

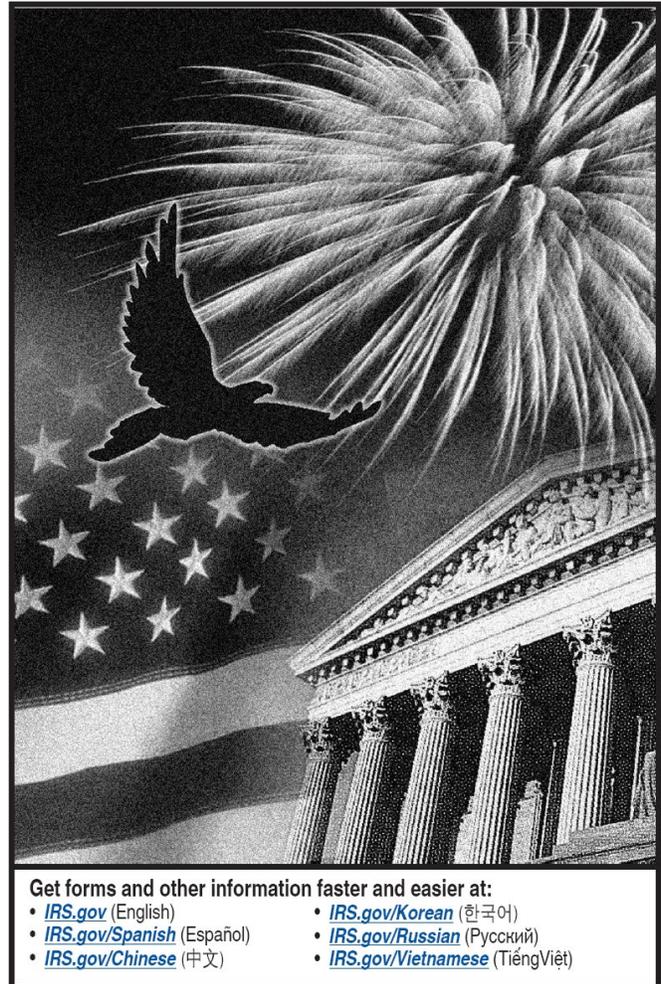
Publication 510

# Excise Tax

(Including Fuel Tax Credits and Refunds)

For use in preparing  
**2019** Returns

Volume 1 of 4



Department of the Treasury  
**Internal Revenue Service**



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Section references are to the Internal Revenue Code unless otherwise noted.

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## What's New

**Notes.** References to “credit” below are for credits or any applicable allowable payments. Don’t claim the credits or payments for fuel sold or used after the year they expire unless they’re extended again.

### **Section 6426 credits and section 6427 payments extensions:**

- **Biodiesel or renewable diesel mixtures.** The biodiesel or renewable diesel mixture credit is retroactively

extended for fuel sold or used in 2018 through 2022.

- **Alternative fuel.** The alternative fuel credit is retroactively extended for fuel sold or used in 2018 through 2020.

### **Retroactive claims and Notice 2020-08.**

See Notice 2020-08 for information on how to make claims for retroactively extended section 6426 credits and section 6427 payments, for fuels sold or used in 2018 or 2019, at [IRS.gov/PUB/IRS-Drop#NOT2020-08](https://www.irs.gov/PUB/IRS-Drop#NOT2020-08).

**Alternative fuel mixtures.** The section 6426 credits and section 6427 payments for alternative fuel mixtures are retroactively extended for fuels sold or used in 2018 through 2020.



*For claims made on or after January 8, 2018, “alternative fuel mixture” means a mixture of taxable fuel and alternative fuel other than liquefied petroleum gas (LPG), compressed natural gas (CNG), liquefied natural gas (LNG), liquefied gas derived from biomass, and compressed gas*

*derived from biomass. To make a claim for the alternative fuel mixture credit for 2018 or 2019, you must file Form 720-X, Amended Quarterly Federal Excise Tax Return.*

## **Retroactive extension of income tax credits:**

- **Section 40A biodiesel and renewable diesel fuels credit.** The section 40A biodiesel and renewable diesel fuels credit is retroactively extended for fuel sold or used in calendar years 2018 through 2022.
- **Section 40 biofuel producer credit.** The section 40 biofuel producer credit is retroactively extended for fuel sold or used in calendar years 2018 through 2020.

**Section 4191 medical device tax.** The medical device tax is repealed.

**Extension of oil spill liability tax.** The section 4611 tax on crude oil received (domestic petroleum oil spill tax), or petroleum products entered (imported

petroleum oil spill tax), is extended through 2020 (no tax in 2019).

**Inflation adjustments for 2020.** For information about inflation adjustments for 2020, such as the inflation-adjusted section 4161 tax on arrow shafts, see Revenue Procedure 2019-44, at [IRS.gov//RP2019-44](https://www.irs.gov/irb/2019-44).

## **Future Developments**

The IRS has created a page on IRS.gov that includes information about Pub. 510, at [IRS.gov/Pub510](https://www.irs.gov/pub510). Information about any future developments will be posted on that page.

## **Reminders**

**Pub. 510 updates.** Pub. 510 isn't updated annually. Instead, it will be updated only when there are major changes in the tax law.

**Reducing your excise tax liability.** For federal income tax purposes, reduce your section 4081 excise tax liability by the amount of excise tax credit allowable under section 6426(c) or (e) and your section 4041

excise tax liability by the amount of your excise tax credit allowable under section 6426(d), in determining your deduction for those excise taxes or your cost of goods sold deduction attributable to those excise taxes.

**Butane mixture doesn't qualify for a credit.** A mixture of butane (or other gasoline blendstock) and gasoline is a mixture of two taxable fuels. Therefore, it isn't an alternative fuel mixture and doesn't qualify for the section 6426 alternative fuel mixture credit. See Revenue Ruling 2018-02 at [IRS.gov/IRB#RR2018-02](https://www.irs.gov/IRB#RR2018-02).

**Aviation fuels for use in foreign trade.** Aviation gasoline and kerosene for use in aviation are exempt from the leaking underground storage tank (LUST) tax.

**Disregarded entities and qualified subchapter S subsidiaries.** Qualified subchapter S subsidiaries (QSubs) and eligible single-owner disregarded entities are treated as separate entities for excise tax and reporting purposes. QSubs and eligible single-owner disregarded entities must pay and report excise taxes (other than IRS Nos. 31,

51, and 117), register for most excise tax activities, and claim any refunds, credits, and payments under the entity's employer identification number (EIN). These actions can't take place under the owner's taxpayer identification number (TIN). Some QSubs and disregarded entities may already have an EIN. However, if you are unsure, please call the IRS Business and Specialty Tax line at 800-829-4933.

Generally, QSubs and eligible single-owner disregarded entities will continue to be treated as disregarded entities for other federal tax purposes (other than employment taxes).

For more information on these regulations, see Treasury Decision (T.D.) 9356, T.D. 9462, and T.D. 9596. You can find T.D. 9356 on page 675 of Internal Revenue Bulletin (I.R.B.) 2007-39, at [IRS.gov/Pub/IRB/2007-39 IRB#TD9356](https://www.irs.gov/pub/irb/2007-39_IRB#TD9356); T.D. 9462 on page 504 of I.R.B. 2009-42, at [IRS.gov/Pub/IRB/2009-42 IRB#TD9462](https://www.irs.gov/pub/irb/2009-42_IRB#TD9462); and T.D. 9596 on page 84 of I.R.B. 2012-30, at [IRS.gov/Pub/IRB/2012-30 IRB#TD9596](https://www.irs.gov/pub/irb/2012-30_IRB#TD9596).

**Registration for certain activities.** You are required to be registered for certain excise tax activities, such as blending of gasoline, diesel fuel, or kerosene outside the bulk transfer/terminal system. See the instructions for Form 637 for the list of activities for which you must register. Also see Registration Requirements under Fuel Taxes in chapter 1 for information on registration for activities related to fuel. Each business unit that has, or is required to have, a separate EIN must be registered.

To apply for registration, complete Form 637 and provide the information requested in its instructions. If your application is approved, you will receive a *Letter of Registration* showing the activities for which you are registered, the effective date of the registration, and your registration number. A copy of Form 637 isn't a Letter of Registration.

**Photographs of missing children.** The Internal Revenue Service is a proud partner with the National Center for Missing & Exploited Children® (NCMEC). Photographs of

missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) or [www.missingkids.com/home](http://www.missingkids.com/home) if you recognize a child.

## **Introduction**

This publication covers the excise taxes for which you may be liable and which are reported on Form 720 and other forms. It also covers fuel tax credits and refunds. For information on fuel credits against income tax see the instructions for Form 4136, Credit for Federal Tax Paid on Fuels, Form 6478, Biofuel Producer Credit, and Form 8864, Biodiesel and Renewable Diesel Fuels Credit.

**Comments and suggestions.** We welcome your comments about this publication and your suggestions for future editions.

You can send us comments from [IRS.gov/FormsPubs](http://IRS.gov/FormsPubs). Click on "More Information," then on "Give Us Feedback."

Or you can write to:

Internal Revenue Service  
Tax Forms and Publications  
1111 Constitution Ave. NW, IR-6526  
Washington, DC 20224

Although we can't respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax products.

## **Useful Items**

You may want to see:

### **Publication**

- **509** Tax Calendars

### **Form (and Instructions)**

- **11-C** Occupational Tax and Registration Return for Wagering
- **637** Application for Registration (For Certain Excise Tax Activities)
- **720** Quarterly Federal Excise Tax Return

- **720-X** Amended Quarterly Federal Excise Tax Return
- **730** Monthly Tax Return for Wagers
- **1363** Export Exemption Certificate
- **2290** Heavy Highway Vehicle Use Tax Return
- **2290(SP)** Declaración del Impuesto sobre el Uso de Vehículos Pesados en las Carreteras
- **4136** Credit for Federal Tax Paid on Fuels
- **6197** Gas Guzzler Tax
- **6478** Biofuel Producer Credit
- **6627** Environmental Taxes
- **8849** Claim for Refund of Excise Taxes, and Schedules 1–3, 5, 6, and 8
- **8864** Biodiesel and Renewable Diesel Fuels Credit Information Returns
- **Form 720-TO**, Terminal Operator Report
- **Form 720-CS**, Carrier Summary Report

See *How To Get Tax Help* in chapter 17 for information about ordering forms and publications.

## **Guidance**

- Notice 2005-4 (fuel tax) on page 289 of I.R.B. 2005-2, at [IRS.gov/Pub/IRB/IRB2005-2#NOT2005-4](https://www.irs.gov/pub/irb/irb2005-2#NOT2005-4)
- Notice 2005-62 (biodiesel and aviation-grade kerosene) on page 443 of I.R.B. 2005-35, at [IRS.gov/Pub/IRB/IRB2005-35#NOT2005-62.](https://www.irs.gov/pub/irb/irb2005-35#NOT2005-62)
- Notice 2005-80 (LUST, kerosene, credit card issuers, mechanical dye injection) on page 953 of I.R.B. 2005-46, at [IRS.gov/PUB/IRB/IRB2005-46#NOT2005-80.](https://www.irs.gov/pub/irb/irb2005-46#NOT2005-80)
- Notice 2006-92 (alternative fuels mixtures) on page 774 of I.R.B. 2006-43, at [IRS.gov/PUB/IRB/IRB2006-43#NOT2006-92.](https://www.irs.gov/pub/irb/irb2006-43#NOT2006-92)
- Notice 2008-110 (biodiesel, cellulosic biofuel) on page 1298 of I.R.B. 2008-51,

at [IRS.gov/PUB/IRB/IRB2008-51#NOT2008-110](https://www.irs.gov/PUB/IRB/IRB2008-51#NOT2008-110)

- Notice 2010-68 (Alaska dyed diesel exemption) on page 576 of I.R.B. 2010-44, at [IRS.gov/PUB/IRB/IRB2010-44#NOT2010-68](https://www.irs.gov/PUB/IRB/IRB2010-44#NOT2010-68).
- Notice 2012-27 (fractional aircraft fuel surtax) on page 849 of I.R.B. 2012-17, at [IRS.gov/PUB/IRB/IRB2012-17#NOT2012-27](https://www.irs.gov/PUB/IRB/IRB2012-17#NOT2012-27).
- Revenue Ruling 2016-03 (foreign reinsurance), 2016-3 I.R.B. 282, at [IRS.gov/PUB/ IRS-Drop#RR2016-02](https://www.irs.gov/PUB/IRS-Drop#RR2016-02)
- T.D. 9621 (indoor tanning) on page 49 of I.R.B. 2013-28, at [IRS.gov/PUB/IRB/IRB2013-28#TD9621](https://www.irs.gov/PUB/IRB/IRB2013-28#TD9621).
- Rev. Proc. 2019-44 (inflation adjustments), at [IRS.gov//RP2019-44](https://www.irs.gov//RP2019-44)
- Notice 2020-08 (retroactive 2018 and 2019 claims), at [IRS.gov/PUB/IRS-Drop#NOT2020-08](https://www.irs.gov/PUB/IRS-Drop#NOT2020-08)
- Revenue Ruling 2018-02 (butane mixture), at [IRS.gov/IRB#RR2018.02](https://www.irs.gov/IRB#RR2018.02).

# Excise Taxes Not Covered

In addition to the taxes discussed in this publication, you may have to report certain other excise taxes.

For tax forms relating to alcohol, firearms, and tobacco, visit the Alcohol and Tobacco Tax and Trade Bureau website at [www.ttb.gov](http://www.ttb.gov).

**Heavy highway vehicle use tax.** You report the federal excise tax on the use of certain trucks, truck tractors, and buses used on public highways on Form 2290, Heavy Highway Vehicle Use Tax Return. The tax applies to highway motor vehicles with a taxable gross weight of 55,000 pounds or more. Vans, pickup trucks, panel trucks, and similar trucks generally aren't subject to this tax.

**Note.** A Spanish version (Formulario 2290(SP)) is also available.

**Registration of vehicles.** Generally, you must prove that you paid your heavy highway vehicle use tax to register your taxable

vehicle with your state motor vehicle department or to enter the United States in a Canadian or Mexican registered taxable vehicle. Generally, a copy of Schedule 1 (Form 2290) is stamped by the IRS and returned to you as proof of payment.



*If you have questions on Form 2290, see its separate instructions, or you can call the Form 2290 call site at 1-866-699-4096 (toll free) from the United States, and 1-859-669-5733 (not toll free) from Canada and Mexico. The hours of service are 8:00 a.m. to 6:00 p.m. Eastern time.*

**Wagering tax and occupational tax.** The information on wagering tax can be found in the instructions for Form 730, Tax on Wagering, and Form 11-C, Occupational Tax and Registration Return for Wagering.

# **Part One.**

## **Fuel Taxes and Fuel Tax Credits and Refunds**

*Chapter 1 defines the types of fuel, taxable events, and exemptions or exceptions to the fuel taxes. Chapter 2 provides information on, and definitions of, the nontaxable uses and explains how to make a claim.*

### **1.**

## **Fuel Taxes**

### **Definitions**

Excise taxes are imposed on all the following fuels.

- Gasoline, including aviation gasoline and gasoline blendstocks.
- Diesel fuel, including dyed diesel fuel.
- Diesel-water fuel emulsion.
- Kerosene, including dyed kerosene and kerosene used in aviation.

- Other Fuels (including alternative fuels).
- Compressed natural gas (CNG).
- Fuels used in commercial transportation on inland waterways.
- Any liquid used in a fractional ownership program aircraft as fuel.

The following terms are used throughout the discussion of fuel taxes. Other terms are defined in the discussion of the specific fuels to which they pertain.

**Agri-biodiesel.** Agri-biodiesel means biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, and camelina, and from animal fats.

**Approved terminal or refinery.** This is a terminal operated by a registrant that is a terminal operator or a refinery operated by a registrant that is a refiner.

**Biodiesel.** Biodiesel means the monoalkyl esters of long chain fatty acids derived from

plant or animal matter that meet the registration requirements for fuels and fuel additives established by the Environmental Protection Agency (EPA) under section 211 of the Clean Air Act, and the requirements of the American Society of Testing Materials (ASTM) D6751.

**Blended taxable fuel.** This means any taxable fuel produced outside the bulk transfer/ terminal system by mixing taxable fuel on which excise tax has been imposed and any other liquid on which excise tax hasn't been imposed.

This doesn't include a mixture removed or sold during the calendar quarter if all such mixtures removed or sold by the blender contain less than 400 gallons of a liquid on which the tax hasn't been imposed.

**Blender.** This is the person that produces blended taxable fuel.

**Bulk transfer.** This is the transfer of taxable fuel by pipeline or vessel.

**Bulk transfer/terminal system.** This is the taxable fuel distribution system consisting of

refineries, pipelines, vessels, and terminals. Fuel in the supply tank of any engine, or in any tank car, railcar, trailer, truck, or other equipment suitable for ground transportation isn't in the bulk transfer/terminal system.

**Diesel-water fuel emulsion.** A diesel-water fuel emulsion means an emulsion at least 14% of which is water. The emulsion additive used to produce the fuel must be registered by a United States manufacturer with the EPA under section 211 of the Clean Air Act as in effect on March 31, 2003.

**Dry lease aircraft exchange.** See later, under *Surtax on any liquid used in a fractional ownership program aircraft as fuel.*

**Enterer.** This is the importer of record (under customs law) for the taxable fuel. However, if the importer of record is acting as an agent, such as a customs broker, the person for whom the agent is acting is the enterer. If there is no importer of record, the owner at the time of entry into the United States is the enterer.

**Entry.** Taxable fuel is entered into the United States when it's brought into the United States and applicable customs law requires that it be entered for consumption, use, or warehousing. This doesn't apply to fuel brought into Puerto Rico (which is part of the U.S. customs territory) but does apply to fuel brought into the United States from Puerto Rico.

**Fractional ownership aircraft program and fractional program aircraft.** See later, under *Surtax on any liquid used in a fractional ownership program aircraft as fuel*.

**Measurement of taxable fuel.** Volumes of taxable fuel can be measured on the basis of actual volumetric gallons or gallons adjusted to 60 degrees Fahrenheit.

**Other fuels.** See *Other Fuels (Including Alternative Fuels)*, later, and *Alternative Fuel Credit and Alternative Fuel Mixture Credit* in chapter 2.

**Pipeline operator.** This is the person that operates a pipeline within the bulk transfer/terminal system.

**Position holder.** This is the person that holds the inventory position in the taxable fuel in the terminal, as reflected in the records of the terminal operator. You hold the inventory position when you have a contractual agreement with the terminal operator for the use of the storage facilities and terminaling services for the taxable fuel. A terminal operator that owns taxable fuel in its terminal is a position holder.

**Rack.** This is a mechanism capable of delivering fuel into a means of transport other than a pipeline or vessel.

**Refiner.** This is any person that owns, operates, or otherwise controls a refinery.

**Refinery.** This is a facility used to produce taxable fuel and from which taxable fuel may be removed by pipeline, by vessel, or at a rack. However, this term doesn't include a facility where only blended fuel, and no other type of fuel, is produced. For this purpose, blended fuel is any mixture that would be blended taxable fuel if produced outside the bulk transfer/terminal system.

**Registrant.** This is a taxable fuel registrant (see *Registration Requirements*, later).

**Removal.** This is any physical transfer of taxable fuel. It also means any use of taxable fuel other than as a material in the production of taxable fuel or Other Fuels. However, taxable fuel isn't removed when it evaporates or is otherwise lost or destroyed.

**Renewable diesel.** See *Renewable Diesel Credits* in chapter 2.

**Sale.** For taxable fuel not in a terminal, this is the transfer of title to, or substantial incidents of ownership in, taxable fuel to the buyer for money, services, or other property. For taxable fuel in a terminal, this is the transfer of the inventory position if the transferee becomes the position holder for that taxable fuel.

**Second generation biofuel.** This is any liquid fuel derived by, or from, qualified feedstocks, and meets the registration requirements for fuels and fuel additives established by the EPA under section 211 of the Clean Air Act (42 U.S.C. 7545). It also

includes certain liquid fuel which is derived by, or from, any cultivated algae, cyanobacteria, or lemna. It isn't alcohol of less than 150 proof (disregard any added denaturants). See Form 6478 for more information.

**State.** This includes any state, any of its political subdivisions, the District of Columbia, and the American Red Cross. An Indian tribal government is treated as a state only if transactions involve the exercise of an essential tribal government function.

**Taxable fuel.** This means gasoline, diesel fuel, and kerosene.

**Terminal.** This is a storage and distribution facility supplied by pipeline or vessel, and from which taxable fuel may be removed at a rack. It doesn't include a facility at which gasoline blendstocks are used in the manufacture of products other than finished gasoline if no gasoline is removed from the facility. A terminal doesn't include any facility where finished gasoline, diesel fuel, or kerosene is stored if the facility is operated by a registrant and all such taxable fuel stored at

the facility has been previously taxed upon removal from a refinery or terminal.

**Terminal operator.** This is any person that owns, operates, or otherwise controls a terminal.

**Throughputter.** This is any person that is a position holder or that owns taxable fuel within the bulk transfer/terminal system (other than in a terminal).

**Vessel operator.** This is the person that operates a vessel within the bulk transfer/terminal system. However, vessel doesn't include a deep-draft ocean-going vessel.

## **Information Returns**

Form 720-TO and Form 720-CS are information returns used to report monthly receipts and disbursements of liquid products. A liquid product is any liquid transported into storage at a terminal or delivered out of a terminal. For a list of products, see the product code table in the Instructions for Forms 720-TO and 720-CS.

The returns are due the last day of the month following the month in which the transaction occurs. Generally, these returns can be filed on paper or electronically. For information on filing electronically, see Publication 3536, Motor Fuel Excise Tax EDI Guide. Publication 3536 is only available on the IRS website.

**Form 720-TO.** This information return is used by terminal operators to report receipts and disbursements of all liquid products to and from all approved terminals. Each terminal operator must file a separate form for each approved terminal.

**Form 720-CS.** This information return must be filed by bulk transport carriers (barges, vessels, and pipelines) who receive liquid product from an approved terminal or deliver liquid product to an approved terminal.

## **Registration Requirements**

The following discussion applies to excise tax registration requirements for activities relating to fuels only. See Form 637 for other persons who must register and for more information about registration.

**Persons that are required to be registered.** You are required to be registered if you are a:

- Blender;
- Enterer;
- Pipeline operator;
- Position holder;
- Refiner;
- Terminal operator;
- Vessel operator;
- Producer or importer of alcohol, biodiesel, agri-biodiesel, and renewable diesel; or
- Producer of cellulosic or second generation biofuel.

**Persons that may register.** You may, but aren't required to, register if you are a:

- Feedstock user,
- Industrial user,
- Throughputter that isn't a position holder,

- Ultimate vendor,
- Diesel-water fuel emulsion producer,
- Credit card issuer, or
- Alternative fuel claimant.

Ultimate vendors, credit card issuers, and alternative fuel claimants don't need to be registered to buy or sell fuel. However, they must be registered to file claims for certain sales and uses of fuel. See Form 637 for more information.

**Taxable fuel registrant.** This is an enterer, an industrial user, a refiner, a terminal operator, or a throughputter who received a *Letter of Registration* under the excise tax registration provisions and whose registration hasn't been revoked or suspended. The term registrant as used in the discussions of these fuels means a taxable fuel registrant.

***Additional information.*** See the Form 637 instructions for the information you must submit when you apply for registration.

**Failure to register.** The penalty for failure to register if you must register, unless due to

reasonable cause, is \$10,000 for the initial failure, and then \$1,000 each day thereafter you fail to register.

## **Gasoline and Aviation Gasoline**

**Gasoline.** Gasoline means all products commonly or commercially known or sold as gasoline with an octane rating of 75 or more that are suitable for use as a motor fuel. Gasoline includes any gasoline blend other than:

- Qualified ethanol and methanol fuel (at least 85% of the blend consists of alcohol produced from coal, including peat),
- Partially exempt ethanol and methanol fuel (at least 85% of the blend consists of alcohol produced from natural gas), or
- Denatured alcohol.

Gasoline also includes gasoline blendstocks, discussed later.

**Aviation gasoline.** This means all special grades of gasoline suitable for use in aviation

reciprocating engines and covered by ASTM specification D910 or military specification MIL-G-5572.

## **Taxable Events**

The tax on gasoline is \$.184 per gallon. The tax on aviation gasoline is \$.194 per gallon. When used in a fractional ownership program aircraft, gasoline also is subject to a surtax of \$.141 per gallon. See *Surtax on any liquid used in a fractional ownership program aircraft as fuel*, later.

Tax is imposed on the removal, entry, or sale of gasoline. Each of these events is discussed later. Also, see the special rules that apply to gasoline blendstocks, later.

If the tax is paid on the gasoline in more than one event, a refund may be allowed for the "second" tax paid. See *Refunds of Second Tax* in chapter 2.

**Removal from terminal.** All removals of gasoline at a terminal rack are taxable. The position holder for that gasoline is liable for the tax.

***Two-party exchanges.*** In a two-party exchange, the receiving person, not the delivering person, is liable for the tax imposed on the removal of taxable fuel from the terminal at the terminal rack. A two-party exchange means a transaction (other than a sale) where the delivering person and receiving person are both taxable fuel registrants and all of the following apply.

- The transaction includes a transfer from the delivering person, who holds the inventory position for the taxable fuel in the terminal as reflected in the records of the terminal operator.
- The exchange transaction occurs before or at the same time as removal across the rack by the receiving person.
- The terminal operator in its records treats the receiving person as the person that removes the product across the terminal rack for purposes of reporting the transaction on Form 720-TO.
- The transaction is subject to a written contract.

***Terminal operator's liability.*** The terminal operator is jointly and severally liable for the tax if the position holder is a person other than the terminal operator and isn't a registrant.

However, a terminal operator meeting all the following conditions at the time of the removal won't be liable for the tax.

- The terminal operator is a registrant.
- The terminal operator has an unexpired notification certificate (discussed later) from the position holder.
- The terminal operator has no reason to believe any information on the certificate is false.

**Removal from refinery.** The removal of gasoline from a refinery is taxable if the removal meets either of the following conditions.

- it's made by bulk transfer and the refiner, the owner of the gasoline immediately before the removal, or the operator of the pipeline or vessel isn't a registrant.

- it's made at the refinery rack.

The refiner is liable for the tax.

***Exception.*** The tax doesn't apply to a removal of gasoline at the refinery rack if all the following requirements are met.

- The gasoline is removed from an approved refinery not served by pipeline (other than for receiving crude oil) or vessel.
- The gasoline is received at a facility operated by a registrant and located within the bulk transfer/terminal system.
- The removal from the refinery is by railcar.
- The same person operates the refinery and the facility at which the gasoline is received.

**Entry into the United States.** The entry of gasoline into the United States is taxable if the entry meets either of the following conditions.

- it's made by bulk transfer and the enterer or the operator of the pipeline or vessel isn't a registrant.
- it's made by bulk transfer. The enterer is liable for the tax.

***Importer of record's liability.*** The importer of record is jointly and severally liable for the tax with the enterer if the importer of record isn't the enterer of the taxable fuel and the enterer isn't a taxable fuel registrant.

However, an importer of record meeting both of the following conditions at the time of the entry won't be liable for the tax.

- The importer of record has an unexpired notification certificate (discussed later) from the enterer.
- The importer of record has no reason to believe any information in the certificate is false.

***Customs bond.*** The customs bond won't be charged for the tax imposed on the entry of the gasoline if at the time of entry the surety has an unexpired notification certificate from

the enterer and has no reason to believe any information in the certificate is false.

**Removal from a terminal by unregistered position holder or unregistered pipeline or vessel operator.** The removal by bulk transfer of gasoline from a terminal is taxable if the position holder for the gasoline or the operator of the pipeline or vessel isn't a registrant. The position holder is liable for the tax. The terminal operator is jointly and severally liable for the tax if the position holder is a person other than the terminal operator. However, see *Terminal operator's liability* under *Removal from terminal*, earlier, for an exception.

**Bulk transfers not received at approved terminal or refinery.** The removal by bulk transfer of gasoline from a terminal or refinery, or the entry of gasoline by bulk transfer into the United States, is taxable if the following conditions apply.

1. No tax was previously imposed (as discussed earlier) on any of the following events.

- a. The removal from the refinery.
  - b. The entry into the United States.
  - c. The removal from a terminal by an unregistered position holder.
2. Upon removal from the pipeline or vessel, the gasoline isn't received at an approved terminal or refinery (or at another pipeline or vessel).

The owner of the gasoline when it's removed from the pipeline or vessel is liable for the tax. However, an owner meeting all the following conditions at the time of the removal won't be liable for the tax.

- The owner is a registrant.
- The owner has an unexpired notification certificate (discussed later) from the operator of the terminal or refinery where the gasoline is received.
- The owner has no reason to believe any information on the certificate is false.

The operator of the facility where the gasoline is received is liable for the tax if the owner

meets these conditions. The operator is jointly and severally liable if the owner doesn't meet these conditions.

**Sales to unregistered person.** The sale of gasoline located within the bulk transfer/terminal system to a person that isn't a registrant is taxable if tax wasn't previously imposed under any of the events discussed earlier.

The seller is liable for the tax. However, a seller meeting all the following conditions at the time of the sale won't be liable for the tax.

- The seller is a registrant.
- The seller has an unexpired notification certificate (discussed later) from the buyer.
- The seller has no reason to believe any information on the certificate is false.

The buyer of the gasoline is liable for the tax if the seller meets these conditions. The buyer is jointly and severally liable if the seller doesn't meet these conditions.

***Exception.*** The tax doesn't apply to a sale if all of the following apply.

- The buyer's principal place of business isn't in the United States.
- The sale occurs as the fuel is delivered into a transport vessel with a capacity of at least 20,000 barrels of fuel.
- The seller is a registrant and the exporter of record.
- The fuel was exported.

**Removal or sale of blended gasoline.** The removal or sale of blended gasoline by the blender is taxable. See *Blended taxable fuel* under *Definitions*, earlier.

The blender is liable for the tax. The tax is figured on the number of gallons not previously subject to the tax on gasoline.

Persons who blend alcohol with gasoline to produce an alcohol fuel mixture outside the bulk transfer/terminal system must pay the gasoline tax on the volume of alcohol in the mixture. See Form 720 to report this tax. You

also must be registered with the IRS as a blender. See Form 637.

However, if an untaxed liquid is sold as taxed taxable fuel and that untaxed liquid is used to produce blended taxable fuel, the person that sold the untaxed liquid is jointly and severally liable for the tax imposed on the blender's sale or removal of the blended taxable fuel.

**Notification certificate.** The notification certificate is used to notify a person of the registration status of the registrant. A copy of the registrant's letter of registration can't be used as a notification certificate. A model notification certificate is shown in the *Appendix as Model Certificate C*. A notification certificate must contain all information necessary to complete the model.

The certificate may be included as part of any business records normally used for a sale. A certificate expires on the earlier of the date the registrant provides a new certificate, or the date the recipient of the certificate is notified that the registrant's registration has been revoked or suspended. The registrant

must provide a new certificate if any information on a certificate has changed.

**Additional persons liable.** When the person liable for the tax willfully fails to pay the tax, joint and several liability for the tax is imposed on:

- Any officer, employee, or agent of the person who is under a duty to ensure the payment of the tax and who willfully fails to perform that duty, or
- Anyone who willfully causes the person to fail to pay the tax.

## **Gasoline Blendstocks**



*Gasoline blendstocks may be subject to \$.001 per gallon LUST tax as discussed below.*

Gasoline includes gasoline blendstocks. The previous discussions apply to these blendstocks. However, if certain conditions are met, the removal, entry, or sale of gasoline blendstocks are taxed at \$.001 per gallon or aren't subject to the excise tax.

**Blendstocks.** Gasoline blendstocks are:

- Alkylate,
- Butane,
- Butene,
- Catalytically cracked gasoline,
- Coker gasoline,
- Ethyl tertiary butyl ether (ETBE),
- Hexane,
- Hydrocrackate,
- Isomerate,
- Methyl tertiary butyl ether (MTBE),
- Mixed xylene (not including any separated isomer of xylene),
- Natural gasoline,
- Pentane,
- Pentane mixture,
- Polymer gasoline,
- Raffinate,
- Reformate,

- Straight-run gasoline,
- Straight-run naphtha,
- Tertiary amyl methyl ether (TAME),
- Tertiary butyl alcohol (gasoline grade) (TBA),
- Thermally cracked gasoline, and
- Toluene.

However, gasoline blendstocks don't include any product that can't be used without further processing in the production of finished gasoline.

**Not used to produce finished gasoline.**

Gasoline blendstocks not used to produce finished gasoline aren't taxable (other than LUST) if the following conditions are met.

***Removals and entries not connected to sale.*** Nonbulk removals and entries aren't taxable if the person otherwise liable for the tax (position holder, refiner, or enterer) is a registrant.

***Removals and entries connected to sale.*** Nonbulk removals and entries aren't taxable if

the person otherwise liable for the tax (position holder, refiner, or enterer) is a registrant, and at the time of the sale, meets the following requirements.

- The person has an unexpired certificate (discussed later) from the buyer.
- The person has no reason to believe any information in the certificate is false.

***Sales after removal or entry.*** The sale of a gasoline blendstock that wasn't subject to tax on its nonbulk removal or entry, as discussed earlier, is taxable. The seller is liable for the tax. However, the sale isn't taxable if, at the time of the sale, the seller meets the following requirements.

- The seller has an unexpired certificate (discussed next) from the buyer.
- The seller has no reason to believe any information in the certificate is false.

**Certificate of buyer.** The certificate from the buyer certifies the gasoline blendstocks won't be used to produce finished gasoline. The certificate may be included as part of any

business records normally used for a sale. A model certificate is shown in the *Appendix* as *Model Certificate D*. The certificate must contain all information necessary to complete the model.

A certificate expires on the earliest of the following dates.

- The date 1 year after the effective date (not earlier than the date signed) of the certificate.
- The date a new certificate is provided to the seller.
- The date the seller is notified that the buyer's right to provide a certificate has been withdrawn.

The buyer must provide a new certificate if any information on a certificate has changed.

The IRS may withdraw the buyer's right to provide a certificate if that buyer uses the gasoline blendstocks in the production of finished gasoline or resells the blendstocks without getting a certificate from its buyer.

**Received at approved terminal or refinery.** The nonbulk removal or entry of gasoline blendstocks received at an approved terminal or refinery isn't taxable if the person otherwise liable for the tax (position holder, refiner, or enterer) meets all the following requirements.

- The person is a registrant.
- The person has an unexpired notification certificate (discussed earlier) from the operator of the terminal or refinery where the gasoline blendstocks are received.
- The person has no reason to believe any information on the certificate is false.

**Bulk transfers to registered industrial user.** The removal of gasoline blendstocks from a pipeline or vessel isn't taxable (other than LUST) if the blendstocks are received by a registrant that is an industrial user. An industrial user is any person that receives gasoline blendstocks by bulk transfer for its own use in the manufacture of any product other than finished gasoline.

**Credits or refunds.** A credit or refund of the gasoline tax may be allowable if gasoline is used for a nontaxable purpose or exempt use. For more information, see chapter 2.

## **Diesel Fuel and Kerosene**

Generally, diesel fuel and kerosene are taxed in the same manner as gasoline (discussed earlier). However, special rules (discussed later) apply to dyed diesel fuel and dyed kerosene, and to undyed diesel fuel and undyed kerosene sold or used in Alaska for certain nontaxable uses and undyed kerosene used for a feedstock purpose.

### **Diesel fuel means:**

- Any liquid that without further processing or blending is suitable for use as a fuel in a diesel-powered highway vehicle or train, and
- Transmix.

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 isn't the predominant use of the liquid. However, a liquid doesn't 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. Diesel fuel doesn't include gasoline, kerosene, excluded liquid, No. 5 and No. 6 fuel oils covered by ASTM specification D396, or F-76 (Fuel Naval Distillate) covered by military specification MIL-F-16884.

An **excluded liquid** is either of the following.

1. A liquid that contains less than 4% normal paraffins.
2. A liquid with all the following properties.
  - a. Distillation range of 125 degrees Fahrenheit or less.
  - b. Sulfur content of 10 ppm or less.
  - c. Minimum color of +27 Saybolt.

**Transmix** means a by-product of refined products created by the mixing of different

specification products during pipeline transportation.

**Kerosene.** This means any of the following liquids.

- One of the two grades of kerosene (No. 1-K and No. 2-K) covered by ASTM specification D3699.
- Kerosene-type jet fuel covered by ASTM specification D1655 or military specification MIL-DTL-5624T (Grade JP-5) or MIL-DTL-83133E (Grade JP-8). See *Kerosene for Use in Aviation*, later.

However, kerosene doesn't include excluded liquid, discussed earlier.

Kerosene also includes any liquid that would be described above but for the presence of a dye of the type used to dye kerosene for a nontaxable use.

**Diesel-powered highway vehicle.** This is any self-propelled vehicle designed to carry a load over public highways (whether or not also designed to perform other functions) and propelled by a diesel-powered engine.

Specially designed mobile machinery for nontransportation functions and vehicles specially designed for off-highway transportation are generally not considered diesel-powered highway vehicles. For more information about these vehicles and for information about vehicles not considered highway vehicles, see *Off-Highway Business Use (No. 2)* in chapter 2.

**Diesel-powered train.** This is any diesel-powered equipment or machinery that rides on rails. The term includes a locomotive, work train, switching engine, and track maintenance machine.

## **Taxable Events**

The tax on diesel fuel and kerosene is \$.244 per gallon. It's imposed on the removal, entry, or sale of diesel fuel and kerosene. Each of these events is discussed later. Only the \$.001 LUST tax applies to dyed diesel fuel and dyed kerosene, discussed later.

If the tax is paid on the diesel fuel or kerosene in more than one event, a refund

may be allowed for the "second" tax paid. See *Refunds of Second Tax* in chapter 2.

**Use in certain intercity and local buses.**

Dyed diesel fuel and dyed kerosene can't be used in certain intercity and local buses. A claim for \$.17 per gallon may be made by the registered ultimate vendor (under certain conditions) or the ultimate purchaser for undyed diesel fuel or undyed kerosene sold for use in certain intercity or local buses. An intercity or local bus is a bus engaged in furnishing (for compensation) passenger land transportation available to the general public. The bus must be engaged in one of the following activities.

- Scheduled transportation along regular routes regardless of the size of the bus.
- Nonscheduled transportation if the seating capacity of the bus is at least 20 adults (not including the driver).

A bus is available to the general public if the bus is available for hire to more than a limited number of persons, groups, or organizations.

**Removal from terminal.** All removals of diesel fuel and kerosene at a terminal rack are taxable. The position holder for that fuel is liable for the tax.

***Two-party exchanges.*** In a two-party exchange, the receiving person, not the delivering person, is liable for the tax imposed on the removal of taxable fuel from the terminal at the terminal rack. A two-party exchange means a transaction (other than a sale) where the delivering person and receiving person are both taxable fuel registrants and all of the following apply.

- The transaction includes a transfer from the delivering person, who holds the inventory position for the taxable fuel in the terminal as reflected in the records of the terminal operator.
- The exchange transaction occurs before or at the same time as completion of removal across the rack by the receiving person.
- The terminal operator in its records treats the receiving person as the person that

removes the product across the terminal rack for purposes of reporting the transaction on Form 720-TO.

- The transaction is subject to a written contract.

***Terminal operator's liability.*** The terminal operator is jointly and severally liable for the tax if the terminal operator provides any person with any bill of lading, shipping paper, or similar document indicating that diesel fuel or kerosene is dyed (discussed later).

The terminal operator is jointly and severally liable for the tax if the position holder is a person other than the terminal operator and isn't a registrant. However, a terminal operator won't be liable for the tax in this situation if, at the time of the removal, the following conditions are met.

- The terminal operator is a registrant.
- The terminal operator has an unexpired notification certificate (discussed under *Gasoline*) from the position holder.

- The terminal operator has no reason to believe any information on the certificate is false.

**Removal from refinery.** The removal of diesel fuel or kerosene from a refinery is taxable if the removal meets either of the following conditions.

- it's made by bulk transfer and the refiner, the owner of the fuel immediately before the removal, or the operator of the pipeline or vessel isn't a registrant.
- it's made at the refinery rack.

The refiner is liable for the tax.

**Exception.** The tax doesn't apply to a removal of diesel fuel or kerosene at the refinery rack if all the following conditions are met.

1. The diesel fuel or kerosene is removed from an approved refinery not served by pipeline (other than for receiving crude oil) or vessel.
2. The diesel fuel or kerosene is received at a facility operated by a registrant and

located within the bulk transfer/terminal system.

3. The removal from the refinery is by:
  - a. Railcar and the same person operates the refinery and the facility at which the diesel fuel or kerosene is received, or
  - b. For diesel fuel only, a trailer or semitrailer used exclusively to transport the diesel fuel from a refinery (described in (1)) to a facility (described in (2)) less than 20 miles from the refinery.

**Entry into the United States.** The entry of diesel fuel or kerosene into the United States is taxable if the entry meets either of the following conditions.

- it's made by bulk transfer and the enterer or the operator of the pipeline or vessel isn't a registrant.
- It isn't made by bulk transfer. The enterer is liable for the tax.

***Importer of record's liability.*** The importer of record is jointly and severally liable for the tax with the enterer if the importer of record isn't the enterer of the taxable fuel and the enterer isn't a taxable fuel registrant.

However, an importer of record meeting both of the following conditions at the time of the entry won't be liable for the tax.

1. The importer of record has an unexpired notification certificate (discussed under *Gasoline*) from the enterer.
2. The importer of record has no reason to believe any information in the certificate is false.

***Customs bond.*** The customs bond won't be charged for the tax imposed on the entry of the diesel fuel or kerosene if at the time of entry the surety has an unexpired notification certificate from the enterer and has no reason to believe any information in the certificate is false.

**Removal from a terminal by unregistered position holder or unregistered pipeline or vessel operator.** The removal by bulk

transfer of diesel fuel or kerosene from a terminal is taxable if the position holder for that fuel or the operator of the pipeline or vessel isn't a registrant. The position holder is liable for the tax. The terminal operator is jointly and severally liable for the tax if the position holder is a person other than the terminal operator. However, see *Terminal operator's liability under Removal from terminal*, earlier, for an exception.

**Bulk transfers not received at approved terminal or refinery.** The removal by bulk transfer of diesel fuel or kerosene from a terminal or refinery or the entry of diesel fuel or kerosene by bulk transfer into the United States is taxable if the following conditions apply.

1. No tax was previously imposed (as discussed earlier) on any of the following events.
  - a. The removal from the refinery.
  - b. The entry into the United States.
  - c. The removal from a terminal by an unregistered position holder.

2. Upon removal from the pipeline or vessel, the diesel fuel or kerosene isn't received at an approved terminal or refinery (or at another pipeline or vessel).

The owner of the diesel fuel or kerosene when it's removed from the pipeline or vessel is liable for the tax. However, an owner meeting all the following conditions at the time of the removal won't be liable for the tax.

- The owner is a registrant.
- The owner has an unexpired notification certificate (discussed under Gasoline) from the operator of the terminal or refinery where the diesel fuel or kerosene is received.
- The owner has no reason to believe any information on the certificate is false.

The operator of the facility where the diesel fuel or kerosene is received is liable for the tax if the owner meets these conditions. The operator is jointly and severally liable if the owner doesn't meet these conditions.

**Sales to unregistered person.** The sale of diesel fuel or kerosene located within the bulk transfer/terminal system to a person that isn't a registrant is taxable if tax wasn't previously imposed under any of the events discussed earlier.

The seller is liable for the tax. However, a seller meeting all the following conditions at the time of the sale won't be liable for the tax.

- The seller is a registrant.
- The seller has an unexpired notification certificate (discussed under Gasoline) from the buyer.
- The seller has no reason to believe any information on the certificate is false.

The buyer of the diesel fuel or kerosene is liable for the tax if the seller meets these conditions. The buyer is jointly and severally liable if the seller doesn't meet these conditions.

***Exception.*** The tax doesn't apply to a sale if all of the following apply.

- The buyer's principal place of business isn't in the United States.
- The sale occurs as the fuel is delivered into a transport vessel with a capacity of at least 20,000 barrels of fuel.
- The seller is a registrant and the exporter of record.
- The fuel was exported.

**Removal or sale of blended diesel fuel or kerosene.** The removal or sale of blended diesel fuel or blended kerosene by the blender is taxable. Blended taxable fuel produced using biodiesel is subject to the tax. See *Blended taxable fuel* under *Definitions*, earlier.

The blender is liable for the tax. The tax is figured on the number of gallons not previously subject to the tax.

Persons who blend biodiesel with undyed diesel fuel to produce and sell or use a biodiesel mixture outside the bulk transfer/terminal system must pay the diesel fuel tax on the volume of biodiesel in the mixture. Generally, the biodiesel mixture

must be diesel fuel (defined earlier). See Form 720 to report this tax. You also must be registered by the IRS as a blender. See Form 637 for more information.

However, if an untaxed liquid is sold as taxable fuel and that untaxed liquid is used to produce blended taxable fuel, the person that sold the untaxed liquid is jointly and severally liable for the tax imposed on the blender's sale or removal of the blended taxable fuel.

**Additional persons liable.** When the person liable for the tax willfully fails to pay the tax, joint and several liability for the tax applies to:

- Any officer, employee, or agent of the person who is under a duty to ensure the payment of the tax and who willfully fails to perform that duty; or
- Anyone who willfully causes the person to fail to pay the tax.

**Credits or refunds.** A credit or refund is allowable for the tax on undyed diesel fuel or undyed kerosene used for a nontaxable use. For more information, see chapter 2.

# Dyed Diesel Fuel and Dyed Kerosene



*Dyed diesel fuel and dyed kerosene are subject to \$.001 per gallon LUST tax as discussed below, unless the fuel is for export.*

The excise tax isn't imposed on the removal, entry, or sale of diesel fuel or kerosene (other than the LUST tax) if all the following tests are met.

- The person otherwise liable for tax (for example, the position holder) is a registrant.
- In the case of a removal from a terminal, the terminal is an approved terminal.
- The diesel fuel or kerosene satisfies the dyeing requirements (described next).

**Dyeing requirements.** Diesel fuel or kerosene satisfies the dyeing requirements only if it satisfies the following requirements.

- It contains the dye Solvent Red 164 (and no other dye) at a concentration spectrally

equivalent to at least 3.9 pounds of the solid dye standard Solvent Red 26 per thousand barrels of fuel or any dye of a type and in a concentration that has been approved by the Commissioner.

- Is indelibly dyed by mechanical injection. See section 6 of Notice 2005-80 for transition rules that apply until final regulations are issued by the IRS.

**Notice required.** A legible and conspicuous notice stating either: ***DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE*** or ***DYED KEROSENE, NON-TAXABLE USE ONLY, PENALTY FOR TAXABLE USE*** must be:

1. Provided by the terminal operator to any person that receives dyed diesel fuel or dyed kerosene at a terminal rack of that operator, and
2. Posted by a seller on any retail pump or other delivery facility where it sells dyed diesel fuel or dyed kerosene for use by its buyer.

The notice under item (1) must be provided by the time of the removal and must appear on all shipping papers, bills of lading, and similar documents accompanying the removal of the fuel.

Any seller that fails to post the required notice under item (2) is presumed to know that the fuel will be used for a taxable use (a use other than a nontaxable use listed later). That seller is subject to the penalty described next.

**Penalty.** A penalty is imposed on a person if any of the following situations apply.

1. Any dyed fuel is sold or held for sale by the person for a use the person knows or has reason to know isn't a nontaxable use of the fuel.
2. Any dyed fuel is held for use or used by the person for a use other than a nontaxable use and the person knew, or had reason to know, that the fuel was dyed.
3. The person willfully alters, chemically or otherwise, or attempts to so alter, the

strength or composition of any dye in dyed fuel.

4. The person has knowledge that a dyed fuel that has been altered, as described in (3) above, sells or holds for sale such fuel for any use for which the person knows or has reason to know isn't a nontaxable use of the fuel.

The penalty is the greater of \$1,000 or \$10 per gallon of the dyed diesel fuel or dyed kerosene involved. After the first violation, the \$1,000 portion of the penalty increases depending on the number of violations.

This penalty is in addition to any tax imposed on the fuel.

If the penalty is imposed, each officer, employee, or agent of a business entity who willfully participated in any act giving rise to the penalty is jointly and severally liable with that entity for the penalty.

There is no administrative appeal or review allowed for the third and subsequent penalty imposed by section 6715 on any person except for:

- Fraud or a mistake in the chemical analysis, or
- Mathematical calculation of the penalty.

If you are liable for the penalty, you may also be liable for the back-up tax, discussed later. However, the penalty applies only to dyed diesel fuel and dyed kerosene, while the back-up tax may apply to other fuels. The penalty may apply if the fuel is held for sale or use for a taxable use while the back-up tax doesn't apply unless the fuel is delivered into a fuel supply tank.

***Exception to penalty.*** The penalty under item (3) won't apply in any of the following situations.

- Diesel fuel or kerosene meeting the dyeing requirements (described earlier) is blended with any undyed liquid and the resulting product meets the dyeing requirements.
- Diesel fuel or kerosene meeting the dyeing requirements (described earlier) is blended with any other liquid (other than diesel fuel or kerosene) that contains the

type and amount of dye required to meet the dyeing requirements.

- The alteration or attempted alteration occurs in an exempt area of Alaska. See *Removal for sale or use in Alaska*, later.
- Diesel fuel or kerosene meeting the dyeing requirements (described earlier) is blended with diesel fuel or kerosene not meeting the dyeing requirements and the blending occurs as part of a nontaxable use (other than export), discussed later.

## **Alaska and Feedstocks**

Tax of \$.001 per gallon is imposed on:

- Undyed diesel fuel or undyed kerosene sold or used in Alaska for certain nontaxable uses (see *Later sales* on page 10).
- Undyed kerosene used for feedstock purposes.

**Removal for sale or use in Alaska.** No tax is imposed on the removal, entry, or sale of diesel fuel or kerosene in Alaska for ultimate sale or use in certain areas of Alaska for

certain nontaxable uses. The removal or entry of any diesel fuel or kerosene isn't taxed if all the following requirements are satisfied.

1. The person otherwise liable for the tax (position holder, refiner, or enterer):
  - a. Is a registrant,
  - b. Can show satisfactory evidence of the nontaxable nature of the transaction, and
  - c. Has no reason to believe the evidence is false.
2. In the case of a removal from a terminal, the terminal is an approved terminal.
3. The owner of the fuel immediately after the removal or entry holds the fuel for its own use in a nontaxable use (discussed later) or is a qualified dealer.

If all three of the requirements above aren't met, then tax is imposed at \$.244 per gallon.

A **qualified dealer** is any person that holds a qualified dealer license from the state of Alaska or has been registered by the IRS as a

qualified retailer. Satisfactory evidence may include copies of qualified dealer licenses or exemption certificates obtained for state tax purposes.

***Later sales.*** The excise tax applies to diesel fuel or kerosene sold by a qualified dealer after the removal or entry. The tax is imposed at the time of the sale and the qualified dealer is liable for the tax. However, the sale isn't taxable (other than the LUST tax at \$.001 per gallon) if all the following requirements are met.

- The fuel is sold in Alaska for certain nontaxable uses.
- The buyer buys the fuel for its own use in a nontaxable use or is a qualified dealer.
- The seller can show satisfactory evidence of the nontaxable nature of the transaction and has no reason to believe the evidence is false.

**Feedstock purposes.** The \$.001 per gallon LUST tax is imposed on the removal or entry of undyed kerosene if all the following conditions are met.

1. The person otherwise liable for tax (position holder, refiner, or enterer) is a registrant.
2. In the case of a removal from a terminal, the terminal is an approved terminal.
3. Either:
  - a. The person otherwise liable for tax uses the kerosene for a feedstock purpose, or
  - b. The kerosene is sold for use by the buyer for a feedstock purpose and, at the time of the sale, the person otherwise liable for tax has an unexpired certificate (described later) from the buyer and has no reason to believe any information on the certificate is false.

If all of the requirements above aren't met, then tax is imposed at \$.244 per gallon.

Kerosene is used for a feedstock purpose when it's used for nonfuel purposes in the manufacture or production of any substance other than gasoline, diesel fuel, or Other

Fuels. For example, kerosene is used for a feedstock purpose when it's used as an ingredient in the production of paint but isn't used for a feedstock purpose when it's used to power machinery at a factory where paint is produced. A feedstock user is a person that uses kerosene for a feedstock purpose. A registered feedstock user is a person that has been registered by the IRS as a feedstock user. See *Registration Requirements*, earlier.

**Later sales.** The excise tax (\$.244 per gallon) applies to kerosene sold for use by the buyer for a feedstock purpose (item (3)(b) above) if the buyer in that sale later sells the kerosene. The tax is imposed at the time of the later sale and that seller is liable for the tax.

**Certificate.** The certificate from the buyer certifies the buyer is a registered feedstock user and the kerosene will be used by the buyer for a feedstock purpose. The certificate may be included as part of any business records normally used for a sale. A model certificate is shown in the *Appendix as Model*

*Certificate G.* Your certificate must contain all information necessary to complete the model.

A certificate expires on the earliest of the following dates.

- The date 1 year after the effective date (not earlier than the date signed) of the certificate.
- The date the seller is provided a new certificate or notice that the current certificate is invalid.
- The date the seller is notified the buyer's registration has been revoked or suspended.

The buyer must provide a new certificate if any information on a certificate has changed.

## **Back-up Tax**

Tax is imposed on the delivery of any of the following into the fuel supply tank of a diesel-powered highway vehicle.

- Any dyed diesel fuel or dyed kerosene for other than a nontaxable use.

- Any undyed diesel fuel or undyed kerosene on which a credit or refund (for fuel used for a nontaxable purpose) has been allowed.
- Any liquid other than gasoline, diesel fuel, or kerosene.

Generally, this back-up tax is imposed at a rate of \$.244 per gallon.

**Liability for tax.** Generally, the operator of the vehicle into which the fuel is delivered is liable for the tax. In addition, the seller of the diesel fuel or kerosene is jointly and severally liable for the tax if the seller knows or has reason to know that the fuel will be used for other than a nontaxable use.

**Exemptions from the back-up tax.** The back-up tax doesn't apply to a delivery of diesel fuel or kerosene for uses 1, 2, 6, 7, 12, 13, 14, and 15 listed under *Definitions of Nontaxable Uses* in chapter 2.

In addition, since the back-up tax is imposed only on the delivery into the fuel supply tank of a diesel-powered vehicle or train, the tax

doesn't apply to diesel fuel or kerosene used as heating oil or in stationary engines.

## **Diesel-Water Fuel Emulsion**

Diesel-water fuel emulsion means diesel fuel at least 14% of which is water and for which the emulsion additive is registered by a United States manufacturer with the EPA under section 211 of the Clean Air Act as in effect on March 31, 2003.

A reduced tax rate of \$.198 per gallon is imposed on a diesel-water fuel emulsion. To be eligible for the reduced rate, the person who sells, removes, or uses the diesel-water fuel emulsion must be registered by the IRS. If the diesel-water fuel emulsion doesn't meet the requirements above, or if the person who sells, removes, or uses the fuel isn't registered, the diesel-water fuel emulsion is taxed at \$.244 per gallon.

**Credits or refunds.** The allowance for a credit or refund on a diesel-water fuel emulsion is discussed in chapter 2.

# Kerosene for Use in Aviation

## Taxable Events

Generally, kerosene is taxed at \$.244 per gallon unless a reduced rate applies (see *Diesel Fuel and Kerosene*, earlier).

For kerosene removed directly from a terminal into the fuel tank of an aircraft for use in noncommercial aviation, the tax rate is \$.219. The rate of \$.219 also applies if kerosene is removed into any aircraft from a qualified refueler truck, tanker, or tank wagon that is loaded with the kerosene from a terminal that is located within an airport. The airport terminal doesn't need to be a secured airport terminal for this rate to apply.

However, the refueler truck, tanker, or tank wagon must meet the requirements discussed under *Certain refueler trucks, tankers, and tank wagons, treated as terminals*, later.

For kerosene removed directly into the fuel tank of an aircraft for use in commercial aviation, the rate of tax is \$.044 per gallon. For kerosene removed into an aircraft from a qualified refueler truck, tanker, or tank

wagon, the \$.044 rate applies only if the truck, tanker, or tank wagon is loaded at a terminal that is located in a secured area of the airport. See *Terminal located within a secured area of an airport*, later. In addition, the operator must provide the position holder with a certificate similar to *Model Certificate K* in the *Appendix*.

For kerosene removed directly into the fuel tank of an aircraft for a use exempt from tax under section 4041(c) (such as use in an aircraft for the exclusive use of a state or local government), the rate of tax is \$.001. There is no tax on kerosene removed directly into the fuel tank of an aircraft for use in foreign trade. The kerosene must be removed from a qualifying refueler truck, tanker, or tank wagon loaded at a terminal located within a secured area of an airport. See *Terminal located within a secured area of an airport*, later. In addition, the operator must provide the position holder with a certificate similar to *Model Certificate K* in the *Appendix*. The position holder is liable for the \$.001 per gallon tax.

For kerosene removed directly from a terminal into the fuel tank of a fractional ownership program aircraft after March 31, 2012, a surtax of \$.141 per gallon applies.

**Certain refueler trucks, tankers, and tank wagons treated as terminals.** For purposes of the tax imposed on kerosene for use in aviation removed directly into the fuel tank of an aircraft for use in commercial aviation, certain refueler trucks, tankers, and tank wagons are treated as part of a terminal if the following conditions are met.

1. Such terminal is located within an area of an airport.
2. Any kerosene for use in aviation that is loaded in a refueler truck, tanker, or tank wagon at a terminal is for delivery into aircraft at the airport in which the terminal is located.
3. Except in exigent circumstances, such as those identified in Notice 2005-80, no vehicle registered for highway use is loaded with kerosene for use in aviation at the terminal.

4. The refueler truck, tanker, or tank wagon meets the following requirements:
  - a. Has storage tanks, hose, and coupling equipment designed and used for fueling aircraft,
  - b. Isn't registered for highway use, and
  - c. Is operated by the terminal operator or a person that makes a daily accounting to the terminal operator of each delivery of fuel from the refueler truck, tanker, or tank wagon. Information reporting will be required by terminal operators regarding this provision. Until the format of this information reporting is issued, taxpayers are required to retain records regarding the daily accounting but aren't required to report such information.

**Terminal located within a secured area of an airport.** See Notice 2005-4 and Notice

2005-80 for the list of terminals located within a secured area of an airport. This list refers to fueling operations at airport terminals as it applies to the federal excise tax on kerosene for use in aviation and has nothing to do with the general security of airports either included or not included in the list.

## **Liability For Tax**

If the kerosene is removed directly into the fuel tank of an aircraft for use in commercial aviation, the operator of the aircraft in commercial aviation is liable for the tax on the removal at the rate of \$.044 per gallon. However, the position holder is liable for the LUST tax for kerosene for use in aviation removed directly into the fuel tank of an aircraft for use exempt from tax under section 4041(c) (except foreign trade). For example, for kerosene removed directly into the aircraft for use in military aircraft, the position holder is liable for the tax.

For the aircraft operator to be liable for the tax \$.044 rate, the position holder must meet the following requirements:

- Is a taxable fuel registrant,
- Has an unexpired certificate (a model certificate is shown in the *Appendix* as *Model Certificate K*) from the operator of the aircraft, and
- Has no reason to believe any of the information in the certificate is false.

**Commercial aviation.** Commercial aviation is any use of an aircraft in the business of transporting persons or property by air for pay. However, commercial aviation doesn't include any of the following uses.

- Any use exclusively for the purpose of skydiving.
- Certain air transportation by seaplane. See *Seaplanes* under *Transportation of Persons by Air* in chapter 4.
- Any use of an aircraft owned or leased by a member of an affiliated group and unavailable for hire by nonmembers. For

more information, see *Aircraft used by affiliated corporations* under *Special Rules on Transportation Taxes* in chapter 4.

- Any use of an aircraft that has a maximum certificated takeoff weight of 6,000 pounds or less, unless the aircraft is operated on an established line. For more information, see *Small aircraft* under *Special Rules on Transportation Taxes* in chapter 4.
- Any use where the surtax on fuel used in a fractional ownership program aircraft is imposed. See *Surtax on any liquid used in a fractional ownership program aircraft as fuel* below.

## **Surtax on Any Liquid Used in a Fractional Ownership Program Aircraft as Fuel**

Fuel used in a fractional ownership program aircraft (as defined below) after March 31, 2012, is subject to a surtax of \$.141 per gallon. The fractional ownership program manager is liable for the tax. The surtax applies in addition to any other taxes imposed

on the removal, entry, use, or sale of the fuel. If the surtax is imposed, the following air transportation taxes don't apply.

- Transportation of persons by air.
- Transportation of property by air.
- Use of international air travel facilities.

These taxes are described under *Air Transportation Taxes*, later.

A fractional ownership program aircraft flight is considered noncommercial aviation; for the rules for kerosene used in noncommercial aviation, see *Kerosene for Use in Aviation* above.

A fractional ownership program is one under which:

- A single fractional ownership program manager provides fractional ownership program management services on behalf of the fractional owners;
- There are one or more fractional owners per fractional program aircraft, with at

least one fractional program aircraft having more than one owner;

- For at least two fractional program aircraft, none of the ownership interests in the aircraft are less than the minimum fractional ownership interest or held by the program manager;
- There exists a dry-lease aircraft exchange arrangement among all of the fractional owners; and
- There are multi-year program agreements covering the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program.

**Fractional program aircraft.** Any aircraft that, in any fractional ownership aircraft program, is listed as a fractional program aircraft in the management specifications issued to the manager of such program by the Federal Aviation Administration under subpart K of part 91, title 14, Code of Federal Regulations, and is registered in the United States.

Fractional program aircraft aren't considered used for transportation of a qualified fractional owner, or on account of such qualified fractional owner when they are used for flight demonstration, maintenance or crew training. In such situations, the flight isn't commercial aviation. Instead, the tax on the fuel used in the flight is imposed at the non-commercial aviation rate.

**Fractional owner.** Any person owning any interest (including the entire interest) in a fractional program aircraft.

**Dry lease aircraft exchange.** An agreement, documented by the written program agreements, under which the fractional program aircraft are available, on an as-needed basis without crew, to each fractional owner.

**Special rule relating to deadhead service.** A fractional program aircraft won't be considered to be used on account of a qualified fractional owner when it's used in deadhead service and a person other than a qualified fractional owner is separately charged for such service.

**More information.** See section 4043 for more information on the surtax.

## **Certificate for Commercial Aviation and Exempt Uses**

A certificate is required from the aircraft operator:

- To support aircraft operator liability for tax on removal of kerosene for use in aviation directly into the fuel tank of an aircraft in commercial aviation, or
- For exempt uses.

**Certificate.** The certificate may be included as part of any business records normally used for a sale. See *Model Certificate K* in the *Appendix*. A certificate expires on the earliest of the following dates.

- The date 1 year after the effective date (not earlier than the date signed) of the certificate.
- The date the buyer provides the seller a new certificate or notice that the current certificate is invalid.

- The date the IRS or the buyer notifies the seller that the buyer's right to provide a certificate has been withdrawn.

The buyer must provide a new certificate if any information on a certificate has changed.

The IRS may withdraw the buyer's right to provide a certificate if the buyer uses the kerosene for use in aviation to which a certificate relates other than as stated in the certificate.

***Exempt use.*** The rate on kerosene for use in aviation is \$.001 (LUST tax) if it's removed from any refinery or terminal directly into the fuel tank of an aircraft for an exempt use. An exempt use includes kerosene for the exclusive use of a state or local government. There is no tax on kerosene removed directly into the fuel tank of an aircraft for use in foreign trade.

**Flash title transaction.** A position holder isn't liable for tax if, among other conditions, it obtains a certificate (described above) from the operator of the aircraft into which the kerosene is delivered. In a "flash title

transaction” the position holder sells the kerosene to a wholesale distributor (reseller) that in turn sells the kerosene to the aircraft operator as the kerosene is being removed from a terminal into the fuel tank of an aircraft. In this case, the position holder will be treated as having a certificate from the operator of the aircraft if:

- The aircraft operator puts the reseller's name, address, and EIN on the certificate in place of the position holder's information; and
- The reseller provides the position holder with a statement of the kerosene reseller.

***Reseller statement.*** This is a statement that is signed under penalties of perjury by a person with authority to bind the reseller; is provided at the bottom or on the back of the certificate (or in an attached document); and contains:

- The reseller's name, address, and EIN;
- The position holder's name, address, and EIN; and

- A statement that the reseller has no reason to believe that any information in the accompanying aircraft operator's certificate is false.

**Credits or refunds.** A claim may be made by the ultimate purchaser (the operator) for taxed kerosene for use in aviation used in commercial aviation (other than foreign trade) and noncommercial aviation (other than nonexempt, noncommercial aviation and exclusive use by a state, political subdivision of a state, or the District of Columbia). A claim may be made by a registered ultimate vendor for certain sales. For more information, see chapter 2.

## **Other Fuels (Including Alternative Fuels)**

Other Fuels means any liquid except gas oil, fuel oil, or any product taxable under section 4081. Other Fuels include alternative fuels.

Alternative fuels are:

- Liquefied petroleum gas (LPG),
- "P Series" fuels,

- Compressed natural gas (CNG) (discussed later),
- Liquefied hydrogen,
- Any liquid fuel derived from coal (including peat) through the Fischer-Tropsch process,
- Liquid fuel derived from biomass,
- Liquefied natural gas (LNG), and
- Liquefied gas derived from biomass.

Liquefied petroleum gas includes propane, pentane, or mixtures of those products.

**Qualified methanol and ethanol fuels.**

Qualified ethanol and methanol means any liquid at least 85% of which consists of alcohol produced from coal, including peat. The tax rates are listed in the Instructions for Form 720.

**Partially exempt methanol and ethanol fuels.** A reduced tax rate applies to these fuels. Partially exempt ethanol and methanol means any liquid at least 85% of which consists of alcohol produced from natural gas.

The tax rates are listed in the Instructions for Form 720.

**Motor vehicles.** Motor vehicles include all types of vehicles, whether or not registered (or required to be registered) for highway use, that have both the following characteristics.

- They are propelled by a motor.
- They are designed for carrying or towing loads from one place to another, regardless of the type of material or load carried or towed.

Motor vehicles don't include any vehicle that moves exclusively on rails, or any of the following items: farm tractors, trench diggers, power shovels, bulldozers, road graders, road rollers, and similar equipment that doesn't carry or tow a load.

## **Taxable Events**

Tax is imposed on the delivery of Other Fuels into the fuel supply tank of the propulsion engine of a motor vehicle or motorboat. However, there is no tax on the delivery if tax

was imposed under the bulk sales rule, discussed next, or the delivery is for a nontaxable use. If the delivery is in connection with a sale, the seller is liable for the tax. If it isn't in connection with a sale, the operator of the vehicle or boat is liable for the tax.

**Bulk sales.** Tax is imposed on the sale of Other Fuels that isn't in connection with delivery into the fuel supply tank of the propulsion engine of a motor vehicle or motorboat if the buyer furnishes a written statement to the seller stating the entire quantity of the fuel covered by the sale is for other than a nontaxable use listed in chapter 2. The seller is liable for this tax.

**Tax rate.** See Form 720 and the Instructions for Form 720 for the tax rates.

**Nontaxable uses.** The nontaxable uses of Other Fuels (including alternative fuels) are discussed in chapter 2.

# **Compressed Natural Gas (CNG)**

## **Taxable Events**

Tax is imposed on the delivery of compressed natural gas (CNG) into the fuel supply tank of the propulsion engine of a motor vehicle or motorboat. The tax is based on the gasoline gallon equivalent of CNG. See Form 720 for the tax rate.

However, there is no tax on the delivery if tax was imposed under the bulk sales rule discussed next, or the delivery is for a nontaxable use, listed in chapter 2. If the delivery is in connection with a sale, the seller is liable for the tax. If it isn't in connection with a sale, the operator of the boat or vehicle is liable for the tax.

If CNG is delivered into the fuel supply tank by the seller in connection with the sale of CNG for a nontaxable use, the seller is liable for the tax unless, at the time of the sale, the seller has an exemption certificate from the buyer. The seller must have no reason to

believe any information in the certificate is false.

**Certificate.** The certificate from the buyer certifies the CNG will be used in a nontaxable use. The certificate may be included as part of any business records normally used for a sale. A model certificate is shown in the *Appendix as Model Certificate J*.

A certificate expires on the earliest of the following dates.

- The date 1 year after the effective date (which may be no earlier than the date signed) of the certificate.
- The date a new certificate is provided to the seller.
- The date the seller is notified the buyer's right to provide a certificate has been withdrawn.

**Bulk sales.** Tax is imposed on the sale of CNG that isn't in connection with delivery into the fuel supply tank of the propulsion engine of a motor vehicle or motorboat if the buyer furnishes a written statement to the seller

that the entire quantity of the CNG covered by the sale is for use as a fuel in a motor vehicle or motorboat and the seller has given the buyer a written acknowledgment of receipt of the statement. The seller of the CNG is liable for the tax.

**Motor vehicle.** For this purpose, motor vehicle has the same meaning as given under *Other Fuels (Including Alternative Fuels)*, earlier.

**Nontaxable uses.** The nontaxable uses of CNG are discussed under *Other Fuels (Including Alternative Fuels)* in chapter 2.

## **Fuels Used on Inland Waterways**



*The tax on inland waterways fuel use applies at the rate listed on Form 720. This is in addition to all other taxes imposed on the sale or use of the fuel.*

Tax applies to liquid fuel used in the propulsion system of commercial transportation vessels while traveling on certain inland and intracoastal waterways.

The tax generally applies to all types of vessels, including ships, barges, and tugboats. The LUST tax must be paid on any liquid fuel used on inland waterways that isn't subject to LUST tax under section 4041(d) or 4081. For example, Bunker C residual fuel oil is subject to the LUST tax.

**Inland and intracoastal waterways.** Inland and intracoastal waterways on which fuel consumption is subject to tax are specified in section 206 of the Inland Waterways Revenue Act of 1978, as amended. See Regulations section 48.4042-1(g) for a list of these waterways.

**Commercial waterway transportation.** Commercial waterway transportation is the use of a vessel on inland or intracoastal waterways for either of the following purposes.

- The use is in the business of transporting property for compensation or hire.
- The use is in transporting property in the business of the owner, lessee, or operator

of the vessel, whether or not a fee is charged.

The operation of all vessels meeting either of these requirements is commercial waterway transportation regardless of whether the vessel is actually transporting property on a particular voyage. However, see *Exemptions*, later. The tax is imposed on fuel consumed in vessels while engaged in any of the following activities.

- Moving without cargo.
- Awaiting passage through locks.
- Moving to or from a repair facility.
- Dislodging vessels grounded on a sand bar.
- Fleeting barges into a single tow.
- Maneuvering around loading and unloading docks.

**Liquid fuel.** Liquid fuel includes diesel fuel, Bunker C residual fuel oil, Other Fuels, and gasoline. The tax is imposed on liquid fuel actually consumed by a vessel's propulsion

engine and not on the unconsumed fuel in a vessel's tank.

**Dual use of liquid fuels.** The tax applies to all taxable liquid used as a fuel in the propulsion of the vessel, regardless of whether the engine (or other propulsion system) is used for another purpose. The tax applies to all liquid fuel consumed by the propulsion engine even if it operates special equipment by means of a power take-off or power transfer. For example, the fuel used in the engine both to operate an alternator, generator, or pumps and to propel the vessel is taxable.

The tax doesn't apply to fuel consumed in engines not used to propel the vessel.

If you draw liquid fuel from the same tank to operate both a propulsion engine and a nonpropulsion engine, determine the fuel used in the nonpropulsion engine and exclude that fuel from the tax. IRS will accept a reasonable estimate of the fuel based on your operating experience, but you must keep records to support your allocation.