

Temporary Relief for Fuel Removals Destined for Nontaxable Use Due to West Shore Pipeline Shutdown

Notice 2017-59

SECTION 1. PURPOSE

This notice provides rules claimants must follow to submit a claim for refund pursuant to the temporary relief provided in section 3.02 of Notice 2017-30, 2017-21 I.R.B. 1248, published on May 22, 2017. A claimant may submit a refund claim for the Internal Revenue Code (Code) § 4081(a)(1) tax imposed on undyed diesel fuel and kerosene for fuel that is 1) removed from a Milwaukee terminal; 2) entered into a Green Bay terminal within 24 hours of removal from that Milwaukee terminal; and 3) subsequently dyed and removed from that Green Bay terminal.

SECTION 2. BACKGROUND

.01 West Shore Pipeline Shutdown and Emergency Fuel Tax Relief.

On May 22, 2017, the Treasury Department and the Internal Revenue Service (IRS) published Notice 2017-30 in response to energy emergencies in Wisconsin resulting from the permanent shutdown of the segment of the West Shore Pipeline between Milwaukee and Green Bay. Section 3.01 of Notice 2017-30 provides one time 180-day temporary emergency relief for fuel removals from Milwaukee terminals that take place on or after May 3, 2017, and before October 31, 2017.

Section 3.02 of Notice 2017-30 provides that once the 180-day temporary emergency relief expires, the Treasury Department and IRS will provide a temporary refund mechanism for the § 4081(a)(1) tax imposed upon removals of undyed diesel fuel and kerosene from a Milwaukee terminal when such fuel is subsequently removed from a Green Bay terminal as dyed fuel destined for a nontaxable use. Section 3.02 of Notice 2017-30 further states that the Treasury Department and the IRS will publish additional guidance on how persons eligible for relief under section 3.02 of Notice 2017-30 may submit claims for refund. This notice provides that guidance.

.02 Law.

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

Section 48.4081-1(b) of the Manufacturers and Retailers Excise Tax Regulations (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 of the regulations provides the rules regarding tax on the removal of taxable fuel at the terminal rack. Under § 48.4081-2(a), the position holder with respect to the fuel removed at the terminal rack is generally liable for the 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 a tax of 0.1 cent per gallon (referred to as the Leaking Underground Storage Tank Trust Fund tax or the LUST tax) in addition to the tax imposed by § 4081(a)(1)(A)(ii).

Section 4081(e) provides that, under regulations prescribed by the Secretary, if any person that 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 § 4081.

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

Section 4082(a) 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.

Section 4082(b) prescribes the types of uses that are nontaxable for purposes of the exemption provided in § 4082(a).

Section 4082(f) provides that the exemption provided in § 4082(a) does not apply to the LUST tax. As a result, a person not liable for the tax on diesel fuel and kerosene because of the exemption provided in § 4082(a) is still liable for the LUST tax on the otherwise tax exempt diesel fuel and kerosene.

Sections 48.4082-1 and Notice 2005-80, 2005-2 C.B. 953, provide rules and conditions for the exemption provided by § 4082(a) to apply to the removal, entry, or sale of any diesel fuel or kerosene.

SECTION 3. RULES FOR TEMPORARY DYED FUEL RELIEF

.01 Temporary Dyed Fuel Relief.

For the period beginning on October 31, 2017, and ending on May 3, 2018, if any person (that is, the position holder) that 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 the position holder in the same manner as if it were an overpayment of tax imposed by § 4081.

The relief described in this section 3.01 is not available with respect to any transaction for which one or more conditions set forth in section 3.02 of this notice are not satisfied or for any refund claim that fails to comply with the procedures set forth in sections 3.03 and 3.04 of this notice.

.02 Conditions to Relief.

The relief described in section 3.01 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 diesel fuel or kerosene is removed or entered pursuant to the relief described in section 3.01 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 diesel fuel or kerosene removed or entered pursuant to the relief described in section 3.01 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 that removes undyed diesel fuel or kerosene from a Milwaukee terminal (that is, the position holder in the Milwaukee terminal) must enter the undyed diesel fuel or kerosene into a Green Bay terminal within 24 hours of its removal from the Milwaukee terminal.

(5) If a position holder at the Green Bay terminal commingles tax-paid diesel fuel or kerosene with untaxed diesel fuel or kerosene, the position holder must identify the undyed diesel fuel or kerosene destined for a nontaxable use by any reasonable method, including a first-in, first-out method applied either on a tank-by-tank basis or on an aggregate basis to all commingled undyed diesel or kerosene fuel held by the position holder at the Green Bay terminal.

(6) A position holder that removes undyed diesel fuel or kerosene from a Milwaukee terminal and enters the undyed diesel fuel or kerosene into a Green Bay terminal as described in section 3.02(4) of this notice must comply with the

requirements of § 48.4081-7. Therefore, the position holder must prepare and file the report described in § 48.4081-7(c)(1) (the First Taxpayer's Report) in the manner described in the regulations and the *Instructions for Form 720*. The position holder must provide a copy of the First Taxpayer's Report to the purchasing position holder.

(7) A position holder that removes undyed diesel fuel or kerosene from a Milwaukee terminal and enters the undyed diesel fuel or kerosene into a Green Bay terminal as described in section 3.02(4) of this notice and who is also the position holder of that fuel when it is removed as dyed fuel from the Green Bay terminal, must file Form 720, *Quarterly Federal Excise Tax Return*, and remit the § 4081 tax prior to submitting a claim for refund pursuant to this notice, for the quarter to which the claim relates.

(8) A position holder that removes undyed diesel fuel or kerosene from a Milwaukee terminal and enters the undyed diesel fuel or kerosene into a Green Bay terminal as described in section 3.02(4) of this notice must maintain detailed records that include matching bill of lading numbers for each removal of undyed diesel fuel or kerosene from a Milwaukee terminal to bill of lading receipts of undyed diesel fuel or kerosene received at a Green Bay terminal.

(9) A position holder that submits a claim for refund pursuant to this notice must follow all of the procedures set forth in sections 3.03 and 3.04 of this notice.

.03 How to Submit a Claim for Refund under this Notice.

A position holder seeking the relief described in section 3.01 of this notice must follow the procedures listed in this section 3.03 in order to receive a refund of § 4081(a)(1) tax. Failing to follow the procedures listed in this section 3.03 will result in substantial delays in processing the claim and may result in the IRS denying the claim.

If the conditions to relief described in section 3.02 of this notice are met, and the position holder follows the procedures in this section 3.03 to claim a refund, the IRS will treat the claim in a manner similar to a § 4081(e) claim where the claimant paid a second tax.

The relief described in section 3.01 of this notice is available only if all of the procedures listed below are followed:

(1) The position holder must submit refund claims on Form 8849, *Claim for Refund of Excise Taxes*. The position holder must write "CLAIM PURSUANT TO NOTICE 2017-59" across the top of the first page of the form.

(2) The position holder must include Schedule 5 (Form 8849), *Section 4081(e) Claims*, with their refund claim. In column (d) of Part II on Schedule 5 (Form 8849), enter the date that the dyed diesel fuel or kerosene was removed from the rack at a Green Bay terminal. In column (f) of Part II on Schedule 5 (Form 8849) enter the amount of the first tax (including LUST tax, provided LUST tax was paid upon removal from the rack at a Green Bay terminal) imposed on the diesel fuel or kerosene when it was removed from a Milwaukee terminal.

(3) The position holder must follow the instructions to Form 8849 and Schedule 5 (Form 8849) when preparing a refund claim to the extent that those instructions do not conflict with this notice.

(4) The position holder must include with its refund claim copies of the First Taxpayer's Reports (and, if applicable, the statement described in § 48.4081-7(c)(4)(iii) (Statement of Subsequent Seller)) that were received from the person that removed the

undyed diesel fuel or kerosene from a Milwaukee terminal (see section 3.02(6) of this notice) for the fuel to which the refund claim relates.

(5) The refund claim must not include any fuel other than undyed diesel fuel or kerosene removed from a Milwaukee terminal that was received at a terminal in Green Bay (within the 24 hour period described in section 3.02 of this notice), subsequently dyed in accordance with § 48.4082-1 and Notice 2005-80, and then removed from the terminal in Green Bay.

.04 Time for Filing Claim Made Under this Notice.

Generally, a position holder may file a claim for refund under this notice any time after the removal at a Green Bay terminal rack of the dyed diesel fuel or kerosene to which the claim relates, and before the end of the period prescribed by § 6511 for filing a claim for refund. A position holder described in section 3.02(7) of this notice may not claim a refund under this notice prior to filing the Form 720 and remitting the § 4081 tax for the quarter to which the claim relates.

SECTION 4. EFFECTIVE DATE

The temporary dyed fuel relief described in section 3.01 of this notice applies to removals of dyed diesel fuel and kerosene from Green Bay terminals on or after October 31, 2017, and before May 4, 2018.

SECTION 5. WHOM TO CONTACT FOR ADDITIONAL INFORMATION

For questions regarding the conditions set forth in section 3.02 of this notice or the refund procedures provided in sections 3.03 and 3.04 of this notice, contact Michel Monconduit at (657) 247-3355 (not a toll-free call).

SECTION 6. DRAFTING INFORMATION

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