



TECHNICAL BULLETIN #17.13

Issued May, 2002

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FEDERAL AND STATE MOTOR FUEL EXCISE TAXES AND FUEL SALES TAXES

FEDERAL AND STATE MOTOR FUEL EXCISE TAX RATES

	FEDERAL	STATE*	TOTAL
Gasoline	\$0.184	\$0.220	\$0.404
Diesel	\$0.244	\$0.230	\$0.474
LP Gas	0.136	\$0.16	\$0.296

*** Does not include state environmental fees**

**This bulletin does not take the place of professional accounting advice.
You are strongly urged to consult professional guidance
in addition to reading this material.**

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State and Federal On-line help for fuel taxes.

Forms, guidance, updates

- **IRS Excise tax web page:**
<http://www.irs.gov/formspubs/display/0,,i1%3D50%26genericId%3D80195,00.html>

See:

Guidance document Publication 378 – very helpful.
IRS Forms 637, 720, 4236, 8849.

- **State Fuel tax web page:**
<http://www.state.me.us/revenue/fueltax/homepage.html>

RECENT LEGISLATIVE CHANGES TO THE MOTOR FUEL TAX LAWS

2002 Maine Motor Fuel Tax "indexing" legislation.

Public Law 688 makes the excise tax rate subject to an annual inflation adjustment. It also retroactively imposes the inflation adjustment from 1998 to 2003. The annual Consumer Price Index inflation factor applied to the gas tax is currently about 0.6 cents. Thus, on July 1, 2003 there will be an increase in the gas and diesel tax of approximately 2.6 cents. Every year after that there will be another automatic increase based on the previous year's CPI index.

Because there will be annual changes to the tax rate, there will be a yearly floorstocks tax inventory report for the Maine Revenue Service. Likewise, there will be annual updates of this bulletin to reflect the tax rate.

2000 Maine State Propane Motor Fuel taxation law changes;

The point of taxation for Maine propane excise tax has moved to the retail level. In an effort to reduce the inventory liability and reporting burden on propane dealers, MODA succeeded in changing the point of taxation for propane to the retailer. Therefore, only a retailer (or person who sells propane to the final user to be used as a motor fuel) is responsible for paying the motor fuel excise tax. Likewise, all inventory issues move up to the retail level.

Summary of the 1998 Maine Motor Fuel Tax Law Changes

- **What were the changes?**

1. Exempts dyed diesel fuel completely from special fuels excise taxation. There are no more exemption certificates for dyed diesel sales. Dyed diesel is no longer subject to shrinkage allowances as it is now exempt from special fuel taxation. The state will rely on inspections similar to the IRS checks for illegal use of non-taxed fuel over the road. Dyed fuel is still subject to the sales tax imposed on commercial sales. Dyed fuel does not need to be reported.
2. Strengthened the language of current law regarding the incidence of taxation to clarify that the incidence of taxation is on the consumer, not the distributor/supplier.
3. Required Terminals/through putters to report their gallons to the state. The purpose of this reporting is to crosscheck terminal sales with distributor sales in order to spot evasion.
4. Changed the shrinkage allowances for gasoline; added a shrinkage allowance for diesel fuel; clarified that shrinkage allowances for gasoline and diesel fuel are to be determined on an annual basis. Below are the specific changes to shrinkage:

Gasoline: Up to ½% from terminal to bulk or retail plus up to ½% intrastate bulk to bulk or bulk to retail; Current law allows for up to 1%. The new law will retain the ½% refund for retail stations. In return for reducing the allowance to a lower level, the MRS clarified that all reporting (except for propane) will be audited based on a yearly return. Not the monthly basis now being practiced by auditors.

Diesel: Up to ¼% for all clear diesel transactions. This is written similarly to the gasoline language. Currently, there is no diesel allowance under the special fuel statute. Reporting will be annualized for audit purposes.

- **Extremely Important! To fully understand the tax policy of the State you must review the revised MRS Excise tax Bulletin #1 and the additional instructional materials provided by the MRS in June of 1998 regarding the new reporting requirements. These documents are attached to this bulletin in the Maine Forms Appendix.**

Summary of 1998 Federal Kerosene Tax or Dye Requirements:

The kerosene tax system began on July 1, 1998. There are four ways that kerosene will be sold after July 1, 1998. The first is as a dyed product; this product will be tax-free and can be used by all tax-free purchasers of kerosene. The undyed kerosene can be sold three ways. If it is graded as jet fuel and is sold to a 637 H license holder, then the fuel is sold tax-free. If it is undyed and sold to a fixed base operator (airport) and it is destined for aircraft use, and a certificate is executed, then the fuel is sold with a tax of \$.219. If it is undyed and sold to a marketer who intends to use it for blending into diesel or heating oil, or who intends to sell it for any use, the tax of \$.244 attaches.

Once the tax attaches, then there are a series of refund procedures. The most important for marketers is the ultimate vendor refund. This refund applies to sales to farmers and state and local governments. To qualify for this refund, the marketer must have a certificate on file, be registered as a 637UV and not charge the tax. The minimum refund is \$200. The second refund is for sales through blocked pumps at retail sites. To qualify for this refund, the marketer must be registered and not charge the tax. The minimum refund is \$100.

Dye

Kerosene will be dyed red to the same concentrations as diesel fuel.

Blocked Pump

To ensure that people who buy kerosene for use in unvented heaters can continue to buy the fuel without tax, the regulations provide for a refund mechanism that is available to the retailers. To take advantage of this, the pump must be unsuitable for fueling motor vehicles, the retailer must be registered and the pump must be labeled.

To take advantage of the refund provision for ultimate vendors from pumps not suitable for fueling a motor vehicle or train, the pump must be fixed (trucks are thus excluded) and cannot be used to dispense fuel directly into the fuel supply tank of a train or highway vehicle. Thus, blocking the pump either with curbing, chainlink fences or steel posts is necessary. The IRS does indicate that this is a physical restriction, and thus, electronic lockouts at service stations are unsuitable. I am unaware of how a pump that is on the islands will be able to meet this criteria. Additionally, the pump must be labeled "UNDYED UNTAXED KEROSENE NON-TAXABLE USE ONLY". PMAA is now undertaking the purchase of some of these labels. Marketers who are selling kerosene under this exemption should immediately affix such a label, even if temporary.

Labeling and Notices

Terminal Operators must when selling dyed kerosene mark the product as "**DYED KEROSENE, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE**" on all documents accompanying its removal.

Retailers and other selling dyed fuel through retail pumps or other delivery facilities must mark the pump "**DYED KEROSENE, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE**".

End User Refunds

If a marketer's customers pay the tax on kerosene, they will be eligible for a refund. They would file refund claims on Form 8849 and credits against income tax on Form 4136. For the claim to be valid, the claim amount must be at least \$750.

Jet Fuel and Kerosene

The IRS is using the definitions established by the ASTM for these two products. For aviation fuel to be removed tax-free it must be classified as jet fuel. To receive such a classification it must be described in ASTM D1655 or military specifications MIL-T-5624R and MIL-T-83133D.

I. FEDERAL AND STATE MOTOR FUEL EXCISE TAX RATES

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II. Seek Professional Guidance.

This Technical Bulletin is intended to provide a consolidated reference for federal and state excise tax information. Tax forms and tax rulings are constantly changing and many situations that seem similar can be different. Therefore, you should always seek professional guidance with any questions that you have.

III. Contacts:

Here are some useful contacts:

(Your Accountant or tax professional)

(Telephone)

Federal Motor Fuel Excise Taxes

Mr. Peter Anderson
Internal Revenue Service
220 Maine Mall Road
South Portland, Maine 04106
207-780-3313 phone
207-780-3515 fax

State Motor Fuel Excise Taxes

Mr. Scott Hamilton
Maine Revenue Service
P.O. Box 1064
Augusta, Maine 04333-0024
624-9692
e-mail of Fuel Tax division: fuel.tax@state.me.us

IV. Motor Fuel Excise Tax Background

For years federal excise taxes on diesel fuel were collected at the point of retail sale. The seller was responsible for remitting the collected taxes to the IRS. If the fuel was sold for a taxable use, you collected the tax, if it was sold for an exempt use, you did not. This changed in the 80s.

In 1985, there was a television expose about excise tax cheating followed by Congressional hearings at which mobsters testified that millions of dollars were being stolen in excise tax fraud. As a result, in 1987 the point of collection of federal excise taxes was moved from the retailer to the wholesaler. This change resulted in the complicated system of Form 637 registrations, wholesale distributor qualifications, and different certifications from different customers that fuel purchased tax-free was being used for a tax-exempt purpose.

The most recent changes came in 1993 when the President and the Congress were seeking ways to cut the federal deficit. After attempts to levy a BTU tax failed, the excise tax was increased and the point of collection for diesel taxes was again moved upstream, this time from the wholesaler to the terminal.

The new system was designed to work the same as the collection of gasoline excise taxes, and to take advantage of the Environmental Protection Agency rule requiring that high sulfur content diesel fuel be dyed. Basically, all federal taxes are collected at the terminal. Any fuel sold tax-free must be dyed. The 1997 tax law change now also requires that kerosene be subject to the

federal tax or dye scheme. As of July 1, 1998, all kerosene leaving the terminal will be taxed at the federal diesel fuel excise tax rate unless it is dyed.

The EPA Rule - diesel sulfur

For background, it is necessary to understand the EPA diesel fuel sulfur rule. The EPA worked with Congress, the petroleum industry, and the truck manufacturers to reduce the particulate emissions from diesel trucks - the puffs of black smoke that no one likes. This is being done by changing the way the truck engines are built and by lowering the sulfur in the fuel they use.

As of October 1, 1993, all motor vehicles must use low sulfur, high cetane diesel fuel regardless of where they are driven or why. A "motor vehicle" is defined as "any self-propelled vehicle designed for transporting persons or property of a street or highway." This means any truck, "on-road" or "off-road".

Diesel fuel that does not meet the EPA requirements of <0.05% sulfur and >40 cetane must be dyed visibly red. Everyone along the distribution chain is jointly and severally liable for compliance, including the individual who fuels the truck. Kerosene is considered to be a diesel fuel and subject to this law. The IRS currently requires that kerosene be taxed or dyed when removed from the terminal.

MODA can provide tank labels for you through PMAA. MODA can provide testing kits with PMAA that will help you ensure that the product you get is not contaminated and help you defend yourself against any claims about the fuel you sell. Contact the MODA office about these items.

The Three Fuels

- **Red, High Sulfur Fuel** is a high sulfur, tax-free fuel that you can sell for heating oil, commercial boat fuel, and construction equipment fuel. It cannot be used in any trucks or buses.
- **Red, Low Sulfur Fuel** is a low sulfur, tax-free fuel that you can sell for use in trucks and buses if used in an exempt manner and for all other tax-exempt uses. There is no prohibition on selling low sulfur for home use.
- **Clear Fuel** is low sulfur, tax paid fuel that can be sold for any use. If it is sold to a farmer or to a state or local government for a tax-exempt use, only the dealer can file for the refund. If it is sold to any other tax-exempt user, only the customer is allowed to file for the refund.

V. Quick Summary of Motor Fuel Tax Exemptions Allowed

<u>DIESEL</u>	<u>Federal</u>	<u>State *1</u>	
	<u>Exempt</u>	<u>Exempt</u>	<u>Color</u>
Home Heating Use	Yes	Yes	Red
Off Highway Vehicle	Yes	Yes	Red *2
State of Maine	Yes	Yes	Red *2
Towns/SADs	Yes	Yes	Red *2
Non-Profit Education Organizations	Yes	No	Red *2
Pleasure Boats	Yes	Yes	Red
Commercial Vessels	Yes	Yes	Red
Farm vehicles	Yes	No	
 <u>GASOLINE</u>			
State of Maine	Yes	No	
Towns/SADs	Yes	Yes	
Non-Profit Education Organizations	Yes	No	
Commercial Vessels	No	No *3	
Pleasure Boats	No	No	
Farm Vehicles	No	No *3	

- *1.) Customers who are exempt from the state excise tax may be subject to the State sales tax.
- *2.) Red (low sulfur) for off-road motor vehicles; Red (high sulfur) for other off-road uses.
- *3.) There are a number of circumstances under which the customer must pay you the excise tax, but may qualify for a refund.

This is only a quick reference guide – read the more complete discussion under the following headings

VI. DIESEL FUEL

Federal Excise Taxes

Federal Excise Diesel Tax: \$0.244 per gallon.

The IRS regulations require that all diesel fuel excise taxes be collected at the terminal. A terminal is a storage and distribution facility that is supplied by pipeline or vessel and from which fuel may be removed at a rack. Heating oil is considered to be diesel fuel. There are limited provisions that allow marketers to purchase diesel fuel without paying taxes, but the tax free fuel must be dyed. It can only be dyed red. The regulations require that:

- High sulfur fuel must be dyed red and clearly identified as high sulfur fuel.
- Tax paid fuel must be clear (actually undyed, but generally referred to as 'clear').
- Low sulfur fuel may be dyed red at the terminal and sold tax free. It should be clearly identified as low sulfur fuel.
- The IRS requires that dyed fuel contain a specific concentration of the dye. This means that a marketer who blends clear kerosene into red diesel fuel may have to add dye to maintain the required concentration. Check with your supplier - some are over concentrating the dye to allow for blending. The EPA only requires that the dye be visible.
- Terminals must keep records of who is purchasing dyed fuel and all dyed fuel paperwork must be marked, "Dyed Diesel Fuel, Nontaxable Use Only, Penalty For Taxable Use". Terminals must report under the IRS EXTOLS program.
- If tax paid fuel is sold to a customer who uses it for an exempt use, that customer is responsible for claiming a refund unless the customer is a farmer or a state or local government. For the latter, the marketer (the 'ultimate vendor') must seek the refund.

Federal IRS Penalty Provisions

The law applies a \$10 per gallon (\$1,000 minimum) penalty if:

- Any dyed fuel is sold or held for sale by any person for any use that such person knows or has reason to know is not a nontaxable use of such fuel,
- Any dyed fuel is held for use or used by any person for a use other than a nontaxable use and such person knew, or had reason to know, that such a fuel was so dyed, or
- Any person willfully alters, or attempts to alter, the strength or composition of any dye or marker in any fuel.

The \$10 penalty increases by \$10 a gallon for each subsequent violation.

- In addition, a person who operates a motor vehicle on the public ways in Maine with dyed fuel in the fuel supply tanks commits a Class D crime and is subject to a fine of not less than \$1,000, which may not be reduced.

Nontaxable Uses

The following are nontaxable uses of diesel fuel and kerosene.

1. Use on a farm for farming purposes (discussed below).
2. Exclusive use by a state.
3. Use in a vehicle owned by an aircraft museum.
4. Use in a school bus (below).
5. Use in a qualified local bus (below).
6. Use in a highway vehicle that:
 - a. Is not registered (and is not required to be registered) for highway use under the laws of any state or foreign country, and
 - b. Is used in the operator's trade or business or for the production of income.
7. Exclusive use by a nonprofit educational organization.
8. Use in a highway vehicle owned by the United States that is not used on a highway.
9. Exported.
10. Use other than as a fuel in a propulsion engine of a diesel-powered highway vehicle (such as home heating oil).
11. Use as a fuel in a propulsion engine of a diesel-powered train (subject to back-up tax see IRS regs).
12. In a boat engaged in commercial fishing
13. Use in an intercity or local bus meeting certain qualifications, discussed later (subject to back-up tax, discussed earlier).

Non-taxable use - Farms and Buses – more detail

Used on a farm for farming purposes.

Diesel fuel or kerosene is used on a farm for farming purposes only if used in carrying on a trade or business of farming, on a farm in the United States, and for farming purposes.

Farm. Definition: A farm includes livestock, dairy, fish, poultry, fruit, fur-bearing animals, and truck farms, orchards, plantations, ranches, nurseries, ranges, and feedyards for fattening cattle. It also includes structures such as greenhouses used primarily for raising agricultural or horticultural commodities. A fish farm is an area where fish are grown or raised--not merely caught or harvested.

Farming purposes. Diesel fuel or kerosene is used on a farm for farming purposes if it is bought by the owner, tenant, or operator of the farm and used for any of the following purposes.

1. To cultivate the soil, or to raise or harvest any agricultural or horticultural commodity.
2. To raise, shear, feed, care for, train or manage livestock, bees, poultry, fur-bearing animals, or wildlife.
3. To operate, manage, conserve, improve, or maintain your farm and its tools and equipment.
4. To handle, dry, pack, grade, or store any raw agricultural or horticultural commodity (as provided below).
5. To plant, cultivate, care for, or cut trees or to prepare (other than sawing logs into lumber, chipping, or other milling) trees for market, but only if the planting, etc., is incidental to your farming operations (as provided below).

Diesel fuel or kerosene is treated as used on a farm for farming purposes if it is bought by a person other than the owner, tenant, or operator of the farm and used on the farm for any of the purposes in item (1) or (2).

Item (4) applies only if more than one-half of the commodity so treated during the tax year was produced on the farm. Commodity refers to a single raw product. For example, apples would be one commodity and peaches another. The more-than-one-half test applies separately to each commodity.

Item (5) applies if the operations are minor in nature when compared to the total farming operations.

If undyed diesel fuel or undyed kerosene is used on a farm for farming purposes, the fuel is not considered used for any other nontaxable use.

Not used for farming purposes. Diesel fuel or kerosene is not used for farming purposes if it is used in any of the following ways.

- Off the farm, such as on the highway or in noncommercial aviation, even if the fuel is used in transporting livestock, feed, crops, or equipment.
- For personal use, such as mowing the lawn.
- In processing, packaging, freezing, or canning operations.
- In processing crude gum into gum spirits of turpentine or gum resin or in processing maple sap into maple syrup or maple sugar.

Buses. Diesel fuel or kerosene used in a school bus or in a qualified local bus is used for a nontaxable use and is not subject to excise tax. However, fuel used in an intercity or local bus is subject to a reduced rate of tax.

School bus. A school bus is a bus engaged in the transportation of students and employees of schools. A school is an educational organization with a regular faculty and curriculum and a regularly enrolled body of students who attend the place where the educational activities occur.

Qualified local bus. A qualified local bus is a bus meeting all the following tests.

- It is engaged in furnishing (for compensation) intracity passenger land transportation available to the general public.

- It operates along scheduled, regular routes.
- It has a seating capacity of at least 20 adults (excluding the driver).
- It is under contract with (or receiving more than a nominal subsidy from) any state or local government to furnish that transportation.

Intracity passenger land transportation means land transportation of passengers between points located within the same metropolitan area. It includes transportation along routes that cross-state, city, or county boundaries if the routes remain within the metropolitan area.

A bus is under contract with a state or local government only if the contract imposes a bona fide obligation on the bus operator to furnish the transportation. A subsidy is more than nominal if it is reasonably expected to exceed an amount equal to 3 cents multiplied by the number of gallons of fuel used in buses on subsidized routes.

A company that operates its buses along subsidized and unsubsidized intracity routes may consider its buses qualified local buses only when the buses are used on the subsidized intracity routes.

Intercity or local bus. A reduced tax of 7.4 cents a gallon is imposed on dyed fuel delivered into the fuel supply tank of an intercity or local bus. This is a bus engaged in furnishing (for compensation) passenger land transportation available to the general public. The bus must be engaged in one of the following activities.

- Scheduled transportation along regular routes regardless of the size of the bus.
- Nonscheduled transportation if the seating capacity of the bus is at least 20 adults (not including the driver).

A bus is available to the general public if the bus is available for hire to more than a limited number of persons, groups, or organizations.

IRS Fuel Excise Tax REFUNDS

As easy as 1,2,3.

- 1. Register using form 637.**
- 2. Take a credit on your 720 return; or**
- 3. Apply for a refund on Form 8849**

If you must sell tax paid fuel to a customer for a tax-exempt use, it is up to the customer to file for a refund unless the customer is a state or local government or a farmer using fuel for an exempt use. There are special rules for them. They do not qualify for a refund. The refund must be applied for by the 'ultimate vendor', which is the dealer. You are expected to either sell them red fuel or to sell them clear fuel tax-free. To get your money back, you have to file for a refund. In order to file for a refund, you must be registered with as an "ultimate vendor".

In order to be an "ultimate Vendor" for purposes of selling tax-free and getting the refund, you need to register with the IRS using form 637.

In order to actually get the refund you need to either take the credit on your form 720 excise tax return or file a claim for refund using form 8849. Please note that you cannot use both the 720 credit and 8849 refund for the same refund.

Farmer/State and Local Government Refunds

In order to receive a refund from the IRS for excise taxes that you paid but could not collect because the customer is a farmer or government, you need a certificate from the customer. A copy of the certificate you need is in Appendix A. Then you need to file IRS Form 8849 (Appendix B).

There is an expedited refund procedure for this refund. That means that you will either receive the refund within 20 days or you will be paid interest on the amount of your claim. In order to do this correctly, you must file the farmer/government claim separately from any other excise tax refund claims. You must write "Diesel Fuel Claim" at the top of the form. Make sure you provide all the information required, including a copy of the certificate. To check on an overdue refund, call Peter Anderson, IRS Excise Specialist for Maine, 207-780-3313.

Boats

Diesel fuel sold for use in commercial fishing boats is currently tax-exempt. Boats engaged in commercial fishing include only watercraft used in taking, catching, processing, or transporting fish, shellfish, or other aquatic life for commercial purposes.

What is a motor vehicle and what is not for purposes of the tax?

Motor vehicle. For the purpose of applying the tax on motor fuels, motor vehicles include all types of vehicles, whether or not registered (or required to be registered) for highway use, that have both the following characteristics.

- They are propelled by a motor.
- They are designed for carrying or towing loads from one place to another, regardless of the type of material or load carried or towed.

Motor vehicles do *not* include any vehicle that moves exclusively on rails, or any of the following items.

Farm tractors	Trench diggers
Power shovels	Bulldozers
Road graders	Road rollers
Similar equipment that does not carry or tow a load	

Stamps and Labels

- The **IRS** has made it official that it is no longer necessary for marketers to label the dyed fuel "DYED DIESEL FUEL, NON-TAXABLE USE ONLY, PENALTY FOR TAXABLE USE" on the invoices or sales documents that they generate below the terminal rack. However, this notice must continue to be recorded on invoices or bills of lading on product that is removed from the terminal.
- If you sell clear, tax paid fuel to a tax exempt user other than a farmer or government, you need a different stamp for the invoice that reads: THIS DIESEL FUEL DOES NOT CONTAIN VISIBLE EVIDENCE OF DYE. Your customer will need this to get a refund. Call the MODA office for the PMAA order the form.
- For the farmers and governments you need a stamp that reads: THE PRICE OF THIS DIESEL FUEL DOES NOT INCLUDE FEDERAL MOTOR FUEL TAXES AND DOES NOT CONTAIN VISIBLE EVIDENCE OF DYE. Call MODA office for PMAA order form.
- Pumps that dispense red, low sulfur fuel should be labeled: THIS PUMP DISPENSES DYED DIESEL FUEL, NON-TAXABLE USE ONLY, PENALTY FOR TAXABLE USE. If it is high sulfur fuel it should also state: OFF HIGHWAY/NOT LEGAL FOR MOTOR VEHICLE USE. These same labels should be put on any tanks used for resale. Call MODA office for PMAA order form.
- The **EPA** does not require stamps, but requires an affirmative defense from anyone caught using high sulfur fuel on the road. You should be fine if the paperwork you get from your supplier is properly marked. Or you could stamp invoices: OFF HIGHWAY/NOT LEGAL FOR MOTOR VEHICLE USE.

State of Maine Diesel Fuel Excise Taxes

Maine Motor Fuel Diesel Excise Tax: \$0.23 per gallon.

All sales of dyed diesel are exempt by statute. No documentation is needed from the purchaser.

All sales of clear diesel fuel are taxable. There are exemptions – see below. If clear diesel fuel is subsequently used for an exempt purpose, a refund application must be submitted directly to Maine Revenue Services. For diesel fuel there is only one instance where the new Affidavit of Exemption is required for a tax-free sale of clear diesel. See Appendix C for details.

Exemptions to this rule: Note: the special fuel statute allows for the tax-free sale of all special fuel including both dyed and clear special fuel in the following circumstances only. The fact that the new law exempts all dyed fuel from taxation relegates the exemptions in practice to only clear fuel sales (propane notwithstanding).

1. Special fuel sold to the Federal Government, this State and political subdivisions. These entities do not require the Special Fuel Users Affidavit of Exemption.
2. Special Fuel sold to a person for the generation of power for resale or manufacturing. This sale requires the purchaser to produce a Special Fuel Users Affidavit of Exemption in order for you to sell clear fuel tax-free. See the Affidavit in the Appendix.
3. Sold for heating and cooking purposes;
4. Precluded from tax by federal law;
5. Exported from this state.

State Sales Tax: 5.0%

If a customer has demonstrated to you that they are exempt from the state excise tax, they may still be subject to the state sales tax. Fortunately, in most cases it is up to the customer to demonstrate to you that they are exempt from the State sales tax.

There are currently over 75 sales tax exemptions on the books. Among them are:

- 1.) Oil sold for heating or cooking in "buildings designed both for human habitation and sleeping". These customers do not have to provide proof of their exemption from the sales tax.
- 2.) The federal government, the State of Maine, and political subdivisions of the state (towns, SADs). These customers do not have to provide proof of their exemption from the sales tax.
- 3.) Manufacturing Facilities: Ninety five percent (95%) of the sale price of all fuel sold to a manufacturer (manufacturer, not general, commercial business) is not subject to sales tax.

The other 5% of the sales price is subject to the regular 6% sales tax. These customers must provide you with a copy of their exemption certificate.

Except as noted above, everyone who is exempt from the State sales tax will either have an exemption certificate from the State or will have a State form that they fill out and provide to you.

It is up to the customer to provide you with proof of the exemption; it is up to you to keep good records. In those cases where a State sales tax should have been collected and was not, the State will require you, not your customer, to pay the tax. Your customer may call the State at 287-3851 and request a copy of the State Exemption Certificate Application.

Remember: First you collect the State excise tax. If your customer is exempt, then you collect the sales tax, unless the customer is exempt from that also. Some customers may think that a sales tax exemption also includes the excise tax. It does not. Two different laws; two different exemptions.

If a customer is subject to the federal excise tax, exempt from the state excise tax, and is subject to the State sales tax, the State sales tax is levied on the sale price including the federal excise tax.

Mixed Use Facilities

In the case of a facility where part of the fuel is used for a tax-exempt purpose and part of it is used for a taxable purpose, you may, acting in good faith, accept the estimate of the customer. Get it in writing and keep it in your files. For example, you sell fuel to a motel that has a restaurant. The fuel used to heat the hotel is exempt; the fuel used to heat the restaurant and for cooking is not. The customer might use the square footage to make this calculation.

State Special Fuel Tax Forms

Appendix F provides examples of State of Maine Special Fuel tax forms. These forms are sent to taxpayers by the Bureau before the taxes are due, and are included here as examples. These include the Special Fuel Supplier Tax Return, the Special Fuel Users Report, the Off Highway Special Fuel and gasoline Refund Application, and a Sales and Use Tax Return.

VII. KEROSENE

Federal Excise Taxes

Federal Excise Tax on clear Kerosene: \$0.244

**Federal Excise Tax on Aviation Fuel other than gasoline: \$0.219*

Dyed Kerosene is not taxed at the rack, undyed is.

Exemptions to federal kerosene taxation are similar to the federal exemptions for diesel fuel. Additionally, an ultimate vendor can sell clear kerosene from a blocked pump to the end-user tax-free

*** Aviation-grade kerosene.**

The excise tax on kerosene is not imposed on the removal from the terminal or refinery rack or non-bulk entry of aviation-grade kerosene if all the following conditions are met.

The person otherwise liable for tax (position holder, refiner, or enterer) is a registrant.

In the case of a removal from a terminal, the terminal is an approved terminal.

Either:

- a. The person otherwise liable for tax delivers the kerosene into the fuel supply tank of an aircraft and this delivery is not in connection with a sale, or
- b. The kerosene is sold for use as a fuel in an aircraft, and, at the time of the sale, the person otherwise liable for tax has an unexpired certificate (described later) from the buyer and has no reason to believe any information on the certificate is false.

There are significant federal requirements and regulations surrounding the taxable or non-taxable sale of kerosene used as aviation fuel. If you deal in this market please refer to the IRS regulations, or call MODA for further info.

State of Maine Motor Fuel Excise Taxes

State Motor Fuel Excise Tax on Kerosene: \$0.230

State Sales Tax: 5.0%

The State treats kerosene the same way it treats diesel fuel except when it is delivered into a separate tank for retail sale (for instance, at a hardware store). In that case, the sale is sales tax-free to the retailer; the retailer collects a tax if the product is used for a taxable purpose.

For those who blend kerosene into diesel, the state excise tax is collected after blending and paid at the diesel rate. Like diesel, kerosene that is exempt from excise tax may be subject to a sales tax.

For a retailer to purchase clear kerosene tax-free from the supplier, the retailer must have obtained the Affidavit of Exemption. See Appendix C for the Affidavit and explanation.

VIII. GASOLINE

Federal Gasoline Excise Taxes

Federal Gasoline Excise Tax: \$0.184 per gallon

Like diesel, all gasoline is considered taxable, and the tax is paid when it leaves the terminal. The refiner or terminal operator who is responsible for the payment of the tax is registered with the IRS on Form 637 for gasoline. Unlike diesel fuel, there is no way for gasoline to be sold tax-free down the distribution chain. If gasoline is sold for an exempt use, then a refund or credit may be applied for from the IRS.

Exempt Users and Uses

A credit or refund of the gasoline tax (without interest) may be allowable if gasoline is, by any person:

- Exported,
- Used in a boat engaged in commercial fishing,
- Used in military aircraft,
- Used in foreign trade,
- Sold to a state for its exclusive use,
- Sold to a nonprofit educational organization for its exclusive use,
- Sold to the United Nations for its exclusive use, or
- Used or sold in the production of special motor fuels (defined later).

Who May Apply for a Credit or Refund?

Only the ultimate taxpayer is eligible to apply for a refund or credit. That is either:

- 1.) The qualified ultimate purchaser, or

- 2.) The supplier who qualifies as a wholesale distributor, purchases the gasoline at a price that includes the tax, and sells it directly to the qualified ultimate purchaser tax-free.

Claims by wholesale distributors. A credit or refund is allowable to a gasoline wholesale distributor who buys gasoline at a price that includes the excise tax and then sells it to the ultimate purchaser (including an exporter) for a purpose listed in the previous list. A wholesale distributor is any person who makes retail sales of gasoline at 10 or more retail motor fuel outlets or sells gasoline to producers, retailers, or users who purchase in bulk quantities and accept delivery into bulk storage tanks. A wholesale distributor is not a producer or importer.

The wholesale distributor must have sold the gasoline at a tax-excluded price and obtained a certificate of ultimate purchaser or proof of exportation.

The wholesale distributor must complete Schedule 4 (Form 8849) and attach it to Form 8849 to make a claim for refund for gasoline sold to an ultimate purchaser for a purpose listed earlier.

By signing the Form 8849, the gasoline wholesale distributor certifies that it:

- Bought the gasoline at a price that included the excise tax,
- Qualifies as a wholesale distributor,
- Sold the fuel at a tax-excluded price, and
- Has obtained the certificate of the ultimate purchaser or proof of export from its buyer.

Claims by persons who paid the tax to the government. A credit or refund is allowable to the person that paid the tax to the government if the gasoline was sold to the user (including an exporter) by either that person or by a retailer for a purpose listed earlier. A credit or refund also is allowable to that person if the gasoline was sold to the user by a wholesale distributor and either of the following is true.

- The distributor bought the gasoline at a price that did not include the tax.
- The sale to the user was charged on an oil company credit card.

By signing the claim, the person that paid the tax certifies that it:

Has obtained one of the three items below.

- c. Proof of exportation.
- d. A certificate of ultimate purchaser.
- e. A certificate of ultimate vendor.

Has met any of the following conditions.

- f. Has neither included the tax in the price of the gasoline nor collected the tax from the buyer.
- g. Has repaid, or agreed to repay, the tax to the ultimate vendor of the gasoline.
- h. Has gotten the written consent of the ultimate vendor to the allowance of the credit or refund.

Qualification as a Wholesale Distributor

A gasoline wholesale distributor is defined as a person who:

- 1.) Holds itself out to the public as being engaged in the trade or business of selling gasoline to producers, to retailers, or to users who purchase in bulk quantities and accept deliveries into bulk storage tanks, and who
- 2.) Actually makes more than casual sales of gasoline to the producers, retailers or bulk users.

As used in this definition, a bulk storage tank is "any tank that is not the fuel supply tank of an aircraft, train, vehicle, or vessel". The term "casual sales" is not limited by any volumetric or numerical test.

Please note: These are the requirements to be eligible for a refund or credit. Once you qualify, you may take a credit for any gasoline tax-free sale to an exempt user, including a sale that fills a tank that is the supply tank of a vehicle.

Certificate of Ultimate Purchaser

In order to qualify for a refund or credit, a wholesale distributor must have an exemption certificate from the ultimate purchaser.

How to Apply for a Credit or Refund - summary

As easy as 1,2,3.

1. Must be registered – form 637.
2. Refunds may be applied for on IRS Form 8849.
3. Credits can be claimed on IRS Form 720 up to the amount of tax due for the quarter. You need to note what the credit is for, that you have an exemption certificate from the ultimate purchaser, and that you qualify for the credit as a wholesale distributor.

Claims by the ultimate purchaser.

A credit or refund is allowable to the ultimate purchaser of taxed gasoline used for a nontaxable use. They can use Form 4136 for the credit and attach it to their income tax return. They can use an 8849 for the actual refund. See IRS Publication 378 for more information about these claims.

Sales on Oil Company Credit Cards

A sale charged on an oil company credit card is not considered a direct sale by the wholesale distributor. Thus, only the refiner can claim a credit or refund for such a sale. According to the IRS, this should not discourage exempt users from buying from wholesale distributors under credit practices currently in place. When an exempt user buys from a wholesale distributor using an oil company credit card, the wholesale distributor invoices the exempt user the full price, including tax. The refiner then reimburses the wholesale distributor the full price, but bills the exempt purchaser ex-tax. Because the wholesale distributor is not out of pocket any taxes paid, he is not eligible for a refund.

State of Maine Gasoline Motor Fuel Excise Taxes

State Motor Fuel Excise Tax on Gasoline: \$0.22 per gallon

Generally, the only state exemption from the gasoline excise tax is for political subdivisions of the State (towns, SADs, and similar entities). Certain gasoline exports are exempt, but require a special state license and reporting form; this exemption should not be a concern for most marketers.

The State of Maine is not exempt from the gasoline excise tax. There are a number of off-road uses of gasoline for which the user can get a partial refund or credit for the excise tax paid. These include such things as commercial motorboats, off-road farm tractors and some other registered off-road vehicles, stationary engines, and other commercial uses. **However, it is the responsibility of these users to get their refund - not yours.** You cannot sell them gasoline tax-free. You can only sell gasoline tax-free to political subdivisions of the State, and the product must be put into a bulk tank for later distribution. (For example, if the town plow pulls up to your station for fuel, you must charge the tax, but if you deliver to the town's tank at the town garage, you do not.)

State forms and information web site: <http://www.state.me.us/revenue/fueltax/homepage.html>

IX. LIQUID PETROLEUM GAS

Federal Excise Tax - Propane

Federal Excise Tax on Propane: \$0.136

LP Gas is defined by the IRS as a special motor fuel when it is used to power a motor vehicle. If used over the road, the user must pay the tax.

State of Maine Motor Fuel Excise Tax - propane

State Excise Tax on Propane: \$0.16
State Sales Tax: 5.0%

If LP Gas is used as an on-road vehicle fuel, it is subject to the State motor fuel tax. If it is used for an off-road purpose, it is exempt from the State motor fuel tax, but it may be subject to the State sales tax, unless the use is exempt from that also. See the discussion of sales tax under the 'Diesel Fuel - State of Maine' section.

- **Effective October 1, 2000, the point of taxation of propane changed from the supplier to the retailer. The retailer must collect and remit special fuel tax on all propane pumped directly into the fuel tank of a motor vehicle. Retailers who sell propane for both on-highway and off-highway use need to use two bulk storage tanks. One for the non-taxable use and the other for the taxable use. Suppliers no longer need to obtain an Affidavit of Exemption from their purchasers since it is now the responsibility of the retailer to account for the tax.**

Small Cylinder Sales

The high use of small cylinders prompted the Bureau of Taxation to issue the following guidance:

Sales of propane into tanks of 100 lbs. or less will be considered to be sales for off-highway use, unless the tank is connected to a motorized vehicle registered for highway use. Sales of propane for residential heating and cooking are exempt from sales tax. Sales of propane for commercial heating or cooking are subject to the sales tax. If the commercial use is at a manufacturing facility, the sales tax applies in the same fashion as outlined for heating fuel used at a manufacturing facility. Although 20 lb. tank sales of propane are exempt from excise tax they are not exempt from sales tax as no provision for exemption is made in the sales tax law for the use generally associated with the propane in these tanks.

Please note that gas grill use is not exempt from the State sales tax. A copy of the Bureau's memo is attached in the State forms appendix.

X. SPECIAL STATE OF MAINE MOTOR FUEL TAX REFUNDS

1. Fuel Consumed in Pumping Off Operations

The fuel used to power your delivery operations pump on your delivery truck is an off-road use, and therefore you can claim a refund for the excise taxes paid to the State of Maine. This applies to both diesel and gasoline powered trucks.

The State allows a credit of 1.5 gallons for every 10,000 gallons pumped off the truck. To claim your refund, use the Special Fuel and Gasoline Refund Application attached in Appendix F.

2. Retail Gasoline Dealer's Shrinkage Refund

Retail gasoline dealers are entitled to apply for a shrinkage refund at the rate of 1/2 of 1% of the excise taxes paid on their entire gross gasoline purchases. Use the Retail Dealer's Gasoline Shrinkage Refund Application attached in Appendix F.

3. Gasoline Distributor's Shrinkage Refund

Licensed distributors of gasoline are entitled to an allowance of up to 1/2 of 1% for the gasoline received and up to 1/2 of 1% of the gasoline transferred from the distributor. This is taken as a credit on the monthly Gasoline Tax Report.

4. Diesel Shrinkage Allowance.

Licensed suppliers of Special fuels are entitled to an allowance of up to 1/4 of 1% for the diesel received and up to 1/4 of 1% of the diesel transferred from the supplier. This is taken as a credit on the monthly Special Fuel Tax Report.

XI. HEAVY VEHICLE USE TAX -Federal

There is another excise tax marketers who operate transports need to pay: the Heavy Vehicle Use Tax. This tax is levied on all highway motor vehicles with a taxable gross weight of more than 55,000 pounds. The taxable gross weight is basically the unloaded weight of the vehicle fully equipped, plus the weight of the heaviest load usually carried. *See IRS Form 2290.*

The State of Maine will not register your vehicle unless this tax has been paid.

XII. CONCLUSION

It is important to repeat that this guide is not a substitute for professional advice.

We strongly recommend reading all the materials contained in Appendix C. Many of these documents were issued as a result of the 1998 Maine motor fuel tax law changes.

As federal and state laws and rules change, we will update this bulletin.

If you have suggestions on how to make this Technical Bulletin more useful to you, please let us know.

As always, if you have any questions, please contact the MODA office

MODA 1-888-863-3753.