

Part III - Administrative, Procedural, and Miscellaneous

Dyed Diesel Fuel and Kerosene: Nontaxable Use; Alaska

Notice 2010-68

This notice provides that undyed diesel fuel and undyed kerosene (undyed fuel) may continue to be removed, entered, and sold for nontaxable uses in the entire state of Alaska under the existing procedures in § 48.4082-5 of the Manufacturers and Retailers Excise Tax Regulations. These regulations generally allow tax-free removals of diesel fuel from approved terminals and tax-free sales of undyed fuel between registered dealers and between registered dealers and nontaxable users.

This notice clarifies that recent changes in Environmental Protection Agency (EPA) rules relating to Alaskan diesel fuel do not affect existing Internal Revenue Service (IRS) procedures relating to undyed fuel transactions in Alaska. Section 48.4082-5(b) provides that these existing IRS procedures apply only to areas of Alaska in which the sulfur content requirements for diesel fuel (see § 211(i) of the Clean Air Act, 42 U.S.C. 7545(i)) do not apply because the Administrator of the EPA has granted an exemption under § 211(i)(4) of that Act.

When § 48.4082-5 was issued in 1996, the entire state of Alaska was exempt from both EPA's sulfur content requirement and its requirement for dyeing high sulfur diesel fuel and kerosene. The EPA is now phasing out Alaska's exemption from the EPA sulfur content requirement but has retained its rule that exempts Alaska from the EPA fuel dyeing requirement.

Because § 4082(c) of the Internal Revenue Code provides an exemption from the dyeing requirements of § 4082(a)(2) of the Code for areas that are exempt from the EPA fuel dyeing requirement, diesel fuel and kerosene in Alaska will continue to be exempt from the dyeing requirements of the Internal Revenue Code. In addition, the current system of fuel distribution and nontaxable use in Alaska will remain in effect until the Administrator of the EPA eliminates part or all of Alaska's exemption from the dyeing requirements of the Clean Air Act. The IRS expects to amend § 48.4082-5(b) to reflect the provisions of this notice.

Taxpayers are reminded that the \$0.001 per gallon tax for the Leaking Underground Storage Tank Trust Fund financing rate generally applies to sales of undyed fuel for nontaxable uses including off-highway and heating oil uses.

The principal author of this notice is Charles J. Langley, Jr. of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Charles J. Langley, Jr. on (202) 622-3130 (not a toll-free call).