



SMALL BUSINESS/Self-EMPLOYED DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

December 12, 2019

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MEMORANDUM FOR DIRECTOR, SPECIALTY EXAMINATION; CHIEF, ESTATE &
GIFT/EXCISE; EXCISE TAX EXAMINATION TERRITORY
AND GROUP MANAGERS

FROM: Daniel R. Lauer Daniel R. Lauer Digitally signed by Daniel R. Lauer
Date: 2019.12.12 13:37:05 -05'00'
Director, Examination-SpecialtyPolicy

SUBJECT: Interim Guidance- Referrals of IRC Section 6715 Penalties

Background/Source(s) of Authority:

The purpose of this memorandum is to issue interim guidance regarding a change to the criteria used to determine if a [Form 5346](#), *Examination Information Report*, must be completed when an IRC Section 6715 (dyed fuel penalty) is proposed. Form 5346 is submitted as a referral for potential examination to address federal excise tax (FET). Please ensure this information is distributed to all affected employees within your organization.

Currently, IRM 4.24.13.9.1 requires fuel compliance officers (FCOs) complete Form 5346 for all proposed dyed fuel penalties. Fuel compliance agents (FCAs) will complete Form 5346 for all proposed dyed fuel penalties unless the FCA directly works the excise tax case.

Procedural Changes:

Effective immediately, to address FET, FCOs and FCAs will complete the Form 5346, if information indicates at least 10,000 gallons of dyed fuel is involved in the proposed penalty. A group manager may approve opening an examination involving less than 10,000 gallons without completion of Form 5346, if the case will be worked within that excise tax field group.

A situation involving at least 10,000 gallons of dyed fuel will rarely be identified by only considering the number of gallons in the propulsion tanks of the vehicles and the number of gallons in the storage tanks involved in the penalty on the date of the inspection. Therefore, the FCO or FCA should gather the facts and review fuel purchase records and other records to determine the historical extent of the taxpayer's

non-compliance. The additional gallons may be considered in the proposed IRC Section 6715 penalty as well as in the Form 5346 referral.

The number of gallons criterion described in this memorandum only applies to IRC Section 6715 dyed fuel penalties. During field work, FCOs and FCAs may identify other excise tax or non-excise tax issues that should be considered for examination. When this occurs, the employee should consult with his/her group manager and promptly submit a Form 5346 referral, if warranted.

The information provided by the FCO and FCA is critical to classifying and developing the lead. The completed Form 5346 and supporting documentation must contain sufficient information to explain the tax situation and the apparent extent of the taxpayer's non-compliance.

Group managers will continue to approve and send the referrals along with any supporting information, via a secured message, to the Workload Selection and Delivery (WSD) mailbox at sbse.excise.wsd@irs.gov with subject line, "Lead/Information Report Request".

Effect on Other Documents:

The guidance within this memorandum will be incorporated in IRM 4.24.13, *Overview of the Excise Fuel Compliance Program* by December 11, 2021.

Effective Date:

The changes included in this memorandum are effective immediately. If there are any questions, please contact Kellie McCann, Excise Tax Policy Program Manager, on 412-404-9607.

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