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<u>TITLE 34</u>	PUBLIC FINANCE
<u>PART 1</u>	COMPTROLLER OF PUBLIC ACCOUNTS
<u>CHAPTER 3</u>	TAX ADMINISTRATION
<u>SUBCHAPTER AA</u>	AUTOMOTIVE OIL SALES FEE
RULE §3.701	Reporting Requirements

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Automotive oil--Any lubricating oils that can be used in an internal combustion engine, crankcase, transmission, gear box, or differential for an automobile, bus, or truck.

(A) Automotive oil includes natural or synthetic engine oil, transmission fluid, and gear oil of any type that can be used, according to the labeling, in the engine of an automobile, truck, or bus, and includes oil that is not labeled specifically for this use, but is suitable for this use according to generally accepted industry specifications.

(B) Automotive oil does not include:

- (i) chain oil;
- (ii) turbine oil;
- (iii) waste oil;
- (iv) outboard motor oil;
- (v) refrigerant oil;
- (vi) cotton spray oil;
- (vii) form oil; and
- (viii) oil additives as they exist prior to blending.

(2) Distributor--A person who maintains a distribution center or warehouse in this state and annually sells more than 25,000 gallons of automotive oil. A distributor must obtain a permit from the comptroller's office.

(A) The distributor's permit is valid until the permit is surrendered by the holder or canceled by the comptroller.

(B) Oil manufacturers that meet the distributor definition, and are currently liable for paying this fee to the comptroller, will not be required to obtain a distributor's permit.

(3) Do-it-yourselfer used oil collection center--A site or facility registered with the Texas Natural Resource Conservation Commission (TNRCC) that accepts or aggregates and stores used oil collected only from household do-it-yourselfers.

(4) First sale--The first actual sale of automotive oil delivered to a location in this state and sold to a purchaser who is not an automotive oil manufacturer or distributor. First sale does not include the sale of automotive oil exported from this state to a location outside this state for the purpose of sale or use outside this state, to the United States Government, or for resale to or use by vessels engaged exclusively in foreign or interstate commerce. A sale to a subsequent purchaser who maintains a do-it-yourselfer used oil collection center or used oil collection center registered by the TNRCC is not considered a first sale.

(5) Importer--Any person who imports, or causes to be imported, automotive oil into this state for sale, use, or consumption. For purposes of this subsection first sale includes the use or consumption of automotive oil in this state.

(6) Oil manufacturer--Any person or entity that formulates automotive oil and packages, distributes, or sells that automotive oil. Oil manufacturer includes any person packaging or repackaging automotive oil.

(7) Out-of-state seller--A person or entity engaged in business in this state as defined in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities).

(8) Used oil collection center--A site or facility that is registered by the TNRCC to manage used oil collected from used oil generators or household do-it-yourselfers.

(b) Exemptions.

(1) Sales of automotive oil to an oil manufacturer or distributor are exempt from the automotive oil fee.

(2) Sales of automotive oil to a subsequent purchaser who maintains a do-it-yourselfer used oil collection center or used oil collection center registered by the TNRCC are exempt from this fee. A copy of its current TNRCC registration must be provided by the purchaser as documentation for an exempt purchase.

(3) Sales of automotive oil to be used by vessels engaged exclusively in foreign or interstate commerce are exempted from this fee.

(4) Sales of automotive oil to the United States Government are exempt from this fee.

(5) Sales of automotive oil delivered to a location in another state for the purpose of sale or use outside the State of Texas are exempt from this fee if shipment is made by means of:

(A) the facilities of the seller;

(B) delivery by the seller to a carrier for shipment to a consignee at a point outside this state;

(C) delivery by the seller to a forwarding agent for shipment to a location in another state of the United States or its territories or possessions; or

(D) the facilities of the purchaser if proof of delivery outside of Texas is provided.

(6) Exports beyond the territorial limits of the United States are exempt from this fee if proof of export can be shown by:

(A) a copy of the bill of lading issued by a licensed and certificated carrier showing the seller as consignor, the buyer or purchaser as consignee, and a delivery point outside the territorial limits of the United States;

(B) documentation provided by a licensed United States custom broker certifying that delivery was made to a point outside the territorial limits of the United States;

(C) formal entry documents from the country of destination showing that the automotive oil was imported into a country other than the United States. For the country of Mexico, the formal entry document would be the pedimento de importaciones document with a computerized number issued by Mexican customs officials; or

(D) a copy of the original airway, ocean, or railroad bill of lading issued by a licensed and certificated carrier which describes the items being exported and a copy of the freight forwarder's receipt if the freight forwarder takes possession of the property in Texas.

(c) Credit or refund of fee paid. A purchaser of automotive oil who makes an exempt sale or use of the oil as provided in this section may obtain a refund or credit from the supplier for the automotive oil fee previously paid to the supplier. The purchaser requesting a refund or credit from its supplier must furnish documentation that verifies the exemption. An oil manufacturer, or distributor, or importer who makes an exempt sale or use of the oil as provided in this section may obtain a refund or credit from the comptroller for the automotive oil fee previously paid to the comptroller. The amount of refund that may be claimed may equal but not exceed the amount of the fee paid on the automotive oil. See Tax Code, §§111.104-111.107.

(d) Report and payment required.

(1) Each automotive oil manufacturer, importer, or distributor shall file a report with the comptroller stating the number of quarts of automotive oil sold, imported, used, or consumed in this state.

(2) An automotive oil manufacturer or distributor who makes a first sale or use of automotive oil in Texas is liable for the fee.

(3) An automotive oil importer who imports or causes to be imported automotive oil into Texas for sale, use, or consumption is liable for the fee at the time the oil is received by the importer.

(e) Amount of fee.

(1) Except as provided in paragraph (2) of this subsection, the rate of the fee shall be \$.02 per quart or \$.08 per gallon of automotive oil.

(2) The TNRCC may adjust the fee rate to meet the expenditure requirements of the used oil recycling program, and to maintain an appropriate fund balance. The fee rate may not exceed \$.05 per quart or \$.20 per gallon.

(3) On or before September 1 of each year, the TNRCC and the comptroller shall jointly issue notice of the effective fee rate for the next fiscal year.

(4) Effective September 1, 1997, the rate of fee shall be \$.01 per quart or \$.04 per gallon of automotive oil. The rate shall be fixed at this level and paragraphs (1), (2), and (3) of this subsection are superseded.

(f) Due date of report and payment.

(1) The automotive oil fee report and payment are due no later than the 25th day of the month following the end of each calendar quarter in which the liability for the fee is incurred.

(2) An automotive oil manufacturer, importer or distributor of automotive oil must file a quarterly report even if there is no fee to report.

(g) Discount. A person required to pay the fee may retain 1.0% of the amount of the fees due from each quarterly payment as reimbursement for administrative costs.

(h) Penalty. Penalties due on delinquent fees and reports shall be imposed as provided by the Tax Code, §111.061.

(i) Interest. Interest due on delinquent fees shall be imposed as provided by the Tax Code, §111.060.

Source Note: The provisions of this §3.701 adopted to be effective June 17, 1992, 17 TexReg 4115; amended to be effective February 10, 1994, 19 TexReg 633; amended to be effective February 7, 1996, 21 TexReg 669; amended to be effective December 6, 1996, 21 TexReg 11517.

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