

Part III - Administrative, Procedural, and Miscellaneous

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

Notice 2021-04

SECTION 1. PURPOSE

This notice provides the final extension of the temporary dyed fuel relief initially provided for the period beginning on October 31, 2017, and ending on May 3, 2018, in section 3.02 of Notice 2017-30, 2017-21 I.R.B. 1248. The temporary dyed fuel relief was extended (i) through December 31, 2018 by section 3 of Notice 2018-39, 2018-20 I.R.B. 582, (ii) through December 31, 2019, by section 3 of Notice 2019-04, 2019-02 I.R.B. 282, and (iii) through December 31, 2020, by section 3 of Notice 2020-04, 2020-04 I.R.B. 380. The final extension of the temporary dyed fuel relief will begin on January 1, 2021, and end on December 31, 2021. A claimant may submit a refund claim for the Internal Revenue Code § 4081(a)(1) tax imposed on undyed diesel fuel and kerosene for fuel that is (i) removed from a Milwaukee or Madison terminal; (ii) entered into a Green Bay terminal within 24 hours of removal from the Milwaukee or Madison terminal; and (iii) subsequently dyed and removed from that Green Bay terminal.

SECTION 2. BACKGROUND

The West Shore Pipeline is a 650-mile pipeline system that transported refined petroleum products to the northeastern part of Wisconsin for over 50 years. The West Shore Pipeline was the only pipeline serving Green Bay and northeastern Wisconsin. The West Shore Pipeline segment between 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. Due to this unanticipated complete shut down and the then uncertain future of this section of the pipeline, Green Bay and northeast Wisconsin expected to have material fuel shortages for a relatively long period of time. In response to this shut down and the expected fuel shortages, the Governor of Wisconsin issued Executive Orders on May 6, 2016, September 7, 2016, and November 4, 2016, declaring energy emergencies. On April 21, 2017, the Wisconsin Department of Administration issued a statement that the West Shore Pipeline Company notified the state that the company would not replace the aging pipeline that runs from north of Milwaukee to Green Bay. A Wisconsin Department of Administration official said the state would continue working with its partners to develop a long-term solution.

Since the March 2016 shutdown of this segment of the West Shore Pipeline, fuel has been transported to Green Bay via vessel, or has been removed from the Milwaukee or Madison terminals and then transported via tank trucks and/or rail cars to Green Bay terminals. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) recognized in Notice 2017-30 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 provided administrative relief in the form of 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. This temporary relief was available for the period beginning on October 31, 2017, and ending on May 3, 2018. Section 3 of Notice 2018-39 extended this temporary relief for the period beginning on May 4, 2018, and ending on December 31, 2018. Additionally, Notice 2018-39 expanded the temporary relief to include refund claims for fuel that is taxed on removal from a Madison terminal, transported to a Green Bay terminal, and then removed from that Green Bay terminal as dyed fuel. The expanded temporary dyed fuel relief was extended through December 31, 2019, by section 3 of Notice 2019-04, 2019-02 I.R.B. 282, and was further extended through December 31, 2020, by section 3 of Notice 2020-04, 2020-04 I.R.B. 380.

The temporary administrative relief provided during the years following the permanent shutdown of the segment of the West Shore Pipeline between Milwaukee and Green Bay has provided the affected position holders time to renegotiate relevant contracts, otherwise adopt business solutions pertaining to the shipment of fuel by vessel to Green Bay or by truck or rail from the Milwaukee and Madison terminals to the Green Bay terminals, and pursue legislative solutions. Accordingly, this is the final extension of the temporary administrative relief for fuel that is (i) removed from a

Milwaukee or Madison terminal; (ii) entered into a Green Bay terminal within 24 hours of removal from the Milwaukee or Madison terminal; and (iii) subsequently dyed and removed from that Green Bay terminal for a nontaxable use.

Upon expiration of this temporary administrative relief, a payment equal to the aggregate amount of tax imposed on such fuel under § 4081 may be available to the ultimate purchaser of the fuel under § 6427(l)(1). Under § 6427(l)(1), if any diesel fuel on which tax has been imposed under § 4081 is used by any person in a nontaxable use, the Secretary of the Treasury or his delegate (Secretary) shall pay (without interest) to the ultimate purchaser of the fuel an amount equal to the amount of tax imposed. Section 48.6427-8(b)(1)(ii) provides that a claim with respect to diesel fuel under § 6427(l)(1) is allowable if, among other conditions, the claimant produced or bought the fuel and did not sell it in the United States.

SECTION 3. FINAL EXTENSION OF TEMPORARY DYED FUEL RELIEF

For the period beginning on January 1, 2021, and ending on December 31, 2021, 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 or Madison 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.

Notice 2017-59, 2017-45 I.R.B. 484, provides guidance on how persons eligible for relief under section 3.02 of Notice 2017-30 may submit claims for refund. Sections 3.02, 3.03, and 3.04 of Notice 2017-59 describe the conditions and procedures required

to make such claims.

The relief described in this section is not available with respect to any transaction for which one or more conditions set forth in section 3.02 of Notice 2017-59 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 Notice 2017-59. For purposes of this notice, any reference in Notice 2017-59 to removals from a Milwaukee terminal shall be read to also include removals from a Madison terminal.

SECTION 4. EFFECTIVE DATE

The temporary dyed fuel relief described in section 3 of this notice applies to removals of dyed diesel fuel and kerosene from Green Bay terminals on or after January 1, 2021, and on or before December 31, 2021.

SECTION 5. DRAFTING INFORMATION

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