

IFTA

2016 Procedures Manual

To maintain one fuel license
and one base jurisdiction
location for each licensee.

<http://dor.sd.gov>
www.sdtruckinfo.com
www.iftach.org



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Taxpayer Bill of Rights

1. You have the right to confidentiality.
2. You have the right to tax information that is written in plain English.
3. You have the right of appeal.
4. You have the right to courteous, prompt, and accurate answers to your questions.
5. You have the right to be certain that collection procedures or assessments are not influenced by performance goals or quotas.
6. You have the right to rely on the written advice given to you by the Department of Revenue.
7. You have the right to be notified before the department audits your records unless the Secretary of Revenue determines that a delay will jeopardize the collection of tax.
8. You have the right to clear and consistent policy regarding the deadlines for filing tax returns and making payments.
9. You have the right to seek a refund of any taxes you believe you have overpaid within the last three years.
10. You have the right to a process requiring that the seizure of your property for taxes be approved by a person no lower in authority than the division director.
11. You have the right to expect that a good-faith effort to comply with tax laws will be given consideration in disputed cases.
12. You have the right to a tax credit of interest or penalties that are determined to have been inappropriately levied.
13. You have the right to the removal of a lien on your property within 30 days after you have paid all tax, penalty and interest due.
14. You have the right to have the South Dakota Department of Revenue correct the public record.

IFTA

The purpose of the International Fuel Tax Agreement (IFTA) is to promote and encourage the most efficient use of the highway system by making the administration of motor fuels taxation uniform concerning motor carriers operating in several member jurisdictions. This agreement, recognized by 58 states and providences, simplifies the way you report and pay fuel taxes, reduces paperwork and minimizes compliance requirements. **Note:** **Carriers who travel in South Dakota only are not eligible for IFTA.**

Specifically, South Dakota's participation in IFTA means that:

1. A single fuel tax license authorizes you to travel in all IFTA member jurisdictions;
2. A single tax return fulfills your reporting requirements for all member jurisdictions;
3. A single state usually performs your fuel tax audit.

This manual has been prepared as a guide with basic information regarding the IFTA program. It contains detailed information on South Dakota's licensing and bonding requirements, lease and trip permits, record keeping and tax reporting requirements, penalties, and the audit and appeal process. This manual does not contain every rule and the contents do not cover every unique situation that may arise. If you have questions regarding the contents of this manual or with the IFTA program, please contact our office at:

Division of Motor Vehicles
IFTA Section
445 East Capitol Avenue
Pierre, SD 57501-3185
Telephone: (605) 773-2104
Fax: (605) 773-4117

You may also visit our website at <http://dor.sd.gov> or www.sdtruckinfo.com for information, forms and frequently asked questions. Copies of the complete International Fuel Tax Agreement, Administrative Procedures and Audit Guidelines can be found on the IFTA home page at www.iftach.org.

Base Jurisdiction

The term "base jurisdiction" establishes the jurisdiction to which a carrier will make fuel tax payments. Your base jurisdiction will then distribute the appropriate amount of tax owed to each IFTA member jurisdiction for you. South Dakota will be your base jurisdiction if:

- Your vehicle(s) are registered in South Dakota;
- Your vehicle(s)'s use is controlled from a location in South Dakota;
- Your vehicle(s)'s records are maintained or can be made available in South Dakota;
- At least one of your vehicles logs miles within South Dakota.

IFTA Qualified Motor Vehicle

IFTA qualified vehicles are defined as motor vehicles used, designed, or maintained to transport people or property and that:

- Have two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms; or
- Have three or more axles, regardless of the weight; or
- Are used in combination when such combination exceeds a gross vehicle weight of 26,000 pounds or 11,797 kilograms.

Recreation vehicles are not considered qualified vehicles.

Licensing and Bonding

License Application

The IFTA application can be obtained from the South Dakota Division of Motor Vehicles, Commercial Licensing Division or from the Trucking Industry website at www.sdtruckinfo.com. The division can issue you a license only after the following requirements have been met:

- You have accurately completed the required forms: South Dakota IRP/IFTA Combined Application, Agreement to Maintain Records, and Agreement to File Returns in a Timely Manner;
- The division has determined that South Dakota is your base jurisdiction;
- You have sent the division the correct license and decal fees;
- If necessary, you have posted an acceptable bond (see “Bonding”); and
- Fees for the Unified Carrier Registration Program have been paid.

Licenses are valid for one calendar year from January 1 through December 31.

IFTA License and Credentials

Upon the approval of your application (approximately 10 days after you have met the application requirements above), the division will send you your credentials, which will include:

1. **IFTA License:** Each licensee is issued one IFTA license. The licensee is required to make copies of the license so that one copy is carried in each qualified vehicle. Keep the original license in your place of business. Failure to carry a copy of the license can subject the vehicle operator to purchase a fuel permit and may result in citations and fines;
2. **IFTA Identification Decals:** Each licensee is issued a set of vehicle identification decals for each qualified vehicle in its fleet (these must be placed on each lower rear exterior side of the cab). All IFTA decals are numbered and assigned to a licensee’s account when issued. Highway Patrol will have access to this information and be able to identify any decals that are being utilized illegally. Failure to display the identification decals in the required locations can subject the vehicle operator to purchase a fuel permit and may result in citations and fines.

When adding a vehicle during the year, you may obtain an additional decal set by sending in a written request, indicating the name of carrier, IFTA account number and signature of the requester along with \$2.50 per decal set requested. If additional sets are obtained but not placed on a vehicle, you must retain the unused decal(s) for audit purposes for a period of four (4) years. The department provides an IFTA decal inventory sheet to assist you in keeping track of your IFTA decals. You can find this form on both websites listed above.

License Renewals

Each September the division will automatically send every IFTA license holder a renewal notice. You will be asked to verify the existing license information and order the appropriate number of decals for the next calendar year. **Your license will not be renewed, however, if you are delinquent in filing your tax returns or if you owe any taxes, owe on an audit, have a delinquent IRP account, or have not paid UCR fees.**

If you report or travel only in South Dakota or file zero distance returns for the past 12 months, your license will not be renewed. In order to qualify for licensing under the IFTA agreement, you must operate in two or more member jurisdictions. Operations in South Dakota only will not allow you to license. In addition, if you do not report any operations for a 12-month period, you will become ineligible to license. If your operations change and travel outside of South Dakota occurs again, contact the Department of Revenue to re-license.

Bonding

In most cases, you will not be required to furnish a surety bond when applying for an IFTA license. A bond, however, is required if you have a history of delinquency in reporting or paying taxes to the State of South Dakota; You are delinquent in reporting or paying tax for any two consecutive reporting periods during a 12-month period; or You remit a non-sufficient funds (NSF) check for tax payment and do not issue a valid check within 15 days of being notified by the Department that your original check did not clear.

The Department currently requires a minimum bond of \$1000.00. The Department will not accept a bond that can be terminated on less than 60 days' notice. Securities accepted include: A cash bond; A bond issued by a corporate surety; or A certificate of deposit endorsed in favor of the South Dakota Department of Revenue. (The payee of the certificate shall receive any interest paid on the certificate.)

Changes in Ownership

If a license holder sells his business, the department must be notified immediately in writing. The existing license will be canceled and a new license issued to the new owner.

IFTA Temporary Decal Permit

If you add a new vehicle to your fleet, you may apply for a 30-day, temporary IFTA decal for that vehicle providing you have held an IFTA license with South Dakota for one year and are in good standing. You must follow up this application with a written request and payment for the actual decal. Failure to follow up is grounds for denial of future decals.

When you request a temporary decal permit, be ready to furnish both the VIN number and unit number since the permits are vehicle specific. The temporary permit must be carried in the cab at all times, along with a copy of the IFTA license. The 30-day period gives the carrier adequate time to purchase a new set of decals and to affix them to the truck. Failure to carry the permit may result in citations and fines.

All mileage and fuel activity while running on a temporary permit must be included on the IFTA return.

Temporary Fuel Permits

Carriers who are IFTA license holders must properly display their decals and carry their IFTA license in the vehicles at all times. If for any reason a carrier does not display decals or have their IFTA license, the carrier must purchase a temporary fuel permit. In South Dakota temporary fuel permits cost \$20 and are good for 72 hours or until a carrier leaves the state, whichever comes first.

Mileage and tax-paid fuel purchased while operating under a temporary permit still must be included on the quarterly tax return. In particular, note the following items on your quarterly return:

- Line A: Add all miles/kilometers accrued under the temporary fuel permit to total distance traveled (necessary to compute average miles/kilometers per gallon).
- Line B: Add all fuel purchased under the temporary fuel permit to total fuel consumed (necessary to compute average miles/kilometers per gallon).
- Column 2: Include all distance traveled in the state in which you purchased the temporary fuel permit.
- Column 3: Do not include any distance traveled under the temporary fuel permit.
- Column 5: Include any fuel you purchased on a tax- paid basis.

Retain all temporary fuel permits in your files for audit verification. Review the permits you submit to be certain that they are fuel permits. For example, some jurisdictions have a ton mileage permit.

If you submitted the ton mileage permit as a fuel permit, your claim would be disallowed and you would be assessed interest for under-reporting your fuel tax liability.

Unified Carrier Registration (UCR)

If you operate a truck or bus in interstate or international commerce there is a federal law that applies to your business. The Unified Carrier Registration (UCR) Program requires individuals and companies that operate commercial motor vehicles in interstate or international commerce to register their business and pay an annual fee based on the size of their fleet. This law includes private carriers. It also includes Freight Forwarders, Brokers and Leasing Companies that make arrangements for the transportation of cargo and goods in interstate or international commerce.

A “Commercial Motor Vehicle” is defined as a self-propelled vehicle used on the highways in commerce principally to transport passengers or cargo, if the vehicle:

- (a) has a gross vehicle weight of 10,001 pounds or more;
- (b) is designed to transport 11 or more passengers (including the driver); or
- (c) is used in transporting hazardous materials in a quantity requiring placarding.

The fees under this program will be required to be paid each year and may vary from year to year. The current fees are listed below.

The Fee Brackets for Motor Carriers are as follows:

Fleet Size (Include Trailers)		Fee Per Company
Tier	From To	
1	0 2	\$ 76.00
2	3 5	\$ 227.00
3	6 20	\$ 452.00
4	21 100	\$ 1,576.00
5	101 1,000	\$ 7,511.00
6	1,001 200,000	\$73,346.00

Example: A motor carrier operating four tractors and nine straight trucks has a fleet size of thirteen (Tier 3) commercial motor vehicles and pays \$452.00

You may either apply for the UCR by completing a UCR application and mailing the appropriate fee to the Department or register online at www.ucr.in.gov and follow the step-by-step instructions. When registering online, payments can be made using MasterCard, Discover, Visa or e-Check. Credit card payments and e-Check payments can only be processed if you register online. Credit cards cannot be accepted if filing a paper application with the South Dakota Department of Revenue.

Lease Agreements and Tax Responsibility

The carrier operating a vehicle is always responsible for the payment of fuel tax, unless a lease agreement specifically states otherwise. For example, if a carrier leasing a vehicle is stopped by law enforcement, and the lease agreement does not show that the lessor is responsible for the payment of fuel tax, the carrier will be held responsible. Similarly, a carrier who is audited by the Department must have documentation proving that the payment of fuel tax is the responsibility of another party or the carrier must have paid the tax.

The following six items quoted directly from the IFTA Articles of Agreement address the tax responsibility of lessors, lessees, independent contractors and household goods agents:

1. A lessor who is regularly engaged in the business of leasing or renting motor vehicles without drivers for compensation to licensees or other lessees may be deemed to be the licensee, and such lessor may be issued a license if an application has been properly filed and approved by the base jurisdiction.

2. In the case of a carrier using independent contractors under long-term leases (more than 30 days), the lessor and lessee will be given the option of designating which party will report and pay fuel use tax. If the lessee (carrier) assumes responsibility for reporting and paying motor fuel taxes, the base jurisdiction for purposes of this agreement shall be the base jurisdiction of the lessee, regardless of the jurisdiction in which the qualified motor vehicle is registered, for vehicle registration purposes by the lessor.
3. In the case of a short-term motor vehicle rental, by a lessor regularly engaged in the business of leasing, or renting motor vehicles without drivers, for compensation to licensees or other lessees of 29 days or less, the lessor will report and pay the fuel tax unless the following two conditions are met:
 - a. The lessor has a written rental contract which designated the lessee as the party responsible for reporting and paying the fuel use tax; and
 - b. The lessor has a copy of the lessee's IFTA fuel tax license which is valid for the term of the rental.
4. In the case of a carrier using independent contractors under short-term/trip lease of 29 days or less, the trip lessor will report and pay all fuel taxes.
5. In the case of a household goods carrier using independent contractors, agents, or service representatives, under intermittent leases, the party liable for fuel tax shall be:
 - a. The lessee (carrier) when the qualified motor vehicle is being operated under the lessee's jurisdictional operating authority. The base jurisdiction for purposes of this agreement shall be the base jurisdiction of the lessee (carrier), regardless of the jurisdiction in which the qualified motor vehicle is registered for vehicle registration purposes by the lessor or lessee.
 - b. The lessor (independent contractor, agent, or service representative) when the qualified motor vehicle is being operated under the lessor's jurisdictional operating authority. The base jurisdiction for purposes of this agreement shall be the base jurisdiction of the lessor, regardless of the jurisdiction in which the qualified motor vehicle is registered for vehicle registration purposes.
6. No member jurisdiction shall require the filing of such leases, but you must make the leases available upon request of any member jurisdiction.

Record Keeping

IFTA license holders must maintain detailed records and file quarterly reports along with their fuel tax payments. Records must be retained for a period of 4 years; the current tax year plus the 3 previous years. This record keeping and reporting responsibility consists of three elements.

Fuel Receipts

In order for the licensee to obtain credit for tax-paid purchases, a receipt, invoice, or credit card or automated-vendor-generated invoice or transaction listing must be retained by the licensee for each purchase of fuel. Separate totals must be compiled for gasoline, diesel, kerosene, gasohol, liquid petroleum gas and CNG. The fuel receipts must contain:

- Date the fuel was purchased;
- Name and address of the seller;
- Number of gallons purchased;
- Type of fuel;
- Equipment number of the vehicle using the fuel;

- Purchaser's name (When there is a lease agreement, receipts will be accepted in the name of either the lessee or the lessor. There must, however, be a legal document confirming the lease agreement.);
- Price per gallon or total amount of sale;
- The amount of tax paid.

South Dakota does not require carriers to report gasoline purchases, but many other jurisdictions do. Specifically, the surrounding jurisdictions of Montana, North Dakota, Minnesota, Iowa, and Nebraska all require gasoline reporting. When traveling into gasoline reporting jurisdictions, purchase enough fuel to offset the distance traveled within their borders.

Since South Dakota does not require gasoline reporting, the quarterly tax return will not include an area for reporting South Dakota fuel purchases.

Bulk Storage

Fuel purchased for bulk storage must be totaled separately. Carriers must keep all fuel delivery tickets and invoices. In addition, carriers must record all disbursements and inventory reconciliation and distinguish between fuel placed in qualified vehicles and fuel used for other purposes. Many taxpayers are claiming all gallons bought in bulk during the reporting period even if they have not used it. You can only report the fuel on your IFTA return if it has been pulled from bulk storage and placed into a qualified vehicle during the filing period.

Over-the-Road Purchases

Similarly, separate totals must be kept for any over-the-road (OTR) purchases. Carriers must keep sales receipts, invoices or credit card receipts. (These items may be on microfilm/microfiche or other electronic data storage media.)

These records must always identify the vehicle by unit number or license plate number, since IFTA license holders may only report fuel purchases made for qualified vehicles that they operate. Altered receipts or those with erasures will not be accepted for tax-paid credit.

Individual Vehicle Distance/Fuel Reports

The Individual Vehicle Distance/Fuel Report (IVDFR) is the basic distance-reporting document. All IVDFRs must include:

- Dates of trip (starting and ending);
- Trip origin and destination;
- Routes of travel including highway numbers;
- Total distance traveled within each jurisdiction;
- Total trip distance (including all vehicle movement whether loaded, empty, deadhead, or bobtail distance);
- Unit number or vehicle identification number for power units and trailers;
- Beginning and ending odometer readings (or hub meter);
- Registrant's name;
- Driver's identification (name, number, signature)

The following information is helpful, but not mandatory:

- Odometer reading at jurisdictional border crossing.

South Dakota encourages the use of new technology and most cost effective methods of accumulating total and in-jurisdiction distances that accurately reflect actual route of travel. If a carrier installs/implements system(s) that provides accurate (life-to-date) distance data without driver input, carrier may request a waiver of either

odometer readings or routes of travel, not both. A request for a waiver of a reporting requirement must be in writing. South Dakota will conduct an inspection of internal control procedures and fully test the carriers distance and fuel accounting system. A valid waiver of either routes of travel or odometers (not both) will bear the signature of an authorized South Dakota official. The waiver is valid for three years - unless there is a material change in internal controls or methods of accumulating key data elements necessary to complete quarterly returns.

Tax Reporting

The preceding elements, fuel receipts and IVDFR’s, are the basis for the third element, the quarterly IFTA Tax Return. The division will send you the tax return form at least 30 days before the tax return due date.

The return must show total distance traveled, all fuel consumed, and total tax paid gallons by qualified vehicles during the quarter as well as the distance traveled and fuel consumed in each IFTA jurisdiction. If fuel is not purchased during the quarter, the average miles/kilometers per gallon from the previous quarter are used. All licensees must submit the IFTA Tax Return every quarter. A return must be submitted each quarter even if:

- No taxable miles were traveled;
- All miles traveled were in South Dakota.

Failure to receive the authorized form does not relieve you from the obligation of submitting a return in a timely manner.

Due Dates

Your tax return must be postmarked no later than midnight on the last day of the month following the close of a reporting period. If the last day of the month falls on a Sunday or legal holiday, the next business day will be considered the final filing date.

Quarter	Reporting Period	Due Date
1 st	January – March	April 30
2 nd	April – June	July 31
3 rd	July - September	October 31
4 th	October - December	January 31

Measurements

Licensees based in South Dakota are required to report in U.S. measurements. When you calculate your fuel tax, use the following factors and compute to the nearest one-tenth of a cent:

- One liter = .2642 gallons
- One gallon = 3.785 liters
- One mile = 1.6093 kilometers
- One kilometer = .62137 miles

When you report fuels that cannot be measured in liters or gallons, such as compressed natural gas, report the fuel at the conversion factor used by the jurisdiction in which the fuel was used.

Tax-Exempt Miles

IFTA member jurisdictions differ in their definition of tax-exempt miles. For reporting tax-exempt miles, the licensee is required to maintain documentation supporting tax-exempt miles (refer to www.iftach.org). Fuel used for off-road agricultural or off-road commercial purposes in South Dakota is no longer exempt from tax and is

not subject to refund or tax exempt reporting.

Annual Reporting

If your distance in all IFTA member jurisdictions other than South Dakota totals less than 5,000 miles during a calendar year, you may choose to report on an annual basis. You must have a one-year filing history under the IFTA program to be eligible for this exception.

If you wish to report annually, you must petition the Division of Motor Vehicles prior to filing your first quarter tax return. Requests for annual filing submitted after the first quarter will not go into effect until the next license year. When the division receives your request, it will notify the other member IFTA jurisdictions of the request. If any jurisdiction objects to your request, the request will be denied. You will receive written notification that the annual filing privilege has been granted to you. Once notified, you will be responsible for filing four separate tax returns at the end of the year.

Refunds and Credits

When you file your tax return, apply any overpayment of fuel taxes paid in one jurisdiction to the taxes owed to another IFTA jurisdiction. For example, if you underpaid fuel taxes in Minnesota by \$100 and overpaid taxes in Montana by \$50, remit the net tax of \$50 along with your IFTA return. If you show a net tax credit of \$25 or more on a tax return, South Dakota will process and issue a refund before the end of the next reporting period.

A refund will not be made, however, if there are any tax liabilities outstanding, including audit assessments, penalties or interest. Similarly, refunds will be withheld if a license holder's payment of fuel tax to any IFTA jurisdiction is delinquent.

Penalties and License Revocations

To avoid penalty for late filing, your tax return must be postmarked no later than midnight on the last day of the month following the close of a reporting period. If the last day of the month falls on a Sunday, or legal holiday, the next business day will be considered the final filing date.

If filing an online return, the return must be filed on the system by the due date to be considered on time. If a return is hand delivered, it will be considered filed and received on the date it was delivered to an employee of the South Dakota Department of Revenue.

A 10 percent of Tax Due or \$50 penalty, whichever is greater, is due when the return is not filed, is submitted late, or for underpayment of taxes due. Failure to file a return or remit tax on a timely basis is a Class 1 misdemeanor for the first violation. A subsequent violation is also a Class 1 misdemeanor.

Failure to File or Pay

It is imperative that all tax returns and payments are remitted as required. Do not ignore any notices sent to you regarding your IFTA license. Many taxpayers believe that because they are paying the tax at the pump, that the importance of filing their IFTA tax return is minimal. Failure to file a return will have serious tax consequences against the license holder. If the department has to generate a jeopardy assessment based on an estimate due to failure to file, your tax liability can amount to thousands of dollars, as the assessment generated will not allow credit for tax paid purchases. The following procedures will be taken against any license holder who fails to file a return or pay an amount due.

If, for any reason, you fail, neglect or refuse to file a tax return when due, a non-filer notice will be sent to you requesting that the appropriate return be filed. If, after 30 days, the return still has not been filed, a jeopardy

assessment based on the best information available will be generated. The jeopardy assessment will provide you with 60 days in which to either file the applicable return and pay any tax, penalty, interest due or request a hearing to contest the assessment. **Failure to take action within the 60 day period will result in the jeopardy assessment becoming your amount due and no further recourse can be taken to object to the assessment nor can you later file the applicable delinquent return to reverse the assessment.**

If you have not satisfied a tax delinquency or filed a written appeal request within 60 days of the date of notification, a tax lien will be generated, along with a letter of revocation. You will be provided 30 days to pay your assessment prior to revocation of your license. You have the right to submit a written request for a hearing contesting the revocation of your license. After this 30-day period, a distress warrant will be issued and your license will be canceled. Once your license is canceled, your IFTA license and all decals become invalid. Operation in member jurisdictions is illegal and cause for enforcement action.

The same procedures will take place if you fail to pay all tax, penalty or interest due against your license. The jeopardy assessment that will be issued will be based on the actual amount due from your tax return filing rather than an assessment based on the department's estimation of tax, penalty and interest due.

IFTA allows for a grace period into the last day of February of each year. Because of this grace period, a tax return must be filed for the first quarter of a year if you have not submitted a written letter of cancellation to the department to cancel your IFTA license at the end of any given tax year.

As noted earlier, the Department may also revoke your IFTA license if you do not comply with record keeping requirements.

Cancellation Procedures

If you cancel your International Registration Program account (the agreement under which interstate motor carriers are licensed), you may also be required to cancel your IFTA account. You must return your IFTA license, remove the IFTA decal from the cab, and file the tax return containing distance and fuel information up to and including your last day of operation. Contact the Department if you have any questions concerning cancellation of your IFTA license. **To cancel your license properly, your request must be made in writing and sent to the Department of Revenue, Division of Motor Vehicles, IFTA Program.**

Audits

The Department of Revenue routinely audits IFTA license holders required to pay fuel taxes. The purpose of an audit is to ensure license holders comply with the terms of the IFTA/IRP. The audit verifies the accuracy of the reported jurisdictional distance and fuel gallons on the quarterly IFTA Tax returns by reviewing the required source and summary documents listed on the Record Keeping and Tax Reporting section of this manual.

Notice of Intent to Audit

The audit process begins when the department mails a Notice of Intent to Audit to the license holder. License holders are normally notified at least 30 days before the audit date (unless the department secretary determines that a delay would jeopardize the collection of tax).

On the opening day of the audit the license holder should provide the auditor with all records supporting distance traveled and fuel consumed. If the license holder fails to present documentation to the auditor within 60 days of the beginning of the audit, the auditor may disallow the distance and fuel, resulting in an assessment of additional taxes and interest. A license holder's failure to provide records for audit purposes will cause the statute of limitations to be suspended until such records are provided.

If the license holder's records are not complete enough to ascertain an accurate distribution of jurisdictional fuel

taxes, the auditor may estimate jurisdictional fuel taxes for the period under audit using the following guidelines:

- A license holder's prior experience or a comparison with similar operations; or
- An acceptable industry standard AMPG for operations.

If a license holder's operational records are not located in South Dakota and it becomes necessary for department auditors to travel to where such records are maintained, the department will bill the license holder the per diem and travel expenses incurred by the auditor(s) to conduct the audit.

Certificate of Assessment

After reviewing the license holder's records, a Certificate of Assessment will be issued. The certificate shows the type and amount of tax or fees due, if any, and the reasons for any assessment. The license holder has 60 days from the date of the certificate to take the following action:

- Pay the assessment, including accrued interest; or
- Request a hearing (in writing) before the Secretary of Revenue.

Appealing an Audit Assessment

A request for a hearing is the license holder's only way of contesting an audit assessment. If a license holder decides to appeal the assessment, he or she must submit a Request for Hearing within the 60-day time limitation. The request, submitted in letter form, must specifically identify the issues being contested. If it does not, the administrative hearing could be denied.

The request for hearing must state the following:

- The portion of the assessment being contested; and
- The mistake of fact or error of law the license holder believes resulted in an invalid assessment

Once a proper request for hearing has been filed, the matter becomes a contested case and falls within the scope of the Administrative Procedures Act (SDCL 1-26). The department schedules the matter for hearing and serves the license holder with a Notice of Hearing.

Notice of Hearing

The notice of hearing informs the license holder of the time and place of hearing, the name and address of the hearing examiner, and sets forth the issues to be considered. The notice of hearing must be served on the license holder at least 10 days prior to the hearing, to allow time for "discovery proceedings," which may include a pre-hearing conference involving the department's attorney, the license holder and his or her representative, and the hearing examiner.

The Administrative Hearing

The administrative hearing is conducted according to the provisions of the Administrative Procedures Act (SDCL 1-26). The license holder may be represented by an attorney.

Essentially, the license holder is a plaintiff in a civil matter. Consequently, he or she must prove that the assessment is invalid because it is based on a mistake of fact or error of law. In most cases, the administrative hearing is the license holder's only opportunity to present testimony and evidence.

At the conclusion of the hearing, the hearing examiner may request briefs on the legal issues. Following the submission of briefs, the hearing examiner prepares proposed findings of fact and conclusions of law for the secretary to consider.

Findings of Fact, Conclusions of Law, and Order of the Secretary of Revenue

The secretary may adopt the proposals of the hearing examiner or, after reviewing the record, may submit his or her own findings, conclusions, and decision. Copies of the findings of fact, the conclusions of law, and the order are sent to the license holder.

If the license holder is ordered to pay additional fees and/ or tax and desires to appeal the decision to the circuit court, he or she must:

- Pay the amounts ordered to be paid; or
- File a bond with the department to insure payment.

The South Dakota Supreme Court has ruled that if payment is not made or a bond posted, the circuit court cannot hear an appeal.

Notice of Appeal

After the license holder has paid the fees and/or tax or filed a bond, the appeal to the circuit court is governed by the Administrative Procedures Act. The license holder must serve his or her notice of appeal upon the department and file it, along with proof of service, with the clerk of courts of the appropriate county. This notice of appeal must be filed within 30 days of the date the Secretary of Revenue serves the license holder notice of his or her decision.

When the court hears the appeal, it will base its review of the department secretary's decision upon the administrative record. With regard to the questions of fact, the secretary's findings will be upheld unless "clearly erroneous." Questions of law are fully reviewable by the court. The decision of the circuit court may be appealed to the South Dakota Supreme Court. The supreme court will review the secretary's decision on the record, under the same standards of review employed by the circuit court.

Collections

If a license holder fails to pay fees, taxes, penalties and interest, the department may begin a civil suit against the license holder for recovery of the debt. If successful, the department becomes a judgment creditor and can use the normal collection procedures open to such a creditor.

Notice of Jeopardy Assessment

In some cases, the Department may bypass the formal audit procedure in determining if fees and/or taxes are due. If the Secretary of Revenue finds that the assessment or collection of any tax is jeopardized by the delay, he may immediately make an assessment of the estimated tax, penalty or interest and demand payment from the license holder. Thus, when confronted with an uncooperative license holder who fails to file required returns or reports taxable transactions, the secretary may estimate the amounts due based upon available records or sources and issue the Notice of Jeopardy Assessment.

If a license holder fails to pay the amounts noted in the jeopardy assessment and is a resident of South Dakota, the department will file appropriate liens and request the issuance of distress warrants.

Notice of Tax Lien

Any fee, tax, penalty or interest due from a license holder results in an automatic lien on his or her real or personal property. To preserve the state's lien priority against other creditors, the Department files a Notice of Tax Lien with the register of deeds of the county in which the license holder's property is located.

Distress Warrant

If the license holder still fails to make payment, the department requests the county treasurer to issue a distress warrant to the county sheriff. The distress warrant directs the sheriff to proceed to collect the delinquent fees and/or taxes by seizing and selling the license holder's property.

License Revocations

If the holder of an IFTA license fails to pay fees and/or taxes in a timely fashion, the license may be revoked. The Department will give the license holder prior notice and an opportunity to be heard before his or her license is suspended or revoked.

A hearing examiner conducts the revocation hearing. The Department presents evidence to prove the failure to pay fees and/or taxes. The license holder then submits his or her evidence or testimony to show compliance with the licensing regulations. Following the hearing, the examiner prepares minutes and a decision for the Secretary of Revenue to consider. The secretary will then issue his or her order, which may include an assessment of additional taxes, penalty and interest.

The department and the license holder have the right of judicial review of the secretary's order. The procedure for judicial review is essentially the same as that described in the previous section on audit appeals.

Declaratory Rulings

If a license holder believes that an error has been made in determining his or her liability, he or she may ask the Secretary of Revenue to render a formal opinion regarding the application or interpretation of a licensing regulation. This is according to specific rules and procedures set forth in SDCL 1-26-15.

A license holder who wants a declaratory ruling from the department secretary must submit a verified petition. The petition must present the specific question on which he or she is requesting a ruling and the factual basis for the question. Typically, the petition will include a request for a refund of fees and/or taxes. If the secretary determines that additional facts or information are needed, he or she may call for a hearing on the petition. The secretary must notify the license holder of the hearing at least 10 days prior to the hearing date.

The secretary may decline to render a decision if he or she determines that a ruling will not settle the controversy. If a ruling is made, the secretary will include findings of fact and conclusions of law. The secretary's ruling is subject to appeal to the courts.

IMPORTANT NOTICE

Implementation of South Dakota's Dyed Diesel Fuel Inspection Program

Penalties apply to anyone who uses tax-exempt (dyed) diesel fuel in a licensed motor vehicle on South Dakota roads and highways. Authorized personnel of the Department of Revenue, the Internal Revenue Service, and the Highway Patrol may withdraw fuel from licensed motor vehicles, machinery, equipment and storage facilities in sufficient quantities to test for compliance with the law.

Penalties differ for qualified vehicles. Persons using dyed fuel in a qualified vehicle, such as semi-trucks, are subject to the following penalties:

- \$500 for the first violation
- \$1000 for each subsequent violation

Persons using dyed fuel in vehicles other than qualified vehicles, such as cars or pickup trucks, are subject to the following penalties:

- \$250 for the first violation
- \$500 for each subsequent violation

The first violation of the dyed fuel law is a Class 2 misdemeanor; a subsequent violation is a Class 6 felony.

Definitions

Base Jurisdiction or Base State

The member jurisdiction where qualified motor vehicles are based for vehicle registration purposes and;

1. Where the operational control and operational records of the licensee's qualified motor vehicles are maintained or can be made available; and
2. Where some travel is accrued by qualified motor vehicles within the fleet. The commissioners of two or more affected jurisdictions may allow a person to consolidate several fleets which would otherwise be based in two or more jurisdictions.

Qualified Motor Vehicle

A motor vehicle used, designed, or maintained for transportation of persons or property and:

1. Having two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms; or
2. Having three or more axles regardless of weight; or
3. Is used in combination when the weight of such combination exceeds 26,000 pounds or 11,797 kilograms gross vehicle weight.

"Qualified motor vehicle" does not include recreational vehicles.

Revocation

The withdrawal of license and privileges granted to the licensee by the licensing jurisdiction.

Suspension

The temporary removal of privileges granted to the licensee by the licensing jurisdiction.

If you have questions regarding the contents of this manual or with the IFTA program, please contact our office at:

Division of Motor Vehicles
IFTA Section
445 East Capitol Avenue
Pierre, SD 57501-3185
Telephone: (605) 773-2104
Fax: (605) 773-4117

You may also visit our website at <http://dor.sd.gov> or www.sdtruckinfo.com for information, forms and frequently asked questions.

Copies of the complete International Fuel Tax Agreement, Administrative Procedures and Audit Guidelines can be found on the IFTA home page at www.iftach.org.



**South Dakota Department of Revenue
IFTA**

445 E. Capitol Avenue | Pierre, South Dakota 57501-3185

Phone: (605) 773-2104 | Fax: (605) 773-4117 | <http://dor.sd.gov> | motorv@state.sd.us

State (SDCL 20-13) and Federal (title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1983 as amended, and the Americans with Disabilities Act of 1990) laws require that the Department of Revenue provide services to all persons without regard to race, color, creed, religion, sex, disability, ancestry, or national origin.

Printed on Recycled Paper. The 2016 IFTA Procedures Manual is written and designed to make licensing information accessible to the general public.

Revised April 2016