

Liability for Tax on Sale or Removal of Blended Taxable Fuel

Under section 4081(b), tax is imposed on taxable fuel removed or sold by the blender. Blended taxable fuel is taxable fuel that is created by mixing a liquid that has not been taxed with previously taxed taxable fuel. Under existing regulations, the blender is liable for tax on the sale or removal of blended taxable fuel. Generally, the blender is the person that owns the mixture immediately after it is created. Under the proposed regulations, a person would be jointly and severally liable for the tax on blended taxable fuel if the person sells a previously untaxed liquid as a taxed taxable fuel and that liquid becomes a part of a mixture that is blended taxable fuel.

Several commentators suggested that the regulations provide relief for certain unsuspecting blenders. For example, a wholesale distributor of petroleum products might offer to sell undyed diesel fuel (a taxed taxable fuel) to a retailer but actually deliver an untaxed liquid. Even though the retailer bought the liquid in good faith, the retailer would be liable for tax as a blender nevertheless because mixing the untaxed liquid with the preexisting inventory of undyed diesel fuel produces blended taxable fuel. Although the proposed regulations would impose joint and several liability on the dishonest wholesaler, the commentators are concerned that the unsuspecting retailer would still be liable for tax at the discretion of the IRS. To resolve this problem, the commentators generally suggested that the blender should be able to avoid liability for tax if the blender acted reasonably and in good faith when it relied on assurances of the seller as to the status of the liquid it bought.

Treasury and the IRS are concerned that the suggested rule may result in losses to the Highway Trust Fund. If retailers and wholesalers take inconsistent positions regarding the representations made by the wholesaler, the IRS might be unable to establish that either party is liable for the tax. Alternatively, even if the IRS is able to establish the wholesaler's liability, it may be unable to collect the tax from the wholesaler. In either case, the Highway Trust Fund would be inappropriately penalized for the retailer's choice of an untrustworthy supplier. Accordingly, the final regulations do not adopt the suggested rule. Although the final regulations allow the IRS to collect the tax from a person other than the blender in certain circumstances, blenders will remain

liable (as under existing regulations) for the tax on the blended fuel.

Other Provisions

The final regulations also make clerical and clarifying changes to other excise tax regulations. For example, in the excise tax procedural regulations, the final regulations remove a redundant sentence. In the regulations relating to the taxes on communication services and air transportation, the final regulations remove obsolete provisions that refer to the district director.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 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, 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 Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects*26 CFR Parts 40 and 48*

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 49

Excise taxes, Reporting and recordkeeping requirements, Telephone, Transportation.

Adoption of Amendments to the Regulations

■ Accordingly, under the authority of 26 U.S.C. 7805, chapter 1 of 26 CFR is amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

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

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

■ 2. In § 40.6302(c)-3, paragraph (d) is amended as follows:

■ a. The heading is revised.

■ b. The first sentence is removed.

The revision reads as follows:

§ 40.6302(c)-3 Special rules for use of Government depositaries under chapter 33.

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(d) *Computation of net amount of tax that is considered as collected during a semimonthly period.* * * *

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PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

■ 3. The authority citation for part 48 continues to read in part as follows:

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

§ 48.4041-21 [Amended]

■ 4. Section 48.4041-21, paragraph (b)(1)(i), is amended by adding the language “by the buyer for a taxable use” after “covered by the statement is for use”.

■ 5. Section 48.4081-1 is amended as follows:

■ a. Paragraph (b) is amended by:

■ 1. Removing the language “§ 48.4041-8(b)” in the definition of Diesel-powered highway vehicle and adding “§ 48.4061(a)-1(d)” in its place.

■ 2. Removing the language “from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons” in the first sentence of the definition of Refinery. b. Paragraph (c)(2)(i) is amended by adding three sentences to the end.

The addition reads as follows:

§ 48.4081-1 Taxable fuel; definitions.

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(c) * * *

(2) * * * (i) * * * A liquid is suitable for this use if the liquid has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train. A liquid may possess this practical and commercial fitness even though the specified use is not the liquid's predominant use. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train.

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■ 6. Section 48.4081-3 is amended by revising paragraphs (g)(2) and (g)(3) to read as follows:

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

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