the pump against the tax for Use Fuel consumed on Arizona highways. Credits are claimed on Arizona Tax Reports: Arizona Use Fuel and Motor Carrier Combined Tax Report; Arizona Use Fuel Tax Report; and Arizona IFTA Use Fuel Tax Report.

Use Fuel tax credits are carried forward to the next tax reporting period. However, taxpayers may receive a refund warrant by requesting a refund from the Department.

Effective January 1, 1994, Arizona will impose an \$.08 Use Fuel Surcharge. The surcharge is reported on Arizona Use Fuel Tax Reports and is not collected at the pump.

CALIFORNIA - The user is ultimately responsible for paying the tax on diesel, but three categories of persons are required to either collect or pay the tax:

- **Wholesaler.** Any person who sells fuel to a retailer which the retailer intends to resell, or any person who sells fuel in bulk to a non-retailer who intends to use the fuel.
- **Vendor.** A person who sells fuel which he then pumps into the fuel tank of a motor vehicle.
- **User.** A person who uses fuel to propel a motor vehicle on a highway.

Wholesalers collect most of the tax; vendors and users are allowed a credit on their tax return for the tax paid to the wholesaler.

The exemptions allowed are:

- Sales between wholesalers;
- Fuel used in a motor vehicle operated off highway;
- Fuel used in public agency vehicles operated on certain military reservations;
- Fuel used in vehicles operating on certain highways under the jurisdiction of the U.S. Department of Agriculture;
- Fuel used to propel agricultural and construction equipment exempt from registration under the Vehicle Code;
- Fuel purchased in California but used outside the State;
- Fuel used in equipment operated by a vehicle's power take-off;
- Sales to the U.S. Government or one of its instrumentalities;
- Sales to out of state sellers when the contract for sale calls for delivery by a common carrier to the out-of-state location;
- A partial exemption is allowed for certain public and private operators of transit services and the transportation of students; and
- When an exemption certificate is not allowed or given, the tax is paid and a claim for refund is filed.

***FLORIDA** - Diesel tax is primarily collected at the wholesale level. Dealers may buy tax free and sell to other licensed dealers or licensed dual users tax free. Tax free sales may also be made to any non-dual user for off road use. Exemptions include home heating, industrial off-road, farmers, commercial fishermen and exports. Most refunds are no longer necessary as the exemption throughput was repealed and made automatic at time of sale.

Tax on special fuel is a combined \$.04/gal. excise tax (highway tax) plus \$.069/gal. retail sales tax; total is

*The survey questions were answered by two Florida Department of Revenue employees. Their responses were combined for this report.

Moving the Point of Taxation on Diesel Fuel

\$.109/gal. The tax is due on the first sale or transfer of fuel in the State.

The first seller is responsible for collecting the tax or determining if the sale qualifies for complete or partial exemption. Special fuel sellers must be licensed to handle tax-free fuel. License holders are allowed to accept affidavits from, and sell tax free to, other special fuel license holders and exempt (or partially exempt) users.

Farmers, commercial fishermen and industrial users who are not dual users (on- and off-highway users) are fully exempt. Purchasers who use special fuel exclusively off-highway and who have no highway vehicles which operate on special fuel may give the seller an affidavit stating the use and pay only the \$.069/gal. rate (retail sales tax). Dual users pay the full \$.109/gal. unless they elect to become licensed to accrue and pay the tax based on use.

Export sales may be exempt under express conditions or, if taxed, may be refunded. Sales for certain uses may be exempt or taxed at a lower rate under certain circumstances. Counties and municipalities are eligible for partial tax refunds on fuel used in school buses and in mass transit systems.

INDIANA - Special fuel is currently taxed at the retail level. Effective October 1, 1993 it is taxed at the terminal rack. The following exemptions also became effective October 1, 1993:

- Sales by suppliers to licensed exporters for export;
- The United States or an agency or instrumentality thereof;
- Post or exchange on a Federal reservation;
- Public transportation corporation;
- Public transit department of a municipality;
- Common carrier of passengers, including taxicabs;
- Proportional exemption/common reservoir; and
- Non-highway purposes, used as heating oil, or in trains.

All but the first three exemptions may be applied for through a refund claim.

The final exempt category fuel is dyed at the rack or before withdrawal from a terminal or refinery rack.

KANSAS - Diesel is taxed at the wholesale/distributor level. Exemptions (deductions on tax return) are al-

lowed on exports, sales to the U.S. government, aviation sales and sales to exemption permit holders. If a fuel user has non-taxable usage they may elect to obtain an exemption permit (allows tax free purchases) or obtain a refund permit (pay the tax at time of purchase and then apply for a refund).

MICHIGAN - As of January 1, 1993, diesel became taxable at the supplier level, which is defined as "a person who imports diesel fuel by pipeline or marine vessel into a terminal or produces, manufactures or refines diesel fuel within this state."

Diesel fuel is taxed at 3 levels:

- **Primary level** - as removed from terminal for distribution except for:
 - Export;
 - Sale to wholesale distributor (with exemption certificate) for resale to government or for export; or
 - Non-highway use (nine cent rate or 15 cent rate).
- **Wholesale distributor** - pays on quarterly return if tax free purchases exceed tax free sales (nine cent rate or 15 cent rate).
- **Retail dealer** - pays tax on all non-exempt sales; claims credit for tax paid on purchases from terminals or wholesale distributors.

Wholesale distributors may request exemption certificates to enable them to purchase gasoline and diesel tax free. If an exemption certificate is approved, they must file a quarterly return and pay tax if tax-free purchases exceed tax-free sales.

All retail dealers of diesel are licensed and file quarterly returns. They pay tax on the additional six cents per gallon on sales into vehicles other than motor carriers.

The following exemptions are allowed:

- Off-highway use;
- Use as a home heating oil;
- Export;
- Use as other than motor fuel;
- Use in trains;
- State certificated operator of an inter-city motor bus for those gallons of diesel-producing mileage traveled within the state; and
- Diesel used in motor vehicles owned or leased and operated by the state, a political subdivision thereof, or the federal government.

All the above may purchase tax-free from a supplier or wholesale distributor except for governmental entities. If tax has been paid they may request a refund.

A discount of six cents per gallon is allowed on diesel if it is delivered into the fuel supply tanks of a commercial motor vehicle licensed under the motor carrier fuel tax act, P.A. 119 of 1980, as amended.

MISSOURI - Diesel fuel tax is imposed on the first receiver (i.e., the distributor) of special fuel.

Missouri law provides for the following exemptions:

- Special fuel sold to railroad companies to be used exclusively for purposes other than propelling motor vehicles on the public highways;
- Special fuel sold for use as a home heating oil;
- Special fuel sold for use exclusively in farm machinery;
- Special fuel sold for use in motor vehicles required to be licensed as an interstate special fuel user in the operation of auxiliary equipment only;
- Special fuel received by a licensed distributor and lost or destroyed;
- Special fuel used by a licensed distributor for off-road use; and
- Special fuel exported by a licensed distributor.

Licensed special fuel distributors may take the above deductions during the month in which they occurred on their monthly distributor report.

NEVADA - Nevada requires that the special fuel (use) tax on diesel be collected by the retail special fuel dealer if the special fuel is placed into the tank of a motor vehicle at the time of sale. Exemptions are:

- The sale or use of special fuel for any purpose other than to propel a motor vehicle upon the public highways of Nevada;
- Sales to the U.S. Government or any of its instrumentalities;
- Sales to the State of Nevada or any of its political subdivisions; and
- Sales to mass transit systems (buses) which use public money to operate the system.

If the tax is collected for special fuel used for non-taxable purposes, the special fuel user may apply for a refund. The purchaser must prove to the satisfaction of the Department that the fuel was used for purposes

other than to propel a vehicle on the public highways of Nevada.

NEW JERSEY - Special fuel is taxed when placed into the supply tank of a vehicle for highway use (retail level).

Exemptions - sales between one licensed seller/user and another or when seller has certification from user that special fuel is to be used for off-highway uses.

Refunds - all off-road transactions (i.e., construction equipment, motor boats, emergency vehicles) are recorded as deductions on seller/user reports and are subject to refund.

NEW YORK - The diesel fuel tax law was changed from a consumption basis to a first sale basis in 1988. Currently, the tax on diesel motor fuel is imposed at the point where the product is first dedicated to the automotive market. Point of sale exemptions exist for sales to Federal, New York State and local governmental entities and for sales to consumers for residential heating purposes. Refunds are provided for off-highway consumption and for consumption by specific classes of purchases.

TENNESSEE - Diesel fuel imported and coming to rest in the state is subject to a special tax of one cent per gallon as well as a 4/10 of a cent per gallon environmental fee. The special tax and environmental fee is paid by class "A" permit holders on a monthly basis. The fuel is reported based on import activity and the appropriate taxes once paid are subsequently passed on to the other distributors, jobbers or customers. Diesel fuel is further taxed under one of the following options:

- Diesel fuel is tangible personal property and subject to the state sales tax.
- Diesel fuel transferred or delivered for resale at a retail filling station for delivery into a motor vehicle is subject to the 17 cent motor fuel tax.

Exemptions are:

- Diesel fuel sold for agricultural purposes is exempt from sales tax, and diesel fuel taxed pursuant to T.C.A. 67-3-803 is also exempt from the sales tax;
- Qualified governmental agencies can purchase diesel free of all taxes; the supplier must file for a refund concerning the appropriate taxes;

Moving the Point of Taxation on Diesel Fuel

- Class "A" permit holders may also file for a refund or seek a credit on their tax reports for the special tax and environmental fee concerning fuel exported out of the state; and
- Diesel fuel placed in qualified auxiliary engines (truck refrigeration or cement mixers) may be entitled to a partial refund, provided the taxpayer has a valid refund permit and submits the required documentation.

VIRGINIA - Diesel is taxed at 16 cents per gallon. The tax is collected by suppliers (wholesale distributors) on diesel sold or delivered into the bulk storage facility of any licensed reseller or bulk user; or used by any supplier in his own vehicles; or delivered by a supplier directly into the fuel supply tank of a motor vehicle, etc. Exceptions include sales to the U.S. Government, state and local governments, volunteer fire fighting and rescue squad purposes.

Aviation special fuel is taxed at five cents per gallon.

Certain refunds are granted for non-highway use.

WISCONSIN - Effective January 1, 1994, gasoline and diesel fuel withdrawn from a terminal or refinery is taxed when the fuel is metered out at the terminal or refinery rack. The tax on gasoline or diesel fuel imported into the state by any other method will be paid by the supplier. No person may import gasoline or diesel fuel into Wisconsin, or sell, use, transport or store gasoline or diesel fuel in the state unless the tax on the motor vehicle fuel has been paid or liability accrued by the holder of a valid supplier's license issued by the department.

If dye has been added to the diesel fuel at the terminal level these sales are not subject to the Wisconsin motor vehicle fuel tax. However, dyed fuel can only be sold for exempt purposes to the following exempt customers:

- The U.S. Government or its agencies;
- Common carriers engaged in urban mass transportation of passengers;
- Persons who use fuel for non-highway purposes in mobile machinery and equipment;
- Suppliers who export fuel from Wisconsin; and
- Exempt users for purposes such as heating oil, for use in trains or other off-highway use.

Vendors who sell clear diesel fuel and gasoline to exempt customers may file a refund claim with the Department. Licensed suppliers who make tax-exempt sales of tax-paid fuel may deduct the exempt sales on their monthly motor vehicle fuel tax report.

Only gasoline and diesel fuel imported into Wisconsin by pipeline or marine vessel for terminal storage will be untaxed motor vehicle fuel. Gasoline or diesel fuel produced, manufactured, or refined within the state can also be held in tax-free storage by the refiner. The tax on gasoline or diesel fuel imported into the state by any other method will be paid by the supplier.

Exceptions to the motor vehicle fuel tax:

- Sales of tax-paid diesel fuel to exempt customers - A tax refund or tax credit on gasoline and diesel fuel is available to persons who make sales of tax-paid motor vehicle fuel to the following exempt customers:
 - The U.S. government or its agencies.
 - Common motor carriers engaged in the urban mass transportation of passengers.
 - Persons who use the fuel for non-highway purposes in mobile machinery and equipment (not licensed to travel public roads), providing the fuel is delivered directly into the customer's storage tank in an amount not less than 100 gallons and the supplier (or wholesale distributor/retail dealer) obtains a valid exemption certificate from the customer which was issued by the department.
 - Licensed general aviation fuel dealers for use in aircraft providing the gasoline is delivered into the dealer's storage tank in a volume of at least 100 gallons.
 - Suppliers who export fuel from Wisconsin, or an unlicensed person who exports the fuel providing such person has paid the tax on the fuel to the state of destination as evidenced by a bill of lading.

Unlicensed persons may use forms provided by the Department to obtain a refund of the tax paid on gasoline and diesel fuel sold for exempt purposes. Licensed suppliers who make tax-exempt sales of tax-paid fuel may deduct exempt sales on the motor vehicle fuel tax report.

2. What, specifically, precipitated the decision to change the point of taxation on diesel/special fuels?

ARIZONA - Perception that use fuel tax would be easier to administer.

CALIFORNIA - Because of the gross under-reporting or non-reporting by wholesalers and the complaints of the fuel industry, the point of taxation will be moved up the distribution chain. We were going to move to the refinery and import level, but now it will be the terminal level.

FLORIDA - We are considering moving the point of taxation to improve enforcement via better fuel tracking, identification of bootlegging and blending, and set a single point of collection. No legislation has been introduced to change the point of taxation.

INDIANA - State budget constraints, and challenged with looking for ways to generate additional revenue without raising the tax rate.

KANSAS - The change will allow better tracking of the flow of fuel from distributor to end user. Under previous statutes, when exempt sales were made, the licensed special fuel dealer/user was not required to list these sales.

MICHIGAN - Prior to January 1, 1993, diesel fuel was collected at the retail level with approximately 2,000 licensed dealers. We were unable to track the product and had a substantial amount of tax evasion with diesel.

The political climate was favorable due to:

- Need for more tax dollars without a tax rate increase;
- Proven Audit Division results of fraud at retail level; and
- Request from major oil companies.

MISSOURI - The Department of Highways and Transportation contacted the Department of Revenue and asked about changing the collection point of spe-

cial fuel due to their increasing concern with the possibility of fuel tax fraud. Their concern was due to the awareness of the fuel tax fraud at the federal level and in other states, and due to the fact that Missouri has one of the lowest fuel tax rates in the country.

NEVADA - During the 1993 session of the Nevada Legislature, AB 774 was introduced, which proposed changing the point of taxation of special fuels from the retail level to the wholesaler/distributor level. This bill was shelved and the issue has been included in an interim study of Nevada taxes on highway users. Since the proposal was sponsored by the Nevada Motor Transport Association and the Nevada Taxpayer Association and had the backing of petroleum distributors, it is expected to be introduced again in the 1994 session.

NEW JERSEY - Major noncompliance existed when tax was at the wholesale or distributor level. During first year of new legislation (actually six to eight months of actual operation because of start-up time) we have collected almost \$30 million more than for the same period before the new legislation.

NEW YORK - The change in point of taxation resulted from information gathered by a joint government-industry task force which found that substantial revenue was lost through various evasion schemes.

TENNESSEE - N/A - Point of taxation has not changed.

VIRGINIA - Not applicable.

WISCONSIN - The study conducted by the Federal Highway Administration estimated the level of diesel fuel tax evasion to be 15 - 25 percent of gallons consumed. The Wisconsin Truck Stop Association and the Department of Transportation backed the legislation. Reduction in the number of persons directly paying the tax from over 3,000 to less than 100 was also a factor in the decision to change the point of taxation to match the federal government's decision to tax all clear diesel fuel at the terminal rack.

3. Has there been opposition from industry or other groups, such as agriculture and marketers? How have differences been resolved? From what areas have you had support for changing the point of taxation?

ARIZONA - Opposition to the tax at the distributor level has been resolved. The Certified Bulk Purchaser license allows the acquisition of tax exempt use fuel for consumption off-highway. Principal off-highway consumers of use fuel include farming, construction, mining and timber.

CALIFORNIA - Marketers have objected to the move because of the time lag from payment to the supplier and reimbursement from their customer. The point has not yet been resolved.

Farmers have objected to the refunding procedure on off-highway fuel. A credit on income tax returns and prepayments has been proposed.

Refiners have objected to moving the point of taxation to the refiner, blender, and importer and have suggested that the point of taxation should be the same as the federal tax on diesel at the terminal.

FLORIDA - There is opposition to proposed changes just within our agency. There is concern about increasing delinquencies if more tax is collected at the retail level. Some industry groups will not support either early payment of tax or the loss of revenue generated on the float of collected tax dollars. Concerns expressed by certain industry and user groups revolve around the issue of handling refunds in a timely manner. Since most special fuel sold in Florida is fully or partially exempt, collecting tax at the top of the sales chain and refunding it to exempt users might create an administrative nightmare.

INDIANA - Initially, there was significant concern over float, inventory and the collection allowance. Differences were resolved as follows:

- Float stayed intact;
- Inventory for non-suppliers can be paid in three installments (October 15, November 15 and December 15, 1993); and
- There is a 1.6 percent collection allowance. Legislation provided for a pass-through from supplier to retailer.

Support for changing the point of taxation to the rack has come from major oil companies, industry, jobbers and trucking associations.

KANSAS - There has been opposition to the change. There were compromises made concerning the requirements of the exemption permits. We originally were not allowing dual tanks (taxable and non-taxable usage) if they were to qualify for the permit. Now they can maintain taxable and non-taxable tanks for the same fuel type and still maintain an exemption permit. The licensed distributors have been fairly supportive of the additional information required of them ... "as long as you are going to utilize the information."

MICHIGAN - The main opposition experienced was the fact that the law is very specific in stating that the ending inventory of diesel fuel is taxable for a wholesale distributor. Wholesale distributors of home heating fuel are opposed to this section, as they must pay the tax on their quarterly returns (which they must file if they have an approved exemption certificate) and wait for a refund on subsequent returns when this fuel is sold for exempt purposes. There is a possibility that these distributors will push for a law change.

Another problem industry faces is due to the motor carrier discount described above. Diesel fuel is billed at nine cents per gallon and retailers must pay the additional six cents per gallon on sales into vehicles other than motor carriers. We must, therefore, license all retail dealers of diesel fuel, and problems arise when a retail dealer is also a wholesale distributor. There is confusion on how to fill out both returns.

The main support for this law change is from suppliers defined in the law.

MISSOURI - The original bill as presented did not contain the above stated exemptions and as such we did receive opposition in the early stages from the trucking association and retail stations and we therefore revised the bill. Other opposition was from large licensed bulk users (e.g. interstate carriers who had bulk storage in Missouri) and we revised the statutes allowing users who receive monthly purchases of 60,000 gallons or more to become licensed distributors, purchase the fuel tax free and pay the tax on their monthly distributor reports.

NEVADA - The bill mentioned in response to Question Two above was introduced late in the 1993 session and did not receive sufficient public notice for any opposi-

tion. As previously stated, the bill was supported by the Nevada Motor Transport Association, the Nevada Taxpayer Association and the Petroleum Distributors.

NEW JERSEY - There has been no major opposition. In fact, the industry supported the move and helped push it through the legislature. They participate in a Division of Taxation advisory council and have significantly assisted in its implementation.

NEW YORK - Since the change in point of taxation resulted from a joint effort with industry, opposition was minimal. During the implementation process an ongoing dialogue was maintained with the affected segments of industry through a petroleum advisory council and through discussion with representatives of other trade groups.

TENNESSEE - N/A

VIRGINIA - N/A

WISCONSIN - Opposition came from the Wisconsin Petroleum Association. This group consists of approximately 800 wholesalers who opposed the change because of the cash float problem and the reduction in the shrinkage allowance. Both of these differences were resolved by requiring that the licensed supplier pass on to the wholesaler 1.25 percent of the 1.35 percent allowance. The cash float problem was resolved by allowing the wholesaler to pay the tax to the supplier when the tax is actually due to the Department of Revenue. Therefore, wholesalers will be allowed to deduct 1.25 percent from the tax payment to the supplier 15 days after the close of the month in which they obtain the product.

We had support from the Wisconsin Truck Stop Association because they wanted to have a level playing field for all truck stops.

4. What are your current penalties? Were your penalties changed in conjunction with the change in the point of taxation? If you are considering a change in the point of taxation, do you expect there to be revisions in your penalties? What will they be if you change the point of taxation?

ARIZONA - Penalties were not changed as a result of the move to the distributor level. Distributor tax reports are due by the 25th of the following month. Penalties for non-payment, under-payment or late filing include:

- \$25 late filing fee;
- Penalties on tax due balance of:
 - *Late less than 30 days*: 10 percent of tax
 - *Late more than 30 days*: 15 percent of tax; and
- Interest at 12 percent per annum on tax due balance.

If a distributor imports use fuel into Arizona without an Arizona Distributor license, a penalty of 100 percent of the tax paid is imposed.

At this time, we do not expect changes in Arizona concerning penalties.

CALIFORNIA - Current penalties in California are as follows:

- \$500 for anyone using fuel without a currently valid permit;
- Ten percent of the tax or \$500, whichever is greater, for each purchase made with an exemption certifi-

cate for personal gain or to evade the payment of taxes;

- Ten percent of the tax or \$500, whichever is greater, for each sale made for personal gain or to evade the payment of taxes when exemption certificate is accepted by a wholesaler who knew the fuel was not to be used in an exempt manner;
- Ten percent for negligence or intentional disregard of law or rules and regulations;
- Ten percent for failure to file a return;
- Ten percent for failure to pay;
- A misdemeanor fine of not less than \$100 and not more than \$1,000, or imprisonment for not more than six months in county jail, or both fine and imprisonment for each offense of placing, or causing to be placed, fuel in the fuel tank of a motor vehicle, or acquiring fuel outside the State and using the fuel in the State, or using the fuel placed in the fuel tank without holding a valid wholesale, vendor or user permit;
- A misdemeanor fine of not more than \$1,000 for each offense of failure or refusal to file a return or supplemental return or other data required;
- A misdemeanor fine of not less than \$300 and not more than \$5,000, or imprisonment for not more than 1 year in county jail, or both fine and impris-

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onment for each offense of making a false or fraudulent return with intent to defeat or evade the law; and

- A felony fine of not less than \$5,000 and not more than \$20,000, or imprisonment for 16 months, two years, or three years, or both fine and imprisonment, for each offense of intent to defeat or evade the amount required by law when the amount of tax is \$25,000 or more in any 12 consecutive-month period.

We will revise and add penalties with the change in the point of taxation. It is unknown at this time what all the changes will be, but includes:

- Change from 10 percent to 25 percent of the tax or \$500, whichever is greater, for misuse of an exemption certificate;
- Add a 25 percent penalty for unlicensed operation;
- Change the misdemeanor fine to not less than \$1,000 nor more than \$5,000; and
- Add that, in addition to the fine or sentence, or both, each person convicted of a felony shall pay \$5 for each gallon of fuel knowingly possessed, kept, stored, or retained for the purpose of sale, or sold or offered for sale. The \$5 per gallon will be divided equally between the local prosecuting jurisdiction and the State.

FLORIDA - Penalty for failure to remit tax timely is 10 percent of the unpaid tax with an additional 10 percent for each month the tax remains unpaid, not to exceed 50 percent. Additionally, interest is due at one percent of the unpaid balance per month until the tax is paid. In criminal cases carry a 100 percent personal liability penalty for officers and owners. No change is anticipated.

INDIANA - Current penalty is a \$300 fine for schedule or return. The penalty structure was changed in conjunction with the change in the point of taxation as follows:

- Class D felony for violation of sections 40 or 62 (e.g., provisions for dyeing and use of dyed fuel; exporter's license and other licenses; shipping documents for transportation of fuel in Indiana, etc.);
- Class D felony for failure to pay State tax on special fuel or, using money belonging to the State;
- For filing a false or fraudulent return, the tax plus an amount equal to the tax will be assessed;

- Other civil penalties for violations committed by fuel transporter, vehicle operator, supplier, terminal operator, etc.; and
- Provisions for impoundment, seizure and subsequent sale of a motor vehicle and its cargo for certain violations.

KANSAS - Penalties for delinquent filing or unpaid taxes is five percent of total tax due. These penalties were not changed when the point of taxation was moved.

MICHIGAN - Our penalties include 100 percent for fraud; five percent per month for failure to file or pay; 25 percent for intentional disregard; 10 percent for negligence; and 25 percent for insufficient funds checks. One change in penalties is that a violation now constitutes a felony instead of a misdemeanor. Also, our State Police now have the authority to seize and sell illegal loads of fuel (i.e., bad or no shipping documents). Civil fines (\$50 - \$1,000) for other violations

MISSOURI - The current penalties are five percent per month up to 25 percent and interest at the rate of 12 percent per annum. The penalties prior to this last year on special fuel were five percent for the first 30 days delinquent, 15 percent after 30 days and 25 percent on assessments.

NEVADA - Delinquent tax return penalty is \$50 plus 10 percent of tax liability and one percent interest per month, or fraction thereof, until paid. If the point of taxation is moved to the wholesaler/distributor, no revision to the current penalty charges is anticipated.

NEW JERSEY - The penalties are the same and are similar to our other tax evasion statutes which are tied into our criminal theft statutes. Term of sentence depends upon the amount evaded and can range from three months to 10 years.

NEW YORK - For late filing/payment: 10 percent of tax due for first month plus one percent per month until paid (maximum penalty, 30 percent). In addition, interest is imposed at a rate determined by the federal short-term rate (not less than six percent per annum). For fraud: penalty of 50 percent of tax due plus interest as above. In addition, certain criminal sanctions are provided. The penalty provisions were not a direct part of the change in point of taxation of diesel.

TENNESSEE - Diesel sold tax free to a customer who is not licensed in Tennessee and owns a licensed vehicle would be subject to the state motor fuel tax of 17 cents per gallon and penalty and interest. Interest is currently 10 percent per annum and penalty is five percent per 30 days of the unpaid balance, not to exceed 25 percent of the tax.

VIRGINIA - Current penalties:

- Report not filed: 10 percent of tax or \$10, whichever is greater;
- Class one misdemeanor for failure or refusal to pay tax; and
- Class six felony for willful non-payment of tax, criminal acts, with additional penalty of 100 percent of tax, in addition to 10 percent penalty.

WISCONSIN - The current penalties are:

- If an incorrect report is filed due to neglect, the entire tax finally determined is subject to a penalty of 25 percent exclusive of interest or other penalties;
- Failure to file penalty is five percent of the amount of the tax if the failure is for not more than one month and an additional five percent of the tax for

each additional month or fraction thereof during which the failure continues, not exceeding 25 percent of the tax in the aggregate period;

- If a person fails to file a return when due or files a false or fraudulent return with intent to in either case defeat or evade the taxes a penalty of 50 percent of the tax shall be added to the tax required to be paid, exclusive of interest and other penalties; and
- Any person who fails to furnish any return required to be made or who fails to furnish any data required by the department may be fined not more than \$500 or imprisoned for not more than 30 days or both.

When the law was changed we imposed an additional penalty of seizure and forfeiture of the fuel. Any untaxed motor vehicle fuel that is received by a person other than a licensee is subject to seizure along with the vehicle and other means of transportation used to transport the motor vehicle fuel. Any motor vehicle fuel, along with the transporting vehicle, brought into Wisconsin by a transporter for use, distribution, storage or sale which is not supported by a manifest is subject to seizure by either the Wisconsin Department of Transportation (State Patrol) or the Wisconsin Department of Revenue.

5. What administrative impact has there been as a result of changing the point of taxation, or what impact do you expect if you are considering a change (e.g. more auditors, new computer systems, more taxpayer assistance personnel, different enforcement methods, revisions in report forms and licensing procedures, changes in the number of licensees and exemptions, changes in the processing of refunds, etc.)?

ARIZONA - The Department established a Motor Fuel Tax Team in October 1992 that is dedicated to auditing distributor tax accounts, which provide about 50 percent of highway fund revenues.

In 1993 the Team completed internal control improvements over the distributor licensing process as follows:

- Reviewed 225 distributor files to verify:
 - Current distributor license information;
 - Appropriate level of distributor bond; and
 - Match application detail to data on system.
- Introduced distributor license questionnaire in addition to distributor license application form;
- Revised the distributor license application approval to include review by Office of Revenue Audit; and

- Currently in the process of developing a revised Distributor License Application for 1994.

CALIFORNIA - There will be a reduction in the number of licensees from 90,000 currently to less than 1,000.

The point of taxation for Liquid Petroleum Gas, Compressed Natural Gas, Liquid Natural Gas and alcohol fuel (ethanol or methanol containing not more than 15 percent gasoline or diesel) will remain at the vendor and user level.

FLORIDA - No detailed analysis has been conducted to determine the administrative impact which might result from a change in the point of taxation. If we move the point upward (to the rack) we anticipate a reduction in license holders of at least 1,700 accounts.

Moving the Point of Taxation on Diesel Fuel

Because Florida has local county taxes administered by the state and collected at retail, we require very limited resources to move all tax collections to retail.

INDIANA - The following changes will be made as a result of changing the point of taxation:

- New computer system:
 - Automated cross-check;
 - Bonding; and
 - Interfaces with current Department system.
- Enforcement changes:
 - Investigators - bulk plants;
 - Motor Carrier Police - on road (transporter shipping papers, etc.);
 - Weigh stations - shipping papers; and
 - Strict bonding requirements for all new licenses.
- Refunds - no change; refunds must be processed within 90 days before interest accrues.

KANSAS - All applicable returns, schedules, license applications and bond forms were revised. Previous licensees were required to re-license and obtain new bonds for coverage of both fuel types. There was no significant increase in the number of distributor licenses and our exemption permits total more than 35,000. There were no audit personnel added. We will be adding one or two new tax examiners for auditing tax returns. We will be revising office procedures to include tracking of fuels sold under exemption permits.

MICHIGAN - Major administrative impacts included revision and creation of forms (doubled number of returns and schedules required); education of the industry; systems programs changes which are still ongoing; increased number of licensees; more levels of taxpayers and licensees; and constant analysis of the law.

MISSOURI - Implementing the change required issuing licenses to special fuel distributors, canceling dealer and special fuel bulk user licenses, sending out information letters, implementing new forms, promulgating rules, implementing a PC system and training new employees. We added three desk auditors to our staff to audit special fuel distributors and terminal, pipeline and transporter reports.

NEVADA - At this time, gasoline tax is imposed at the wholesaler/distributor level and the collection is administered by the Department of Taxation. If collection of special fuel tax is moved to the wholesaler/distributor level, it is anticipated that both tax programs will be administered by one agency. This will not require any additional personnel if the staff of both tax collection and audit programs will be combined into a single unit. Depending on the language in the proposed law change, refunds for tax-paid fuel used in a non-taxable manner could increase by a large percentage.

NEW JERSEY - The change required a complete reorganization of the function previously responsible for motor fuel tax matters. A new unit was formed — new management, a few field people were retired, approximately 30 new auditors and investigators were hired, and overall management was put under the Office of Criminal Investigations.

NEW YORK - The change resulted in revisions to reporting forms, inter-party transactional documentation, licensing procedures and the number and composition of licensees. It also resulted in a change in the manner in which some exemptions are provided. In some instances, formerly exempt transactions are now made on a tax-paid basis subject to refund. Some systems modifications were required as a result of revisions of reporting forms.

TENNESSEE - N/A

VIRGINIA - N/A

WISCONSIN - Our department is currently attempting to modernize our entire motor vehicle fuel tax program. Our plans are to have a tracking system in place by April 1, 1994. We have developed new reporting forms based on the FTA Uniformity Committee recommendations. With the reduction in the number of persons paying the tax directly to the Department we anticipate a reduction in the number of field auditors, but we also contemplate more investigators to determine if dyed diesel fuel is actually being used in licensed motor vehicles. We also expect an increase in the number of persons claiming refund of tax on clear fuel sold to exempt customers.

6. What is the expected impact on revenue?

ARIZONA - Expect increased tax revenues.

CALIFORNIA - Revenue should increase, but no estimates are available at this time.

FLORIDA - Federal Highway Administration estimates Florida loses \$50.3 million annually to fraud, about half of which is tax on diesel fuel. Retail collection could curb 10 percent to 15 percent of the fraud, or \$2.5 to \$3.8 million.

INDIANA - Estimate \$20 million increase over two-year budget cycle.

KANSAS - The original fiscal note on Senate Bill 551 estimated an increase of \$7 million. The current consensus estimate (April 1993) is \$6 million. This current estimate takes into consideration any refunds of special fuel tax. These estimates were based on the history of the Missouri change in point of taxation on diesel fuel. We used their estimated increase of 33 percent and adjusted for refunds and exemptions.

MICHIGAN - For the first six months of the new law, we have shown an increase in gasoline tax of 3.1 percent, or \$9.4 million and an increase in diesel tax of

21.3 percent, or \$5.8 million. We feel, however, that the most accurate measure of the new law will not be available until the first quarter of 1994.

MISSOURI - We realized an increase in collections of 24 percent.

NEVADA - Some increase in revenue is expected.

NEW JERSEY - Increase (\$30 million over previous period).

NEW YORK - The 1988 change in the point of taxation of diesel motor fuel resulted in increased tax collections. The Division of the Budget estimated a \$15 million increase in fuel tax receipts for the first full year after implementation.

TENNESSEE - N/A

VIRGINIA - N/A

WISCONSIN - The change in the diesel fuel tax imposition from the retail level to the terminal level is expected to result in additional revenues for the 1993 to 1995 fiscal years totaling \$13 million.

7. Have you perceived an increase in voluntary compliance, or is an increase expected? Why?

ARIZONA - We believe we will see an increase in voluntary compliance related to distributor licensing and tax reporting due to the efforts of the Motor Fuel Tax Team.

CALIFORNIA - Unknown.

FLORIDA - N/A

INDIANA - Expect an obvious increase in voluntary compliance due to decreased opportunity for evasion. Also, automated cross-checking of monthly schedules to track fuel should help force compliance.

KANSAS - Our change was effective July 1, 1993, so we have only received the July returns. We do expect better compliance with the exemption permits aiding in this area, but it is too early to estimate how much increase.

MICHIGAN - Increase expected due to change in taxation methods and new tracking system.

MISSOURI - There has been an increase of voluntary compliance as the distributors are aware of our tracking ability when auditing the distributor report and also cross-checking such reports against the terminal and transporter reporters.

NEVADA - Taxing the special fuel at the wholesaler/distributor level is expected to increase compliance since the bulk user will be paying the tax on the fuel delivered rather than after he has determined the taxable use.

NEW JERSEY - Yes, because we have more control. New reporting requirements allow us to monitor fuel transactions from the refinery to the retailer, both taxable and non-taxable product. We were not able to do that previously.

Moving the Point of Taxation on Diesel Fuel

NEW YORK - There has been an increase in voluntary compliance which most likely is a result of stepped up audit/compliance activities. By moving the point of collection upstream the number of taxpayers has been substantially reduced, resulting in better, more frequent audit. Also, the larger dealers are less likely to experience the cash flow problems of small retailers.

TENNESSEE - N/A

VIRGINIA - N/A

WISCONSIN - Our terminal tax law does not take effect until April 1, 1994. We expect a 15 percent to 25 percent increase in voluntary compliance. Because the tax will be paid at the high level in the distribution chain and because of the IRS and EPA dyeing requirements along with our diesel fuel dyeing requirement, no person will want to get caught with dyed fuel in their motor vehicle fuel tank.

8. Is evasion expected to be, or has it been, measurably reduced?

ARIZONA - We cannot effectively measure motor fuel tax evasion. However, we believe the internal control improvements and the presence of the Motor Fuel Tax Team will contribute to reduced tax evasion.

CALIFORNIA - It is expected to be reduced.

FLORIDA - N/A

INDIANA - Yes.

KANSAS - Not able to adequately measure evasion reduction at this time.

MICHIGAN - Yes, our primary problems were at the retail level and these taxpayers can no longer obtain tax-free fuel. Fuel tracking system also helps detect problems at higher levels of the distribution chain.

MISSOURI - Evasion seems to be reduced due to our ability to track the special fuel sold from in-state terminals or pipelines in the same manner as we were tracking the motor fuel (gasoline).

NEVADA - This is unknown at this time. However, Nevada has been advised by the industry and other taxing authorities that less evasion takes place at the retail point of taxation. We do not anticipate any increase in the evasion problem if the tax is collected at the wholesale level.

NEW JERSEY - It has been measurably reduced - from our many sources of information and feedback from the industry.

NEW YORK - Evasion has been reduced through stepped-up audit activity, the resulting awareness of industry, and the greater level of accountability imposed as part of the change in point of taxation.

TENNESSEE - N/A

VIRGINIA - N/A

WISCONSIN - We do expect some evasion because of the tax exempt persons purchasing clear diesel. Our enforcement effort will be in this area and we do expect that evasion will be reduced by 15 percent.

9. How might taxation at the terminal help the states in exchanging information on interstate fuel movement?

ARIZONA - Fuel tax activity reported at the terminal, if the information identifies the owner of the fuel, may help Arizona better track fuel imports. Very little fuel is exported from Arizona. Fuel import information would assist us to reconcile distributor reports of fuel imports.

CALIFORNIA - The point of taxation and control would be the same in all states and schedules used for export could be used for import.

FLORIDA - Florida is currently able to exchange information on fuel movement with its border states, Alabama and Georgia. Very little special fuel is exported from Florida and we would anticipate little impact on exchanging information should the point of taxation be changed. I guess if we use the Tennessee method all exports would be identifiable for refund purposes. However, early taxation kills the tracking of fuel from a low tax state to a high tax state. It also provides no network to uncover blended fuel. Exemptions at the

rack as proposed by the IRS are okay for dyed fuel, but create serious problems when exempt users can buy tax-paid fuel and obtain a refund. Now you can steal tax without buying fuel.

INDIANA - Uniform import/export requirements.

KANSAS - No increase in compliance. Kansas currently has information on interstate fuel movement and exchanges this information with any state that requests it.

MICHIGAN - Uniformity in taxation should create a better ability to exchange information between states and with the federal government. Also, we require the licensing and reporting of all exporters. Voluntary collection by terminals of tax for neighboring states on exports; required licensing and reporting for exporters.

MISSOURI - By licensing the terminal operators, special fuel distributors, and transporters this would give the Department better control over the distribution of special fuels. This allows states to track the movement of special fuel from the terminal through the distributor for fuel moved or sold across state boundaries.

NEVADA - By taxing the fuel at the rack, tracking of fuel movement, even across state lines, should be simpler. If the reseller exports the fuel and requests

credit for the state tax paid at the terminal, the export state should request proof that the transfer of the fuel was reported to the import state for taxing purposes.

NEW JERSEY - It may make it easier.

NEW YORK - By imposing fuel tax at the terminal level and requiring greater product accountability, the movement of fuel between interstate terminals should be better documented and, therefore, the information more readily available for exchange. Where an exclusion from the tax base exists for exported product, it is to the taxpayers' benefit to account for such movement. This information, available to the recipient state, provides verification of reporting by the importing terminal.

TENNESSEE - Currently, our state collects 1.4 cents upon import into the terminal. Therefore, we are in a position to exchange information concerning interstate fuel movement.

VIRGINIA - It would enhance uniformity relating to the exchange of information.

WISCONSIN - Taxation at the terminal level requires the terminal operator to know the destination state. This requirement to show the destination state, plus the provision to seize the vehicle and the fuel if the bill of lading does not show the destination state, should help in the exchange of information on interstate fuel movement.

10. Do you plan to utilize the federal dyeing program as an enforcement tool for your state's fuel tax administration? Would there be a need to change state exemptions to match the federal exemptions?

ARIZONA - We plan to use federal fuel dyeing program requirements to assist the Motor Fuel Tax Team evaluate the quality of use fuel sold by distributors and vendors. We plan to coordinate use fuel quality testing with the Arizona Department of Weights and Measures. Use fuel quality tests will assist us in determining:

- Use fuel blend stock components and sources of those components; and
- Whether taxes have been paid on use fuel available for sale.

CALIFORNIA - Unknown at this time.

FLORIDA - We anticipate that the federal dyeing program will give us another tool in verifying claims of exempt use of special fuel. No changes in statutory exemption provisions are anticipated.

INDIANA - Yes, Indiana law will match federal dyeing requirements in most respects.

KANSAS - Yes, we hope to use the federal fuel dyeing program as an enforcement tool. We do not plan to change our state exemptions, but we will incorporate procedures for allowing for the exemptions when upgrading our enforcement program.

Moving the Point of Taxation on Diesel Fuel

MICHIGAN - Federal program perceived as only backup information to paperwork required by Michigan to document exemptions - no need to change state exemptions or procedures.

MISSOURI - Not at this time.

NEVADA - Not known at this time.

NEW JERSEY - Not determined at this time. Possibly.

NEW YORK - At present, the greater percentage of middle distillate entering New York State is destined for the heating fuel market and, therefore, is not subject to the diesel motor fuel tax. This percentage varies seasonally and is also impacted by the severity of winter. To adopt the federal standard without first

revising New York statute would be disruptive to the heating oil supply and would create administrative problems until supplies of high sulfur and low sulfur levels have stabilized regionally. At this point in time it is difficult, if not impossible, to determine any benefits of conformity to federal statute.

TENNESSEE - Uncertain at this time.

VIRGINIA - Not at the current time.

WISCONSIN - Yes, the State of Wisconsin plans to utilize the IRS regulations in the enforcement of our diesel fuel tax administration. We do not feel there is a need to change the state exemptions to match the federal exemptions. In fact, Wisconsin does not exempt local units of government from the state excise tax.

11. What impact do you think the federal dyeing program will have on state fuel tax administration? Do you think it will provide an impetus for the states toward moving the point of taxation to the terminal?

ARIZONA - We think that the federal fuel dyeing program will promote fuel tax compliance by providing:

- Visible means to determine if fuel has been taxed; and
- Demand for quality fuels from suppliers and distributors.

If Federal fuel dyeing results in significant revenues for the federal government, states may pursue moving fuel taxation to the rack.

CALIFORNIA - Unknown.

FLORIDA - We believe the Federal dyeing program will have minimal impact on our fuel tax administration activities. It is possible that changes will be made in our licensing provisions; however, no changes are currently being considered. If they can resolve the refund problems I am sure many states will follow. Probably a lot of states will do it, even if the problems persist, if industry wants to do it to get the states and IRS the same.

We do not believe the dyeing program will have an effect on our moving the taxation point to the terminal level. See answer to question 3.

INDIANA - Already anticipated and adjusted in Indiana. Hopefully will provide impetus (for other states) - proof will be in improved collection statistics.

KANSAS - In Kansas, moving the point of collection to the terminal would most likely never be achieved. Due to the large amount of non-taxable usage, mostly agricultural, the lobby to keep non-taxable purchases as convenient and hassle free as possible would be far greater than the benefits we could propose to the legislature.

MICHIGAN - At first, the dyeing program will create massive confusion among pipeline companies, terminal operators and wholesalers. Eventually, it will be a valuable tool in controlling false claims of non-highway consumption and facilitate moving the point of collection to the terminal level.

MISSOURI - I feel the federal dyeing program will encourage the states to take a closer look at fuel tax fraud and may encourage the states to change the point of collection to the first receiver or terminal level.

NEVADA - No refineries are located in Nevada and, therefore, all fuel must be imported. A large volume of this fuel is being trucked into the state, since only two pipelines move fuel to terminals in Las Vegas and

Reno/Sparks. Therefore, it is unknown at this time what benefit the federal dyeing program would have on Nevada fuel tax administration.

NEW JERSEY - No.

NEW YORK - While it is too early in the process to make final judgments regarding the federal program, at least in the short run the dyeing program will have a negative effect on our administration. Long term, if all states adopt the federal standards and exemptions, administration should be universally eased. To this end, a move in point of collection to terminal level may be beneficial.

Please write any other comments you feel are important to this subject.

CALIFORNIA - Legislation has been introduced in California (SB840) to move the point of taxation for diesel fuel up the distribution chain from the wholesale level to the refinery and importation level. However, with the recent federal changes, staff will be recommending mirroring the federal taxation point for California State taxation purposes. We anticipate this change to be effective January 1, 1995.

FLORIDA - Business case studies are currently being prepared on proposals to move the taxation point of fuels to rack (terminal) level or to the retail level, using hypothetical situations and analyzing benefits and negatives of each approach. Results are due out in mid-October.

KANSAS - When Kansas changed the point of taxation on diesel fuel, we underestimated the time needed to fully implement the changes within the industry itself. The bill was passed in the 1992 legislative session with an effective date of July 1, 1993. We mailed the first information six months prior to the change (January 1, 1993). We started informational meetings for the distributors in March (approximately five) and meetings for users in April (approximately 60). We began licensing for exemption permits in May and did not complete the backlog until the end of July. The exemption permits were very time consuming and we received twice as many as expected. Time is

TENNESSEE - We have not been able to review the program in great detail, however, our reports could be modified to accommodate a change in tax liability if industry and legislation so requires it.

VIRGINIA - Unknown at this time. No anticipated impact.

WISCONSIN - The federal dyeing program will definitely have a large impact on state tax administration because it provides an additional tool in the collection of the tax. It definitely was one of the factors in moving the point of taxation to the terminal level for our state.

one of the most important elements when considering this change.

MICHIGAN - After nine months, there are still quite a few problems we are experiencing with this new law. There is still much confusion and misinterpretation by the industry at various levels. We feel that part of this confusion is due to the fact that we were only allowed a little over two months to implement the law change. We recommend at least six months to properly implement all the changes.

MISSOURI - It is important that all states track fuel sales from the terminal or pipeline and exchange that information with other states for all cross-border sales.

NEW JERSEY - One point of taxation may not be appropriate for all taxing jurisdictions - local problems differ.

WISCONSIN (Bob Zellner) - Most of the complaints we receive from Wisconsin taxpayers question why our state is different from the federal government in imposing motor vehicle fuel taxes. Truck stop operators want a level playing field that all taxes are actually collected by the department. We feel that the terminal tax on diesel fuel will level the playing field and provide another enforcement tool in collecting all fuel taxes.

**Appendix 9. Draft Model Legislation: State Enforcement
of Fuel Dyeing**

ANALYSIS
MODEL LEGISLATION
STATE ENFORCEMENT OF FUEL DYEING

SECTION 1. Section 1 of the bill creates a State violation for having diesel fuel, which has been dyed in accordance with the federal law requiring diesel fuel on which the federal excise tax has not been paid to be dyed, in the supply tank of a vehicle operated on the highway. Tax exempt uses are excepted, provided the dyed fuel is low sulfur.

SECTION 2. Paragraph (a) of SECTION 2 authorizes various law enforcement officers and agents to enforce the provisions of SECTION 1. Paragraph (b) of Section 2 requires the appropriate State Department to approve any testing equipment used to enforce SECTION 1.

SECTION 3. Paragraph (a) of SECTION 3 of the bill moves the point of taxation for diesel fuel to the terminal rack. This provision is not a prerequisite to roadside enforcement of dyed fuel. It does however make for consistency with the Federal law. Paragraph (b), however, is necessary for any State roadside inspection program. It provides that, irrespective of where in the chain the State diesel fuel tax is imposed, it will not be imposed on fuel which has already been dyed under the Federal law. Paragraph (b) also provides, however, that if dyed, tax-exempt fuel is used or sold for a taxable purpose, or if dye is removed or altered, the fuel becomes subject to the State motor fuel excise tax.

SECTION 4. SECTION 4 sets out penalties for the misuse of dyed fuel and states that in addition to the penalty, the State motor fuel tax must also be paid. The amounts chosen are purely arbitrary.

Most States already have bonding provisions for motor vehicle code violations. Consequently, if the above provisions are placed in the motor vehicle code, the existing bonding, and civil and administrative procedures would apply to the use of dyed fuel on the highway.

Note that this draft does not address violations involving attempts to remove dye nor does it address violations involving the sale of dyed diesel fuel for highway use, except to state that any sale of tax-exempt fuel for a taxable purpose or any removal of dye subjects the fuel involved to the State motor fuel tax. The actual penalties for this activity are more appropriately treated as criminal fraud violations rather than motor vehicle code violations and each State ought review its current fraud provisions to determine whether they adequately cover motor fuel tax evasion.

This draft does not include definitions for highways, diesel fuel or other terms which are presumably already defined in most State statutes.

DRAFT

Model Legislation

SECTION 1. FUEL USED FOR HIGHWAY PURPOSES. No person may operate a motor vehicle upon any public highway in this State with fuel contained in the fuel supply tank of the vehicle that is dyed pursuant to 26 USC 4082 or Section 211(i) of the Clean Air Act. This section does not apply to those highway uses which are tax-exempt, provided the dyed fuel used complies with the low sulfur requirements of 40 CFR Parts 80 and 86 established by the Environmental Protection Agency.

SECTION 2. ENFORCEMENT. (a) Inspections. Inspections of fuel to determine violations of Section 1 may be conducted by the State police, State motor carrier inspectors, agents of the Department of Revenue and any other law enforcement officer. Fuel inspections may be conducted in the course of safety or other vehicle inspections or as otherwise provided in regulations adopted under this chapter.

(b) Inspection Equipment. Equipment used to test fuel for dye or markers, or both, shall be approved by the Department of _____.

SECTION 3. IMPOSITION OF TAX. (a) Taxed Fuel. Except as provided in Section 3 (b), the tax specified in sec. _____ shall be imposed on diesel fuel received for sale in this State or for export to this State and shall be imposed in the same manner as the tax imposed by 26 USC 4081 as in effect on January 1, 1994.

(b) Tax Exempt Fuel. The tax under sec. _____ shall not be imposed on fuel to which dye has been added pursuant to the provisions of 26 USC 4082 or Section 211(i) of the Clean Air Act. If any fuel, on which tax under sec. _____ has not been imposed, is used or sold or offered for sale for a taxable purpose, or the dye in such fuel has been removed or altered or attempted to be removed or altered, the entire amount of the fuel involved shall be taxed at the rate provided in sec. _____. The tax shall be in addition to the penalties imposed for use of dyed fuel on the highway, or for sale or offer for sale of tax-exempt fuel for a taxable purpose, or for any alteration or removal of dye or attempt to alter or remove dye.

SECTION 4. PENALTY FOR USE OF DYED FUEL ON THE HIGHWAY. If any dyed fuel is used in violation of SECTION 1 and the operator of the vehicle knew or had reason to know that the fuel was dyed, such operator shall be subject to a penalty of \$500 for the first offense and \$5,000 for a second or subsequent offense. In addition the entire amount of the fuel involved shall be taxed at the rate provided in sec. _____



U.S. Department
of Transportation
**Federal Highway
Administration**

FUEL TAX EVASION HIGHLIGHTS

A Report on the Activities of the
Joint Federal/State Motor Fuel Tax Compliance Project

Volume 2, Number 3

July 1993

IN THE NEWS

In what is now the largest federal excise tax evasion case ever brought, a Federal grand jury in New York indicted 8 individuals on charges of conspiracy and 7 counts of tax evasion in an alleged scheme to evade approximately \$85 million in federal gasoline excise taxes on nearly 946 million gallons of gasoline between 1983 and 1988. This indictment supersedes an October 28, 1992 indictment that charged five of the eight defendants with two counts of tax evasion. Three more defendants, Marat Balagula, John Barberio and Joseph L. Macchia, were named in the new indictment. Marat Balagula, an alleged kingpin in the Russian mob, was convicted last year of conspiracy and gasoline tax evasion and is currently serving 10 years in prison. If convicted, the defendants face up to five years in prison and a \$250,000 fine for each count. The investigation was conducted by the IRS and NY State Tax Dept. *U.S. Department of Justice Press Release 6/30/93, Newsday 7/1/93, Transport Topics 7/5/93*

A Federal grand jury in Houston, Texas indicted Richard D. Gatten, Larry F. West and Thomas L. Massey on charges of evading gasoline excise taxes for a period of 19 months in 1987 and 1988. Each defendant faces up to 20 years imprisonment and \$1 million in fines if convicted. *U.S. Dept. of Justice Press Release 6/24/93*

Robert J. and John T. Schilling were indicted by a Hammond, Indiana Federal grand jury for tax fraud. The indictment alleges that they purchased stolen diesel fuel and falsified records in an attempt to evade the tax. The investigation was conducted jointly by the IRS and the Indiana Dept. of Revenue. The Schilling brothers face a maximum of 20 years in prison and \$1.5 million fine if convicted of all charges. *Gary Post Tribune 6/28/93*

Over 250 law enforcement officials in New Jersey, New York and Pennsylvania arrested 10 people and executed 40 search warrants in a what authorities term a massive fraud involving the sale of contaminated fuel oil and a diesel tax evasion scheme. "Operation Boilermaker" was an 18 month undercover investigation involving the NJ Dept. of Environmental Protection and Energy, the Div. of Taxation, the State Police, the Division of Criminal Investigation, 12 county prosecutors, two municipal

police departments and related agencies from New York and Pennsylvania. Authorities identified Christopher Grungo as the leader of a group which blended millions of gallons of waste oil with clean oil and then sold the contaminated and potentially toxic product to large commercial operations and the City of New York. Officials seized eight truck tractors, 13 tankers, bank accounts and other property. Two additional suspects are being sought.

On July 13, Grungo was indicted by a Federal grand jury in Trenton, NJ on charges of conspiracy and tax evasion. The indictment alleges that Grungo evaded more than \$300,000 in excise taxes by purchasing No. 2 home heating oil tax free and then selling it to retail diesel fuel stations claiming all taxes had been paid. If convicted, Grungo faces a maximum sentence of up to 30 years imprisonment and a \$1.5 million fine. The FBI, IRS, U.S. DOT, NJ Div. of Taxation and the PA Dept. of Revenue participated in this investigation *New York Times (Metro) 5/28/93, Newark Star-Ledger 5/28/93, Philadelphia Inquirer 5/28/93, U.S. Dept. of Justice Press Release 7/13/93*

Joe Haven Beadles, convicted in February of conspiracy and money laundering in a scheme to evade Federal and State diesel fuel excise taxes, was sentenced to 6 and 1/2 years in prison by a U.S. District Court Judge in Texas. He was ordered to pay more than \$437,000 in restitution and given a \$10,300 fine. Roy Charles Martin, who was also convicted February, was sentenced to 4 years in prison and a \$10,100 fine for his part in the scheme. *Dallas Morning News 6/5/93*

Eighteen people were indicted in an alleged daisy chain scheme to defraud the Federal government of \$34 million in gasoline taxes. All 18, including reputed members of the Mafia and Russian Immigrant organized crime families, were charged with tax evasion and conspiracy. The indictment also charges that as part of the scheme, the Colombo, Gambino, Luchese and Genovese crime families collected a "tribute" of at least 1 1/2 cents per gallon from the "proceeds" of the transactions. The indictment was the result of a 3-year undercover operation by the FBI and IRS. *New York Times 6/28/93, Newsday 6/28/93, U.S. Dept. of Justice Press Release 6/27/93*

Jerry W. Kelley was sentenced in DuPage County (Illinois) Circuit Court to three years in prison for fuel tax fraud in a scheme in which he purchased home heating oil and sold it as diesel fuel in his gas stations. Gerald O'Neill was also convicted and ordered to pay \$168,000 in restitution. *Daily Herald* 6/22/93

Morris Silverman, owner of a Philadelphia truck stop, was charged with failing to remit more than \$300,000 in fuel use and oil franchise taxes to the Commonwealth of Pennsylvania between June 1991 and January 1993. *Transport Topics* 7/12/93

Kenneth W. Myers of Ft. Wayne, Indiana was charged with 14 counts of failing to remit \$80,000 in State special fuel taxes collected between 1989 - 1990 at the J&R U.S. 30 Plaza truck stop in Princeton, Indiana. *Warsaw Times-Union* 7/20/93

NBC Dateline has aired several segments on various aspects of motor fuel fraud, including cocktailing. A special one hour program on July 29 focused on octane mislabeling and also noted the tax evasion problem.

NEWS FROM STATE LEGISLATURES

Indiana

On June 30, Indiana enacted legislation in its budget bill requiring tax exempt diesel fuel to be dyed when it is withdrawn from the terminal or refinery rack, effective January 1, 1994. In addition, the point of taxation of diesel fuel was moved to the terminal rack. Licensing and reporting provisions were strengthened, including requiring "destination state" on shipping papers.

Wisconsin

On July 16, the Wisconsin Legislature passed legislation moving the point of taxation for gas and diesel fuel to the terminal rack, reducing the shrinkage allowance and requiring more frequent deposits of fuel tax revenue. The bill is under consideration by the Governor.

1993 REVENUE RECONCILIATION ACT

The House and Senate have each passed versions of the budget and a Conference Committee will reconcile the differing provisions. The House version contains a Btu tax, while the Senate chose a 4.3 cent gas tax increase. Both versions include provisions moving the point of taxation for diesel fuel to the terminal rack and requiring dyeing of tax exempt diesel fuel.

MOTOR FUEL TAX SECTION AND STEERING COMMITTEE MEETINGS

The annual meeting of the FTA Motor Fuel Tax Section is scheduled for September 19-21 at the Airport Hilton and Conference Center in Wichita, Kansas. The deadline for registration is Sept. 1. A meeting of the Steering Committee of the Joint Federal/State Motor Fuel Tax Compliance Project will follow on Wednesday, Sept. 22 from 8:30 - Noon.

The Committee will hear reports from the Task Forces and be updated on Congressional action on fuel tax legislation, including fuel coloring. FTA will report on its proposal to initiate additional motor fuel training courses, including the development of an advanced course curriculum. These are tentatively scheduled for 1994.

NEW PUBLICATION ON STATE HIGHWAY TAXES

"Highway Taxes and Fees, How They Are Collected and Distributed, 1993" (Publication No. FHWA-PL-93-018) is now available from FHWA by calling any of the individuals at the number listed below.

WANT TO KNOW MORE?

For more information or additions to the mailing list, call Jim Link, Steve Baluch, or Mary Moehring at (202) 366-0570 or write to FHWA (HPP-13), 400 7th Street, SW, Washington, D.C. 20590

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FUEL TAX EVASION HIGHLIGHTS

A Report on the Activities of the
Joint Federal/State Motor Fuel Tax Compliance Project

Volume 2, Number 4

September 1993

CONGRESSIONAL UPDATE

On August 10, President Clinton signed the Omnibus Budget Reconciliation Act of 1993. Chapter 1 of Title XIII of this Act, cited as the Revenue Reconciliation Act of 1993, made extensive changes to various provisions of the Federal motor fuel excise tax laws. This issue of HIGHLIGHTS reviews the major transportation tax provisions of the Act. A table of tax changes is available by calling the number in Want to Know More on page 2.

Gasoline Tax Rate

The gasoline tax consists of the Highway Trust Fund (HTF) rate of 11.5 cents per gallon, the Leaking Underground Storage Tank (LUST) rate of 0.1-cent per gallon and the deficit reduction rate which Sec. 13241 of the Act increased from 2.5 cents per gallon to 6.8 cents per gallon, effective Oct. 1, 1993. As of Oct. 1, 1993, the total gasoline tax rate is 18.4 cents per gallon.

Diesel Tax Rate

The diesel tax rate consists of the HTF rate of 17.5 cents per gallon, the LUST rate of 0.1-cent per gallon and the deficit reduction rate which Sec. 13241 of the bill increased from 2.5 cents per gallon to 6.8 cents per gallon, effective Oct. 1, 1993. As of Oct. 1, 1993, the total Federal diesel tax rate is 24.4 cents per gallon.

Tax Rate for Aviation Fuel

Currently noncommercial aviation gasoline is taxed at 15.1 cents per gallon, noncommercial aviation jet fuel is taxed at 17.6 cents per gallon. These rates include the 0.1-cent LUST tax. Commercial aviation fuels are generally subject only to the 0.1-cent per gallon LUST tax. The Act imposes an additional 4.3 cents per gallon deficit reduction tax on noncommercial aviation gasoline and jet fuel effective Oct. 1, 1993. Gasoline and jet fuel used in commercial aviation are subject to the 4.3-cent deficit reduction tax on Oct. 1, 1995.

Diesel Fuel Used in Trains

The rate for gasoline and diesel used in trains consists of the 0.1-cent LUST tax and the deficit reduction rate which the Act increased from 2.5 cents per gallon to 6.8 cents per gallon, effective Oct. 1, 1993. The deficit reduction rate is reduced to 5.55 cents per gallon after Sept. 30, 1995, and further reduced to 4.3 cents per gallon after Sept. 30, 1999.

Rate for Intercity Buses

The rate for intercity buses consists of the HTF rate of 3 cents per gallon, the LUST rate of 0.1-cent per gallon and effective Oct. 1, 1993 a deficit reduction rate of 4.3 cents per gallon for a total of 7.4 cents per gallon.

Gasohol

The Act increased the deficit reduction rate for gasohol from 2.5 cents per gallon to 6.8 cents per gallon effective Oct. 1, 1993. The HTF rate, which varies depending on the composition of the fuel, and the 0.1-cent per gallon LUST rate were unaffected by the bill.

Inland Waterway Tax Rate

The rate on diesel and other liquid fuels used by commercial vessels on inland waterways consists of the 0.1-cent per gallon LUST rate, plus the Inland Waterway rate of 17 cents per gallon in 1993, 19 cents per gallon in 1994 and 20 cents per gallon in 1995 and thereafter. As of Oct. 1, 1993, the Act imposes the 4.3 cents per gallon deficit reduction rate on these fuels.

Liquid Petroleum Gas (LPG) Rate

The HTF rate for LPG is 11.5 cents per gallon. The LUST rate does not apply to LPG. The Act increases the current 2.5 cent per gallon deficit reduction rate to 6.8 cents, effective Oct. 1, 1993, for a total of 18.3 cents.

Compressed Natural Gas (CNG) Rate

Currently CNG used in motor vehicles and motorboats is untaxed. Effective Oct. 1, 1993, CNG used in highway motor vehicles and motor boats will be subject to a deficit reduction tax of 48.54 cents per thousand cubic feet (MCF) [roughly equivalent to 4.3 cents per gallon].

Transfer of 2.5-cent Deficit Reduction Tax to HTF

The 2.5-cent per gallon deficit reduction tax, established in the Omnibus Budget Reconciliation Act of 1990, is extended to September 30, 1999. Effective Oct. 1, 1995, these revenues, except for taxes attributed to trains and motorboats, are transferred to the HTF with 2 cents credited to the highway account and 0.5 cents to the transit account, bringing the total credited to the transit account to 2 cents. The 2.5-cent deficit reduction tax on fuel used in trains is reduced to 1.25 cents on Oct. 1, 1995, for a total deficit reduction rate of 5.55 cents, and is retained in the General Fund. As of

Oct. 1, 1999, this rate is reduced to 4.3 cents and retained in the General Fund. The 2.5-cent deficit reduction tax on fuel used in motorboats is also retained in the General Fund along with the 4.3 cent per gallon increase until Sept. 30, 1999, after which the rate is also reduced to 4.3 cents and retained in the General Fund.

Point of Taxation for Diesel Fuel

Section 13242 of the Act moves the point of taxation for diesel fuel up to the terminal level effective Jan. 1, 1994, consistent with the current gasoline tax provisions.

Dyeing of Tax Exempt Diesel Fuel

Sec. 13242 of the Act provides that only dyed fuel is exempt from tax, effective Jan. 1, 1994. Dyed fuel may not be used on the highway after that date. The Treasury Secretary will prescribe regulations for the dye and also consider the need for a non-visible marker.

Penalty for Misuse of Tax Exempt Diesel Fuel

Sec. 13242 of the Act imposes a penalty for misuse of tax exempt diesel fuel of \$1,000 or \$10 for every gallon of fuel involved, whichever is greater. The penalty also increases with subsequent violations by multiplying it by the number of prior violations. Officers, employees and agents may be held liable for penalties if willful participation is shown.

Use by Farmers and State/Local Governments

Clear fuel, which is taxed, may still be purchased at a tax excluded price for use on a farm for farming purposes or by State and local governments. The ultimate vendor will then be able to claim the refund.

IN THE NEWS

A Federal grand jury in Houston, TX indicted Charles Henke, Thomas Hultt, John Moritz and Larry West on charges of conspiring to defraud the U.S. Government by obstructing the IRS from collecting diesel fuel taxes from Texas Metro Fuels, Inc. Henke and Hultt were charged with 7 counts of tax evasion, 4 counts of making false statements and 2 counts of making false representations in purchasing tax-free diesel. Moritz was

charged with one count of making false statements. The indictment alleges that over \$3 million in diesel taxes were evaded in 1990 and 1991. Agents of the Internal Revenue Service investigated the case.

Dept. of Justice Press Release 9/2/93

NEWS FROM STATE LEGISLATURES

The Georgia legislature has passed legislation to reduce the level of motor fuel tax evasion. The bill, signed by the Governor on April 27, 1993, adds definitions of imports and exports, loading rack and terminal. It requires exporters to list destination State on bills of lading to obtain the export exemption and also adds new reporting requirements and additional penalties. The bill was supported by the GA Oilmen's Association. *Georgia Oilmen's Assn. Press Release 5/3/93*

DEFENSE DEPT. FRAUD INVESTIGATIONS

The Defense Fuel Supply Center (DFSC) contracts for petroleum products, coal and natural gas for the military services and many Federal civilian agencies. The DFSC Office of Counsel has requested that copies of indictments or news articles concerning the prosecution of petroleum companies, their officers, employees or affiliates be provided to Ms. Chris Poston, Fraud Counsel, Office of Counsel, Defense Fuel Supply Center (DFSC-G), Cameron Station, Alexandria, VA 22304-6160; (703) 274-7445; FAX (703) 617-7308. Prosecution and conviction information may be used in considering whether suspension or debarment from Federal government contracting is appropriate. Information on companies with whom DFSC does business is available by contacting Ms. Poston. Ms. Poston can also assist enforcement agencies in coordinating information concerning common subjects under investigation.

WANT TO KNOW MORE?

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FUEL TAX EVASION HIGHLIGHTS

A Report on the Activities of the
Joint Federal/State Motor Fuel Tax Compliance Project

Volume 2, Number 5

December 1993

IRS REGULATIONS ON FUEL DYEING

IRS temporary regulations implementing the dyeing requirements for nontaxable diesel fuel were filed Nov. 23, with publication in the Federal Register on Nov. 30. These regulations also serve as a Notice of Proposed Rulemaking and comments are requested. A public hearing is scheduled for March 22, 1994. A copy of the regulations is available by calling the number in Want to Know More? on page 2. A brief review follows.

Color, Concentration, Marker, Injection System

If the fuel is high sulfur, it is to be dyed the EPA blue. If the fuel is low sulfur, it must be dyed red. Specific minimum concentrations are specified. Other colors and concentrations for low sulfur may be used only with the IRS Commissioner's approval. A marker will be required beginning July 1, 1994. Until specific injection systems are required by a subsequent rulemaking, any means of dyeing, including "splash" blending is acceptable.

Labeling Requirements for Dyed Diesel Fuel

Terminal operators and other sellers must provide customers a notice on retail pumps, invoices, bills of lading, etc. stating "DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE."

Kerosene

Under the regulations, kerosene is not treated as diesel fuel before July 1, 1994. Therefore, kerosene used for heating will not be taxed and is not required to be dyed. The treatment of kerosene after June 30, 1994 is under study and comments are requested.

Credit/Refund for Nontaxable Use of Clear Tax-Paid Diesel -- Farmers and State and Local Governments

Only the ultimate vendor may file a refund claim for tax-paid, clear diesel fuel sold at a tax-excluded price to State or local governments, or to farmers for farming purposes. Farmers who purchase clear, tax-paid diesel for use on a farm for farming purposes may not take an income tax credit or file for a refund. State and local government vehicles may use dyed, low sulfur fuel.

Pleasure Boats

Non-commercial boats using diesel are required to use clear, tax-paid fuel. Commercial boats, including those transporting passengers for hire, are exempt from the tax and may use dyed fuel. If clear, tax-paid diesel is used in a commercial boat, the ultimate purchaser may claim the refund or credit.

IN THE NEWS

Federal Grand Jury in Pittsburgh indicted 7 individuals for their alleged involvement in a scheme in which an estimated \$1.5 million in State and Federal motor fuel taxes were evaded between Dec. 1991 to Oct. 1992. Ronald Schramm, Anthony DeCello, Oleg "Alex" Vinokurov, Michael "Steve" Zubinsky, Aminderjeet "Andy" Aulakh, Ashok Tyagi, Amarbir "Sonny" Singh were charged with conspiracy to defraud the U.S. government and the Commonwealth of Pennsylvania of taxes on the sale of diesel fuel. The indictment alleges that untaxed home heating oil was delivered to various truck stops in Pennsylvania where it was sold as diesel fuel. The indictment grew out of a four-State investigation in Oct. 1992, in which State and Federal agents executed more than 60 search warrants at truck stops, oil company offices and residences in Pennsylvania, Ohio, New Jersey and West Virginia. As a result of the investigation, three Youngstown-area truckstop operators, Bhima Ranmal, Gurinder "Gary" Grewai and Shiyaji "Sam" Khutti waived indictment and entered guilty pleas in Federal court in Pittsburgh to participating in illegal fuel tax schemes in Pennsylvania and Ohio. More indictments are anticipated by Federal prosecutors. The case was investigated by agents of the IRS, Ohio Dept. of Taxation and the Pennsylvania Dept. of Revenue. *News Release, U.S. Attorney, West. Dist. PA, 10/29/93*
Pittsburgh Post-Gazette, 10/1, 10, 12, 29/93
Transport Topics, 11/8/93; NATSO State-Link, 10/93
Oil City, PA, Tribune-Review, 10/29/93
Franklin, PA, News Herald, 10/30/93

Federal marshals armed with machine guns and shot guns filled the Federal Courthouse in Hauppauge, NY amid reports that an attempt would be made to "break out" reputed Russian mob boss, Marat Balagula, during a routine hearing. Balagula, who arrived at the hearing in shackles, has been held in solitary confinement since the alleged escape scheme came to the attention of Federal authorities. The hearing involved allegations that Balagula had been involved in a scheme to evade \$85 million in gasoline taxes. He is already serving a total of 18 years in prison on previous convictions for gasoline tax evasion and credit card fraud. The purported attempt to free Balagula is under investigation by the FBI and the Federal Bureau of Prisons. *NY Newsday, 11/17/93*

Nicholas Uccio, Anna Keylin and Eugene Rakovsky were convicted in U.S. District Court in NY on Nov. 9, 1993 on charges of conspiracy, tax evasion and fraudulently using an IRS tax-free transaction form. The defendants were found guilty of evading over \$4 million in motor fuel excise taxes during four months in 1989. Testimony revealed that the defendants, many of whom were Russian emigres, paid members of organized crime to participate in the scheme. The maximum penalty is 20 years in prison and a \$755,000 fine. Four additional defendants, Vldy Zak, Igor Organsky and Leon Uzdln, pleaded guilty prior to trial. One alleged participant in the scheme was murdered after providing documents pursuant to a grand jury subpoena in 1990. Two others, Arcady Shuster and Jeffrey Broner, are fugitives reportedly living in Russia and the Ukraine. The case was investigated by agents from the IRS Criminal Investigation and Examination Divisions, assisted by the New York State Dept. of Finance and Taxation.
Dept. of Justice Press Release, 11/15/93

Minnesota officials have charged Pederson Oil Company of Drayton, ND with selling diesel fuel without a distributor's license and failing to pay the taxes due. The company allegedly sold the fuel even though its distributor license and authority to do business in Minnesota had been canceled for nonpayment of Minnesota motor fuel taxes in excess of \$65,000. The penalty for selling petroleum products without a license is up to one year in prison, a \$3,000 fine, or both. Failure to pay-over State funds is a felony punishable by 5 years in prison, a \$10,000 fine, or both. Individuals who suspect fuel tax evasion may anonymously call the Minnesota Dept. of Revenue at 1-800-657-3500.
Minnesota Dept. of Revenue News Release, 11/6/93

Victor and John Orena, sons of Victor Orena, reputed acting head of the Colombo crime family, pleaded guilty to loansharking and tax fraud charges. Victor Orena was charged with setting up "daisy chains." Victor and John Orena face 95 and 65 years in jail, respectively.
New York Daily News, 10/5/93

A recent article, "Joe Stalin's Heirs," in Forbes details the world-wide activities of the "Russian mafia" and notes their alleged activities in fuel tax evasion in the U.S.
Forbes, 9/27/93

Efforts by Federal and State authorities and the National Association of Truck Stop Operators to fight tax evasion is profiled in "Coping with Cheats, Change."
National Petroleum News, 9/93

A recent Washington Post article discusses the newly enacted Federal law requiring the dyeing of diesel fuel for tax compliance purposes and notes various inconsistencies with EPA requirements for dyeing high sulfur fuel to detect violations of environmental laws.
Washington Post, 11/3/93

Christopher Grungo, indicted in July on charges of evading more than \$300,000 in taxes on diesel fuel, was convicted by a Federal Grand Jury in Camden, NJ in October. Grungo faces a maximum 25-year prison sentence and \$1 million in fines. Sentencing is set for Jan. 14, 1994.
Transport Topics, 10/21/93

NEXT STEERING COMMITTEE MEETING

The Steering Committee of the Joint Federal/State Motor Fuel Tax Compliance Project will meet April 18-19, 1994 at FHWA Headquarters in Washington, D.C. Agenda topics tentatively include the implementation of fuel dyeing, a presentation from the Fraud Counsel of the Defense Fuel Supply Center, a presentation on FHWA and RSPA motor carrier and hazardous materials data bases and training courses for State and IRS motor fuel tax enforcement personnel.

WANT TO KNOW MORE?

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FUEL TAX EVASION HIGHLIGHTS

A Report on the Activities of the
Joint Federal/State Motor Fuel Tax Compliance Project

Volume 3, Number 1

February 1994

MODIFICATIONS TO FUEL DYEING REGULATIONS

The IRS has modified a portion of the fuel dyeing regulations originally issued on Nov. 29 and 30, 1993. The regulations had imposed a floor stocks tax on diesel fuel held on January 1, 1994 that was purchased tax-free. An exemption was provided if the fuel was dyed upon removal from the refinery or at the terminal rack. The amendments will provide an additional exemption from the floor stocks tax if the fuel is dyed below the refinery or terminal rack. In the same announcement the IRS stated it would amend the regulations to authorize the use of a reduced concentration of blue dye until April 1, 1994.

On January 20, the IRS notified its District Directors not to impose a penalty where, because of weather conditions, undyed kerosene is added to dyed diesel fuel, provided the fuel is used for a nontaxable purpose. This decision allows marketers to create a winter blend home heating fuel by adding kerosene to dyed diesel fuel without concern as to whether this action subjects them to the penalty for willfully altering the composition or strength of the dye.

Copies of these announcements, the temporary regulations, and the floor stocks tax regulations are available by calling the number in Want to Know More? on page 2. A hearing on the proposed final regulation is scheduled for March 22, at 10:00 a.m. in the IRS Auditorium, 1111 Constitution Ave. NW, Washington, DC.

IN THE NEWS

On Dec. 9, a Federal grand jury in Pittsburgh returned 2 indictments against ten individuals for allegedly evading Federal, Pennsylvania, Ohio and West Virginia motor fuel excise taxes. One indictment alleges that Louis G. Roerig, Amarjit S. Grewal, Gurtej Singh Gill, and Kulbir Singh conspired to evade approximately \$15 million in U.S. and Pennsylvania fuel taxes in a four year period from Nov. 1988 - Oct. 1992. The other indictment charges George Bevier, Baljeet Brar, Gurmeet S. Buttar, Bhupinder Singh, Gurinder J. Singh and Leonid Shuster with conspiracy to evade an estimated \$300,000 in Federal, West Virginia and Ohio fuel taxes in a 3-month period from Oct.-Dec. of 1991. The scheme has cost Ohio about \$3 million since May of 1991 according to Gov. George Voinovich. These indictments are the second and third in the Western District of Pennsylvania stemming from an investigation by the IRS Criminal

Investigation Division, Penn. Dept. of Revenue, Ohio Dept. of Taxation and the U.S. Immigration and Naturalization Service. In total, the three indictments charge 20 individuals with allegedly evading more than \$19 million in state and federal taxes on about 70 million gallons of diesel fuel. The cases were presented to the Grand Jury by the U.S. Attorney's Office in Pittsburgh and the Tax Division of the U.S. Dept. of Justice.

*U.S. Dept. of Justice Press Release, 12/9/93, 1993
Pittsburgh Post Gazette 12/10/93; The Derrick 12/10/93
Cleveland Plain Dealer, 12/11/93*

Nine individuals, were indicted by a Federal grand jury in Atlanta on January 7, 1994 on charges of wire fraud, racketeering, structuring cash transactions, and conspiracy to evade motor fuel taxes. The defendants, Boris Vax, Michael Rubinoff, Ilia Miller, Zinovy Michnik, Yakov Litvak, Michael Vax and Paul Sharp, allegedly attempted to evade over \$1.3 million in Federal fuel taxes on over 6.3 million gallons of diesel fuel sold in Georgia and Florida. Two remaining defendants are fugitives. The case involved a seven month undercover investigation by the IRS, the Georgia Bureau of Investigation and the U.S. DOT Office of Inspector General (OIG). Arrests were made by agents of the IRS and OIG. The charges carry maximum terms of up to 20 years, a \$250,000 fine, or both. The indictment seeks forfeitures of real and personal property and cash.

*Department of Justice Press Release, 1/7/94
Washington Post 1/11/94*

Lawrence S. Iorizzo and his son Lawrence J. Iorizzo have been indicted by a Texas grand jury on fuel tax evasion and criminal conspiracy charges. Iorizzo Sr. masterminded daisy chain schemes in the early 1980's which allegedly resulted in the evasion of more than \$200 million in Federal and State fuel taxes in New York, New Jersey, Connecticut, and Florida. He entered the Federal witness protection program in 1986 after testifying against former mob associates. He has not appeared to answer the current Texas charges and his whereabouts are unknown. His son pleaded innocent and has reportedly been detained for questioning in Belgium. Allegedly he used the alias "Ray Wall" to submit fake tax reports for Hebco Petroleum in 1989. Defense attorneys sought to keep the Texas case secret, claiming the son's life is in danger from his father's former business associates. According to court documents, all those who testified earlier have been murdered. *Oil Week, 1/31/94; Houston Post, 1/23/94*

Israeli police arrested two men wanted by U.S. authorities in cases involving so-called Russian organized crime in the U.S. One of the fugitives, Yisrael Mizrahi, was the alleged "hitman" indicted in the 1989 murder of the former owner of Oceanside Terminal, Michael Markowitz, who was a key figure in gasoline bootlegging in the New York area. According to testimony at several trials, Markowitz, who had become a Federal informant, had been one of the key figures in a 1983 meeting on Long Island which divided the fuel tax evasion scheme between the Russian mob and the Colombo organized crime family. The second fugitive, Yosef Reis, the owner of Inwood Oil Terminal, was indicted in May 1993 along with Vic Orena Jr., the son of the head of the Colombo organized crime family, in a multimillion dollar gasoline bootlegging scheme. Under Israeli law, fugitives cannot be extradited, but must be tried in Israeli courts. According to the U.S. Attorney's office, this usually results in the prosecution proceeding in Israel with the assistance of U.S. law enforcement officials.

NY Daily News, 11/29/93; Newsday, 11/30/93

Trucking industry concerns with the diesel dyeing requirements center on the new penalty for use of dyed fuel on the highway, the effect of the new dyeing requirements on longstanding industry practices involving the use of additives and blending crankcase oil in diesel fuel, and refunds for fuel used for non-highway purposes such as in refrigeration units.

Transport Topics, 11/29/93

The National Association of Truck Stop Operators encourages States to adopt uniform standards for reporting diesel fuel transactions. *Stop Watch, 12/93*

Florida fuel retailers are concerned that a recent New York State court decision allowing Native Americans to sell fuel tax-free to non-Indians will spread to Florida, giving the Native American stations a 40 cent advantage. *National Petroleum News, 9/93*

Billy Hardman was sentenced to 15 months in Federal prison after pleading guilty to participating in a conspiracy which resulted in a loss of over \$900,000 in motor fuel excise taxes from Nov. of 1989 until Feb. of 1991. The term is half that recommended by the Federal sentencing guidelines. The lesser sentence was requested in recognition of Hardman's cooperation with gov't. officials. *Tyler Texas Morning Telegraph, 1/22/94*

An article on international organized crime, Global Mafia, includes a report on the activities of the so-called Russian mafia, and its alleged activities in the U.S. involving complicated schemes such as fuel tax and medical insurance fraud. *Newsweek, 12/13/93*

Proposed amendments to the Federal Acquisition Regulations would add tax evasion to the list of currently enumerated offenses which the offeror must disclose. Currently, tax evasion is not listed in the FAR as an offense requiring disclosure. Conforming changes would be made to add tax evasion as a debarment or suspension cause. *CCH Gov't. Reports, Num. 1214, p.3*

STEERING COMMITTEE MEETING/CALENDAR

The Steering Committee of the Federal/State Fuel Tax Compliance Project will meet from 8:30am-4:00pm on April 18 and from 8:30am-Noon on April 19 at FHWA Headquarters in Washington. A Reporting Workshop will be held for State representatives from 1:00pm-4:00pm on April 19 and continue from 8:30am-Noon on April 20.

May 1-3, FTA Southern Motor Fuel Mtg., Destin, FL

May 15-17, FTA Northeast Motor Fuel Mtg., Boston, MA

June 26-28, FTA Pacific Motor Fuel Mtg., Cheyenne, WY

WANT TO KNOW MORE?

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Joint Federal/State Motor Fuel Tax Compliance Project
 PART 1 - Tax Filings and Examination/Audit from Fuel Companies

State: _____
 Agency: _____
 Name: _____
 Phone: _____

Reporting Period:
 ___ Apr ___ - Sep ___
 ___ Oct ___ - Mar ___

MOTOR FUEL TAX FILINGS GASOLINE SPECIAL COMBINED*

Number of Returns Filed by Fuel Companies:

- Monthly _____

- Quarterly _____

TOTAL

Motor Fuel Tax Receipts(\$)
 from Fuel Companies: _____

Motor Fuel Taxable Gallons
 from Fuel Companies: _____

AUDITS/EXAMINATION EFFORTS GASOLINE SPECIAL COMBINED*

Number of Reconciliations/Audits Completed on Fuel Companies:

- Office Reconciliation _____

- Office Audit _____

- Field Audit _____

Total _____

Staff hours of effort devoted to Audits of Fuel Companies:

- Office Reconciliation _____

- Office Audit _____

- Field Audit _____

Total _____

Audit staff-hours charged to FHWA agreement: _____

Typical or average agency cost per staff-hour:\$ _____

TOTAL

Assessments(\$) against Fuel Companies from: _____

- Office Reconciliation _____

- Office Audit _____

- Field Audit _____

Total _____

All interest & penalties(\$)
 from Fuel Companies: _____

* Note that the "Combined" column is not the sum of the "Gasoline" and "Special" columns, but rather shows the number of returns, audits, or hours that include both gasoline and special fuels in a single return, audit, etc. For dollars and gallons, the "Total" column is the sum of the "Gasoline" and "Special" amounts.

Narrative report of regional task force activities, completed training, and public information efforts (attach news releases, news clippings, etc.):

General Definitions, Part 1 - Tax Filings and Examination/Audit

"Name" is the name of a contact person familiar with the information reported. If more than one name is given, indicate the specialty area of each person.

"Motor Fuel Tax Receipts" should include tax only, less any credits or allowances, including any local option taxes collected by the State for distribution to localities. Include excise, sales, or other petroleum taxes on motor fuels. Do not deduct refunds to users for non-highway purposes.

"Fuel Companies" include any companies trading in motor fuel including refiners, distributors, wholesalers, retailers or other company handling motor fuel and required to remit motor fuel taxes to the State.

"Gasoline" includes gasohol.

"Special" fuels include diesel, LPG, compressed natural gas, and other fuels used to power vehicles on the highway for which motor fuel taxes are required to be paid to the State.

"Combined" indicates items covering gasoline and one or more special fuel products.

"Mathematical verification" is the process of verifying the various mathematical calculations required to complete the tax return, i.e. summations, subtractions, tax calculation based on the taxable gallons and rate, etc. Mathematical verification is not considered an enforcement activity and is not reported on this form.

"Office reconciliation" is the verification of information on the return from other documentation such as import/export schedules, other taxpayer or informational reports filed, transportation company reports, or other government agency reports. Such reconciliation may be done manually or by computer. When reconciliation is done by computer, staff hours are still generally required to resolve discrepancies from the computer exception reports.

"Office audit" is an audit performed by a professional accountant or examiner that takes place within the revenue agency office using information provided by phone, by mail, or by another government agency.

"Field audit" refers to an audit performed at the taxpayer's place of business.

"Reporting Period" is the 6-month period ending March 31 or September 30.

"Assessments" should include amounts of tax only, and should include all amounts assessed, whether or not recovered. All other penalties, interest, or other charges should be included with "All interest & penalties."

"Cost per staff-hour" should include salary and estimated other direct costs (e.g., fringe, travel, etc.) to accomplish an hour of examination.

Dollar items, i.e. receipts, assessments, interest, and penalties, should not include cents and may be rounded to the nearest tens or hundreds of dollars.

Form Revised February 26, 1992

Appendix 15. Joint Project State Data Report--Part 2

**Joint Federal/State Motor Fuel Tax Compliance Project
PART 2 - Criminal Investigations (CI) of Fuel Companies**

State: _____	Reporting Period: _____
Agency: _____	___ Apr ___ - Sep ___
Name: _____	___ Oct ___ - Mar ___
Phone: _____	

Current Period Activity	<u>GASOLINE</u>	<u>SPECIAL</u>	<u>COMBINED*</u>
Investigations initiated	_____	_____	_____
Against Fuel Companies:	_____	_____	_____

of these referred by audit _____

Number of cooperative investigations initiated (count each investigation on any line that applies - these numbers are for information only, and will not be added to the number of cases reported above:)

With other office in-State	_____	_____	_____
With another State	_____	_____	_____
With IRS	_____	_____	_____

Total active investigations against Fuel Companies: _____

Staff hours of effort devoted to active investigations Against Fuel Companies: _____

Additional CI hours not attributed to active cases, e.g. preliminary work on future cases and follow-up on completed cases: _____

CI staff-hours charged to FHWA agreement: _____

Typical or average agency cost per staff-hour:\$ _____

Results of Investigations Resolved This Period against Fuel Companies:

Prosecutions	_____	_____	_____
Discontinued - To audit	_____	_____	_____
Other Discontinued	_____	_____	_____
Total	_____	_____	_____

No. of entities convicted _____

No. of persons w/jail terms _____

Actual total cost (salary and other direct charges) of the completed cases: Against Fuel Companies: _____

Estimated tax loss (\$) for resolved investigations Against Fuel Companies:	_____	_____	<u>TOTAL</u>
	_____	_____	_____

Assessments by CI ** _____

Interest, fines, & penalty _____

* Note that the "Combined" column is not the sum of the "Gasoline" and "Special" columns, but rather shows the number of investigations, prosecutions, etc. that include both gasoline and special fuels in a single case. For dollars, the "Total" column is the sum of the "Gasoline" and "Special" amounts.

Narrative report of regional task force activities, completed training, and public information efforts (attach news releases, news clippings, etc.):

General Definitions, Part 2 - Criminal Investigations:

"Name" is the name of a contact person familiar with the information reported. If more than one name is given, indicate the specialty area of each person.

"Fuel Companies" include any companies trading in motor fuel including refiners, distributors, wholesalers, retailers or other company handling motor fuel and required to remit motor fuel taxes to the State.

"Gasoline" includes gasohol.

"Special" fuels include diesel, LPG, compressed natural gas and other fuels used to power vehicles on the highway for which motor fuel taxes are required to be paid to the State.

"Combined" indicates items covering gasoline and one or more special fuel products.

"Reporting Period" is the 6-month period ending March 31 or September 30.

"Investigations resolved" means cases that have been adjudicated, otherwise resolved by plea bargain, sentence, etc., or discontinued.

"Prosecutions" includes the investigations resolved by adjudication, sentence, plea bargain, etc. The number reported should be the number of investigations resolved this way. The number of persons or companies convicted and persons sentenced to jail terms are reported on separate lines. A prosecution with no convictions is counted as a prosecution with no entities convicted or sentenced, and with estimated tax loss, if still considered valid, included in the space provided.

"Discontinued" cases are those investigations terminated without prosecution or other adjudication. The number returned to exam/audit for further action should be reported separately from the number discontinued without further action. If there is any estimated tax loss for other discontinued, it should be included.

"Assessments" and "tax loss" should include amounts of tax only, and should include all amounts assessed or lost whether or not recovered. All other penalties, fines, or other charges should be included with "Interest, fines, & penalty."

"Estimated tax loss" should be the total estimated tax loss as documented in the prosecutor's report or other investigation summary, even though the formal charges may be for a lesser amount.

"Cost per staff-hour" should include salary and estimated other direct costs (e.g., fringe, travel, etc.) to accomplish an hour of investigation.

"Entities convicted" includes persons and companies.

Dollar items, i.e. tax loss, assessments, interest, fines and penalties, should not include cents and may be rounded to the nearest tens or hundreds of dollars.

Form Revised February 26, 1992

Appendix 16. Arizona Department of Transportation Fuel Distributor License Application (General or Limited Partnership)



APPLICATION NUMBER _____
 APPLICATION YEAR 1994

RETURN TO:
 ARIZONA DEPARTMENT OF
 TRANSPORTATION, MD 522M
 P.O. BOX 2100
 PHOENIX, AZ 85001-2100

FOR OFFICE USE ONLY			
LICENSE NUMBER	DATE RECEIVED	APPROVAL DATE	ISSUE DATE

ARIZONA MOTOR VEHICLE FUEL/LIQUID USE FUEL DISTRIBUTOR LICENSE APPLICATION

GENERAL OR LIMITED PARTNERSHIP

THIS APPLICATION MUST BE COMPLETED IN ITS ENTIRETY ALONG WITH THE APPROPRIATE ATTACHMENTS AND BE ACCEPTED AND APPROVED BY THE ARIZONA DEPARTMENT OF TRANSPORTATION. A DISTRIBUTOR LICENSE MUST BE RECEIVED PRIOR TO ENGAGING IN BUSINESS IN THE STATE OF ARIZONA. PLEASE MAIL THIS APPLICATION WITH THE \$50.00 FEE TO THE ADDRESS SHOWN ABOVE.

1a. APPLICANT'S COMPLETE PARTNERSHIP NAME
 AS SHOWN ON PARTNERSHIP AGREEMENT

 (Partnership)

b. CURRENT DBA, IF ANY

 (Write none if not applicable)

2. LOCATION OF PARTNERSHIP OFFICE

 (Street Address)

 (City) (State) (Zip Code)

 (Area Code, Telephone Number, Fax Number)

3. LOCATION OF FUEL HANDLING AND STORAGE
 FACILITIES (Attach additional list if necessary)

 (Street Address)

 (City) (State) (Zip Code)

 (Area Code, Telephone Number, Fax Number)

4. ALL CORRESPONDENCE REGARDING THIS ACCOUNT
 IS TO BE MAILED TO

 (Street Address)

 (City) (State) (Zip Code)

 (Area Code, Telephone Number, Fax Number)

For Cashier's Use Only

5a. ADDRESS WHERE BOOKS AND RECORDS ARE MAINTAINED

(Street Address)
(City) (State) (Zip Code)
(Area Code, Telephone Number, Fax Number)

b. PERSON TO CONTACT REGARDING ALL LICENSING ACTIVITIES?

(Name, Telephone Number, Fax Number)

c. PERSON TO CONTACT REGARDING ALL TAX REPORTING ACTIVITIES?

(Name, Telephone Number, Fax Number)

6a. LIST FULL NAME OF GENERAL PARTNERS

Table with 3 columns: NAME, MAILING ADDRESS, SOCIAL SECURITY NUMBER

(For an Arizona partnership, include the name and social security number of all spouses. Attach additional list if necessary. If the general partners' names, addresses, and social security numbers are included in the partnership agreement attached to this application, it is not necessary to repeat the information here.)

b. LIST FULL NAME OF LIMITED PARTNERS

Table with 3 columns: NAME, MAILING ADDRESS, SOCIAL SECURITY NUMBER

(For an Arizona partnership, include the name and social security number of all spouses. Attach additional list if necessary. If the general partner's names, addresses, and social security numbers are included in the partnership agreement attached to this application, it is not necessary to repeat the information here.)

c. HAS THE PARTNERSHIP OR ANY OF ITS GENERAL OR LIMITED PARTNERS BEEN CONVICTED OF ANY FELONY OR MISDEMEANOR INVOLVING MOTOR VEHICLE FUEL OR LIQUID USE FUEL (DIESEL) TAXES?

YES [] NO []

If yes, explain

7. HAS THE PARTNERSHIP OR ANY OF ITS GENERAL OR LIMITED PARTNERS HAD ANY TYPE OF LICENSE INVOLVING MOTOR VEHICLE FUEL OR LIQUID USE FUEL REVOKED WITHIN THE LAST TEN YEARS?

YES [] NO []

If yes, explain

8. FEDERAL EMPLOYER IDENTIFICATION NO.

9. FEDERAL (637) TAX-FREE NUMBER

10a. PREVIOUS YEAR'S ARIZONA MOTOR VEHICLE FUEL/LIQUID USE FUEL DISTRIBUTOR LICENSE NUMBER

b. OTHER LICENSES HELD BY THE PARTNERSHIP WHICH WERE ISSUED BY THE ARIZONA DEPARTMENT OF TRANSPORTATION (e.g. Use Fuel, Motor Carrier, IRP, IFTA, etc.)

PARTNERSHIP AGREEMENT

11. ATTACH A COPY OF THE PARTNERSHIP AGREEMENT INCLUDING SIGNATURES OF EACH PARTNER ACCEPTING THE AGREEMENT AND ANY AMENDMENTS TO THE AGREEMENT.

12a. HOW MANY YEARS HAS YOUR PARTNERSHIP BEEN IN BUSINESS?

b. HOW MANY YEARS HAS YOUR PARTNERSHIP BEEN IN BUSINESS IN THE STATE OF ARIZONA?

- 13a. HAS YOUR PARTNERSHIP CONDUCTED BUSINESS IN THE PAST USING A DBA? YES NO
 If yes, list prior dba's _____
- b. DOES YOUR PARTNERSHIP CONDUCT ANY OTHER TYPE OF BUSINESS ACTIVITY USING A DBA? YES NO
 if yes, list dba's used _____
-
14. IF YOUR PARTNERSHIP IS SENT A REQUEST FOR INFORMATION BY THE ARIZONA DEPARTMENT OF TRANSPORTATION CONCERNING PURCHASES OR SALES, OR REQUESTED TO PROVIDE RECORDS FOR TRANSACTIONS BETWEEN YOUR PARTNERSHIP AND OTHER BUSINESS ENTITIES, WHICH TYPE OF REQUEST PROCEDURE WOULD YOU PREFER:
- a. LETTER YES NO
 - b. LETTER PLUS ADMINISTRATIVE SUBPOENA YES NO
 - c. ADMINISTRATIVE SUBPOENA WITH STATUTORY SERVICE YES NO
15. DO YOU PLAN TO IMPORT OR EXPORT PETROLEUM PRODUCTS INTO OR OUT OF ARIZONA? YES NO
16. DO YOU TAKE TITLE TO THE GASOLINE/DIESEL? YES NO
17. DO YOU TAKE PHYSICAL POSSESSION OF FUEL IN ARIZONA? YES NO
18. DO YOU PURCHASE OR PLAN TO PURCHASE GASOLINE OR DIESEL BLENDING STOCKS? (OTHER THAN OXYGENATES OR JET FUEL FOR WINTER BLENDING OF DIESEL) YES NO
19. DO YOU BLEND OR PLAN TO BLEND THESE STOCKS INTO GASOLINE OR DIESEL FOR RESALE? YES NO
20. DO YOU PURCHASE OR PLAN TO PURCHASE TRANSMIX, BURNER OIL, ROAD OIL OR OTHER PETROLEUM PRODUCTS NOT NORMALLY LABELED BLENDING STOCK? YES NO
21. DO YOU SELL OR PLAN TO SELL AVIATION FUEL? YES NO
22. DO YOU MANUFACTURE AND PRODUCE GASOLINE/DIESEL? YES NO
23. ARE YOU A SHIPPER OF RECORD ON ONE OF THE COMMERCIAL PIPELINES SERVING ARIZONA? YES NO
24. DO YOU MAINTAIN OR EXPECT TO MAINTAIN BULK STORAGE FACILITIES IN ARIZONA? YES NO
25. DO YOU SELL MOTOR VEHICLE FUEL, LIQUID USE FUEL, OR BLENDING STOCKS ON CONSIGNMENT? YES NO
26. DO YOU HAVE ANY PETROLEUM PRODUCT REFINING CAPABILITIES? YES NO
27. DO YOU OWN, CONTROL, OR HAVE A CONTROLLING INTEREST IN A REFINERY? YES NO
28. DO YOU HAVE A BUSINESS LOCATION IN ARIZONA?
 (Business location is defined as an actual office or facility location, an employee or agent, other than statutory agent, representing the company, or the ownership or leasing of a storage facility in Arizona.)
29. DOES THE PARTNERSHIP OR ANY OF ITS GENERAL OR LIMITED PARTNERS OWN OR CONTROL OTHER BUSINESSES IN THE PETROLEUM INDUSTRY? (e.g. other distributors, refiners, transportation, retail, terminal storage etc.) YES NO
 If yes, explain _____
30. DOES THE PARTNERSHIP OR ANY OF ITS GENERAL OR LIMITED PARTNERS OWN OR CONTROL ANY PETROLEUM BUSINESS WHICH OPERATES IN ARIZONA? YES NO
 If yes, explain _____
31. DOES THE PARTNERSHIP OR ANY OF ITS GENERAL OR LIMITED PARTNERS OWN OR CONTROL ANY PETROLEUM TRANSPORT EQUIPMENT FOR USE IN ARIZONA? YES NO
 If yes, explain _____
- 32a. LIST ANY GENERAL OR LIMITED PARTNER OF THE PARTNERSHIP THAT IS OR HAS BEEN AN OFFICER, DIRECTOR, CONTROLLING SHAREHOLDER, PARTNER OR SOLE PROPRIETOR OF ANY ENTITY WHICH CURRENTLY HAS OR HAS HAD, WITHIN THE LAST SEVEN YEARS, AN ARIZONA MOTOR VEHICLE FUEL DISTRIBUTOR'S LICENSE, A USE FUEL VENDOR'S LICENSE, OR A USE FUEL/IFTA OR MOTOR CARRIER LICENSE? (Controlling shareholder means all shareholders if there are 15 or less; if more than 15 shareholders, shareholders with five percent or more ownership interest.) If yes, provide the name of the account and the applicant's relationship to the account holder. _____
- (Attach additional list if necessary)
- b. IS THE PARTNERSHIP OR ANY OF ITS GENERAL OR LIMITED PARTNERS CURRENTLY, OR HAS IT BEEN WITHIN THE LAST SEVEN YEARS, A LICENSED DISTRIBUTOR IN ARIZONA, CALIFORNIA, NEVADA, UTAH, COLORADO, NEW MEXICO, OR TEXAS? YES NO
 If yes, attach list(s) with account numbers.
33. FUEL STORAGE TANK CAPACITY: ABOVE GROUND _____ BELOW GROUND _____
34. IF NO BULK STORAGE FACILITY IS OWNED, EXPLAIN STORAGE ARRANGEMENTS. _____

35. LIST CURRENT (EXPECTED) SUPPLIERS OF PETROLEUM PRODUCTS

36. PERCENTAGE OF FUEL YOU HAVE TITLE TO WHICH IS STORED UNDER THE CONTROL OF ANOTHER PERSON OR COMPANY: GASOLINE _____ DIESEL _____
List name and address of such person or entity

37a. IF A NEW BUSINESS, FROM WHOM DID YOU ACQUIRE THE BUSINESS?

b. HOW MANY GALLONS OF FUEL WERE IN STORAGE TANKS AT THE TIME OF PURCHASE?
GASOLINE _____ DIESEL _____

SURETY BOND CALCULATION

38. A bond (cash, certificate of deposit, or surety) of \$ _____ is enclosed, or is on file with the Arizona Department of Transportation. If submitting a bond in the form of a certificate of deposit, it must be payable only to the Arizona State Treasurer, referencing the applicant's name as depositor. The certificate of deposit may not contain "and" "or" designations, and must be drawn on an Arizona bank. A \$10.00 handling fee is required and must be attached.

The bond amount will be equal to one and one half times the average monthly tax liability (actual or estimated). Applicants are to use the previous twelve (12) months activity for both motor vehicle fuel and liquid use fuel to determine the average tax liability, then multiply by 1.5.

** For a 1994 license, the applicant is to use only 1993 activity for both motor vehicle fuel and liquid use fuel.

Example: \$20,000 average tax liability x 1.5 = \$30,000 bond

ROUND BOND AMOUNT TO THE NEXT HIGHER \$1,000; USE THE GREATER OF THE CALCULATION OR THE MINIMUM BOND AMOUNT OF \$1,000. BOND SHALL NOT EXCEED \$100,000.

INDEPENDENT AUDIT REPORT

39. Attach a copy of your most recent independent certified audit report with this Application. If an independent certified audit report is not available, submit a current financial report including current balance sheet. If not yet in business, attach a proforma financial statement.

AFFIDAVIT OF APPLICANT(S)

The undersigned hereby swears or affirms under penalty of perjury that I am duly authorized to make the foregoing Application, and hereby swear or affirm that the Application and all attachments are true and correct representation(s) of the premises to be licensed and agree that the place of business, if licensed, may be inspected during business hours, or at any time business is being conducted on the premises, by officials and agents of the Arizona Department of Transportation, for purposes of determining compliance with the Arizona Motor Vehicle Fuel and Liquid Use Fuel laws.

The application must be signed by a general partner.

Signature of Applicant

Print or Type Applicant's Name

STATE OF _____
County of _____

Sworn to and subscribed before me this ____ day of _____, 19____. My Commission Expires _____

Notary Public

WARNING

Read Carefully. This instrument is a sworn document. False answers could result in penalties and/or denial of your Application.

DISTRIBUTOR BUSINESS ACTIVITIES CONDUCTED IN THE STATE OF ARIZONA PRIOR TO THE ISSUANCE OF A LICENSE SHALL BE SUBJECT TO SEVERE PENALTIES.

THE LICENSE SHALL NOT BE ASSIGNABLE AND SHALL BE VALID ONLY FOR THE PERSON, FIRM, OR CORPORATION TO WHOM ISSUED, AND SUCH LICENSE SHALL BE PLACED IN A CONSPICUOUS PLACE IN THE BUSINESS OR BUSINESSES FOR WHICH IT IS ISSUED, AND SO DISPLAYED.

THE INFORMATION PROVIDED IN THIS APPLICATION IS CONFIDENTIAL.



HPP-13/7-95(1.2M)QE

