

Part III – Administrative, Procedural, and Miscellaneous.

Treatment of Kerosene for Use in Aviation

Notice 2016-15

SECTION 1. PURPOSE

This notice provides guidance regarding the criteria for designation by the Internal Revenue Service (IRS) of a terminal located within a secure area of an airport as a Secured Airport Terminal (SAT) for purposes of §§ 4081 and 4082. This notice also provides procedures for the IRS to maintain an approved list of airports with such SATs (SAT list). In addition, this notice provides procedures for a terminal operator to request that a terminal be placed on the SAT list.

SECTION 2. BACKGROUND

The American Jobs Creation Act of 2004 (Pub. L. 108-357) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act (Pub. L. 109-59) provided a new system for imposing excise tax on kerosene used in aviation. Under this system, kerosene generally is taxed at a rate of 24.3 cents per gallon (excluding the 0.1 cent per gallon imposed for the Leaking Underground Storage Tank Trust Fund (LUST) tax). However, if the kerosene is removed directly into the fuel tank of an aircraft from a terminal or refinery, it will be taxed at lower aviation rates. Furthermore, if nontaxable

use kerosene is removed directly into the fuel tank of an aircraft from a terminal, the general rate of tax is reduced to zero. For purposes of these exceptions, refueler trucks, tankers, and tank wagons that meet certain conditions (“refuelers”) are treated as part of a terminal if the terminal is located within a secure area of an airport (*i.e.*, a SAT).

H.R. Conf. Rep. No. 108-755, at 692 (2005), provided an initial list of terminals located within secure areas of airports (the SAT list). In Notice 2005-4, 2005-1 C.B. 289, the IRS adopted this list, with some modifications, as its initial SAT list. Notice 2005-80, 2005-2 C.B. 953, modified the SAT list. Currently, these documents are the only public record of the SAT list.

SECTION 3. LAW

Section 4081(a)(1)(A)(i) and (ii) impose tax on the removal of taxable fuel, which includes kerosene, from any refinery or terminal.

Section 4081(a)(2)(A)(iii) prescribes a tax rate of 24.3 cents per gallon of kerosene for the tax imposed by § 4081(a)(1)(A). Section 4081(a)(2)(B) imposes an additional tax of 0.1 cent per gallon (referred to as the LUST financing rate).

Section 4081(a)(2)(C) reduces the tax rates on kerosene used in aviation under certain conditions. In the case of kerosene that is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in aviation, the rate of tax under § 4081(a)(2)(A)(iii) is reduced from 24.3 cents per gallon to (i) 4.3 cents per gallon in the case of use for commercial aviation by a person registered for such use under § 4101 or (ii) 21.8 cents per gallon for use in the case of any aviation not described by § 4081(a)(2)(C)(i).

Section 4081(a)(3)(A) provides that, for purposes of § 4081(a)(2)(C), a refueler truck, tanker, or tank wagon shall be treated as part of a terminal if (i) such terminal is located within an airport, (ii) any kerosene which is loaded in such truck, tanker, or wagon at such terminal is for delivery only into aircraft at the airport in which such terminal is located, (iii) such truck, tanker, or wagon meets the requirements of § 4081(a)(3)(B) with respect to such terminal, and (iv) except in the case of exigent circumstances identified by the Secretary in regulations, no vehicle registered for highway use is loaded with kerosene at such terminal.

Section 4081(a)(3)(B) provides that refuelers meet the requirements of § 4081(a)(3) with respect to a terminal (and are therefore treated as part of a terminal) if such refueler—(i) has storage tanks, hose, and coupling equipment designed and used for the purposes of fueling aircraft, (ii) is not registered for highway use, and (iii) is operated by—(I) the terminal operator of such terminal, or (II) a person that makes a daily accounting to such terminal operator of each delivery of fuel from such refueler.

Section 4081(a)(3)(C) provides that the Secretary shall require under § 4101(d) reporting by such terminal operator of—(i) any information obtained under § 4081(a)(3)(B)(iii)(II) (that is, the daily accountings to terminal operators of fuel deliveries made by other persons operating refuelers), and (ii) any similar information maintained by such terminal operator with respect to deliveries of fuel made by refuelers operated by such terminal operator.

Section 4081(a)(3)(D) provides that (i) in the case of kerosene treated as removed from a terminal by reason of § 4081(a)(3), the rate of tax specified in § 4081(a)(2)(C)(i) (that is, 4.3 cents per gallon plus .1 cent per gallon LUST) applies if

such terminal is located within a secured area of an airport, and (ii) in all other cases, the rate of tax specified in § 4081(a)(2)(C)(ii) (that is, 21.8 cents per gallon plus .1 cent per gallon LUST) applies.

Section 4082(e) provides that in the case of kerosene (other than kerosene with respect to which tax is imposed under § 4043) which is exempt from the tax imposed by § 4041(c) (other than by reason of a prior imposition of tax, for example, because of the operation of § 4041(f) or (g)) and which is removed from any refinery or terminal directly into the fuel tank of an aircraft (1) the rate of tax under § 4081(a)(2)(A)(iii) shall be zero and (2) if such aircraft is employed in foreign trade or trade between the United States and any of its possessions, the increase in such rate under § 4081(a)(2)(B) shall be zero. For purposes of § 4082(e), any removal described in § 4081(a)(3)(A) shall be treated as a removal from a terminal but only if such terminal is located within a secure area of an airport.

Section 4083(d)(1) provides that the Secretary may in administering compliance with subpart A of part III of subchapter A of chapter 32 (motor and aviation fuels), § 4041, and penalties and other administrative provisions related thereto—(A) enter any place at which taxable fuel is produced or is stored (or may be stored) for purposes of— (i) examining the equipment used to determine the amount or composition of such fuel and the equipment used to store such fuel, (ii) taking and removing samples of such fuel, and (iii) inspecting any books and records and any shipping papers pertaining to such fuel, and (B) detain, for the purposes referred in § 4083(d)(1)(A), any container which contains or may contain any taxable fuel.

Section 48.4101-1(c)(1)(vi) of the Manufacturers and Retailers Excise Tax regulations requires a terminal operator to register under § 4101.

SECTION 4. SAT DESIGNATION CRITERIA

In order to be designated as a SAT, a terminal must meet the following criteria:

- (1) The terminal operator requests that the terminal be designated as a SAT according to the procedures in § 5 of this notice.
- (2) The terminal operator is registered as a terminal operator under § 4101.
- (3) The terminal is a terminal within the meaning of § 48.4081-1;
- (4) The terminal is located within an airport;
- (5) Only authorized vehicles are allowed to enter and exit the terminal;
- (6) Kerosene received, stored, and removed is exclusively for delivery into the fuel tank of an aircraft at the terminal;
- (7) Kerosene delivery into the fuel tank of an aircraft is made directly from the terminal, such as through a hydrant system, or by qualifying refuelers, as defined in § 4081(a)(3) that are used only to transport and deliver kerosene into the fuel tank of an aircraft.
- (8) Except in the case of exigent circumstances identified by the Secretary in regulations, no vehicle registered for highway use is loaded with kerosene at such terminal.
- (9) The terminal has security measures that are consistent with customary business security practices designed to resist access to the terminal by unauthorized personnel and unauthorized vehicles.

SECTION 5. SAT LIST MAINTENANCE PROCESS

.01 Procedures to request SAT status.

(1) The terminal operator must request, in writing, that the IRS add the terminal to the SAT list by mailing the request to Department of the Treasury, Internal Revenue Service, Excise Operations Unit – Stop 5701G, Cincinnati, OH 45999. Requests must have “Excise Tax - SAT Request – Stop 5701G” written at the top center of the request and must include the following information:

- a. Name of entity making the request
- b. Employer identification number
- c. Mailing address
- d. Terminal control number (TCN)
- e. Contact person

(2) The IRS will arrange for one or more IRS representatives such as a revenue agent or a fuel compliance officer to perform an onsite inspection of the terminal to inspect for compliance with the criteria described in § 4 of this notice.

- a. If the IRS approves the request, generally within 60 days from receipt of the request, the IRS will issue the terminal operator a SAT approval letter. SAT designation is valid upon the issuance of the SAT approval letter. The IRS will also add the terminal to the SAT list.
- b. If the IRS denies the request, generally within 60 days from receipt of the request, the IRS will inform the terminal operator of the reason for the denial in writing. The applicant will have 10 business days from the date of the denial letter within which to submit a written appeal of the denial under procedures specified in § 5.01(3) of this notice. If the

applicant does not appeal the denial, the applicant may submit another request for SAT designation after 10 days from the date of the denial letter. In addition to the information required in § 5.01(1) of this notice, the applicant must explain what has changed since the earlier denial to make the terminal eligible for SAT designation.

- (3) The following appeal procedures will apply to contested denials:
- a. The applicant may submit a written appeal of the denial to the Chief of Excise Tax Examination for a final determination.
 - b. The applicant must send the request to the address provided in § 5.01(1) of this notice and include the information required in that section. The request must also explain why the applicant thinks the application should not be denied.
 - c. If the Chief of Excise Tax Examination concurs with the denial, the IRS will issue the applicant a written letter denying its appeal for SAT designation. If the Chief of Excise Tax Examination determines that the IRS should grant the SAT designation, the IRS will issue the applicant a letter of approval.
 - d. The applicant has no further administrative recourse if it disagrees with a denial on appeal and must submit another request for SAT designation under procedures described in § 5.01(2)(b) of this notice.

.02 Requirements after SAT approval

- (1) A terminal operator of a SAT must notify the IRS in writing within 10 days when there are changes in business operations, including changes in refueling

equipment, security measures, owners/operators, or any other change to any of the SAT designation criteria listed in § 4 of this notice.

(2) Upon receipt or discovery of information that a terminal no longer qualifies for the SAT designation, the IRS may confirm that the terminal no longer complies with the SAT criteria, and issue a written notification to the terminal operator that the terminal's SAT status will be revoked and the terminal removed from the SAT list no earlier than 10 business days from the date of the written notification.

(3) A terminal operator may appeal the notification of revocation through the following appeal procedures:

- a. The terminal operator submits a written appeal of the notice of revocation to the Chief of Excise Tax Examination for a final determination within 10 business days from the date of the written notification.
- b. The terminal operator must send the request to the address provided in § 5.01(1) of this notice and include the information required in that section. The request must also explain why revocation would be inappropriate.
- c. If the Chief of Excise Tax Examination concurs with the revocation, the IRS will issue the terminal operator a letter in writing denying its appeal. If the Chief of Excise Tax Examination determines that the IRS should not revoke the SAT designation, the IRS will issue the terminal operator a letter withdrawing the notice of revocation.

- d. The applicant has no administrative recourse if it disagrees with a denial on appeal and must submit another request for SAT designation under the procedure described in § 5.01(2) of this notice that applies following a denial of SAT designation.

SECTION 6. THE SAT LIST

(1) As of March 8, 2016, the following airports include an approved SAT and the terminal operator does not need to request SAT approval for that terminal. The airports are listed by the airport name and the TCN of the approved SAT.

Baltimore/Washington International Airport, T-52-MD-1569;
 Bradley International Airport, T-06-CT-1271;
 Charlotte/Douglas International Airport, T-56-NC-2032;
 Cincinnati/Northern Kentucky International Airport, T-61-KY-3277;
 Cleveland Hopkins International Airport, T-31-OH-3109;
 Colorado Springs Airport, T-84-CO-4108;
 Dallas Fort Worth International Airport, T-75-TX-2673;
 Dallas Love Field Airport, T-75-TX-2663;
 Denver International Airport, T-84-CO-4111;
 Dulles International Airport, T-54-VA-1676;
 Federal Express Corporation Memphis Airport, T-62-TN-2220.
 Fort Lauderdale/Hollywood International Airport; T-65-FL-2158;
 General Mitchell International Airport, T-39-WI-3092;
 George Bush Intercontinental Airport, T-76-TX-2818;
 Honolulu International Airport, T-91-HI-4570;
 John F. Kennedy International Airport, T-11-NY-1334;
 Kansas City International Airport, T-43-MO-3723;
 Lambert International Airport, T-43-MO-3722;
 Logan International Airport, T-04-MA-1171;
 Los Angeles International Airport, T-95-CA-4812;
 Louis Armstrong New Orleans International Airport, T-72-LA-2356;
 McCarren International Airport, T-86-NV-4355;
 Memphis International Airport, T-62-TN-2212;
 Mid Continent Airport, T-43-KS-3653;
 Midway Airport, T-36-IL-3376;
 Minneapolis-St. Paul International Airport, T-41-MN-3419;
 Minneapolis-St. Paul International Airport, T-41-MN-3420;

Minneapolis–St. Paul International Airport, T–41–MN–3421;
 Nashville Metropolitan Airport, T–62–TN–2222;
 Newark Liberty International Airport, T–22–NJ–1532;
 Oakland International Airport, T–94–CA–4702;
 O'Hare International Airport, T–36–IL–3325;
 Ontario International Airport, T–33–CA–4792;
 Orlando International Airport, T–59–FL–2111;
 Philadelphia International Airport, T–23–PA–1770;
 Piedmont Triad International Airport, T–56–NC–2038;
 Pittsburgh International Airport, T–23–PA–1766;
 Portland International Airport, T–91–OR–4450;
 Raleigh/Durham International, T–56–NC–2045;
 Reno Cannon International Airport, T–86–NV–4352;
 Ronald Reagan National Airport, T–54–VA–1686;
 Salt Lake City International Airport, T–84–UT–4207;
 San Diego International Airport, T–33–CA–4788;
 San Francisco International Airport, T–94–CA–4701;
 Seattle Tacoma International Airport, T–91–WA–4425;
 Sky Harbor International Airport, T–86–AZ–4302;
 Tampa/St. Petersburg International Airport, T–59–FL–2110;
 Ted Stevens International Airport, T–91–AK–4520;
 Wayne County Metropolitan Airport, T–38–MI–3018;
 William B. Hartsfield Atlanta International Airport, T–58–GA–2512;
 William B. Hartsfield Atlanta International Airport, T–58–GA–2513;
 William B. Hartsfield Atlanta International Airport, T–58–GA–2536;

(2) The IRS will maintain a current SAT list, which will be publicly available on the IRS website (in Microsoft Excel and PDF formats). The list will include the name of the airport and the TCN, or other such number the IRS may use for SAT designation, of the approved SAT.

SECTION 7. EFFECTIVE/APPLICABILITY DATES

This Notice is effective March 8, 2016.

SECTION 8. DRAFTING INFORMATION

The principal author of this notice is Rachel S. Smith of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, please contact Ms. Smith at (202) 317-6855 (not a toll-free call).