

changes made by the Omnibus Budget Reconciliation Act of 1993 and the Small Business Job Protection Act of 1996. They affect certain enterers, refiners, retailers, terminal operators, throughputters, wholesale distributors, and users.

DATES: These regulations are effective January 2, 1998. For dates of applicability of these regulations, see §§48.4082-5 (h) and 48.6715-1(a)(3).

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. Section 1801 of the Small Business Job Protection Act of 1996 amends section 4082 to create an exception to the dyeing requirement that effectively applies only to diesel fuel that is removed, entered, or sold in Alaska.

Temporary regulations (T.D. 8693 [1997-1 C.B. 192]) relating to this change were published in the Federal Register on December 17, 1996 (61 F.R. 66215) along with a notice of proposed rulemaking (REG-247678-96 [1997-1 C.B. 787]) cross-referencing the temporary regulations (61 F.R. 66246). The notice of proposed rulemaking also proposed other changes to the gasoline and diesel fuel excise tax regulations that were not contained in the temporary regulations.

A public hearing was neither requested nor held. After consideration of written comments, the proposed regulations are adopted as revised by this Treasury decision. Comments and revisions are discussed below.

Explanation of Provisions

The proposed regulations provide a definition of kerosene for purposes of the diesel fuel tax. Several commentators questioned this proposal. Because the IRS is continuing its review of this issue, the final regulations do not define kerosene. However, a definition may be included in a future Treasury decision.

The proposed regulations also include changes to the effective date of other proposed regulations that were published in the **Federal Register** on March 14, 1996 (61 F.R. 10490). Those regulations propose requirements relating to dye injection equipment and are not being finalized at this time. However, the IRS appreciates the concern expressed by several commentators that, as revised, the proposed effective dates still would not give taxpayers sufficient time to comply with the proposed requirements. Thus, the final dye injection regulations will provide a longer period of time between the publication date and the effective date than was proposed.

In response to comments, these final regulations modify the definition of terminal to exclude an otherwise qualifying facility that stores only taxed gasoline and taxed, undyed diesel fuel. As a result of this modification, tax will not be imposed again when the fuel is removed from this type of facility.

The final regulations generally adopt as proposed the provisions dealing with diesel fuel that is removed, entered, or sold in Alaska. However, several comments suggested that the definition of qualified dealer in the proposed regulations was too narrow and prevented unlicensed vendors from selling diesel fuel for exempt uses. In response, the final regulations expand the definition of qualified dealer to include unlicensed diesel fuel retailers that are registered by the IRS under specified conditions. As a result of this modification, many retailers that serve remote communities in Alaska will be able to buy diesel fuel tax free for resale for nontaxable uses.

The final regulations also make minor modifications to existing gasoline and diesel fuel regulations. For example, existing regulations generally require gasoline and diesel fuel refund claims to be filed with the same service center where the claimant's income tax return is filed. Because all excise tax refund claims are now processed at the Cincinnati Service Center, this regulatory provision is removed.

Special Analyses

It has been determined that this Treasury decision is not a significant regula-

Section 4081.—Imposition of Tax

26 CFR 48.4081-1: Taxable fuel; definitions.

T.D. 8748

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 40 and 48

Gasoline and Diesel Fuel Excise Tax; Special Rules for Alaska; Definitions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the application of the diesel fuel excise tax to fuel used in Alaska. This document also contains final regulations relating to the gasoline and diesel fuel excise tax definitions. The regulations implement certain

tory 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 a collection of information on small entities, 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, the notice of proposed rulemaking preceding these regulations was 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 parts 40 and 48 are amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 continues to read in part as follows:

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

§40.6011(a)–1 [Amended]

Par. 2. Section 40.6011(a)–1(b)(2)(vi) is amended by removing the language “a taxable fuel registrant” and adding “registered under section 4101” in its place.

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Par. 3. The authority citation for part 48 is amended by removing the entry for §48.4082–5T and adding an entry in numerical order to read in part as follows:

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

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

Par. 4. Section 48.4081–1 is amended as follows:

1. Paragraph (b) is amended by:

- a. Adding a definition in alphabetical order; and
- b. Revising the definition of terminal.

2. Paragraph (c)(1)(i) is amended by removing the language “any mixture” and adding “any taxable fuel” in its place and by removing the language “and that consists of” and adding “by mixing” in its place.

3. Paragraph (d) is revised.

The addition and revisions read as follows:

§48.4081–1 Taxable fuel; definitions.

* * * * *

(b) * * *

Aviation gasoline means all special grades of gasoline that are suitable for use in aviation reciprocating engines, as described in ASTM Specification D 910 and Military Specification MIL–G–5572. The ASTM specification may be obtained from the American Society for Testing and Materials and the military specification from the Standardization Document Order Desk at the addresses provided in paragraph (c)(2)(i) of this section.

* * * * *

Terminal means a taxable fuel storage and distribution facility that is supplied by pipeline or vessel and from which taxable fuel may be removed at a rack. However, the term does not include any facility at which gasoline blendstocks are used in the manufacture of products other than finished gasoline and from which no gasoline is removed. Also, effective January 2, 1998, the term does not include any facility operated by a taxable fuel registrant if all of the finished gasoline and diesel fuel (other than diesel fuel dyed in accordance with §48.4082–1(b)) stored at the facility has been previously taxed under section 4081 upon removal from a refinery or terminal.

* * * * *

(d) *Effective date.* This section is applicable January 1, 1994, except that in paragraph (b) of this section the definition of aviation gasoline and the third sentence in the definition of terminal are effective January 2, 1998.

§48.4082–5T [Redesignated as §48.4082–5]

Par. 5. Section 48.4082–5T is redesignated as §48.4082–5 and the language “(temporary)” is removed from the section heading.

Par. 6. Section 48.4082–5, as redesignated, is amended as follows:

1. Paragraph (b) is amended by revising the definition of qualified dealer.

2. Paragraphs (f) and (g) are redesignated as paragraphs (g) and (h), respectively.

3. A new paragraph (f) is added.

4. Paragraph (h), as redesignated, is revised.

The addition and revisions read as follows:

§48.4082–5 Diesel fuel; Alaska

* * * * *

(b) * * *

Qualified dealer means any person that holds a qualified dealer license from the state of Alaska or has been registered by the district director as a qualified retailer. The district director will register a person as a qualified retailer only if the district director—

(1) Determines that the person, in the course of its trade or business, regularly sells diesel fuel for use by its buyer in a nontaxable use; and

(2) Is satisfied with the filing, deposit, payment, and claim history for all federal taxes of the person and any related person.

* * * * *

(f) *Registration.* With respect to each person that has been registered as a qualified retailer by the district director, the rules of §48.4101–1(g), (h), and (i) apply.

* * * * *

(h) *Effective date.* This section is applicable with respect to diesel fuel removed or entered after December 31, 1996. A person registered by the district director as a qualified retailer before April 2, 1998, may be treated, to the extent the district director determines appropriate, as a qualified dealer for the period before that date.

§48.6416(b)(4)–1 [Removed]

Par. 7. Section 48.6416(b)(4)–1 is removed.

§48.6421-3 [Amended]

Par. 8. In §48.6421-3, paragraph (d)(2) is amended by removing the last sentence.

§48.6427-3 [Amended]

Par. 9. In §48.6427-3, paragraph (d)(2) is amended by removing the last sentence.

Par. 10. In §48.6715-1, paragraph (a)(3) is revised to read as follows:

§48.6715-1 Penalty for misuse of dyed diesel fuel.

(a) * * *

(3) The alteration or attempted alteration occurs in an exempt area of Alaska after September 30, 1996.

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§48.6715-2T [Removed]

Par. 11. Section 48.6715-2T is removed.

Michael P. Dolan,
*Acting Commissioner of
Internal Revenue.*

Approved November 6, 1997.

Donald C. Lubick,
*Acting Assistant Secretary of
the Treasury.*

(Filed by the Office of the Federal Register on December 31, 1997, 8:45 a.m., and published in the issue of the Federal Register for January 2, 1998, 63 F.R. 24)