

# Request for Comments on Excise Tax Regulations Regarding Fuel Used in a Motor Vehicle Power Take-off or Power Transfer

Notice 2019-10

## **SECTION 1. PURPOSE**

This notice requests public comments on possible changes to the rules that govern the excise tax treatment of fuel used in a motor vehicle to operate auxiliary equipment, under §§ 4041, 4081, 6421 and 6427 of the Internal Revenue Code. Specifically, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) are considering revisiting the treatment of fuel used in a motor vehicle to operate special or auxiliary equipment unrelated to the propulsion of the vehicle by means of a power take-off or power transfer (collectively “PTO”). Under §§ 48.4041-7, 48.6421-1(d), and 48.6427-1(d) of the Manufacturers and Retailers Excise Tax Regulations, fuel used by the propulsion motor of a highway vehicle is subject to tax, including fuel used by the motor to operate auxiliary equipment through a PTO.

Generally, fuel used in an off-highway business use, within the meaning of § 6421(e)(2), is exempt from tax.<sup>1</sup> Sections 48.4041-7, 48.6421-1(d), and 48.6427-1(d) exempt (or allow a credit or payment for) fuel used in a highway motor vehicle to power auxiliary equipment through a separate motor (that is, a motor that does not propel the vehicle) if certain requirements are met. The regulations do not exempt fuel used in a highway motor vehicle to power auxiliary equipment if the auxiliary equipment is

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<sup>1</sup> See § 4041(b)(1), § 6421(a) and (e)(2)(A), and § 6427(l)(2).

powered by the propulsion motor by means of a PTO. Industry groups have requested that the Treasury Department and the IRS revisit §§ 48.4041-7, 48.6421-1(d), and 48.6427-1(d), stating that technological advances now allow highway motor vehicle operators to quantify the fuel used to power auxiliary equipment through a PTO and that PTOs provide greater fuel efficiency than separate motors, when used to power such equipment.

In response, this notice requests public comments on whether the excise tax exemption for the off-highway business use of fuel should be applied to fuel used by a vehicle's propulsion motor to power auxiliary equipment unrelated to the propulsion of the vehicle. Specifically, the Treasury Department and the IRS request comments on how such an exemption could be applied equitably across different industries and categories of highway motor vehicles, and on how highway motor vehicle operators could effectively document and support an exemption with respect to the various categories of highway motor vehicles and auxiliary equipment powered through a PTO.

## **SECTION 2. BACKGROUND**

Section 4041(a)(1) imposes a tax on any liquid other than gasoline (as defined in § 4083) that is (i) sold by any person to an operator of a diesel-powered highway vehicle for use as a fuel in such vehicle, or (ii) used by any person as a fuel in a diesel-powered highway vehicle unless there was a taxable sale of the fuel under clause (i). No tax is imposed, however, on the sale or use of any liquid on which tax was imposed under § 4081 (other than tax at the Leaking Underground Storage Tank Trust Fund financing rate) and not credited or refunded.

Section 4041(b)(1)(A) provides an exemption from the tax imposed by § 4041(a) for certain fuels sold for use or used in an off-highway business use. Under § 4041(b)(1)(C), the term “off-highway business use” has the meaning given to such term by § 6421(e)(2), except that such term does not, for purposes of § 4041(a)(1), include use in a diesel-powered train.

Section 4081 imposes tax on certain removals, entries, and sales of taxable fuel.

Section 4083(a)(1) provides that the term “taxable fuel” means gasoline, diesel fuel, and kerosene.

Section 6421(a) provides that if gasoline is used in an off-highway business use, the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the amount determined by multiplying the number of gallons so used by the rate at which tax was imposed on such gasoline under § 4081.

Section 6421(e)(2)(A) defines the term "off-highway business use" generally to mean any use by a person in a trade or business of such person or in an activity of such person described in § 212 (relating to production of income) otherwise than as a fuel in a highway vehicle.

Section 6427(l)(1) provides that except as otherwise provided in § 6427(l) and in § 6427(k), if any diesel fuel or kerosene on which tax has been imposed by § 4041 or § 4081 is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under § 4041 or § 4081, as the case may be, reduced by any payment made to the ultimate vendor under § 6427(l)(4)(C)(i).

Section 6427(l)(2) defines the term “nontaxable use,” for purposes of § 6427(l), to mean any use which is exempt from the tax imposed by § 4041(a)(1) other than by reason of a prior imposition of tax.

Under § 48.4041-7, tax applies to all taxable liquid fuel sold for use or used as a fuel in the motor which is used to propel a diesel-powered vehicle or in the motor used to propel a motor vehicle, motorboat, or aircraft, even though the motor is also used for a purpose other than the propulsion of the vehicle, motorboat, or aircraft. Thus, if the motor of a diesel-powered highway vehicle or a motorboat operates special equipment by means of a power take-off or power transfer, tax applies to all taxable liquid fuel sold for this use or so used, whether or not the special equipment is mounted on the vehicle or boat. For example, tax applies to diesel fuel sold to operate the mixing unit on a concrete mixer truck if the mixing unit is operated by means of a power take-off from the motor of the vehicle. Similarly, tax applies to all taxable liquid fuel sold for use or used in a motor propelling a fuel oil truck even though the same motor is used to operate the pump (whether or not mounted on the truck) for discharging the fuel into customers’ storage tanks. However, tax does not apply to liquid fuel sold for use or used in a separate motor to operate special equipment (whether or not the equipment is mounted on the vehicle).

Section 48.6421-1(d)(1) provides that no credit or payment may be claimed in respect of gasoline used in a highway vehicle used in a trade or business or for the production of income solely by reason of the fact that the propulsion motor in the vehicle is also used for a purpose other than the propulsion of the vehicle. Thus, if the propulsion motor of a highway vehicle (used in a trade or business or for the production

of income) also operates special equipment, such as a mixing unit on a concrete mixer truck or a pump for discharging fuel from a tank truck, by means of a power take-off or power transfer, no credit or payment may be claimed in respect of the gasoline used to operate the special equipment.

Section 48.6427-1(d) provides that the principles set forth in § 48.4041-7, relating to dual use of fuel, for determining whether liability is incurred under § 4041 at the time of sale of the fuel, are equally applicable in determining whether a credit or payment is to be allowed under § 48.6427-1.

In 2005, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. No. 109-59, 119 Stat. 1144 (2005). Section 11144 of SAFETEA-LU generally requires the Secretary of the Treasury, in consultation with the Secretary of Transportation, to study the use of highway motor fuel by trucks other than for the propulsion of the vehicle, including reviewing the technical and administrative feasibility of exempting the nonpropulsive use of highway fuels from highway motor fuels excise taxes, and, if such exemptions are technically and administratively feasible, to propose options for implementing such exemptions for any highway vehicle which consumes fuel for both transportation and non-transportation-related equipment, using a single motor, and to report the findings.

In response to this statutory directive, the IRS published the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Section 11144 – PTO Report, in July of 2007 (2007 report).<sup>2</sup> The 2007 report found that over time there had been a decline in the manufacture and use of dual motor vehicles

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<sup>2</sup> Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Section 11144 – PTO Report, SB/SE Research – Philadelphia, Project ID – PHL0019 (July 2007).

with a single fuel tank, and an increase in the use of motor vehicles that power auxiliary equipment by means of a PTO. This means that there is a potential increase in fuel used for auxiliary purposes for which the exemptions do not apply under the current rules. Industries that used auxiliary equipment on motor vehicles commented that operating the equipment by means of a PTO was more fuel efficient than operating the equipment by separate motor. Several stakeholders described technological advances designed to allow motor vehicle operators to track and quantify fuel used to propel the vehicle and, separately, fuel used to operate auxiliary equipment through a PTO. The 2007 report also identified many practical concerns with exempting PTO fuel usage. For instance, the 2007 report noted that the validation and determination of equitable PTO allowance rates by type of PTO vehicle could be a challenge to exempting PTO fuel usage. The concerns identified in the 2007 report are consistent with the comments requested in Section 3 of this notice.

### **SECTION 3. REQUEST FOR COMMENTS**

The Treasury Department and the IRS request public comments on how the provisions of §§ 48.4041-7, 48.6421-1(d), and 48.6427-1(d) that exempt (or allow a credit or payment for) the off-highway business use of fuel in a vehicle's separate (non-propulsion) motor to power auxiliary equipment could be revised to also apply the exemption to fuel used in the propulsion motor of a vehicle to power auxiliary equipment unrelated to the propulsion of the vehicle by means of a PTO. Comments are requested regarding this issue, including: What types of motor vehicles with PTO-powered auxiliary equipment are able to track fuel use by PTO (for state fuel tax or other purposes)? What type of information can be tracked, and what metrics (e.g., fuel

volume) are or could be used? Are dual-motor, single fuel tank, motor vehicles with auxiliary equipment still commonly in use?

Additionally, the Treasury Department and the IRS specifically request comments on the accuracy and relative burden to stakeholders of potential methods to determine the number of gallons of fuel used by a PTO for purposes of an exemption from tax, including the types of records and data taxpayers should maintain in order to support claims for credit or refund upon examination by the Service. Examples of potential methods include, but are not limited to: (i) a flat percentage of total fuel used by a motor vehicle, (ii) a percentage of total fuel used by a motor vehicle based on the vehicle type, or (iii) a data-based method, using computer software or other reasonable means, to determine actual PTO fuel use. The Treasury Department and the IRS also request comments on whether there is sufficient reliable data (e.g., data made available by industries or state agencies) to support a general rule, a vehicle-specific rule, or other type of rule that would not require analysis of actual fuel usage on a case-by-case basis by each taxpayer, and would minimize burden and provide parity among stakeholders.

The deadline for submission of comments is July 23, 2019. Taxpayers may submit comments electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and NOT-124078-16). Alternatively, taxpayers may submit comments to: CC:PA:LPD:PR (Notice 2019-10), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C., 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2019-10), Courier's Desk, Internal Revenue Service, 1111

Constitution Avenue, N.W., Washington, D.C. 20224. All comments received will be available for public inspection on [www.regulations.gov](http://www.regulations.gov).

#### **SECTION 4. DRAFTING INFORMATION**

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