



## Motor Fuel Tax Section Annual Meeting

### Summary of Proceedings

#### 2009 FTA Motor Fuel Tax Section Annual Meeting

To State Tax Administrators:

#### **Summary**

The 2009 Annual Federation of Tax Administrators (FTA) Motor Fuel Tax Section Meeting was held September 21 – 23, 2009 in Oklahoma City, Oklahoma. This bulleting summarizes the presentations and annual business meeting from the conference. Copies of the Resolutions approved at the business meeting along with available presentations from the conference are attached.

Presiding over the conference was Herman Wisneski, Revenue Tax Specialist, Minnesota Department of Revenue and the FTA Motor Fuel Tax Section National Chair.

#### **GENERAL SESSION – MONDAY**

The conference started with the presentation of colors by the Oklahoma Highway Patrol. Trooper Stan McConnell, Oklahoma Highway Patrol, performed the National Anthem.

**Herman Wisneski**, Revenue Tax Specialist, Minnesota Department of Revenue and the FTA Motor Fuel Tax Section National Chair, welcomed all attendees to the Annual Motor Fuel Tax Section Meeting. He also performed the roll call of states and there was an introduction of attendees.

**Tony Mastin**, Agency Administrator, welcomed everyone to the conference and to Oklahoma City.

**Marcia Leichner**, Uniformity Committee Industry Co-Chair, Audit Manager, State Of Nebraska, read a letter of resignation she had received from Donna Alderman, National Vice-Chair. Donna cited recent cut backs in her agency's travel budget as a reason for resigning. Marcia reported that the Steering Committee met last Thursday to discuss the resignation. Donna's position will be filled by Wilda Ice, Auditor II, West Virginia State Tax Department. Therefore Wilda Ice will be the next FTA Motor Fuel Tax Section National Chair.

**Michael Dougherty**, Program Analyst, Federal Highway Administration gave an annual update. His presentation covered staff and organizational changes at the Highway Administration; authorizations; status of grants; reviewing grant awards; and the department's fuel tax evasion website.

**Brenda Hansen**, Excise Tax Manager, ConocoPhillips and the Chair of the American Petroleum Institute (API) Excise Tax Section, gave a presentation that covered topics such as Federal

proposed regulations; Highway Trust Fund Reauthorization; Highway Trust Fund Authorization; and Refinery Reporting. Brenda also discussed a meeting her group had with the IRS regarding a report issued by the Treasury Inspector General for Tax Administration (TIGTA).

**Vance McSpadden**, Executive Director, Oklahoma Petroleum Marketers and Convenience Store Association, gave an update for the Petroleum Marketers Association of America (PMAA). Vance reported some of the issues that the PMAA is dealing with. Some of these issues are: futures market reform for energy and commodity futures; “wet lines” in gasoline transportation vehicles; credit card interchange fees, automatic temperature compensation devices for retail fuel dispensers; the ethanol fuel “wall”; climate change and carbon restrictions; FDA regulation of Native American tobacco sales; and the commercialization of rest stops .

**Malcom Bruce**, Manager, Canadian Fuel Tax Council (FTC), gave a presentation that covered recession related challenges facing the FTC; communication opportunities, the FTC website; and current project updates.

**Robert Donnelan**, Global Companies LLC, and **Marcia Leichner**, Uniformity Committee Industry Co-Chair, Audit Manager, State Of Nebraska, gave a presentation on the U.S. Uniformity Project. Their presentation primarily focused on the 11 point plan and information on the FTA.

There were two awards presented. One award was presented to **Scott Bryer**, Chief of Road Toll Operations, New Hampshire Department of Safety for their uniformity and e-filing efforts. The industry award was presented to **Brian Serafino**, State Excise Tax manager for Chevron.

Two Concurrent sessions were repeated in the afternoon.

### **All About the Mixtures (Cocktails Anyone?)**

**Christy Dixon**, Auditor, Oklahoma Tax Commission and the Motor Fuel Tax Section Past National Chair, was moderator for this session. The panel included **Tim Turgeon**, Excise Tax Manager, CHS, Inc., and **John Penacho**, Tax Manager, Sprague Energy Corporation. Topics included in this session included ethanol manufacturing, marketing relationship to state taxes and reporting Bio Diesel manufacturing, marketing relationship to state taxes and reporting.

### **Let's Go Green**

**Wilda Ice**, Auditor II West Virginia State Tax Department, was moderator for this session. The panel included **Michael Dougherty**, Program Analyst, Federal Highway Administration, and **Malcom Bruce**, Manager, Canadian FTC. Topics covered included the Mileage Base Tax and Carbon Tax.

Following these sessions were the regional breakout meetings.

## **GENERAL SESSION – TUESDAY**

**Richard Little**, Sr. Program Analyst – Fuel Policy, Internal Revenue Service, and **Dan Farish**, Manager Excise/Sales Tax, Murphy Oil USA, gave a presentation that covered updates on the

Joint Operation Center for National Fuel Tax Compliance (JOC); an update on the Excise Tax Reporting System (ExSTARS) and other items of interest to the group.

**Michael Dougherty**, Program Analyst, Federal Highway Administration gave a presentation on Motor Fuel Tax Issues with Natural Gas and Other Alternative Fuels. His presentation covered alternative fuels such as Biodiesel, CNG, Propane, Hydrogen, Electricity, as well as Algae Biodiesel, Jatropha, Marsh Plants and Cellulosic Ethanol.

**James Eads, Jr.**, Executive Director, Federation of Tax Administrators (FTA) welcomed everyone to the conference and gave a brief history regarding the importance of the Motor Fuel section to the FTA.

**Martin Cano, Jr.**, Deputy Chief, CID Unit, Texas Comptroller of Public Funds presented information on recent success in motor fuel tax prosecutions in Texas. Texas recently convicted several individuals in the Houston area who evaded over \$4.5 million in motor fuel taxes. Cano also reported on some of the newer import/export, short loading, and blending schemes that they have observed.

**Jeremy Neeck**, Sr. Revenue Tax Specialist, Minnesota Department of Revenue, gave a presentation on Dyed Fuel Violations. In January, 2009 the Compliance Subcommittee decided to create and maintain a national database of dyed fuel enforcement programs from around the country. Neeck gave a report on their progress.

**Larry Flynn**, Administrator, Montana Department of Transportation, extended an invitation to the 2010 FTA Motor Fuel Tax Section Annual Meeting in Helena, Montana. The Uniformity committee will meet September 10 and 11, 2010. The general meeting will be held September 12 through September 15, 2010.

**Peter Steffens**, Revenue Program Administrator, Florida Department of Revenue and Past National Chair of the FTA Motor Fuel Tax Section, presented the Robert Beck Award to **Andre Brisebois** and **Guy Ste-Marie**. Andre is retired from the Quebec Department of Revenue and Guy is an Analyst with the Quebec Department of Revenue.

**Herman Wisneski**, Revenue Tax Specialist, Minnesota Department of Revenue and the FTA Motor Fuel Tax Section National Chair, presented National Chairs Awards to the following individuals: Stan Whaley, State of Florida, Darrell Wissink, State of Nebraska, Gene Holland, ConocoPhillips, Marcia Leichner, State of Nebraska, Larry Trimble, State of Minnesota, John Nordlie, State of Wisconsin, Michael Dougherty, Federal Highway Administration, Patti Smith, Travis County DA's Office, Ruth Ellen Gura, Travis County DA's Office, Mark Smith, County DA's Office and District Judge Christopher Duggan.

Two concurrent sessions were held in the afternoon.

### **Off Shore Tax Reporting**

**Edie Martin**, Public Service Executive II, Kansas Department of Revenue, was the moderator of this session. The panel included **Jeff Farish**, ExxonMobil, **James DeClair**, Chevron Corporation, and **Rae Takai**, Shell Oil. The topic of this session was how off shore tax reporting is being done.

## **How States and Industry Work Together To Streamline Audits**

**Robert Donnelan**, Sr. Tax Manager, Global Companies LLC was the moderator for this session. The panel included **Marc Papandrea**, State of Connecticut, **Vicki Haydon**, State of Arkansas, **John Penacho**, Sprague Energy, and **Sabrina Dudek**, NuStar Energy. The topic of this session was States can do to effectively streamline motor fuel audits.

Immediately following the concurrent sessions was the annual business meeting.

## **Annual Business Meeting**

**Herman Wisneski**, State of Minnesota and the Motor Fuel Tax Section National Chair, presided over the meeting which began with a roll call of states.

The four regional updates were given as follows:

**Kevin Schatz (ND)** – Midwest Regional Meeting was held July 28-29, 2009 in Omaha, Nebraska

**Dawn Leitz (NV)** – Pacific Regional Meeting was held April 27-28, 2009 in Golden, Colorado

**Carol Player (SC)** – Southern Regional Meeting was held June 29-30, 2009 in Savannah, GA

**Scott Byer (NH)** – Northeast Regional Meeting was held May 18-19, 2009 in Boston, Massachusetts

Time and Place Committee – **Dawn Leitz (NV)**, announced the following locations for the upcoming annual meetings:

2010 Helena, MT

2011 West Virginia

2012 To be determined from the Northeast

Resolutions Committee – **Rollie Marr (IL)** sought approval of the fourteen resolutions presented. All resolutions were approved and are attached.

Nominations Committee – **Marcia Leichner (NE)** announced that Donna Alderman (NC) resigned from the Vice Chair position and the Steering Committee voted Wilda Ice (WV) as Donna's replacement for Vice Chair position, therefore **Wilda Ice (WV)** was nominated and approved as the 2010 Motor Fuel Tax Section Chair and **Rosemary Cleary (CT)** was nominated and approved as the 2010 Motor Fuel Tax Section Vice Chair.

## **GENERAL SESSION – WEDNESDAY**

**Leanne Sobel**, Attorney, Sutherland Ashbill & Brennan LLP and **Gregory Staiti**, Attorney, Sutherland Ashbill & Brennan LLP, presented an introduction to the EPA's Renewable ID Numbers (RINS). These are 38 digit numbers that have a two-year lifetime and are intended to document legally produced fuels that are expected to enter the marketplace.

**Robert Donnelan**, Sr. Tax Manager, Global Companies LLC, gave a presentation on Alternative Fuels and Energy. The main topic he covered dealt with how many tax dollars the government is missing out on. He also touched on mileage tax, registration tax, road tolls and emission tax.

**Deborah Laake**, Accounting Manager, Global Ethanol LLC, was a last minute addition to the agenda. She wanted to clear up some of the misinformation regarding ethanol. Among other items, she stressed items such as ethanol is not made from food grain corn so it is not removing food from the marketplace; ethanol contains a solvent that breaks up sludge so that is why some cars run differently when it is introduced into the fuel system; and all it takes it to re-program a microchip to make an automobile run on E85.

**David Retz**, Sr. Tax Counsel – Excise Tax, Chevron Corporation, gave a presentation on Fuels of the Future. In addition to giving a brief overview of the different alternative fuels that are out there, Retz stressed that fuels of the future will challenge the current motor fuel tax revenue models. In his opinion, the reality is that, in the near term, petroleum products will remain the primary transportation fuels.

**Wilda Ice**, Auditor II, West Virginia State Tax Department and newly installed FTA Motor Fuel Tax Section National Chair, adjourned the meeting.

James Eads  
Executive Director

**RESOLUTIONS OF THE MOTOR FUEL TAX SECTION**  
**Adopted at the Annual Business Meeting**  
**September 22, 2009 – Oklahoma City, Oklahoma**

**27 States plus the Province of Ontario were present**

**Resolution One**

*(Adopted by all members present)*

**WHEREAS**, this the 83<sup>rd</sup> annual meeting of the Federation of Tax Administrators, Motor Fuel Tax Section held at the Renaissance Hotel in Oklahoma City, Oklahoma will be remembered as informative and enjoyable, and

**WHEREAS**, the success of the meeting has been due in large part to the excellent arrangements made, informative program presented, and the generous hospitality provided,

**NOW, THEREFORE, BE IT RESOLVED**, that the delegates and guests at the 83<sup>rd</sup> annual meeting of the Federation of Tax Administrators, Motor Fuel Tax Section, express their thanks and appreciation to their hosts, Christy Dixon, Joanne Kurjan, Bruce Smith, Michelle Thompson, Brenda Wright, Crystal Jayroe, Kelli Haan, Anthony Hennigh, Paula Ross and the Oklahoma State Tax Commission.

**Resolution Two**

*(Adopted by all members present)*

**WHEREAS**, the proceedings of the formal sessions of this 83<sup>rd</sup> annual meeting of the Federation of Tax Administrators, Motor Fuel Tax Section, have featured the presentation of timely, interesting and well prepared papers, and

**WHEREAS**, the exchange of technical and administrative information that has been accomplished in our breakout sessions is one of the principal functions of the meeting,

**NOW, THEREFORE, BE IT RESOLVED**, that the members of the Federation of Tax Administrators, Motor Fuel Tax Section, express their thanks and appreciation to Herman Wisneski, Minnesota Department of Revenue, Chair of the Motor Fuel Tax Section, who presided at the sessions, and to the speakers and moderators at the 83<sup>rd</sup> annual meeting of the Federation of Tax Administrators, Motor Fuel Tax Section for their contributions to the success of the program.

**Resolution Three**

*(Adopted by all members present)*

**WHEREAS**, the petroleum industry and state tax agencies desire to operate in the most effective and efficient manner, and

**WHEREAS**, the states employ different requirements for the reporting of motor fuel tax information, and

**WHEREAS**, the Motor Fuel Tax Uniformity Committee, FTA Motor Fuel Tax Section has met and adopted the changes to the FTA Electronic Combined Reporting Methods Implementation Guide for 2009, and

**NOW, THEREFORE BE IT RESOLVED**, that the delegates of the 83<sup>rd</sup> annual meeting of the Federation of Tax Administrators, Motor Fuel Tax Section held in Oklahoma City, Oklahoma adopt the changes to the FTA Electronic Combined Reporting Methods Implementation Guide for 2009.

### **EDI Implementation Guidelines**

(To be placed in the Uniformity Booklet with Point 6 and EDI Guide)

#### **1. Standard EDI Map (ANSI X.12 4030 format):**

By using the Motor Fuel Uniformity Committee approved EDI map, States and taxpayers can leverage existing work instead of creating custom files to transmit tax data. Standard maps pre-define fields and data elements so they are well understood. In addition, States and companies can utilize vendor software to produce standard EDI files.

FYI – Once the uniform file is received, the state can choose to ignore certain data fields.

#### **2. Testing Timeline:**

- From notifying the taxpayer to go-live, allow 6 months to test and convert current process to EDI. This gives appropriate lead time to align resources, budgets, preparation and testing.
- Sample Data Test: Require 1 or 2 months of testing sample data. Be flexible as to what month and year the companies provide for testing. Due to development system limitations, only a limited amount of data may be available at any given time and it is very cumbersome to load data from prior month's actual transactions. The point of this portion of the test is to test the systems ability to process the file.
- Production Data Test: To ensure that EDI is accurate, the state could require both paper and EDI for 2 to 3 months in production.
- After Go Live the paper and/or separate electronic submission via fax, email or web site of summary reports contained in the EDI submission should no longer be required.

#### **3. Forms and Schedules:**

It is recommended not to change forms or schedule codes at the same time you are moving to EDI. Moving from paper to EDI is more straight-forward when the forms/schedules remain the same. We recommend changing forms/codes in advance of EDI.

#### **4. State Web Site:**

If possible, the state's web site could provide the following:

- Allow companies to upload and process test and production files.
- Provide clear error messages and confirmation that a return was filed. Error messages should allow the filer to identify which records resulted in the error. Recommendations for confirmation information include the name of the file and the date submitted.
- Validation/Pre-Check process: validate a file before submission to catch any data issues (i.e. invalid FEIN).
- Allow for multiple user logins by filer.
- Whether through FTP or web site login, EDI filing methods should attempt to use standard technology and settings to minimize the need for supplemental technology support.
- Contain contact information for problems using web site or filing return. EDI documentation contacts can get out of date.

FYI - Colorado has good pre-EDI validation process. See "EDI check" at:

<https://www.cofts.com/goGuest.cfm>

#### **5. Retroactive Filing:**

Requiring companies to re-file paper returns as EDI is not a best or preferred practice. Once a return is filed with the state (paper or EDI), that return should serve as the source.

If a state expects they will be requiring the taxpayer to back file they need to disclose that fact up front, so that the taxpayer can prepare for it while testing. It shouldn't come as a surprise at the end of the certifications process.

States could also be asked to suspend the paper schedules in exchange for a company's agreement to back file the returns due during the test period.

#### **6. EDI Implementation guides:**

It is recommended that state's begin with the FTA Electronic Commerce Guide in designing the state's guide; then submit that guide to the committee for review and approval. Once approved the state publishes their guide and advises industry allowing 6 months for testing and implementation.

Include comprehensive instructions that address both technical specifications and plain text descriptions. Include testing procedures/requirements, State contacts and any specific file naming conventions. Also include schedule description details for determining appropriate schedule assignments as many times the taxpayer and state testers involved in implementing EDI are not experts with the particular tax returns.

**Resolution Four**  
*(Adopted by all members present)*

**WHEREAS**, the petroleum industry and state tax agencies desire to operate in the most effective and efficient manner, and

**WHEREAS**, the states employ different requirements for the reporting of motor fuel tax information, and

**WHEREAS**, the Motor Fuel Tax Uniformity Committee, FTA Motor Fuel Tax Section has met and adopted the Import/Export file layout, and

**NOW, THEREFORE BE IT RESOLVED**, that the delegates of the 83<sup>rd</sup> annual meeting of the Federation of Tax Administrators, Motor Fuel Tax Section held in Oklahoma City, Oklahoma adopt the Import/Export file layout.

**Resolution Five**  
*(Adopted by all members present)*

**WHEREAS**, the petroleum industry and state tax agencies desire to operate in the most effective and efficient manner, and

**WHEREAS**, the states employ different requirements for the reporting of motor fuel tax information, and

**WHEREAS**, the Motor Fuel Tax Uniformity Committee, FTA Motor Fuel Tax Section has met and adopted the “Proposed” Best Practice Keeping Forms/Schedules Current with EDI requirements and

**NOW, THEREFORE BE IT RESOLVED**, that the delegates of the 83<sup>rd</sup> annual meeting of the Federation of Tax Administrators, Motor Fuel Tax Section held in Oklahoma City, Oklahoma adopt the “Proposed” Best Practice Keeping Forms Schedules Current with EDI requirements.

**FTA Motor Fuel Tax Uniformity Committee**  
**“Proposed” Best Practice**  
**Keeping Forms/Schedules Current with EDI requirements**

**GOAL:**

To create a suggested practice to benefit both States and industry regarding keeping forms and schedules current with States’ EDI reporting requirements.

**PROPOSED BEST PRACTICES:**

As States implementing EDI move to uniform schedule codes for electronic reporting; it’s proposed States also make corresponding changes to their forms to keep paper forms and schedules in sync with EDI requirements.

- ***Terminal reporting***
  - When moving to EDI, older schedule codes 2A and 4A are replaced with uniform schedule codes 15A and 15B
  - Face forms will be updated to reference new schedule codes 15A and 15B

- Schedule forms will be updated to use new schedule codes 15A and 15B
- Schedule 15C will be removed as a supported form for those state moving to EDI
  - Terminal Operator Schedule of Inventories cannot be sent via EDI (inventory by position holder is not supported in the X12 map)
- ***Carrier reporting***
  - When moving to EDI, older schedule codes 1A, 2A, 3A are replaced with uniform schedule codes 14A, 14B, 14C
  - Face forms will be updated to reference new schedule codes 14A, 14B, 14C
  - Schedule forms will be updated to use new schedule codes 14A, 14B, 14C
- ***Schedules***
  - Add any additional state-required fields in DEI (exchange position holder) to the paper schedule forms

**POINTS TO CONSIDER:**

Although taxpayers filing electronically no longer send paper forms to the taxing jurisdiction, industry analysts still need to view the forms to verify they are meeting filing requirements. Industry must also be able to verify their tax liability. Keeping paper forms in sync with EDI requirements facilitates understanding of reporting requirements by industry and facilitates reporting accurately to taxing jurisdictions.

**Resolution Six**

*(Adopted by all members present)*

**WHEREAS**, the petroleum industry and state tax agencies desire to operate in the most effective and efficient manner, and

**WHEREAS**, the states employ different requirements for the reporting of motor fuel tax information, and

**WHEREAS**, the Motor Fuel Tax Uniformity Committee, FTA Motor Fuel Tax Section has met and adopted that XML will follow the Uniformity Guidelines in letting the States decide whether it's optional or mandatory in the data structures, and

**NOW, THEREFORE BE IT RESOLVED**, that the delegates of the 83<sup>rd</sup> annual meeting of the Federation of Tax Administrators, Motor Fuel Tax Section held in Oklahoma City, Oklahoma adopt that XML will follow the Uniformity Guidelines in letting the States decide whether it's optional or mandatory in the data structures.

**Resolution Seven**

*(Adopted by all members present)*

**WHEREAS**, the petroleum industry and state tax agencies desire to operate in the most effective and efficient manner, and

**WHEREAS**, the states employ different requirements for the reporting of motor fuel tax information, and

**WHEREAS**, the Motor Fuel Tax Uniformity Committee, FTA Motor Fuel Tax Section has met and adopted the State of Florida and New Hampshire EDI guide, and

**NOW, THEREFORE BE IT RESOLVED**, that the delegates of the 83<sup>rd</sup> annual meeting of the Federation of Tax Administrators, Motor Fuel Tax Section held in Oklahoma City, Oklahoma adopt the State of Florida and New Hampshire EDI guides.

**Resolution Eight**

*(Adopted by all members present)*

**WHEREAS**, the petroleum industry and state tax agencies desire to operate in the most effective and efficient manner, and

**WHEREAS**, the states employ different requirements for the reporting of motor fuel tax information, and

**WHEREAS**, the Motor Fuel Tax Uniformity Committee, FTA Motor Fuel Tax Section has met and adopted to rename 13K to “Credit or Deduction for Reduced Tax Rate” from “Credit or Deduction for Alternative Fuel,” and

**NOW, THEREFORE BE IT RESOLVED**, that the delegates of the 83<sup>rd</sup> annual meeting of the Federation of Tax Administrators, Motor Fuel Tax Section held in Oklahoma City, Oklahoma adopt renaming schedule 13K.

**Resolution Nine**

*(Adopted by all members present)*

**WHEREAS**, the petroleum industry and state tax agencies desire to operate in the most effective and efficient manner, and

**WHEREAS**, the states employ different definitions for various terms that are used consistently throughout the motor fuel industry and in state motor fuel tax administration and,

**WHEREAS**, the Motor Fuel Tax Uniformity Committee, Federation of Tax Administrators, has met and adopted uniform forms which the Committee recommends to assist states in the exchange of information and to relieve the burden on industry of dealing with multiple definitions for similar terms,

**NOW, THEREFORE, BE IT RESOLVED**, that the delegates of the 83<sup>rd</sup> annual meeting of the Federation of Tax Administrators, Motor Fuel Tax Section held in Oklahoma City, Oklahoma adopt the blender’s report for state fuel tax purposes:

**Fuel Blender’s Report**

Reporting of blended products may be achieved in two methods, included on the Distributor’s Fuel Tax Report with all other fuel transactions or included on a separate Fuel Blender’s Report.

Those states that require the reporting of blended products on a separate report should utilize the FTA Distributor's Fuel Tax Report format when developing the Fuel Blender's Report.

A Fuel Blenders Report is used by the following states at this time.

- **Florida** – A monthly form filed by a person who is not licensed and is engaged in the activity of blending gasoline, gasohol, diesel, or aviation fuel with tax free or partially untaxed products for person use.
- **South Carolina** – A monthly form filed by fuel vendors to remit a user fee on sales of kerosene (K-1) or other blend stocks that are blended with tax paid gasoline or diesel to create a product subject to the user fee.
- **West Virginia** – A form used to calculate tax due on blended products. The report also contains a component that offsets tax due on the blend stocks with previously taxed components of the blend.
- **Kansas** – Combines a producer/manufacturer, blender, and end consumer return under one report. The form is used by those who are producing and blending product for their own use or for a retailer to claim a credit/refund for blending products they purchased at a higher tax rate and then blended to produce a product with a lower tax rate.

### **Resolution Ten**

*(Adopted by all members present)*

**WHEREAS**, the petroleum industry and state tax agencies desire to operate in the most effective and efficient manner, and

**WHEREAS**, the states employ different definitions for various terms that are used consistently throughout the motor fuel industry and in state motor fuel tax administration and,

**WHEREAS**, the Motor Fuel Tax Uniformity Committee, Federation of Tax Administrators, has met and adopted uniform definitions which the Committee recommends to assist states in the exchange of information and to relieve the burden on industry of dealing with multiple definitions for similar terms,

**NOW, THEREFORE, BE IT RESOLVED**, that the delegates of the 83<sup>rd</sup> annual meeting of the Federation of Tax Administrators, Motor Fuel Tax Section held in Oklahoma City, Oklahoma adopt the following definitions for state fuel tax purposes:

### **Definitions**

#### **Two Party Exchange**

A transaction in which petroleum product is transferred from one supplier to another supplier pursuant to an exchange agreement.

#### **Exchange Agreement**

An agreement between two terminal suppliers whereby a terminal supplier agrees to deliver fuel to the other party or the other party's customer at the loading rack.

### **Resolution Eleven**

*(Adopted by all members present)*

**WHEREAS**, the petroleum industry and state tax agencies desire to operate in the most effective and efficient manner, and

**WHEREAS**, the states employ different requirements for the reporting of motor fuel tax information, and

**WHEREAS**, the Motor Fuel Tax Uniformity Committee, FTA Motor Fuel Tax Section has met and adopted the Invitation Letter to invite other organization to Uniformity Meetings and other Motor Fuel Tax Conferences, and

**NOW, THEREFORE, BE IT RESOLVED**, that the delegates of the 83<sup>rd</sup> annual meeting of the Federation of Tax Administrators, Motor Fuel Tax Section held in Oklahoma City, Oklahoma adopt the following Invitation Letter:

**Invitation Letter**

Date  
Recipient  
Name of Company/Organization  
Address  
State, City Zip Code

Dear Recipient:  
RE: Federation of Tax Administrators Motor Fuels Tax Section  
Uniformity Committee

The FTA Motor Fuels Tax Section is pleased to invite your (company/organization) to participate at our next meeting on (Date) at (Location). There is no registration fee to attend.

The FTA Motor Fuels Tax Section is comprised of States, Industry, Federal and Foreign Governments and the Canadian Fuel Tax Council. The FTA Motor Fuels Tax Section Uniformity Committee meets three (3) times a year with one (1) meeting in conjunction with the FTA Motor Fuels Tax Section Annual Meeting. Its purpose is to provide an opportunity for government and industry to partner for the efficient and effective reporting and remittance of fuel taxes, to minimize fuel tax evasion and to act as an information resource to stakeholders.

The FTA Motor Fuels Tax Section would like to include other sectors involved with the manufacturing, distribution, administration and taxation of motor fuels, such as independent refiners, distributors and alternative fuel products.

**Benefit of Participation**

Your company/organization will have a voice in the development of common jurisdictional processes for a more flexible, simplified, efficient and effective fuel tax administration.

The Uniformity Committee which is comprised of four (4) subcommittees developed the Fuel Tax Evasion 11 Point Plan. (see enclosure) The major points of the Plan include uniform definitions for imports and exports; use of Federal numbers as a reference for reporting and

information exchange; licensing of all resellers; total accountability of fuel and third party reporting on fuel movement; uniform electronic reporting; and training for auditors and investigators.

Thank you for taking the time to consider being a part of the FTA Motor Fuels Tax Section Uniformity Committee. Please see the attached document which provides you with the Roles and Missions of each of the four (4) subcommittees of the Motor Fuels Tax Section Uniformity Committee.

Should you wish to attend the next meeting, future meetings or require more information, please contact (name) at (website) or (telephone number).

Sincerely,  
Your Name  
Title  
FTA Motor Fuels Tax Section Uniformity Committee

**FTA Motor Fuels Tax Section Uniformity Subcommittees****Communication and Coordination Subcommittee promotes points 1, 8 and 10 of the 11 Point Plan.**

- Model legislation
- Definitions and terms
- Surveys
- STP Funding
- Publications
  - Uniformity Project Booklet
  - Uniformer
- Advisory groups
- Promote single point of filing
- 11 Point Plan maintenance

**Compliance Subcommittee promotes point 11 of the 11 Point Plan.**

- Educate and advise stakeholders by:
  - Publicizing case studies and best practices
  - A liaison to Law Enforcement
  - Involving stakeholders at all levels
  - A clearinghouse for effective tools to combat fuel tax evasion
  - Encourage industry to educate government on accounting and distribution processes
  - Provide guidance to stakeholders on how to integrate ExStars/ExTole in a tracking system

**Electronic Commerce Subcommittee promotes point 6 of the 11 Point Plan.**

- Develop and maintain a standard electronic filing and remittance process
- Facilitate and encourage the implementation of the standard electronic filing and remittance process
- Educate non-technical staff how to use the standard electronic filing and remittance process
- Monitor ExSTARS/ExTOLE for compatibility

**Forms Management Subcommittee promotes points 2, 3, 4, 5 and 9 of the 11 Point Plan.**

- Maintains forms and subschedules
- Creates new forms and schedules
- Provides reporting guidance for forms and schedules
- Product code control
- Sub-schedule control

**Resolution Twelve**  
*(Adopted by all members present)*

**WHEREAS**, the petroleum industry and state tax agencies desire to operate in the most effective and efficient manner, and

**WHEREAS**, the states employ different definitions for various terms that are used consistently throughout the motor fuel industry and in state motor fuel tax administration and,

**WHEREAS**, the Motor Fuel Tax Uniformity Committee, Federation of Tax Administrators, has met and adopted the Model Legislation Checklist to assist States in the Administration of the Fuel tax,

**NOW, THEREFORE, BE IT RESOLVED**, that the delegates of the 83<sup>rd</sup> annual meeting of the Federation of Tax Administrators, Motor Fuel Tax Section held in Oklahoma City, Oklahoma adopt the following Model Legislation for Two Party Exchange:

**Model Legislation for Two Party Exchange**

Introduction:

Two-party exchange is a transaction in which petroleum product is transferred from one supplier to another supplier pursuant to an exchange agreement.

Exchange Agreement is an agreement between two terminal suppliers whereby a terminal supplier agrees to deliver fuel to the other party or the other party's customer at the loading rack.

Simple example of two-party exchange transaction:

Supplier A is a position holder in Terminal X. Supplier B has a customer taking delivery of product in Terminal X, but Supplier B is not a position holder in Terminal X. Supplier A agrees to exchange product with Supplier B so Supplier B can sell product to the customer. Likewise, Supplier B will exchange product in another terminal where Supplier A is not a position holder.

Items to consider:

A. Your state's taxation point.

1. Tax at the terminal rack (including position holder, modified position holder, or first receiver)

Position holder = the one who owns inventory according to the records of the terminal operator.

Modified position holder = the position holder delivers on exchange and the exchange receiver remits the tax; or if no exchange is involved the position holder remits the tax.

First receiver = the person physically receiving accountable product/motor fuel at the rack remits tax to the taxing jurisdiction, if licensed. If not licensed, then variations of position holder and modified position holder should be considered.

2. Tax below the rack (including distributor/wholesale level, retail level, or upon importation)
  - a. If taxing below the rack, you should consider the number of pass-throughs allowed and whether two-party exchanges will affect the number of pass-throughs on all products, including ethanol blended with gasoline. (An example of a “pass through” is when the distributor could collect and report the tax to the state, but chooses to sell tax-free product to the wholesaler, who then becomes responsible for reporting and paying the tax to the state.)

Keep in mind that if you decide to limit the number of pass-throughs, the person in the middle may not know that their the taxable party.

- B. How to handle “stacking” exchange agreements. You might encounter a series of two-party exchanges prior to the product leaving the terminal. States should consider how they want to handle these “stacking” exchange agreements on a single movement of fuel.
- C. Tracking and cross matching issues.
  1. Will you be able to track and cross match transactions involving two-party exchanges?
  2. Does fuel lose identity through a series of two-party exchanges? (This means not being able to identify the fuel type, losing track of the original bill of lading number, or not being able to track the product from the original position holder through the exchange partner to the final recipient.)
  3. Does terminal disbursement information properly match recipient’s receipt information? Does the terminal-issued bill of lading reflect the exchange-receiver as the supplier of record as opposed to the position holder? The position holder should not be reported on the bill of lading as the supplier of record.
  4. Does the terminal operator report reflect the exchange receiver as the supplier of record as opposed to the position holder?

D. Enforcement and auditing issues.

1. Is product transferred via a two-party exchange or is the transaction actually a sale? When does title actually transfer?
2. Does possession transfer directly from the exchange supplier to the exchange receiver's customer; title passes instantaneously from the exchange supplier to the exchange receiver to the exchange receiver's customer.
3. Are both parties properly reporting the transaction?
4. Do participants have proper supporting documentation?
5. If the fuel is exported to an at-the-rack state, will the proper tax be collected and remitted?

**Resolution Thirteen**

*(Adopted by all members present)*

**WHEREAS**, the success of the Federation of Tax Administrators, Motor Fuel Tax Section depends on the dedication of many State, Federal and Industry participants, and

**WHEREAS**, this 83<sup>rd</sup> annual meeting of the Motor Fuel Tax Section recognizes several of these individuals, who have contributed to the success of the Federation of Tax Administrators, Motor Fuel Tax Section, during the previous years, have recently retired or moved on,

**NOW, THEREFORE, BE IT RESOLVED**, that the members of the Federation of Tax Administrators, Motor Fuel Tax Section express their thanks and appreciation to **Linda Quade** State of Colorado, **Rich Hall**, State of Colorado, **Debbie Bland**, State of Delaware, **Jimmy Archer**, State of Texas, **Mary Tamplin-Collier**, State of Georgia, **Robert Surowiec**, State of New Hampshire, **Andre Brisebois**, Province of Quebec, **Guy Ste-Marie**, Province of Quebec, **Sheri Alston**, Federal Highway Administration, **Wayne McDonald**, ExxonMobil. We wish them luck in their future endeavors, and

**BE IT FURTHER RESOLVED**, that a copy of this resolution be forwarded to these individuals.

**Resolution Fourteen**

*(Adopted by all members present)*

**WHEREAS**, the success of the FTA Motor Fuel tax Section depends on the dedicated work of many State, Federal and Industry participants, and

**WHEREAS**, an individuals, who contributed to the success of the Motor Fuel Tax Section during the year has passed away,

**NOW, THEREFORE, BE IT RESOLVED**, that the members of the Federation of Tax Administrators, Motor Fuel Tax Section express their deepest sympathy to the family and friends of Charles (Chuck) Cunningham.