

INITIAL DISCUSSION PAPER

Proposed New Regulation

Regulation 1434, Sales of Diesel Fuel to the United States and Its Agencies and Instrumentalities

Issue

Should the Board adopt Regulation 1434 to explain and clarify who may file a claim for refund for tax paid on diesel fuel sold to the United States and how those claims for refund are to be filed?

Background

The diesel fuel tax does not apply to the sale of diesel fuel to the United States and its agencies and instrumentalities (the “United States”). Section 60100 of the Revenue and Taxation Code provides for an exemption from the diesel fuel tax when a supplier sells diesel fuel to the United States, and Section 60501 of the Revenue and Taxation Code allows for a refund of the diesel fuel tax to a person who has purchased tax-paid diesel fuel and resells the diesel fuel to the United States.

There has been some misunderstanding of who files a claim for refund for the tax on tax-paid diesel fuel and how the claim is filed. Also, there has been some uncertainty in who should file a claim for refund when the United States uses an access card.

The Fuel Taxes Division's staff has proposed Regulation 1434, Sales of Diesel Fuel to the United States and Its Agencies and Instrumentalities, to explain who should file a claim for refund, what form to use and what documentation is needed for support of the sale to the United States. The proposed regulation gives examples of agencies and instrumentalities of the United States and explains that an exemption may be claimed on the supplier's tax return, a claim for refund may be made on an ultimate vendor's report, and an issuer of an access card that meets specified requirements may file a claim for refund with the Board. The proposed Regulation 1434 is attached as **Exhibit 1**.

Discussion of Point of Taxation of Diesel Fuel and Exempt Sales to United States

The point of taxation of diesel fuel is at the time of removal of the fuel from the refinery or terminal rack. Generally, a supplier is liable for payment of the tax on diesel fuel when the supplier removes the fuel from the rack. However, the fuel that the supplier sells to the United States is exempt from diesel fuel tax. The proposed regulation clarifies that a supplier is entitled to claim on its tax return a credit for tax paid on fuel that it sold to the United States.

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Discussion of a Refund to an Ultimate Vendor

A person licensed as an ultimate vendor may file a claim for refund when it sells diesel fuel to the United States upon which the ultimate vendor has already paid diesel fuel tax. The proposed regulation clarifies that an ultimate vendor may claim such refund on its Diesel Fuel Ultimate Vendor Report/Claim for Refund form.

Discussion of a Refund to a Wholesaler or to a Retailer

The United States may purchase diesel fuel ex-tax from a wholesaler who has already paid tax on the fuel it delivers into a storage tank of the United States. The proposed regulation clarifies that a claim for refund may be filed by the wholesaler.

The United States may also purchase diesel fuel at retail service stations. The retailer that owned the tax-paid diesel fuel and directly sold the tax-paid diesel fuel ex-tax to the United States may file a claim for refund.

Discussion of a Refund to an Access Card Issuer

Sometimes, the United States enters into arrangements where its employees may obtain fuel by use of an access card. These access cards are different than credit cards in that they allow access to the pump, but do not extend credit to the cardholder or to the participating service station. The issuer of the access card purchases the tax-paid diesel fuel as it leaves the pump and is dispensed into the fuel tank of the United States government vehicle and the United States purchases the fuel ex-tax from the card issuer. The card issuer pays the service station the full amount of the cost of the diesel fuel, including tax, and collects from the United States the cost of the diesel fuel, minus the tax. The proposed regulation clarifies that in these access card situations, the access card issuer is entitled to claim a refund of the tax it paid on fuel that it sold ex-tax to the United States.

Summary

Staff intends to recommend that the Board authorize publication of proposed Regulation 1434. This matter is scheduled for discussion at the October 24, 2001 Business Taxes Committee meeting. However, staff is seeking comments on this regulation from interested parties to ensure that all issues and concerns relating to the regulation are considered in advance of the October 24, 2001, meeting.

INITIAL DISCUSSION FOR ISSUE PAPER

Proposed New Regulation

Regulation 1434, Sales of Diesel Fuel to the United States and Its Agencies and Instrumentalities

Prepared by the Fuel Taxes Division, Special Taxes Department

Current as of June 8, 2001

Regulation 1434. Sales of Diesel Fuel to the United States and Its Agencies and Instrumentalities.

(a) IN GENERAL. The diesel fuel tax does not apply to the sale of diesel fuel to the United States and its agencies and instrumentalities. Examples of the United States and its agencies or instrumentalities, include but are not limited to, American Red Cross, Postal Service, branches of the armed services, military exchanges, and agencies such as the US Forest Service and the Department of Housing and Urban Development.

(b) SALES OF EX-TAX DIESEL FUEL. A supplier licensed under the Diesel Fuel Tax Law that makes sales of ex-tax diesel fuel to the United States and its agencies and instrumentalities, may claim an exemption on its diesel fuel tax return.

(c) SALES OF TAX-PAID DIESEL FUEL.

(1) A supplier licensed under the Diesel Fuel Tax Law that makes sales of tax-paid diesel fuel to the United States and its agencies and instrumentalities may claim a credit on its diesel fuel tax return. The tax-paid fuel may be sold in bulk or through any company-owned retail service station.

(2) A person licensed as an ultimate vendor under the Diesel Fuel Tax Law who makes a sale of tax-paid fuel to the United States and its agencies and instrumentalities may claim a refund on its Diesel Fuel Ultimate Vendor Report/Claim for Refund.

(3) A diesel fuel seller not required to be licensed under the Diesel Fuel Tax Law, including but not limited to a wholesaler, access card issuer or service station operator may file on forms prescribed by the Board, a claim for refund of tax on its sales of tax-paid diesel fuel to the United States and its agencies and instrumentalities as to those gallons of diesel fuel it sells ex-tax to the United States and its agencies and instrumentalities. The claim for refund may only be filed by the person that owned the tax-paid diesel fuel and directly sold the tax-paid diesel fuel to the United States and its agencies and instrumentalities. "Access card issuer" means a person that issues to a customer an access card or code or similar access device which entitles the customer to obtain fuel owned by the access card issuer at participating fuel dispensing sites.

(d) DOCUMENTATION FOR BULK TRANSACTIONS. Any person claiming an exemption, credit, or refund for bulk sales of diesel fuel to the United States and its agencies and instrumentalities must retain supporting documentation. Documentation may include, but is not limited to:

(1) A copy of the United States government purchase order or other documentation authorizing the purchase of the diesel fuel.

(2) A copy of the billing invoice or other documents identifying the United States and its agencies and instrumentalities as the purchaser of the diesel fuel, the invoice billing date, the invoice billing number, the number of diesel fuel gallons sold to the United States and its agencies and instrumentalities and a clear indication that no diesel fuel tax reimbursement was collected from the United States and its agencies and instrumentalities.

(3) Documentation showing that the diesel fuel in question was acquired ex-tax by a licensed supplier claiming the exemption.

(4) Documentation showing that the diesel fuel in question was acquired tax-paid by a person claiming the credit or refund.

(e) DOCUMENTATION FOR NON-BULK TRANSACTIONS. Any person claiming a credit or filing a claim for refund on retail sales of tax-paid fuel sold in non-bulk quantities, including credit card sales to the United States and its agencies and instrumentalities must retain supporting documentation. Documentation may include, but is not limited to:

(1) A copy of the billing invoice or other documentation identifying the United States and its agencies and instrumentalities as the purchaser of the diesel fuel, the invoice billing date, the invoice billing number, the number of diesel fuel gallons sold to the United States and its agencies and instrumentalities and a clear indication that no diesel fuel tax reimbursement was collected from the United States and its agencies and instrumentalities.

(2) Documentation showing that the diesel fuel in question was acquired tax-paid by a person claiming the credit or refund.

(3) A copy of the credit card receipt, or listing of credit card transactions provided by the card processor, identifying the United States and its agencies and instrumentalities as the purchaser of the diesel fuel, the date of the transaction, the record number of the receipt, and the number of diesel fuel gallons sold to the purchaser.

(4) A copy of the charge back of the tax to the retailer by the credit card processor.

Authority: Section 60601 of the Revenue and Taxation Code.

Reference: Sections 60100, 60501, and 60508 of the Revenue and Taxation Code.

The proposed version contained in this document may not be adopted. Any version that is adopted may differ from this text.