

MOTOR FUEL TAX ACT (EXCERPT)
Act 403 of 2000

207.1130 Seizure; inventory statement; hearing; forfeiture; appeal to circuit court; agreement to sell fuel; public sale.

Sec. 130. (1) As soon as possible, but not more than 5 business days after seizure of a motor vehicle and its cargo under section 129, the person making the seizure shall deliver personally or by registered mail to the last known address of the person from whom the seizure was made, if known, an inventory statement of the motor vehicle, motor fuel, or other property seized. A copy of the inventory statement shall also be filed with the department.

(2) In addition to notice of the property seized, the inventory statement shall contain a notice that unless demand for a hearing as provided in this section is made within 10 business days after the date the inventory statement was delivered, the property is forfeited to the state.

(3) If the person from whom the seizure was made is not known, the person making the seizure shall cause a copy of the inventory statement, together with the notice provided for in this section, to be published not less than 3 times in a newspaper of general circulation in the county where the seizure was made.

(4) Within 10 business days after the date of service of the inventory statement or, in the case of publication, within 10 business days after the date of last publication, the person from whom the property was seized or any person claiming an interest in the property may by registered mail, facsimile transmission, or personal service file with the department a demand for a hearing before the commissioner for a determination as to whether the property was lawfully subject to seizure and forfeiture. The person shall verify a request for hearing filed by facsimile transmission by also providing a copy of the original request for hearing by registered mail or personal service.

(5) The person or persons are entitled to appear at a hearing before the department, to be represented by counsel, and to present testimony and argument.

(6) Upon receipt of a request for hearing, the department shall hold the hearing within 15 business days. The hearing is not a contested case proceeding and is not subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(7) After the hearing, the department shall render its decision in writing within 10 business days after the hearing and, by order, shall either declare the seized property subject to seizure and forfeiture, or declare the property returnable in whole or in part to the person entitled to possession.

(8) If, within 10 business days after the date of service of the inventory statement, the person from whom the property was seized or any person claiming an interest in the property does not file with the department a demand for a hearing before the department, the property seized shall be considered forfeited to the state by operation of law and may be disposed of by the department as provided in this section.

(9) If, after a hearing, the department determines that the property is lawfully subject to seizure and forfeiture and the person from whom the property was seized or any persons claiming an interest in the property do not take an appeal to the circuit court of the county in which the seizure was made within the time prescribed in this section, the property seized shall be considered forfeited to the state by operation of law and may be disposed of by the department as provided in this section.

(10) If a person is aggrieved by the decision of the department, that person may appeal to the circuit court of the county where the seizure was made to obtain a judicial determination of the lawfulness of the seizure and forfeiture. The action shall be commenced within 20 days after notice of the department's determination is sent to the person or persons claiming an interest in the seized property. The court shall hear the action and determine the issues of fact and law involved in accordance with rules of practice and procedure as in other in rem proceedings. If a judicial determination of the lawfulness of the seizure and forfeiture cannot be made before deterioration of any of the property seized, the court shall order the sale of the property with public notice as determined by the court and require the proceeds to be deposited with the court until the lawfulness of the seizure and forfeiture is finally adjudicated.

(11) During the pendency of any filing for appeal, hearing, or rendering of decision, the aggrieved person and the department may by mutual consent agree to sale of the fuel in order to facilitate release of the vehicle containing the fuel. The proceeds from the sale shall be held in escrow by the department pending the department's decision and an appeal, if any, from the department's decision.

(12) The department may sell fuel forfeited under this act at public sale. Public notice of the sale shall be given at least 5 days before the date of sale. The department may pay an amount not to exceed 25% of the proceeds of the sale to the local governmental unit whose law enforcement agency performed the seizure. The balance of the proceeds derived from the sale by the department shall be credited to the Michigan transportation fund.

History: 2000, Act 403, Eff. Apr. 1, 2001.