

Revenue Information Bulletin
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Excise Taxes

Changes to the Petroleum Products Inspection Fee

Act No. 47 of the 2004 Regular Session of the Louisiana Legislature amended certain provisions of Louisiana Revised Statutes 3:4602 and 4684 relative to petroleum products and the fee (also referred to as an inspection fee) collected to defray the expenses connected with the inspection, testing, and analyzing of petroleum products by the Department of Agriculture. The purpose of this bulletin is to clarify some issues that have arisen with the passage of this legislation.

Law and Administrative Practice Before 2004 Amendments

Prior to the Regular Legislative Session of 2003, R.S. 51:792 provided that, for the purpose of defraying the expenses connected with the inspection, testing, and analyzing of petroleum products in Louisiana by the Department of Agriculture and Forestry, the secretary of the Department of Revenue would collect a fee of one thirty-seconds of one cent per gallon on all gasoline, kerosene or motor fuel distributed, sold, or offered or exposed for sale, use, or consumption in this state. The fee established therein, was to be paid by the first person handling or distributing the products before delivery to agents, dealers, or consumers in the state. For administration purposes, this fee was reported with the excise tax reports filed by dealers of motor fuels that included gasoline, gasohol, kerosene, jet fuel, and aviation gasoline.

Act 139 of the 2003 Regular Session of the Louisiana Legislature, effective May 28, 2003, moved the provisions of what had been R.S. 51:792 to newly enacted R.S. 3:4684. In addition, the fee was increased to four thirty-seconds of one cent per gallon on all petroleum products distributed, sold, or offered or exposed for sale or use or consumption in the state or used or consumed in the state. The term 'petroleum products' was defined at R.S. 3:4602(12.1) to be any refined hydrocarbon mixture including motor oil, kerosene, gasoline, gasohol, diesel fuel, aviation fuel, heating kerosene, and any blend of two or more refined hydrocarbon mixtures except liquefied petroleum gas and natural gas. Therefore, through this Act, the fee now applied to all fuels including those considered special fuels as found in R.S. 47:801 et seq.

The revised provisions of R.S. 3:4684 further stated that no fee would be due on special fuels that were eligible for tax refunds under the provisions of R.S. 47:802.1 and 802.2; i.e., on undyed diesel fuel purchased and used for nontaxable purposes where dyed diesel was not available and for undyed diesel used in any licensed vehicle utilized by a licensed fishermen in the administration of business associated with commercial fishing.

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Effective September 1, 2003, the Department of Revenue began administering this fee by continuing to require the reporting on the excise tax reports filed by dealers of gasoline, gasohol, kerosene, jet fuel, and aviation fuel and including the reporting of the fee on the excise tax reports filed by special fuels suppliers as defined in the Special Fuels Tax law.

Changes made by Act 2004, No. 47

Act 47 of the 2004 Regular Session of the Louisiana Legislature, effective May 21, 2004, added definitions to R.S. 3:4602 and amended R.S. 3:4684 relative to the application of the inspection fee to petroleum products sold, used, or consumed in Louisiana. Changes to R.S. 3:4684 clarified that the inspection fee does not apply to liquefied petroleum gas and natural gas, and provided that the fee does not apply to bulk sales or transfers, to fuel exported, or to special fuels sold for use in or distributed to seagoing vessels as defined at R.S. 3:4602(14.1), and left in place that the inspection fee did not apply to special fuels eligible for tax refunds under the provisions of R.S. 47:802.2. The exemption from the inspection fee previously afforded special fuels eligible for tax refunds under provisions of R.S. 47:802.1 was removed.

Some of the new terms used in R.S. 3:4684 are defined within Act 47 at R.S. 3:4602. While “motor fuel” is defined at R.S. 47:712(1), for the purposes of the application of the fee and as used therein, the term is intended to include gasoline, gasohol, kerosene, jet fuel, aviation gasoline, diesel, and other hydrocarbon mixtures. However, the definitions added by Act 47 contained terms that are not defined elsewhere in Louisiana statutes, with the intention that terminology recognized within the industry was to apply. For example, the terms ‘*bulk transfers*’ and ‘*rack*’ are defined in R.S. 3:4602. The definition of ‘*bulk transfers*’ included other terms such as bulk transfer/terminal system, terminal, licensed suppliers, and permissive suppliers that are not currently defined within Louisiana statutes. These terms are associated with the taxation of fuel “at-the-rack”; i.e., taxation upon removal of the product from the rack. The terms used within the definition of ‘*bulk transfers*’ in the absence of a specific definition within Louisiana statutes are construed to mean the following:

“*book transfer*” is the inventory record of who owns what fuel product maintained by the storage facilities and terminal operator;

“*bulk transfer/terminal system*” is the motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals approved by the Internal Revenue Service;

“*licensed supplier*” refers to an entity registered with the Internal Revenue Service for transactions in the bulk transfer/terminal system, that is registered for tax purposes in Louisiana, and who is a position holder in motor fuel in this state or who receives fuel in this state pursuant to a two-party exchange and does not refer to ‘supplier’ as defined at R.S. 47:802(11);

“*permissive supplier*” refers to an entity registered with the Internal Revenue Service for transactions in the bulk transfer/terminal system, that is not registered in Louisiana for tax

purposes, and who is a position holder of motor fuel only in another state exchange and does not refer to 'supplier' as defined at R.S. 47:802(11);

"terminal" refers to a fuel storage and distribution facility as recognized by the Internal Revenue Service to which motor fuel is supplied by pipeline or marine vessel and from which motor fuel may be removed at the rack;

"two-party exchange" refers to a transaction in which motor fuel is transferred from one licensed supplier or permissive supplier to another licensed supplier or permissive supplier pursuant to an exchange agreement that is completed prior to the removal of the product from the bulk transfer/terminal system.

Act 47 added, in R.S. 3:4684, the statement that "the fee does not include liquefied petroleum gas, natural gas, or bulk sale or transfers." For clarification, 'bulk sale' as used therein refers to the transfer of the motor fuel within the terminal system where in the transfer of the inventory position is done for consideration consisting of money, services, or other property and the transferee becomes the position holder within the bulk transfer/terminal system. The terms 'bulk sale' and 'bulk transfer' are used synonymously.

Administrative Practice for Current Law

The inspection fee is to be imposed upon fuels removed from a terminal using the terminal rack and is to be collected by the owner of the inventory, or position holder, from the person who orders the withdrawal. The fee is also imposed on fuel that is imported into the state by means other than bulk transfer and this fee is to be paid by the first importer. Since the application of the fee is not related to the taxability of the fuel, the inspection fee is due on all fuels, clear or dyed, unless specifically exempted.

Revised forms and instructions will be mailed to affected parties. Any questions concerning this matter may be directed to the Excise Taxes Section of the Taxpayer Services Division in Baton Rouge at 225-219-7656.

Cynthia Bridges
Secretary