



Oregon

Theodore R. Kulongoski, Governor

Department of Transportation

Fuels Tax Group
550 Capitol St. NE
Salem, OR 97301-2530
(503) 378-8150
FAX (503) 378-3060
ODOTFuelsTax@odot.state.or.us

MAY 27, 2008

File Code:

NOTICE TO SELLERS CHANGE IN USE FUEL TAX LAW

During the 2008 Oregon special session, the legislature passed Senate Bill 1079. SB 1079 establishes a definition for a cardlock card, redefines a non-retail facility, and clarifies the responsibility for tax-exempt (ex-tax) sales documentation when cardlock cards are used at retail sites. These revisions are **effective January 1, 2009**.

The administrative rules, which are the 'formal' version of how the law will be applied, are currently being developed. These rules will serve as a guide in complying with the law. If you are interested in participating in the rulemaking review process, please contact David Nemchik at (503) 378-3077 or by e-mail at david.nemchik@odot.state.or.us.

Highlights of the revisions

The definition of a cardlock card under ORS 319.520(1) requires card issuers to program their cards to generate an electronic invoice when they are used at non-retail stations equipped with a reader for that card system. The card may be issued by a cardlock network, fuel co-op, or fleet card company provided its use can generate an electronic invoice and/or customer statement that meets the statutory requirements. The card must be issued to a specific vehicle, piece of equipment, or group of equipment. If the card is not issued to a specific vehicle/equipment, the card must be coded to include tax. The card/statement must be able to provide the same information that is required for an ex-tax sale at a retail location:

1. customer name and address
2. seller (card issuer) name and address
3. location of facility where fuel was purchased
4. full date of sale
5. gallons and type of fuel purchased
6. tax status for the transaction (tax-paid or tax-exempt), and
7. if exempt, the reason the tax was not collected:
 - i. Oregon weight-mile plate number (OWRATI),
 - ii. Oregon use fuel user emblem number,
 - iii. Government plate number (US, State, City)
 - iv. Description of equipment fueled (tractor, backhoe, etc), or
 - v. Description of container filled (can, barrel, tank, etc).

If you have questions about qualifying information for an ex-tax sale, please contact the Fuels Tax Group at (503) 378-8150 or outside Salem at (888) 753-2525.

A non-retail facility is now defined as:

- (a) An unattended facility accessible only by a cardlock card and not associated with a retail facility; or

(b) An unattended portion of a retail facility separate from the retail operations and accessible only by a cardlock card.

This change allows “diesel only cardlocks” to qualify as a non-retail facility **for the purpose of reporting to the Fuels Tax Group ONLY**. This provision does not circumvent any current or future Fire Marshall rules or regulations relating to non-retail facilities.

NOTE: Even though the operation may meet the definition of a non-retail facility, the cardlock cards issued for that facility must meet the statutory definition of a cardlock card and produce the required detail for ex-tax sales. If the cards cannot provide the required information to qualify each transaction as an ex-tax sale, the seller must collect the tax from the customer.

This law change also clarifies the responsibility for ex-tax sales made at retail locations when qualifying cardlock cards are used to purchase fuel. Beginning January 1, 2009, if retailers can accept cardlock cards at their locations, the card issuer is responsible for collecting the tax or documenting the ex-tax sale. The electronic card reader at the retail location must be able to capture the qualifying sale information from the card.

When qualifying cardlock cards are used to purchase fuel at retail locations, the retailers may deduct the sales from their total sales reported on schedules 1 and 2. The card issuer is then responsible for remitting the tax on taxable sales, or documenting the ex-tax sales. For the retailer to be able to deduct the sales from total sales, the company that ‘owns’ the cardlock card reader must provide the retailer with a statement for that location. The statement must be issued at least monthly, but may be issued more frequently. The statement will contain the gallons sold by location, and a listing of card issuers whose customers used the site and the gallons purchased through each card issuer.

If you have questions as to whether your cards/statements will meet the requirements of the new law, please contact the Fuels Tax Group at (503) 378-8150 or outside Salem at (888) 753-2525. Please expect to provide samples of the information you have developed to allow us to provide guidance.

Following this notice are three enclosures:

Questions and Answers on SB1079
Excerpts of Law Changes due to SB1079
Survey of Use Fuel Seller Operations

Please complete and return the survey by August 1, 2008. A postage-paid envelope is enclosed for your convenience.

Sincerely,

Fuels Tax Group
Phone: (503) 378-8150
Fax: (503) 378-3060

QUESTIONS AND ANSWERS
(Relating to change in Use Fuel law)

My company issues cardlock cards. What is the deadline to convert my customer accounts?

The law change takes effect January 1, 2009.

I have a customer who wants cards issued by driver, how does this law change affect their account?

The driver does not qualify the sale as ex-tax, the vehicle or equipment does. If the cards are not issued to a specific vehicle that qualifies for ex-tax sales, the cards must be coded to include the tax in the purchase price.

My customer has a 50-gallon drum that they use for small equipment on job sites. The drum is carried in the bed of a service truck. Can they purchase ex-tax fuel in the drum?

Yes, a separate card must be issued for the drum to qualify as an ex-tax sale.

Do I still need to have my customer complete the 'Oregon Certification of Use Fuel Tax Exempt Status' (exemption certificate) once I get the cards coded?

Yes, the certificates are still required. This law change does not affect the need for exemption certificates, and it protects you as the seller if your customer uses the card incorrectly.

My customer has refrigerated trucks that have a separate tank for the 'reefer' unit. Do I have to issue two cards for this vehicle?

Maybe. It will depend on the weight of the truck. If the truck is over 26,000 pounds and pays weight mile tax on all of its miles, you may issue one card for both the truck and the reefer unit. If the truck is 26,000 pounds or less and does not hold a valid user emblem, you should issue two cards: one card for the truck (tax-paid fuel) and one card for the reefer unit (ex-tax or dyed fuel)

I have my customer's cards set up correctly with ex-tax documentation, but the tax status was inadvertently set to charge the tax. Can I get a refund of the overpaid tax?

If your cards are correctly coded with information to document the ex-tax sale but the tax was added to the price, you may request a credit from the Fuels Tax Group, which you can then pass on to your customer. If the information on the card/statement does not meet the requirements for an ex-tax invoice, no refund will be issued.

I have a retail station and accept cardlock cards as a form of payment. What documentation do I need to claim ex-tax sales?

As a retail seller, you will need to retain complete invoices for any ex-tax sales made through the retail portion of your operations. For ex-tax sales paid with cardlock cards, you will need to retain the monthly statement provided by the owner of the card reader to document the sales.

If you have additional questions regarding these changes, please feel free to contact us at:

ODOT - Fuels Tax Group
550 Capitol St. NE
Salem, OR 97301-2350
(503) 378-8150
Outside Salem (888) 753-2525

ORS 319 (Revised)

ORS 319.520. As used in ORS 319.510 to 319.880, unless the context clearly indicates a different meaning:

- (1) 'Cardlock card' means a fuel card:
 - (a) Capable of generating an electronic invoice or electronic statement that includes the information required by ORS 319.671 and the applicable fuel tax amount;
 - (b) Issued for a specific vehicle, a specific piece of equipment or a group of equipment;
 - (c) That includes the qualifying information, as designated by the Department of Transportation by rule, that is printed on the electronic invoice or electronic statement;
 - (d) That allows the tax status of the cardlock card to be indicated on the electronic invoice or electronic statement and includes state tax as a separate item on the invoice or statement; and
 - (e) That allows a cardlock card issuer to generate a statement recording, by fuel type, gallons of fuel purchased for domestic and foreign customers each month.
- (2) 'Combined weight' means the total empty weight of all vehicles in a combination plus the total weight of the load carried on that combination of vehicles.
- (3) 'Delinquent' means having failed to pay a tax or penalty within the time provided by law.
- (4) 'Department' means the Department of Transportation.
- (5) 'Domestic customer' means a customer making a purchase at a nonretail facility owned by the cardlock card issuer.
- (6) 'Foreign customer' means a customer making a purchase at a nonretail facility owned by a seller other than the cardlock card issuer.
- (7) 'Fuel' means any combustible gas, liquid or material of a kind used for the generation of power to propel a motor vehicle on the highways except motor vehicle fuel as defined in ORS 319.010.
- (8) 'Highway' means every way, thoroughfare and place, of whatever nature, open to the use of the public for the purpose of vehicular travel.
- (9) 'Light weight' means the weight of a vehicle when fully equipped for moving over the highway.
- (10) 'Motor vehicle' means every self-propelled vehicle operated on the highway, except an implement of husbandry used in agricultural operations and only incidentally operated or moved upon the highway.
- (11) 'Nonretail facility' means:
 - (a) An unattended facility accessible only by cardlock card and not associated with a retail facility; or
 - (b) An unattended portion of a retail facility separate from the retail operations and accessible only by cardlock card.
- (12) 'Person' means any individual, firm, copartnership, joint venture, association, corporation, trust, receiver or any group or combination acting as a unit.
- (13) 'Seller' means:
 - (a) A person that sells fuel to a user; or
 - (b) If the fuel is dispensed at a nonretail facility the person that owns the user's accounts and bills the user for fuel purchased at a nonretail facility.
- (14) 'To sell fuel for use in a motor vehicle' means to dispense or place fuel for a price into a receptacle on a motor vehicle, from which receptacle the fuel is supplied to propel the motor vehicle.

(15) 'To use fuel in a motor vehicle' means to receive into any receptacle on a motor vehicle, fuel to be consumed in propelling the motor vehicle on the highways of this state; and, if the fuel is received into the receptacle outside the taxing jurisdiction of the state, 'to use fuel in a motor vehicle' means to consume in propelling the motor vehicle on the highways of this state.

ORS 319.665. (1) The seller of fuel for use in a motor vehicle shall collect the tax provided by ORS 319.530 at the time the fuel is sold, unless one of the following situations applies:

(a) The vehicle into which the seller delivers or places the fuel bears a valid permit or user's emblem issued by the Department of Transportation

(b) The fuel is dispensed at a nonretail facility, in which case the seller shall collect any tax owed at the same time the seller collects the purchase price from the person to whom the fuel was dispensed at the nonretail facility. A seller is not required to collect the tax under this paragraph from a person who certifies to the seller that the use of the fuel is exempt from the tax imposed under ORS 319.530

(c) A cardlock card is used for purchase of the fuel at an attended portion of a retail facility equipped with a cardlock card reader, in which case the cardlock card issuer licensed in this state is responsible for collecting and remitting the tax unless the person making the purchase certifies to the seller that the use of the fuel is exempt from the tax imposed under ORS 319.530.

(2) If a cardlock card is used for purchase of fuel at an attended portion of a retail facility equipped with a cardlock card reader, the seller at the retail facility may deduct fuel purchases made with a cardlock card from the seller's retail transactions if the seller provides the department with the following information:

(a) A monthly statement from a cardlock card issuer that details the cardlock card purchases at the retail facility; and

(b) A listing of cardlock card issuers and gallons of fuel purchased at the retail facility by the issuers' customers.

(3) The department shall supply each seller of fuel for use in a motor vehicle with a chart which sets forth the tax imposed on given quantities of fuel.