

Section 4082.—Exemptions for Diesel Fuel

26 CFR 48.4082–5T: Diesel fuel; Alaska (temporary).

T.D. 8693

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 48

Diesel Fuel Excise Tax; Special Rules for Alaska

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the application of the diesel fuel excise tax to fuel used in Alaska. The regulations implement certain changes made by the Small Business Job Protection Act of 1996. They affect certain enterers, refiners, retailers, terminal operators, throughputters, wholesale distributors, and users. The text of these regulations also serves as the text of REG–247678–96, page 17, this Bulletin.

DATES: These regulations are effective December 17, 1996. For dates of applicability of these regulations, see §§ 48.4082–5T(g) and 48.6715–2T(b).

FOR FURTHER INFORMATION CONTACT: Frank Boland (202) 622–3130 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 4081 imposes a tax on certain removals, entries, and sales of diesel fuel. However, under section 4082, tax is not imposed if, among other conditions, the diesel fuel is indelibly dyed in accordance with Treasury regulations. Dyed diesel fuel can be used legally in nontaxable uses such as for heating oil, as fuel in stationary engines, or as fuel in nonhighway vehicles. A substantial penalty under section 6715 applies if

dyed diesel fuel is used for a taxable purpose such as in a registered highway vehicle.

A similar dyeing regime for diesel fuel is required by regulations issued under the Clean Air Act. That Act prohibits the use on highways of diesel fuel with a sulfur content exceeding prescribed levels. The Environmental Protection Agency (EPA) requires this "high sulfur" diesel fuel to be dyed.

Section 1801 of the Small Business Job Protection Act of 1996 amends section 4082 to create an exception to the IRS dyeing requirement. Under this amendment, which is effective October 1, 1996, the IRS dyeing requirement does not apply to diesel fuel that is removed, entered, or sold in a state for ultimate sale or use in an area of such state during the period such area is exempted from EPA's sulfur content and fuel dyeing requirements if the use of the fuel is certified pursuant to Treasury regulations.

Section 211(i)(4) of the Clean Air Act allows EPA to exempt the states of Alaska and Hawaii from the Clean Air Act's sulfur content requirements. In response to a petition from Alaska, the EPA granted a permanent exemption for remote areas of Alaska (that is, areas that are not served by the Federal Aid Highway System). In addition, a temporary exemption was granted for urban areas. This temporary exemption, which was originally scheduled to expire after September 30, 1996, has been extended by the EPA (61 FR 42812 (August 19, 1996)) for 24 months, or until a decision is made on Alaska's petition for a permanent exemption, whichever period is shorter.

Thus, under current EPA rules, the entire state of Alaska is exempt from the Clean Air Act's sulfur content requirements and, consequently, from the EPA's dyeing requirements. No part of Hawaii or any other state is similarly exempt.

Explanation of Provisions

These temporary regulations generally establish a system for collecting the federal diesel fuel tax at the wholesale level in Alaska. This system is similar to the pre-1994 federal system under section 4091 and the present system used by the state of Alaska for state fuel tax. The person liable for tax under the temporary regulations generally will be

a person who is licensed by Alaska as a qualified dealer.

Under the temporary regulations, a qualified dealer may buy undyed diesel fuel tax free at a terminal rack and sell the fuel tax free to another qualified dealer or to a buyer for the buyer's own nontaxable use. However, a qualified dealer is liable for tax when it sells to a buyer for the buyer's taxable use or to a reseller that is not a qualified dealer.

A qualified dealer must keep adequate records to document the exempt nature of its nontaxable sales. Although the temporary regulations do not prescribe any specific documentation, taxpayers may consider using a format similar to the notification certificate in § 48.4081-5 as proof of tax-free sales between qualified dealers. As proof of tax-free sales for nontaxable uses, taxpayers may consider using Alaska's exemption certificate, when appropriate, or an adaptation of the certificate presently used to support tax-free sales of aviation fuel that is found in Notice 88-132, 1988-2 C.B. 552, 555. The IRS will consider whether the final regulations should specify model certificates to be used for documenting nontaxable transactions in the future.

Taxpayers are cautioned that the uses that are exempt from Alaska's state tax are not identical to the uses that are exempt from the federal tax. For example, Alaska exempts sales to all non-profit organizations described in section 501(c)(3); the comparable federal rule exempts only sales to nonprofit educational organizations.

Taxpayers should also note that diesel fuel that is dyed in accordance with existing IRS regulations will continue to be exempt from the section 4081 tax in Alaska.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this temporary regulation will be

submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Frank Boland, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 48 is amended as follows:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Paragraph 1. The authority citation for part 48 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 48.4082-5T also issued under 26 U.S.C. 4082. * * *

Par. 2. Section 48.4082-5T is added to read as follows:

§ 48.4082-5T Diesel fuel; Alaska (temporary).

(a) *Application.* This section applies to diesel fuel removed, entered, or sold in Alaska for ultimate sale or use in an exempt area of Alaska.

(b) *Definitions.*

Exempt area of Alaska means the area of Alaska in which the sulfur content requirements for diesel fuel (see section 211(i) of the Clean Air Act (42 U.S.C. 7545(i))) do not apply because the Administrator of the Environmental Protection Agency has granted an exemption under section 211(i)(4) of that Act.

Nontaxable use means a use described in section 4082(b). Qualified dealer means any person that holds a qualified dealer license from the state of Alaska.

(c) *Tax-free removals and entries.* Notwithstanding § 48.4082-1, tax is not imposed by section 4081 on the removal or entry of any diesel fuel in an exempt area of Alaska if—

(1) The person that would be liable for tax under § 48.4081-2 or 48.4081-3 is a taxable fuel registrant and satisfies the requirements of paragraph (e) of this section;

(2) In the case of a removal from a terminal, the terminal is an approved terminal; and

(3) The owner of the diesel fuel immediately after the removal or entry holds the fuel for its own use in a nontaxable use or is a qualified dealer.

(d) *Sale s afte r removal s and en-tries*—(1) *In genera l* Paragraph h (c) of this section does not apply with respect to diesel fuel that is subsequently sold by a qualified dealer unless—

(i) The fuel is sold in an exempt area of Alaska;

(ii) The buyer purchases the fuel for its own use in a nontaxable use or is a qualified dealer; and

(iii) The seller satisfies the requirements of paragraph h (e) of this section.

(2) *Tax impose d at time of sale; liability for tax*. Notwithstanding §§ 48.4081–2 and 48.4081–3, in any case in which paragraph h (c) of this section does not apply with respect to diesel fuel because of a subsequent sale by a qualified dealer, the tax with respect to that fuel is imposed at the time of the subsequent sale and the qualified dealer is liable for the tax.

(3) *Rate of tax*. For the rate of tax, see section 4081.

(e) *Evidenc e of tax-free transaction s*

The requirements of section 4082(c)(2) (relating to certification) and this paragraph (e) are satisfied if the person otherwise liable for tax is able to show the district director satisfactory evidence of the exempt nature of the transaction and has no reason to believe that the evidence is false. Satisfactory evidence may include copies of qualified dealer licenses or exemption certificates obtained for state tax purposes.

(f) *Cross refe renc e* For the tax on previously untaxed diesel fuel that is used for a taxable purpose, see § 48.4082–4.

(g) *Effectiv e dat.e* This section is applicable with respect to diesel fuel removed or entered after December 31, 1996.

Par. 3. Section 48.6715–2T is added to read as follows:

§ 48.6715–2 *T Applicatio n of sectio n 6715(a)(3) to Alaska (temporary)*.

(a) *In genera l* The penalty provided by section 6715(a)(3) for willful alteration of dyed fuel will not be assessed if the alteration occurs in an exempt area of Alaska.

(b) *Effectiv e dat.e* This section is applicable October 1, 1996.

Margaret Milner Richardson,
Commissione r of Interna l Revenue

Approved November 27, 1996.

Donald C. Lubick,
*Actin g Assistan t Sec retary
of the Treasur y.*

(Filed by the Office of the Federal Register on December 16, 1996, 8:45 a.m., and published in the issue of the Federal Register for December 17, 1996, 61 F.R. 66215)