



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN Excise Tax Bulletin #1

SPECIAL FUEL TAX

This bulletin is intended solely as advice to assist persons in determining and complying with their obligations under Maine tax law. It is written in a relatively informal style and is intended to address issues commonly faced by those involved in sales of special fuels.

Taxpayers are responsible for complying with all applicable tax statutes and rules. Although bulletins issued by Maine Revenue Services (“MRS”) do not have the same legal force and effect as rules, justifiable reliance upon this bulletin will be considered in mitigation of any penalties for any underpayment of tax due. This bulletin is current as of the last revision date shown at the end of the document.

The Special Fuel Tax Act is found in Title 36, Chapter 459, of the Maine Revised Statutes (“M.R.S.”). Both Title 36 and all MRS rules may be seen by clicking on “Laws and Rules” on the MRS website: www.maine.gov/revenue.

1. RELEVANT STATUTORY DEFINITIONS

A. DISTILLATES. “Distillates,” as defined in 36 M.R.S. § 3202(1), means diesel fuel, No. 2 fuel oil, kerosene, biodiesel fuel, and all other combustible gases and liquids used in an internal combustion engine, other than the fuel subject to the tax imposed by chapter 451 (gasoline tax) and low-energy fuel.

B. DYED FUEL. “Dyed fuel,” as defined in 36 M.R.S. § 3202(2-A), means a distillate that is dyed pursuant to the requirements of the Federal Government, including diesel fuel and kerosene that have been dyed to indicate off-highway usage.

C. LICENSED SUPPLIER. A “licensed supplier,” as defined in 36 M.R.S. § 3202(2-E), means a supplier that is not a registered supplier. A licensed supplier may purchase special fuel for resale free from excise tax.

D. LOW-ENERGY FUEL. “Low-energy fuel,” as defined in 36 M.R.S. § 3202(3), means any fuel used to propel vehicles powered by an internal combustion engine that has 90% or less of the energy potential of an equivalent volume of gasoline. Energy potential is determined by the number of BTUs in a standard volume. Examples include propane, natural gas, and alcohol fuels.

E. REGISTERED SUPPLIER. A “registered supplier,” as defined in 36 M.R.S. § 3202(5-D), means a supplier that purchases or imports only distillates on which the excise tax has been

paid to a licensed supplier and that makes sales of distillates only to retail dealers or directly into the fuel tanks of motor vehicles. Registered suppliers may only make sales of special fuel that (1) is not subject to the excise tax, or (2) has been purchased excise tax paid. A common example of a registered supplier is a home heating oil dealer.

F. RETAILER. A “retailer,” as defined in 36 M.R.S. § 3202(5-B), means any person that purchases low-energy fuel principally for resale directly into the fuel tank of a motor vehicle.

G. SPECIAL FUEL. “Special fuel,” as defined in 36 M.R.S. § 3202(6), means distillates and low-energy fuel.

H. SPECIAL FUEL USER. A “special fuel user” means a “user” as that term is defined in 36 M.R.S. § 3202(9) and includes any person who is the registered owner of, or causes the operation in this State of, any motor vehicle that uses special fuel in an internal combustion engine that (a) has a gross vehicle weight or combined gross vehicle weight of more than 26,000 pounds; (b) has 3 or more axles on the power unit regardless of gross weight; or (c) is a bus designed to carry 20 or more passengers.

I. SUPPLIER. A “supplier,” as defined in 36 M.R.S. § 3202(7), means a person that imports distillates into this State; exports distillates from this State; produces, refines, manufactures, or compounds distillates within this State; or purchases distillates within this State principally for resale to others in bulk. Suppliers can be licensed or registered.

J. WHOLESALER. A “wholesaler,” as defined in 36 M.R.S. § 3202(10), means a person that owns, operates or otherwise controls a terminal or a person that holds a distillate inventory position in a terminal when that person has a contract with the terminal operator for the use of storage facilities and terminal services for fuel at the terminal.

2. EXCISE TAX IMPOSED

An excise tax is imposed on all suppliers of distillates sold (both licensed and registered), on all retailers of low-energy fuel sold, and on all users of special fuel used in this State.

The tax is a levy on the ultimate consumer; however, suppliers and retailers are primarily responsible for collecting and remitting the tax. If a supplier or retailer includes the tax on a bill to a customer, it must be shown as a separate line item and identified as “Maine special fuel tax.”

For current excise tax rates, please refer to the Fuel Tax section of the MRS website (www.maine.gov/revenue/fueltax).

3. CERTIFICATES

A retailer, supplier, or wholesaler may not operate within the State, and a special fuel user may not use or consume any special fuel within the State, without a certificate issued by MRS. The appropriate certificate is issued once a properly completed application for tax registration is filed with MRS. Applications for registration may be obtained by contacting MRS or by visiting the MRS website.

A copy of the certificate must be displayed in each place of business. Certificates must be surrendered to MRS if the business ceases operations.

A certificate may be revoked for reasonable cause by MRS after notice has been given to the certificate holder. Reasonable cause for revocation includes, but is not limited to: filing a false return; failing, refusing, or neglecting to file a required return; failure to pay the full amount of tax due on a return; or failure to meet the statutory definition of a retailer, supplier, or wholesaler.

4. MONTHLY RETURNS

Every licensed supplier, retailer, and wholesaler must file a monthly return listing inventories, receipts, and disbursements from the prior month. The return is due on or before the last day of each month. The return must be accompanied by certain schedules, and will be considered incomplete if the applicable schedules are not attached or are not properly filled out.

Blank return forms, schedules, and instructions are available on the MRS website or by contacting MRS directly. ***Failure to receive a tax return does not excuse a taxpayer from the requirement to file returns as prescribed by law.*** Tax computed on the monthly return is due at the same time the return is due. Penalties apply for failure to file returns timely or to include the required payment. Tax returns must still be filed even if a licensed supplier or retailer has zero inventory or activity in a reporting period.

MRS requires electronic funds transfer payments for many taxpayers. Information is available by clicking “Electronic Services” on the MRS website; see also MRS Rule 102, “Electronic Funds Transfer.”

All amounts must be reported in gallons, which means actual gallons received, sold or used, without adjustment for temperature or barometric pressure. Transactions must be reported in the month they occur, not when they are billed.

When distillates are delivered by a supplier to a consumer or to a retail outlet, the fuel is considered to have been sold, even if the retail outlet is owned in whole or in part by the supplier. The gallons should be reported on the monthly return as a taxable sale at the time the gallons are delivered into a retail tank. Any storage tank connected to a pump fitted to fuel motor vehicles is considered to be a retail tank. Gallons in retail inventory should not be included in reported inventories.

Withdrawals from inventory for a person’s own use must be reported as a taxable sale, unless the use is covered by one of the exemptions detailed in Section 6.

5. OTHER TAX RETURNS

A. REGISTERED SUPPLIERS. Registered suppliers do not have a reporting requirement with MRS, but are still required to maintain records accounting for purchases and sales of special fuel for a period of at least six years.

B. SPECIAL FUEL USERS. A person who receives any special fuel under any circumstances in which the excise tax was not collected by the supplier or retailer is liable for reporting and paying the excise tax on any sale or use of that fuel.

Quarterly returns are required to be filed with MRS stating the total gallons of fuels used within the State during the reporting period. The returns are due on or before the last day of January, April, July, and October each year, reporting fuel used during the quarter ending the last day of the preceding month. The excise tax due on each gallon reported as taxable is due at the time the return is filed. Any special fuel user operating exclusively within the State and using only special fuel purchased within the State upon which the State has received the excise tax, may be exempted, at the discretion of MRS, from filing returns.

6. EXEMPTIONS

The following sales are exempt from the special fuel excise tax:

A. SALES TO THE FEDERAL GOVERNMENT. Special fuel sold in bulk to the Federal Government is exempt from excise tax. The supplier must maintain copies of delivery slips and invoices that clearly identify the purchaser as the Federal Government. Sales made without proper documentation are considered taxable. Sales to the Federal Government must be listed on Schedule 8 of the monthly tax return.

Federal Government agencies that make retail purchases of special fuel may file for a refund of the excise tax paid. See Section 8(B) below for additional information.

B. SALES TO POLITICAL SUBDIVISIONS. For purposes of this exemption, “political subdivision” includes the State of Maine, any agency of the State of Maine, and any political subdivision of the State. In addition to any county, city, town or plantation in the State of Maine, “political subdivision” also includes Maine School Districts; water, power, sewer, parking and other districts in Maine established by legislative act as quasi-municipal corporations; village corporations; and the Maine Turnpike Authority. This exemption is not available to other states or provinces or to their agencies or subdivisions.

When special fuel is sold in bulk to a Maine political subdivision exempt from excise tax, the supplier must maintain copies of delivery slips and invoices that clearly indicate the purchaser as the political subdivision. Sales made without proper documentation are considered taxable. Sales to political subdivisions must be listed on Schedule 9 of the monthly tax return.

Political subdivisions that make retail purchases of special fuel must apply for a refund of the excise tax paid. See Section 8(B) below for additional information.

C. SALES FOR RESALE. Sales of distillates to other licensed suppliers or sales of low-energy fuels to a licensed retailer for resale are exempt from excise tax. A copy of the purchaser’s “Licensed Special Fuel Supplier Certificate” or “Special Fuel Retailer Certificate” with the appropriate signed affidavit must be kept in the seller’s file to document this exemption. Exempt sales of clear distillates to other licensed suppliers should be listed on

Schedule 6 of the monthly tax return. Maine Revenue Services provides a list of licensed suppliers on its website: www.maine.gov/revenue/fueltax.

Registered suppliers may not make tax-exempt purchases of special fuel. Excise tax must be paid on purchases of special fuel by registered suppliers.

D. HEATING AND COOKING. Special fuel delivered directly into a tank used solely for heating or cooking purposes is exempt from excise tax. This applies to both commercial and residential customers. Delivery slips and invoices which clearly indicate that the fuel is being used for heating or cooking are required as documentation to exempt these sales.

E. EXPORTS. Special fuel exported outside of Maine is exempt from excise tax. Delivery slips and invoices which clearly indicate the purchaser, point of origin, and destination are required to document these sales. Exports must be listed on Schedule 7 of the monthly tax return.

F. GENERATION OF POWER. Special fuel sold to a person for the generation of power for resale or manufacturing is exempt from excise tax. A Special Fuel Users Affidavit of Exemption (Form ET-1) must be obtained and kept in the records of the seller to support these sales. Affidavits are valid until the purchaser ceases business or discontinues using the special fuel for the generation of power for resale or manufacturing. Seller's should periodically update their files. Sales for power generation must be listed on Schedule 10 of the monthly tax return.

Sales for the generation of power for manufacturing are subject to sales tax at the industrial energy rate. An Industrial Users Blanket Certificate of Exemption (Certificate ST-A-117) must be obtained from the purchaser in these situations.

G. KEROSENE FOR RETAIL SALE. Kerosene prepackaged for home use or delivered into a separate tank for retail sale is exempt from excise tax. Excise tax must be remitted by licensed special fuel users rather than by the supplier. Suppliers selling clear kerosene for resale to a business not licensed as a Special Fuel Supplier must obtain a Special Fuel Users Affidavit of Exemption (Form ET-1) from the customer.

H. DYED FUEL. Generally dyed fuel is not reported on the special fuel supplier tax return. When distillates are purchased as clear fuel and ultimately disbursed or sold as dyed fuel or blended with dyed fuel, the sale or disbursement should be reported as a dyed fuel sale. Line clearing or flushing of clear diesel fuel into a dyed fuel tank is an example of when gallons should be reported under dyed fuel. Dyed fuel sales must be documented by delivery slips or invoices which clearly indicate the type of fuel being sold. If fuel is re-branded from a clear product to a dyed product, document the circumstances which caused the re-branding.

I. SELF-PRODUCED BIODIESEL FUEL. Biodiesel fuel that is produced by an individual and used by the same individual or a member of that individual's immediate family is exempt from excise tax.

7. SHRINKAGE

Licensed suppliers and retailers must also file an annual shrinkage return listing inventories, total receipts, and total sales. Annual returns are due by January 31st for the prior calendar year.

An allowance may be made by MRS to cover the loss through shrinkage, evaporation, or handling sustained by a licensed supplier on the transportation of undyed distillates. The allowance cannot be more than $\frac{1}{4}$ of 1% of the amount of undyed distillates received by a licensed supplier, plus $\frac{1}{4}$ of 1% on all transfers in vessels, tank cars or full tank truck loads by the licensed supplier in the regular course of business from one of the licensed supplier's places of business to another of the licensed supplier's places of business within this State. The total allowance must be supported by documentation satisfactory to MRS and is calculated on an annual (calendar year) basis. Licensed suppliers should not include shrinkage gains or losses in reported sales figures on monthly special fuel supplier returns.

An allowance may be made by MRS to cover the loss through shrinkage, evaporation, or handling sustained by a retailer on the transportation of propane received by the retailer. The total allowance must be supported by documentation satisfactory to MRS, is calculated on an annual (calendar year) basis, and cannot exceed 1% of the amount of propane received by the retailer.

Further allowances may be requested from MRS by submitting proof of a loss sustained through fire, accident, or unavoidable calamity.

8. REFUND PROGRAMS

Applications and affidavits for the refund programs are available on the MRS website:
www.maine.gov/revenue/fueltax/refund%20programs/refundprograms.htm.

A. OFF-HIGHWAY. A refund of excise tax is available for purchases of special fuel where the fuel is used other than in the operation of a registered motor vehicle on the highways of this State. A person is entitled to reimbursement in the amount of the excise tax paid less 1 cent per gallon. However, special fuel that qualifies for refund for off-highway use is subject to use tax, and the excise tax refund will be reduced by the amount of the use tax due.

Please note, certain off-highway uses, such as special fuel used in manufacturing or commercial farming may also be entitled to exemption from the use tax. For additional information, see MRS Instructional Bulletins Nos. 22 ("Manufacturers") and 59 ("Farming, Fishing & Wood Harvesting").

Purchasers of special fuel used off-highway may apply to MRS for a refund of the excise tax, using the Special Fuel and Gasoline Tax Refund Application (Form "OFF-1"). Applications for refund must be filed within 18 months from the date of purchase.

B. FEDERAL GOVERNMENT AND POLITICAL SUBDIVISIONS. Retail sales of special fuels made to the Federal Government and political subdivisions of this State are subject to the excise tax; however, the Federal Government and political subdivisions are able

to apply to MRS for a refund of the excise tax, using the Political Subdivision Fuel Refund Application (Form “GTR-PS”).

By contractual agreement, a Federal government agency or political subdivision of this State may assign its right to a refund of the excise tax paid to a third party. Both parties must complete the Affidavit for Assignment of Refund and include a copy with the refund application, as well as a copy of the contractual agreement between the two parties.

Applications for refund must be filed within 12 months from the date of purchase.

9. SALES TAX ISSUES

Special fuel sold exempt from excise tax is subject to Maine sales and use tax. For guidance on the applicability of the sales and use tax to the sales of special fuel, please see MRS Instructional Bulletin No. 13 (“Sale of Fuel and Utilities”) which is available by contacting MRS or at www.maine.gov/revenue/salesuse/salestax/bulletinssales.htm.

10. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common issues regarding the Special Fuel Tax Law faced by your business. It is not intended to be all-inclusive. Requests for information on specific situations must be in writing, should contain full information as to the transaction in question and should be directed to:

**MAINE REVENUE SERVICES
SALES, FUEL & SPECIAL TAX DIVISION
P.O. BOX 1060
AUGUSTA, ME 04333-1060
Tel: (207) 624-9693
V/TTY: 7-1-1**

**Or visit our website at www.maine.gov/revenue/fueltax
Email us at fuel.tax@maine.gov**

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