

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Entry of Taxable Fuel

REG-120616-03

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9145) relating to the tax on the entry of taxable fuel into the United States. The text of those regulations also serves as the text of these proposed regulations. The regulations affect enterers of taxable fuel, certain other importers, and certain sureties.

DATES: Written and electronic comments and requests for a public hearing must be received by October 28, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-120616-03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-120616-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the IRS Internet site at www.irs.gov/regs or via the Federal eRule-making portal at www.regulations.gov (IRS and REG-120616-03).

FOR FURTHER INFORMATION CONTACT: Concerning submissions, LaNita Van Dyke (202) 622-7180; concerning the regulations, Celia Gabrysh (202) 622-3130 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by September 28, 2004. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in this proposed regulation are in §48.4081-3T(c)(2)(iii) and (iv). Section 48.4081-3T(c)(2)(iii) generally provides that an importer of record may avoid tax liability if the importer of record obtains from the enterer a notification certificate, described in §48.4081-5, which contains the enterer's registration number. Section 48.4081-3T(c)(2)(iv) generally provides that a surety bond will not be charged for the tax imposed on the entry of the fuel covered by the bond, if at the time of entry, the surety has a notification certificate, described in §48.4081-5, which contains the enterer's registration number. These collections of information are required to obtain a tax benefit. The likely respondents are businesses.

Estimated total annual reporting and/or recordkeeping burden: 281 hours.

Estimated average annual burden hours per respondent and/or recordkeeper varies from .25 hour to 2.25 hours, depending on individual circumstances, with an estimated average of 1.25 hours.

Estimated number of respondents and/or recordkeepers: 225.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in this issue of the Bulletin amend the Manufacturers and Retailers Excise Taxes Regulations (26 CFR Part 48) relating to the tax on the entry of taxable fuel imposed by section

4081. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory flexibility 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. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the time required to request and to furnish a notification certificate is minimal and will not have a significant impact on those small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on all aspects of the proposed regulations. In addition, the IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Celia Gabrysh, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS, the Treasury Department, and the Bureau of Customs and Border Protection, Department of Homeland Security, participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 48 is proposed to be amended as follows:

PART 48 — MANUFACTURERS AND RETAILERS EXCISE TAXES

Paragraph 1. The authority citation for part 48 continues to read in part as follows:

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

Par. 2. In §48.4081-1, paragraph (b), the definition of *Enterer* is revised to read as follows:

§48.4081-1 Taxable fuel; definitions.

[The text of the proposed amendment to §48.4081-1(b) is the same as the text of §48.4081-1T(b), definition of enterer, published elsewhere in this issue of the Bulletin].

Par. 3. Section 48.4081-3 is amended by adding paragraphs (c)(2)(ii) through (c)(2)(iv) to read as follows:

§48.4081-3 Taxable fuel; taxable events other than removal at the terminal rack.

[The text of the proposed amendment to §48.4081-3(c)(2)(ii) through (iv) is the same as the text of §48.4081-3T(c)(2)(ii) through (iv) published elsewhere in this issue of the Bulletin].

Mark E. Matthews,
*Deputy Commissioner for Services
and Enforcement.*