

Temporary Relief for Fuel Removals Due to Energy Emergencies Resulting from West Shore Pipeline Shutdown

Notice 2017-30

SECTION 1. PURPOSE

This notice provides 180-day emergency relief for fuel removals from Milwaukee terminals due to energy emergencies resulting from the shutdown of the West Shore Pipeline. Once the 180-day emergency relief described in this notice expires, there will be subsequent temporary relief that provides a mechanism for refunds of the § 4081(a)(1) tax imposed upon removals of undyed diesel fuel and kerosene from the Milwaukee terminals when such fuel is subsequently removed from the Green Bay terminals as dyed fuel destined for a nontaxable use.

SECTION 2. BACKGROUND

.01 West Shore Pipeline Shutdown

The West Shore Pipeline is a 650-mile pipeline system that has transported refined petroleum products to the northeastern part of Wisconsin for over 50 years. The West Shore Pipeline is the only fuel pipeline serving Green Bay and northeastern Wisconsin. The West Shore Pipeline segment between the cities of Milwaukee and Green Bay closed on March 10, 2016, for repairs, testing, and inspections. On June 22, 2016, this segment of the West Shore Pipeline was shut down indefinitely after integrity concerns were detected. On April 21, 2017, the Wisconsin Department of

Administration issued a statement that this segment of the West Shore Pipeline will not be replaced. Due to this unanticipated shut down and the decision that this section of the pipeline will not be replaced or reactivated, the areas of Green Bay and northeast Wisconsin are expected to have material fuel shortages for a relatively long period of time. In response to this shut down and the resulting fuel shortages, Wisconsin Governor Scott Walker issued Executive Orders on May 6, 2016, September 7, 2016, and November 4, 2016, declaring energy emergencies.

Fuel is currently being removed from the Milwaukee terminals and transported via tank trucks and/or rail cars to Green Bay terminals in order to mitigate and avoid material fuel shortages and supply fuel to the northern portion of Wisconsin during the West Shore Pipeline outage. Aside from vessels, transporting fuel via tank trucks and rail cars is the only way to get fuel to Green Bay for distribution now that the pipeline is permanently shut down.

.02 Law

Section 4081(a)(1)(A)(ii) imposes tax on the removal of taxable fuel, which includes gasoline and diesel fuel, from any terminal.

Section 48.4081-1(b) of the Manufacturers and Retailers Excise Taxes Regulations defines “removal” as any physical transfer of taxable fuel, and any use of taxable fuel other than as a material in the production of taxable fuel or special fuels. Taxable fuel is not removed when it evaporates or is otherwise lost or destroyed.

Section 4081(a)(1)(B)(i) provides an exemption from the tax imposed by § 4081(a)(1)(A) for removals of taxable fuel transferred in bulk by pipeline or vessel to registered terminals.

Section 48.4081-2 provides the rules regarding tax on the removal of taxable fuel at the terminal rack.

Section 4081(a)(2)(A)(i) prescribes a tax rate of 18.3 cents per gallon of gasoline 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 Leaking Underground Storage Tank Trust Fund tax or the LUST tax).

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

Section 4081(e) provides that, under regulations prescribed by the Secretary, if any person who paid the tax imposed by § 4081 with respect to any taxable fuel establishes to the satisfaction of the Secretary that a prior tax was paid (and not credited or refunded) with respect to such taxable fuel, then an amount equal to the tax paid by such person shall be allowed as a refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4081.

Section 48.4081-7 sets forth the reporting requirements and other conditions for claiming a refund under § 4081(e).

Section 4082 provides that the tax imposed by § 4081 does not apply to diesel fuel and kerosene that is indelibly dyed in accordance with Treasury regulations, meets any marking requirements prescribed by Treasury regulations, and is destined for a nontaxable use.

.03 Reasons for Relief

Under existing law, tax is imposed under § 4081(a)(1) upon the removal of taxable fuel from the Milwaukee terminals (referred to as the first tax). The taxable fuel that is transported to and entered into the Green Bay terminals is subject to a second § 4081(a)(1) tax upon removal from the Green Bay terminals (referred to as the second tax). Section 4081(e) and § 48.4081-7 provide a refund mechanism that allows the person who pays the second tax, i.e., the position holder in Green Bay, to claim a refund (but not a credit) in the amount of the second tax paid (without interest). In the case of dyed fuel, there is no mechanism in existing law that allows a refund for taxable fuel that is removed from a Milwaukee terminal, transported to and entered into a Green Bay terminal, and dyed pursuant to the provisions of § 4082.

The Treasury Department and the Internal Revenue Service (IRS) recognize that position holders in Milwaukee will need time to adjust sales contracts and business practices and to explore the possibility of increasing bulk transfers via vessel in order to account for the imposition of the § 4081(a)(1) tax upon the removal of taxable fuel from the Milwaukee terminals now that the West Short Pipeline is permanently closed. Accordingly, the Treasury Department and the IRS are providing temporary emergency relief from the removal rules under § 4081(a)(1)(A) and § 48.4081-2(b) for a period of 180 days, subject to the conditions in section 3 of this notice. This relief will temporarily put position holders in the Milwaukee terminals in the same position as they were prior to the shutdown of the West Shore pipeline. Following the expiration of the temporary emergency relief described in section 3.01 of this notice, relief is available through § 4081(e), which allows position holders in the Green Bay terminals to claim a refund

(but not a credit) of the second tax imposed upon the removal of taxable fuel from the Green Bay terminals.

The Treasury Department and the IRS also recognize that there is no mechanism under existing law that permits a refund of the § 4081(a)(1) tax imposed upon removal of taxable fuel from a Milwaukee terminal when that fuel is transported to and entered into a Green Bay terminal, and then removed from the Green Bay terminal as dyed fuel destined for a nontaxable use. Accordingly, the Treasury Department and the IRS are providing a temporary refund mechanism for the first tax paid on the taxable fuel when it is removed from a Milwaukee terminal, transported to and entered into a Green Bay terminal, and later removed from that Green Bay terminal as dyed fuel destined for a nontaxable use. Under this temporary relief, the person who dyes the fuel at the rack in Green Bay will be allowed to claim a refund (without interest) of the first tax. The refund provision under this temporary relief will be similar to the refund provision for taxable fuel under § 4081(e) in that the same person is allowed to make the claim for refund (i.e., the position holder who removes the taxable or dyed fuel from the Green Bay terminal).

SECTION 3. TEMPORARY RELIEF

.01 180-Day Emergency Relief

For the period beginning on May 3, 2017 and ending on October 30, 2017, tax will be imposed under § 4081(a)(1)(A)(ii) and § 48.4081-2(b) on the removal of taxable fuel from a terminal rack in Milwaukee, unless the fuel is transported by tank truck or rail car and entered into a Green Bay terminal within 24 hours of its removal from the Milwaukee terminal. If such fuel is entered into a Green Bay terminal within 24 hours of

its removal from a Milwaukee terminal, the fuel will be subject to tax under § 4081(a)(1)(A)(ii) upon its removal from the Green Bay terminal rack, unless § 4082 applies. All existing rules under § 4081 and § 48.4081-2 apply once the fuel removed from a Milwaukee terminal is entered into a Green Bay terminal in accordance with the requirements prescribed in this section.

This relief is subject to satisfaction of all of the conditions to relief set forth in section 3.03 of this notice. Upon the termination of this 180-day emergency relief, the normal rules of § 4081(a)(1)(A)(ii) and § 48.4081-2(b) will apply to removals of taxable fuel from the Milwaukee terminals.

.02 Temporary Dyed Fuel Relief

For the period beginning on October 31, 2017, and ending on May 3, 2018, if any person who removes diesel fuel or kerosene that satisfies the requirements of § 4082 from a Green Bay terminal establishes to the satisfaction of the Secretary that a prior tax was paid with respect to the removal of such fuel from a Milwaukee terminal, then an amount equal to the prior tax paid shall be allowed as a refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by § 4081. No refund will be allowed unless the fuel removed from a Milwaukee terminal was transported by tank truck or rail car and entered into a Green Bay terminal within 24 hours of its removal from the Milwaukee terminal.

The Treasury Department and the IRS will publish guidance on how to submit claims for refund pursuant to this section 3.02 prior to the expiration of the relief described in section 3.01 of this notice. The relief in this section 3.02 will be subject to satisfaction of all of the conditions to relief set forth in section 3.03 of this notice.

.03 Conditions to Relief

The relief granted in sections 3.01 and 3.02 of this notice is available only if all of the following conditions are satisfied:

- (1) The segment of the West Shore Pipeline between Milwaukee and Green Bay remains permanently and completely shut down.
- (2) All operators of terminals from which fuel is removed or entered pursuant to the relief granted in sections 3.01 and 3.02 of this notice must timely and accurately satisfy Excise Summary Terminal Activity Reporting System (ExSTARS) reporting obligations by filing Form 720-TO, Terminal Operator Report, as required by § 4101(d) and § 48.4101-1(h)(1)(iii). Form 720-TO filers are reminded of the information reporting requirements under § 4101(d) and the penalty provisions of § 6725 for any failure to report and any failure to include all of the information required to be shown on such report or the inclusion of incorrect information.
- (3) All position holders with respect to fuel removed or entered pursuant to the relief granted in sections 3.01 and 3.02 of this notice must keep records pursuant to § 48.4101-1(h)(1)(ii) that sufficiently show tax liability under § 4081 and payments or deposits of such liability.
- (4) The same person who removes taxable fuel from a Milwaukee terminal (i.e., the position holder in the Milwaukee terminal) must enter the fuel into a Green Bay terminal within 24 hours of its removal from the Milwaukee terminal.

The relief set forth in sections 3.01 and 3.02 of this notice is not available with

respect to any transaction for which one or more conditions set forth in this section 3.03 are not satisfied.

SECTION 4. EFFECTIVE DATES

The 180-day emergency relief provided in section 3.01 of this notice applies to removals from Milwaukee terminals on or after May 3, 2017, and before October 31, 2017.

The temporary dyed fuel relief provided in section 3.02 of this notice applies to removals of diesel fuel and kerosene from Green Bay terminals on or after October 31, 2017, and before May 4, 2018.

SECTION 5. DRAFTING INFORMATION

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