CHAPTER 207

MOTOR FUELS, ETC.; REGULATION; DISTRIBUTORS; OTHER PERSONS

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207.01 Definitions.—The following words, terms and phrases used in this section are for the purpose hereof defined as follows:

(1) "Motor Fuel" shall mean and include gasoline or other like products of petroleum and any and all liquid fuels or products of petroleum which are now or hereafter subjected to a tax computed by or measured by or based upon the sale, use, consumption, or distribution of said liquid fuels or products of petroleum.

(2) "Kerosene" shall include the ordinary household petroleum oil used with wick burners for illuminating, heating and cooking purposes.

(3) "Public Highways" shall mean and include every way or place, of whatever nature generally open to the use of the public as a matter of right, for the purpose of vehicular travel, and notwithstanding that the same shall have been temporarily closed for the purpose of construction, reconstruction, maintenance or repair.

(4) "Person" shall mean and include natural persons, corporations, copartnerships, firms, companies, agencies or associations, counties, municipalities or other political subdivisions of this state, singular or plural.

(5) "Distributor" shall include any person, association of persons, firm, corporation, municipalities and political subdivisions of this state:

(a) That imports or causes to be imported and sells at wholesale or retail, or otherwise within this state, any of the motor fuel as specified above; or

(b) That imports or causes to be imported, and withdraws for use within this state by himself, or others, any such fuels, from the tank car, truck, or other original container, or package in which imported into this state; or

(c) That manufactures, refines, produces, or compounds any such fuels within this state, and sells the same at wholesale or retail or otherwise within this state for use or consumption within this state.

(d) That imports into this state from any other state or foreign country or shall receive by any means into this state, and keep in storage in this state for a period of twenty-four hours, or more after the same shall lose interstate character as a shipment in interstate commerce, any motor fuel which is intended to be used for consumption in this state.

(e) That are primarily liable under the motor fuel tax laws of this state for the payment of motor fuel taxes.

(f) That was holding, on January 1, 1953, an uncanceled license issued by the comptroller of the state to engage in business as a distributor of motor fuel.

(g) That purchases or receives in this state gasoline in bulk quantities for resale to retail dealers, upon which the tax has not been paid.

(6) "Comptroller" shall mean the comptroller of the state.

(7) "Duly licensed distributors" shall mean and include any distributor holding an unrevoked license issued by the comptroller of the state.

(8) "Motor fuel tax" shall mean and include any and all taxes imposed by the laws of the state upon or measured by the sale, use, distribution or consumption of motor fuel.

(9) "Motor fuel tax collection fund" shall mean any fund or funds heretofore or hereafter created by the legislature for the purpose

of enforcing the motor fuel tax laws of the state.

History.—§1, ch. 16082, 1933; CGL 1936 Supp. 1167(62) Sub. §(5) am. §1, ch. 28100, 1953; (5) by §1, ch. 57-162.

207.02 Application for license.—It is unlawful for any distributor to engage in business as a distributor of motor fuel within this state unless such distributor is the holder of an uncanceled license issued by the comptroller to engage in such business. To procure such license every distributor shall file with the comptroller an application upon oath and in such form as the comptroller may prescribe, setting forth:

(1) The name under which the distributor will transact business within the state;

(2) The location, with street number address, of its principal office or place of business within this state;

(3) The name and complete residence address of the owner or the names and addresses of the partners, if such distributor is a partnership, or the names and addresses of the principal officers, if such distributor is a corporation or association; and if such distributor is a corporation organized under the laws of another state, territory or country, it shall also file with such application a certified copy of the certificate or license issued by the secretary of state showing that such corporation is authorized to transact business in the state.

Upon filing of an application for a license, and concurrently therewith, a bond of the character stipulated and in the amount provided for, shall be filed with the comptroller. No license shall issue upon any application unless accompanied by such a bond.

Upon the filing of the application for a license, a filing fee of five dollars shall be paid to the comptroller.

History.—§2, ch. 16082, 1933; CGL 1936 Supp. 1167(63).

207.03 Application by person whose license has been canceled; procedure.—In the event that any application for a license certificate to transact business as a distributor in the state shall be filed by any person whose license shall at any time theretofore have been canceled for cause by the comptroller or in case said comptroller shall be of the opinion that such application is not filed in good faith, or that such application is filed by some person as a subterfuge for the real person in interest whose license or registration shall theretofore have been canceled for cause by said comptroller, then and in any of said events the comptroller, after a hearing of which the applicant shall have been given five days' notice in writing and in which said applicant shall have the right to appear in person or by counsel and present testimony, may refuse to issue to such person a license certificate to transact business as a distributor in the state.

History.—§2, ch. 16082, 1933; CGL 1936 Supp. 1167(63).

207.04 Licensing of distributors.—The application in proper form having been accepted for filing, the filing fee paid, and the bond having been accepted and approved, the comptroller shall issue to such distributor a license certificate to transact business as a distributor in the state, subject to cancellation of such license as provided by law.

The license certificate so issued by the comptroller shall not be assignable, and shall be valid only for the distributor in whose name issued, and shall be displayed conspicuously in the principal place of business of said distributor in the state.

The comptroller shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all duly licensed distributors.

History.—§2, ch. 16082, 1933; CGL 1936 Supp. 1167(63); am. §7, ch. 22858, 1945.

207.05 License number and cards; penalties.—Each distributor shall be assigned a license number upon qualifying for a license hereunder, and the comptroller shall issue to each such licensee separate license cards for each tank truck operated by such distributor. Such license card shall indicate the number so assigned the distributor, the motor number of the truck authorized to be operated under such license card, and such other information as the comptroller may prescribe. Such license card shall be conspicuously displayed on the tank truck to which it is assigned and any distributor operating a tank truck in this state, conveying or transporting motor fuel without such license card shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than ten dollars nor more than one hundred dollars or to confinement in jail for not less than ten nor more than thirty days.

History.—§2, ch. 16082, 1933; CGL 1936 Supp. 1167(63), 7794(5).

cf.—§775.06 Alternative punishment.

207.06 Bond required of licensed distributors.—Each distributor shall file with the comptroller a bond in a penal sum of not less than three thousand dollars nor more than thirty-five thousand dollars, said sum to be approximately three times the average monthly motor fuel tax paid or due by such distributor during the next preceding twelve calendar months under the laws of this state; provided, however, that any person subsequently becoming a distributor, as heretofore defined, shall file a bond in the minimum penalty of three thousand dollars. Such bond shall be in such form as may be approved by the comptroller, shall be executed by some surety company duly licensed to do business under the laws of the state as surety thereon, and upon which such distributor shall be the principal obligor and the state shall be the obligee, conditioned upon the prompt filing of true reports and the payment by such distributor to the comptroller of the state of any and all motor fuel taxes which are now or which hereafter may be levied or imposed by the state, together with any and all penalties and interest thereon, and generally upon faithful compliance with the provisions of the motor fuel tax laws of the state.

In the event that liability upon the bond thus filed by the distributor with the comptroller shall be discharged or reduced, whether by judgment rendered, payment made or otherwise, or if in the opinion of the comptroller any surety on the bond theretofore given shall have become unsatisfactory or unacceptable, then the comptroller may require the distributor to file a new bond with satisfactory sureties in the same amount, failing which the comptroller shall forthwith cancel the license certificate of said distributor. If such new bond shall be furnished by said distributor as above provided, the comptroller shall cancel and surrender the bond of said distributor for which such new bond shall be substituted.

In the event that upon hearing, of which the distributor shall be given five days' notice in writing, the comptroller shall decide that the amount of the existing bond is insufficient to insure payment to the state of the amount of the tax and any penalties and interest for which said distributor is or may at any time become liable, then the distributor shall forthwith upon the written demand of the comptroller file additional bond in the same manner and form with like security thereon as hereinbefore provided; provided further, that the total amount of any such additional bond as well as the bond required under the provisions of the first paragraph of this section shall not exceed the maximum of twenty thousand dollars, and the comptroller shall forthwith cancel the license certificate of any distributor failing to file an additional bond as herein provided.

Any surety on any bond furnished by a distributor as above provided shall be released and discharged from any and all liability to the State of Florida accruing on such bond after the expiration of sixty days from the date upon which such surety shall have lodged with the comptroller written request to be released and discharged; provided, however, that such request shall not operate to relieve, release or discharge such surety from any liability already accrued, or which shall accrue, before the expiration of said sixty-day period. The comptroller shall, promptly on receipt of notice of such request, notify the distributor who furnished such bond, and unless such distributor shall on or before the expiration of such sixty-day period file with the comptroller a new bond with a surety company satisfactory to the comptroller in the amount and form hereinbefore in this section provided, the comptroller shall forthwith cancel the license of said distributor. If such new bond shall be furnished by said distributor as above provided, the comptroller shall cancel and surrender the bond of said distributor for which such new bond shall be substituted.

History.—§3, ch. 16082, 1933; CGL 1936 Supp. 1167(64). Am. §1, ch. 57-78.

207.07 Comptroller may cancel licenses; surrender of bond.—If a distributor shall at any time knowingly file a false monthly report of the data or information required by the motor fuel tax laws, or shall fail, refuse or neglect to file the monthly report required by such laws, or to pay the motor fuel tax as required by this chapter and the laws of the state, the comptroller may forthwith cancel the license of said distributor and notify such distributor in writing of such cancellation by registered mail to the last known address of such distributor appearing on the files of the comptroller.

The comptroller may cancel any license hitherto or hereafter issued to any distributor, such cancellation to become effective sixty days from the date of receipt of the written request of such distributor for cancellation thereof, or said comptroller may cancel the license of any distributor upon investigation and sixty days' notice mailed to the last known address of such distributor, if he shall ascertain and find that the person to whom such license has been issued is no longer engaged in business as a distributor, and has not been so engaged for the period of six months immediately preceding such cancellation; but no license shall be canceled upon the request of any distributor until and unless the distributor shall, prior to the date of such cancellation, have paid to the state all motor fuel taxes payable under the laws of the state, together with any and all penalties and fines accruing by reason of any failure on the part of said distributor to make accurate reports as required by the motor fuel tax laws of Florida or to pay said taxes and penalties. In the event that the license of any distributor shall be canceled by the comptroller as hereinbefore in this section provided, and in the further event that said distributor shall have paid to the state all motor fuel taxes due and payable by it under the laws of the state together with any and all penalties accruing by reason of any failure on the part of said distributor to make accurate reports or to pay said tax and penalties, then the comptroller shall cancel and surrender the bond theretofore filed by said distributor.

History.—§4, ch. 16082, 1933; CGL 1936 Supp. 1167(65).
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

207.08 Estimate of amount of motor fuel taxes due and unpaid.—Whenever any distributor shall neglect or refuse to make and file any report for any calendar month, as required by the motor fuel tax laws of this state, or shall file an incorrect or fraudulent report, or shall be in default in the payment of any motor fuel taxes and penalties thereon payable under the laws of this state, the comptroller, after giving at least five days' notice to such distributor, shall, from any information he may be able to obtain from his office or elsewhere, estimate the number of gallons of motor fuel, with respect to which the distributor has become liable for taxes under the motor fuel laws of this state, and the amount of taxes due and payable thereon, to which sum shall be added a sum equal to ten per cent thereof, as a penalty for the failure of such distributor or his default aforesaid.

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

History.—§§5, 24, ch. 16082, 1933; CGL 1936 Supp. 1167(66), 1167(84).

207.09 Suits for collection of unpaid taxes.—Upon demand of the comptroller the attorney general, or any state attorney of any judicial circuit, shall bring appropriate actions, in the name of the state or in the name of the comptroller in the capacity of his office, for the recovery of the above mentioned taxes, penalties and interest, and judgment shall be rendered for the amount so found to be due together with costs; provided, however, that if it shall be found as a fact that such failure to pay was willful on the part of any distributor, judgment shall be rendered for double the amount of the tax found to be due, with costs. The comptroller may employ an attorney at law to institute and prosecute proper proceedings to enforce payment of the motor fuel taxes provided for by the laws of this state and penalties and interest provided for by this chapter and fix the compensation for the services of said attorney at law.

History.—§5, ch. 16082, 1933; CGL 1936 Supp. 1167(66).

207.10 Comptroller's warrant for collection of unpaid taxes.—Upon the determination of the amount of unpaid taxes and penalties due, the comptroller may issue a warrant, under the official seal of his office, directed to the sheriff of any county of the state, commanding said sheriff to levy upon and sell the goods and chattels of such distributor found within his jurisdiction, for the payment of the amount of such delinquency, with the added penalties and interest and the cost of executing the warrant and conducting the sale, and to return such warrant to the comptroller and to pay the comptroller the money collected by virtue thereof; provided, however, that any surplus resulting from said sale after all payments of costs, penalties and delinquent taxes have been made shall be returned to the defaulting distributor. The sheriff, to whom any such warrant shall be directed, shall proceed upon the same in all respects to and with like effect and in the same manner (with the exceptions herein noted) as prescribed by law in respect to executions issued against goods and chattels upon judgments by the several circuit courts. In the event there shall be a contest or claim of any kind with reference to the property levied upon, or the amount of taxes, costs or penalties due, such contest or claim shall be tried in the circuit court in and for the county in which the warrant was executed as nearly as may be in the same manner and means as such contest or claim would have been tried in such court had the warrant originally issued upon a judgment rendered by said court; provided, that the warrant issued as aforesaid shall constitute prima facie evidence of the amount of taxes, interest and penalties due to the state by said distributor, and the burden of proof shall be upon the distributor to show that said amounts or penalties were incorrect; provided further, that nothing in this section shall be construed as forfeiting or waiving any rights to collect such taxes or penalties by an action upon any bond that may be filed with the comptroller under the provisions of this chapter, or by suit or otherwise, and in case such suit, action or other proceeding shall have been instituted for the collection of said tax, such suit, action or other proceeding shall not be construed as waiving any other right herein provided; provided further, that any civil proceeding under this chapter shall not be construed as a waiver or estoppel in any criminal proceeding against such distributor under this chapter.

History.—§24, ch. 16082, 1933; CGL 1936 Supp. 1167(84); am. §7, ch. 22858, 1945.

207.11 Report from persons not distributors.—Every person purchasing or otherwise acquiring motor fuel in tank car, truck or cargo lots and selling, using, consuming or otherwise disposing of the same for delivery in Florida not required by the provisions of this chapter to be licensed as a distributor in motor fuel or by the laws of Florida to make reports, shall file a statement setting forth the name under which such person is transacting business within the state, the location with street number address of such person's principal office or place of business within the state, the name and address of the owner, or the names and addresses of the partners if such person is a partnership, or the names and addresses of the principal officers if such person is a corporation or association, and, on or before the fifteenth day of each calendar month, such person shall, on forms prescribed by the comptroller report to the comptroller all purchases or other acquisition and sales or other disposition of motor fuel during the next preceding calendar month, giving a record of each tank car, truck or cargo lot delivered to a point within Florida. Such report shall set forth from whom each tank car, truck or cargo lot was purchased or otherwise acquired, point of shipment, to whom sold or shipped, point of delivery, date of shipment, the name of the carrier, the initials and number of the car, and the number of gallons contained in such tank car, if shipped by rail, and the name and owner of the boat, barge or vessel, and the number of gallons contained therein, if shipped by water, and the name of the owner of the truck and the number of gallons contained in such truck if shipped by truck, and shall contain any other additional information the comptroller may require relative to such motor fuel.

History.—§6, ch. 16082, 1933; CGL 1936 Supp. 1167(67).

207.12 Penalty for failure to submit report.—When any person, not required by the provisions of this chapter to register as a distributor of motor fuel, purchasing or otherwise acquiring motor fuel in tank car, truck or cargo lots and selling, using, consuming or otherwise disposing of the same for delivery in Florida, shall fail to submit his monthly report to the comptroller by the sixteenth day of the month succeeding the month in which said lot or lots of motor fuel were received, acquired or purchased, or when such person shall fail to submit in such monthly report the data required by this chapter, such person shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than one hundred dollars or to imprisonment of not more than thirty days, for the first offense; and shall be fined an amount not less than one hundred dollars nor more than one thousand dollars or be subjected to imprisonment for not less than thirty days, nor more than a year, for each subsequent offense.

History.—§6, ch. 16082, 1933; CGL 1936 Supp. 7794(6).
cf.—§775.06 Alternative punishment.

207.13 Reports from carriers transporting motor fuel, kerosene or similar products.—Every railroad company, street car, suburban or interurban railroad company, pipe line company, water transportation company, and common carrier transporting motor fuel, kerosene, casinghead gasoline, natural gasoline, naphtha, or distillate, either in interstate or intrastate commerce, to points within Florida, and every person transporting motor fuel, kerosene, casinghead gasoline, natural gasoline, naphtha or distillate, by whatever manner to a point in Florida from any point outside of said state, shall report under oath to the comptroller on forms prescribed by said comptroller all deliveries of motor fuel, kerosene, casinghead gasoline, natural gasoline, naphtha or distillate so made to points within the state.

Such reports shall cover monthly periods, shall be submitted within fifteen days after the close of the month covered by the report, shall show the name and address of the person to whom the deliveries of motor fuel, kerosene, casinghead gasoline, natural gasoline, naphtha or distillate have actually and in fact been made, the name and address of the originally named consignee, if motor fuel, kerosene, casinghead gasoline, natural gasoline, naphtha or distillate has been delivered to any other than the originally named consignee, the point of origin, the point of delivery, the date of delivery, and the number and initials of each tank car and the number of gallons contained therein, if shipped by rail; the name of the boat, barge or vessel, and the number of gallons contained therein if shipped by water; the license number of each tank truck and the number of gallons contained therein, if transported by motor truck; if delivered by other means, the manner in which such delivery is made; and such other additional information relative to shipments of motor fuel and kerosene as the comptroller may require.

History.—§7, ch. 16082, 1933; CGL 1936 Supp. 1167(68).

207.14 Reports to be filed whether taxes due or not.—All statements or reports required by this chapter and the motor fuel tax laws of this state to be made to the comptroller monthly, shall be filed each month regardless of whether or not a motor fuel tax is due under the provisions of the laws of Florida.

History.—§17, ch. 16082, 1933; CGL 1936 Supp. 1167(78).

207.15 Penalty for false statements in reports.—Any false or fraudulent statement or report submitted under the motor fuel tax laws of this state and sworn to by a person knowing same to be false or fraudulent, shall constitute perjury and upon conviction thereof, the person so convicted shall be punished as provided by law for conviction of perjury under §837.01.

History.—§17, ch. 16082, 1933; CGL 1936 Supp. 7794(12).

207.16 Retention of records by distributors and other persons. — Each distributor shall maintain and keep, for a period of two years, such record or records of motor fuel received, used, consumed, sold and delivered within this state by such distributor, together with invoices, bills-of-lading, and other pertinent records and papers as may be required by the comptroller for the reasonable administration of the motor fuel tax laws of this state.

Every person purchasing motor fuel taxable under the laws of the state from a distributor for the purpose of resale, shall maintain and keep for a period of one year a record of motor fuel received, the amount of tax paid to the distributor as part of the purchase price, together with delivery tickets, invoices, and bills of lading, and such other records as the comptroller shall require.

Penalty: Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and shall, upon conviction thereof, be sentenced to pay a fine of not more than one thousand dollars and costs of prosecution, or to undergo imprisonment for not more than one year.

History.—§8, ch. 16082, 1933; CGL 1936 Supp. 1167(69), 7794(7).
cf.—§775.06 Alternative punishment.

207.17 Inspection of records; hearings; forms.—The comptroller or any deputy, employee or agent authorized by him, may examine, during the usual business hours of the day, the records, books, papers, storage tanks, and any other equipment of any distributor, purchaser, or common or contract carrier, pertaining to motor fuel or kerosene received, sold, shipped, delivered or used, as the case may be, to verify the truth and accuracy of any statement, report or return, or to ascertain whether or not the motor fuel taxes imposed by law have been paid. The comptroller may, in the enforcement of the provisions of this chapter and of the motor fuel tax laws of this state, hold hearings, take the testimony of any person, and for such purpose may issue subpoenas and compel the attendance of witnesses, and may conduct such investigations as he may deem necessary.

History.—§9, ch. 16082, 1933; CGL 1936 Supp. 1167(70).

207.18 Motor fuel taxes a lien on property.—If any person liable for the motor fuel tax imposed by the laws of this state neglects or refuses to pay the same, the amount of such tax (including any interest, penalty or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the state upon all franchises, property and rights to property, whether real or personal, then belonging to or thereafter acquired by such person (whether such property is employed by such person in the prosecution of business or is in the hands of an assignee, trustee or receiver for the benefit of creditors) from the date said taxes are due and payable. Such lien shall have priority over any lien or incumbrance whatsoever except the lien of other state taxes having priority by law, and except that such lien shall not be valid as against any bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights shall have attached prior to the time when the comptroller shall have filed notice of such lien in the office of the clerk of the circuit court of the county in which the principal place of business of such person is located (for which filing no fee shall be required). Such lien shall continue until the amount of said tax, together with any penalties and interest subsequently accruing thereon, is paid. The comptroller may issue a certificate of release of lien when the amount of such tax, together with any penalties and interest subsequently accruing thereon, has been satisfied by such person, and such person may record the same with the clerk of the circuit court in and for the county in which the notice of lien was filed.

History.—§10, ch. 16082, 1933; CGL 1936 Supp. 1167(71).

207.19 Officer, etc., selling property belonging to a distributor.—No sheriff, receiver, assignee, master or other officer shall sell the property or franchise of any person who is distributor without first filing with the comptroller a statement containing the following information:

(1) Name of the plaintiff or party at whose instance or upon whose account the sale is made;

(2) Name of the person whose property or franchise is to be sold:

(3) The time and place of sale:

(4) The nature of the property and the location of the same.

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

History.—§10, ch. 16082, 1933; CGL 1936 Supp. 1167(71).

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

History.—§10, ch. 16082, 1933; CGL 1936 Supp. 1167(71).

207.21 Foreclosure of liens.—The comptroller may cause to be filed in the name of the state a bill in chancery to foreclose the liens provided for herein, and the practice, pleading and procedure of foreclosure shall be as nearly as may be in accordance with the practice, pleading and procedure for foreclosure of mortgages on real estate. A certificate of the comptroller setting forth the amount of motor fuel taxes due shall be prima facie evidence of the matter therein contained. Said suit may be instituted at any time after said lien becomes effective. The purchaser at any sale in suits for the foreclosure of said liens shall be entitled to a deed and the same process and remedies to obtain possession of the premises as in suits for the foreclosure of mortgages. The title to the land conveyed by such deed shall be indefeasible as to all parties defendant in the action.

History.—§10, ch. 16082, 1933; CGL 1936 Supp. 1167(71).

207.22 Discontinuance or transfer of business; penalty.—Whenever a distributor ceases to engage in business as a distributor within the state by reason of the discontinuance, sale or transfer of the business of such distributor, such distributor shall notify the comptroller in writing at least ten days prior to the time the discontinuance, sale or transfer takes effect. Such notice shall give the date of discontinuance and, in the event of a sale or transfer of the business, the date thereof and the name and address of the purchaser or transferee thereof. All motor fuel taxes, penalties and interest not due and payable under the provisions of the laws of this state, shall, notwithstanding such provisions, become due and payable concurrently with such discontinuance, sale or transfer; and any such distributor concurrently with such discontinuance, sale or transfer, shall make a report, pay all such taxes, interest, and penalties, and surrender to the comptroller the license certificate theretofore issued to said distributor by the comptroller.

Unless the notice above provided for shall have been given to the comptroller as above provided, such purchaser or transferee shall be liable to the state for the amount of all taxes, penalties, and interest under the laws of Florida accrued against any such distributor selling or transferring his business, on the date of such sale or transfer, but only to the extent of the value of the property and business thereby acquired from such distributor.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall upon conviction thereof be sentenced to pay a fine of not less than fifty dollars nor more than three hundred dollars and costs of the prosecution, or to undergo imprisonment for not more than one year. Nothing in this section shall be construed as releasing the distributor so transferring or discontinuing his business of liability for any motor fuel tax, or for any interest or penalty due under the motor fuel tax laws.

History.—§11, ch. 16082, 1933; CGL 1936 Supp. 1167(72), 7794(8).
cf.—§775.06 Alternative punishment.

207.23 Not to settle for less than amounts actually due.—The comptroller shall have no right, power, or authority to settle or compromise with any distributor any claim of the state accruing under the motor fuel tax laws of this state for a sum less than the full amount due, in conformity with this chapter.

History.—§12, ch. 16082, 1933; CGL 1936 Supp. 1167(73).

207.24 Transportation of motor fuel over public highways.—Every person hauling, transporting or conveying motor fuel over any of the public highways of this state must, during the entire time he is so engaged, have in his possession an invoice or delivery ticket, bill of sale, or other record evidence showing the true name and address of the person from whom he has received the motor fuel, and the number of gallons so originally received by him from said person, and the true name and address of every person to whom he has made deliveries of said motor fuel, or any part thereof, and the number of gallons so delivered to each of said persons. The person hauling, transporting or conveying such motor fuel shall, at the request of any person required by law to inquire into or investigate said matters, produce and offer for inspection said invoice, or delivery ticket, or bill of sale, or record evidence. If said person fails to produce the invoice, or delivery ticket, or bill of sale or record evidence, or if, when produced, it fails to clearly disclose said information, the same shall be prima facie evidence of a violation of this section. No person shall haul, transport or convey motor fuel over any of the public highways of the state except in vehicles plainly and visibly marked on each side and on the rear thereof with the word "Gasoline" or other name of the motor fuel being transported, in letters at least four inches high and of corresponding appropriate width, together with the name and address of the owner of the vehicle in which such motor fuel is contained. Any person guilty of violating any of the provisions of this section shall, upon conviction, be fined not less than one hundred dollars nor more than two hundred fifty dollars, or imprisoned for a term of not less than fifteen nor more than sixty days. The provisions of this section shall not apply to vehicles transporting motor fuel not in excess of one hundred gallons contained in the fuel tank of such vehicle provided for the carrying of motor fuel for propelling same, which motor fuel is to be used solely for the motive power of such vehicle, nor to vehicles transporting motor fuel in quantities of not more than five gallons for emergency purposes, nor to motor fuel being transported by common carrier in railroad cars.

History.—§13, ch. 16082, 1933; CGL 1936 Supp. 1167(74), 7794(9).
cf.—§775.06 Alternative punishment.

207.25 Transportation of motor fuel by boats over the navigable waters of this state.—Every person hauling, transporting or conveying motor fuel over any of the navigable waters of this state must, during the entire time he is so engaged, have in his possession an invoice or bill of sale or other record evidence showing the true name and address of the person from whom he has received said motor fuel and the true name and address of every person or persons to whom he is making deliveries of same, and the number of gallons (that is, a person hauling, transporting or conveying said motor fuel must have in his possession record evidence of the name and address of the person from whom he has received the same, and also of the name and address of the person to whom he is going to deliver the same, and the number of gallons). The person hauling, transporting or conveying said motor fuel shall at the request of any person authorized by law to inquire into or investigate said matters, produce and offer for inspection said invoice or bill of sale or other record evidence. If said person fails to produce the invoice or bill of sale or other record evidence, or if, when produced, it fails to clearly disclose said information, the same shall be prima facie evidence of a violation of this section. No person shall haul, transport or convey motor fuel in boats over any of the navigable waters of the state, except in boats plainly and visibly marked on both sides and above the water line thereof with the word "Gasoline" or other name of the motor fuel being transported, in letters at least four inches high and of corresponding appropriate width, together with the name and address of the owner of the boat in which such motor fuel is contained. Any person guilty of violating any of the provisions of this section, shall, upon conviction, be fined not less than one hundred dollars nor more than two hundred fifty dollars, or imprisoned for a term of not less that fifteen nor more than sixty days. The provisions of this section shall not apply to boats transporting motor fuel to be used solely for their own motive power.

History.—§14, ch. 16082, 1933; CGL 1936 Supp. 1167(75), 7794(10).
cf.—§775.06 Alternative punishment.

207.27 Forfeiture of vehicles and boats illegally transporting or delivering motor fuel.—The right of property in and to all conveyances, boats and other vehicles of transportation, and all tanks and other equipment used in connection therewith, employed in the illegal transportation or delivery of motor fuel in this state for the purpose of illegally evading or avoiding any motor fuel tax provided or imposed by the laws of this state, and all other personal property that may have been used by any person for the purpose of illegally evading or avoiding any such tax, or which may have been used to facilitate the illegal evasion or avoidance of any such tax, is hereby declared not to exist in any person, and the same shall be forfeited. The comptroller, the comptroller's deputies, the several sheriffs, deputy sheriffs, constables and police officers of municipalities, shall seize any and all such things, and the same shall be safely kept by the sheriff of the county until disposed of as in this section provided.

The sheriff of the county, within ten days after the receipt of any such things, shall make and subscribe to an affidavit in writing before some officer authorized by law to administer an oath, reciting such seizure, with the date, place and things seized, giving a reasonably full description thereof, and the name of the alleged owner and person from whose possession same were taken, if either or both be known to such sheriff, and a short statement of the circumstances under which said property was being used for the purpose of illegally evading or avoiding or had been used for the purpose of illegally evading or avoiding any motor fuel tax provided or imposed by the laws of Florida; and:

(1) Within ten days after the receipt of such things by the sheriff, such sheriff shall present such affidavit to the judge of the circuit court of the county where such things were seized, and the circuit judge of said court shall direct that such sheriff shall serve written notice upon such owner and person from whose possession such things were taken, if known, and if he, it or they be within the county, of time and place of the hearing upon such affidavit, which may be in term time or in vacation, and at any place within the judicial circuit as the circuit judge may fix, which notice shall be signed by the circuit judge citing such person to appear and show cause, if any, why such things should not be adjudged forfeited and disposed of as in this section provided; but,

(2) If such sheriff shall recite in his affidavit that such things were not taken from the possession of any person, or that the owner is unknown, or that either of such persons is without the county, conceals himself or themselves, or that personal service of such notice can not be made by such sheriff for any good reason, the circuit judge shall by written order direct that, in lieu of personal notice of such hearing to any such person, that written notice of such hearing shall be posted at the county court house door, directed to all persons interested in such things, and giving notice of such seizure, and of the date and place thereof and a reasonable description of the things seized, and of the time and place of the hearing upon such affidavit, which notice shall be signed by the circuit judge;

(3) If at the time and place provided for the hearing upon such affidavit no person shall appear and claim such things, the affidavit of the sheriff shall stand as confessed and taken as true, and the recitals therein contained shall not thereafter be open to question in any other court or proceeding, and the circuit judge shall thereupon make an order in writing directing the sale thereof;

(4) Such sale shall be in the presence of the clerk of the circuit court of the county, and at such times, places and in such manner as such judge shall in his order direct.

History.—§16, ch. 16082, 1933; CGL 1936 Supp. 1167(77).

207.28 Trial of issues interposed by defense; sale, etc.—Should any person appear at the hearing provided for in §207.27, and claim the things seized and interpose any defense to the affidavit mentioned in said section, the circuit judge shall determine whether the evidence adduced proves beyond a reasonable doubt that such things are forfeited and make his written order accordingly. And if he shall determine in the affirmative, such things shall be sold by the sheriff in the same manner and upon the same terms and conditions as provided in §207.27; but if he shall determine in the negative respecting all or any of such things, the part not forfeited shall be returned to the person legally entitled thereto. The hearing before the circuit judge shall be informal and he may make all needful rules and orders to carry this section into effect. And the sheriff may call to his assistance the state attorney, county solicitor or other commissioned prosecuting attorney or other prosecuting attorney regularly employed by the county, to assist him in preparing the affidavit herein mentioned, and represent him at the hearing before the circuit judge, and in taking and perfecting any appeal from the final decision of the circuit judge. If the state, the sheriff, or the claimant shall be dissatisfied with the decision of said circuit judge they may within ten days of the making of the order, appeal from the final decision of the court to the supreme court in the same manner as appeals in chancery are taken under general law and the rules of the supreme court, and upon such appeal being entered such circuit judge shall cause to be reduced to writing and authenticate with his signature all oral evidence considered by him upon such hearing and the same shall be filed with the papers in the case and thereby become a part of the record proper, and a bill of exceptions shall not be necessary. No appeal taken by any party shall operate as a supersedeas, but such things shall remain in the custody of the sheriff pending such appeal and to abide the final decision of the supreme court.

History.—§16, ch. 16082, 1933; CGL 1936 Supp. 1167(77).

207.29 Costs and expenses of proceedings.—For the performance of the duties required of the sheriff by the provisions of §§207.27 and 207.28, he shall receive the same fees provided by law for the arrest and return of persons charged with crime, including the same mileage and the actual cost of transporting such things, and for each seizure made by him or his deputy, when the same are ordered sold by the circuit judge he shall receive an additional fee of five dollars, and all such fees and compensations shall be paid out of the proceeds of the sale. The clerks of the courts performing duties under the provisions aforesaid shall receive the same fees as prescribed by the general law for the performance of similar duties, and witnesses attending any investigation pursuant to subpoena shall receive the same mileage and per diem as if attending as a witness before the circuit court in term time. All fees and costs provided for shall be paid from the proceeds of the sale, or if there be no sale or if the proceeds of such sale be insufficient to meet such fees and costs then such fees and costs shall be paid out of the motor fuel tax collection fund or other funds available for the enforcement of the motor fuel tax laws by the comptroller. In the event the proceeds of the sale are more than sufficient to pay all costs and fees attending said sale then the surplus thereof shall be sent to the comptroller to be disposed of as provided for the disposition of the taxes collected under the motor fuel tax laws of the state; provided, however, that any property seized under §207.27, against which there is existing a mortgage lien or retain title contract held by a person who has no knowledge that such property is being used for the purpose of illegally evading or avoiding the payment of the motor fuel taxes provided for under the laws of the state, then such seizure shall not invalidate such lien or retain title contract, but the same shall be paid out of any funds derived from a sale of said property, provided the retain title holder or mortgagee shall within thirty days after seizure come into court and set up his claim to such retained title lien or mortgage.

History.—§16, ch. 16082, 1933; CGL 1936 Supp. 1167(77).

207.30 **Restraining and enjoining violations.**—Any person who shall violate any of the provisions of this chapter, or who shall fail to pay all motor fuel taxes and all interest and penalties due by him to the state under the provisions of the laws of this state may be restrained and enjoined in a suit or other proceeding in any court of competent jurisdiction instituted in the name of the state by the attorney general or by any state attorney at the direction of the comptroller, from selling, consuming, using, distributing or transporting any motor fuel which is taxable under the laws of this state until such person shall have paid all of said taxes, interest and penalties due the state, and have complied with the provisions of this chapter. Any proceeding instituted under this section shall not operate as a bar to the prosecution of any person guilty of violating any of the criminal laws of the state.

History.—§19, ch. 16082, 1933; CGL 1936 Supp. 1167(80).

207.31 **Posting price of motor fuel plus tax.**—Distributors and all other persons selling motor fuel may add the amount of the motor fuel tax to the price of the motor fuel sold by them, and shall state the rate of the tax separately from the price of the motor fuel on all price display signs and invoices.

History.—§22, ch. 16082, 1933; CGL 1936 Supp. 1167(82).

207.32 **Comptroller and deputies may make arrests, seize property and execute warrants.**—The comptroller and his deputies, agents and employees may make arrests without warrants for any violation of any provision or provisions of this chapter or for any violation of the motor fuel tax laws of this state. In all such cases the person arrested for any violation of any provision of this chapter or of the motor fuel tax laws of this state shall be surrendered without delay to the sheriff of the county in which the arrest was made and formal complaint made against him, in accordance with law.

The comptroller and his deputies, agents and employees also may seize property as set out in §§207.27-207.29 and upon said seizure being made shall surrender without delay such seized property to the sheriff of the county where said property was seized for further procedure as set out in said sections.

When the comptroller deems advisable, he may direct the warrant provided for in §207.10, to one of the said comptroller's deputies, agents and employees who shall then execute said warrant and proceed thereon in the same manner provided for sheriffs in such cases.

History.—§25, ch. 16082, 1933; CGL 1936 Supp. 1167(85).

207.33 **Method for collection of tax cumulative.**—The methods and means of effecting and enforcing the collection of motor fuel taxes as set out in this chapter shall be in addition to, and not in lieu of the methods and means of effecting and enforcing collection set out in the motor fuel tax laws of Florida.

History.—§28, ch. 16082, 1933; CGL 1936 Supp. 1167(87).

207.34 **Appeals to courts from comptroller's decisions.**—Any person aggrieved by an order or decision of the comptroller may within twenty days from the rendition of such order or decision, take an appeal therefrom to the circuit court in and for Leon county, upon notifying the comptroller to this effect, and upon giving bond with sureties to be approved by the clerk of said court, payable to the state, conditioned to pay all costs created by said appeal. The comptroller shall, within fifteen days after receipt by him of said notice of appeal, prepare and file with the clerk of said court a true and correct copy of the order or decision appealed from, together with a transcript of the proceedings had before it in connection with the said matter. The trial upon appeal to said circuit court shall be de novo and said court shall render judgment confirming, modifying or setting aside the order or decision of the comptroller, or in its discretion may remand the case to the comptroller for proceedings in conformity with the direction of the court. From the judgment of the circuit court either party may appeal to the supreme court, as in civil cases, within thirty days from the rendition of the judgment. No appeal hereunder shall suspend the order or decision of the comptroller pending the determination of such appeal by said circuit court.

History.—§23, ch. 16082, 1933; CGL 1936 Supp. 1167(83).

207.35 General penalties for violations.—Any person who shall violate any of the provisions of this chapter, a penalty for which is not otherwise provided, shall upon conviction thereof for a first offense be punished by a fine of not more than one hundred dollars, or by imprisonment for a term of not more than thirty days, and for a second or further offense, shall be punished by a fine of not less than one hundred dollars nor more than five thousand dollars or by imprisonment for a term of not less than thirty days and not more than twelve months. Each day or part thereof, during which any person shall engage in business as a distributor without being the holder of an uncanceled license as provided by this chapter, shall constitute a separate offense within the meaning of this section; provided that in addition to the penalty imposed by this chapter the defendant shall be required to pay all motor fuel taxes and penalties due to the state.

History.—§20, ch. 16082, 1933; CGL 1936 Supp. 7794(18).
cf.—§775.06 Alternative punishment.

207.36 Records and files as public records.—The records and files in the office of the comptroller appertaining to this chapter shall be available to the public at any time during business hours. The comptroller shall prepare a list each month, of all distributors, and others, together with the amount of motor fuel tax or taxes paid thereby, and mail a copy thereof to each duly licensed distributor.

History.—§21, ch. 16082, 1933; CGL 1936 Supp. 1167(81).

207.37 Exchange of information among the states.—The comptroller of the state shall, upon request duly received from the officials to whom are entrusted the enforcement of the motor fuel tax laws of any other state, forward to such officials any information which he may have in his possession relative to the manufacture, receipt, sale, use, transportation or shipment by any person of motor fuel, kerosene or other petroleum products.

History.—§21, ch. 16082, 1933; CGL 1936 Supp. 1167(81).

207.38 Comptroller to make rules and regulations.—The comptroller shall make reasonable rules and regulations, which shall have the force and effect of law, to effect a strict enforcement of the provisions of this law and of the motor fuel tax laws of the state.

History.—§18, ch. 16082, 1933; CGL 1936 Supp. 1167(79).