



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

GRETCHEN WHITMER
GOVERNOR

RACHAEL EUBANKS
STATE TREASURER

TREASURY DISCONTINUES ITS 3.2 GALLON PER VEHICLE STANDARD ALLOWANCE (SAFE HARBOR) FOR AUTOMAKER FUEL TAX REFUND CLAIMS

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In *AutoAlliance Int'l, Inc v Dep't of Treasury*,¹ the Michigan Court of Appeals held that the taxpayer (an automaker) was entitled to claim a refund for the motor fuel tax imposed by the Motor Fuel Tax Act ("MFTA") on the 3.2 gallons of motor fuel that it placed into the fuel supply tank of each newly manufactured vehicle for export.

The Court determined that the taxpayer's placement of the fuel into the fuel supply tanks of those vehicles, to ensure they could undergo quality control and testing within the taxpayer's off-highway facilities and be driven off transport carriers upon arrival at their out-of-state destinations, qualified as a non-taxable (nonhighway) "use" of fuel under sections 33 and 39 of the MFTA.² The Court also accepted that the 3.2 gallon per vehicle figure was the "minimum amount needed" to accomplish those purposes based on the vehicles at issue in the case.

As a result of that decision, Treasury instituted an administrative standard allowance (safe harbor) of 3.2 gallons per vehicle for *AutoAlliance*-based refund claims. This meant that as long as the taxpayer affirmed or otherwise demonstrated that each vehicle received at least 3.2 gallons of fuel, Treasury would not require the taxpayer to submit the fuel fill specification records that established, controlled, directed, or which would otherwise verify the actual fuel fill for each vehicle for which the refund is claimed *for the first 3.2 gallons of fuel*. Supporting fuel fill specification documentation were required only for claimed fuel fill amounts in excess of 3.2 gallons per vehicle.

In the years following the *AutoAlliance* decision, taxpayers have expressed concern that Treasury's 3.2 gallon standard allowance (safe harbor) is based on the particular attributes of the vehicles at issue in that case and does not reflect the attributes of the vehicles that are subject of their refund claims. In addition, the May 29, 2018, decision by the Michigan Court of Appeals in *Ford Motor Co v Dep't of Treasury* (Docket No. 338784) provides additional clarity as to the documentation that is required to support an *AutoAlliance*-based refund claim.

¹ 282 Mich App 492 (2009), lv den 485 Mich 866 (2009), recon den 485 Mich 1105 (2010).

² MCL 207.1033; MCL 207.1039.

In consideration of these legal and factual developments, Treasury has determined to discontinue this 3.2 gallon per vehicle standard allowance (safe harbor).

Effective July 1, 2019, the 3.2 gallon per vehicle standard allowance (safe harbor) is no longer available. An *AutoAlliance*-based refund claim submitted to Treasury on or after the effective date of this Notice must be supported by documentation that substantiates the actual fuel fill (e.g., gallons) per vehicle during the tax period(s) for which the refund is claimed.

In addition to establishing a minimum set of requirements in order to seek a refund under the MFTA, MCL 207.1048 authorizes Treasury to set substantiation standards for refunds claims as may be necessary based on the type of refund claim and the underlying circumstances under which the refund claim is based.

Accordingly, in addition to the general information and documentation required under MCL 207.1048, and/or Treasury policy for all refund claims involving motor fuel tax, a taxpayer filing an *AutoAlliance*-based refund claim must provide, at a minimum, the following information and/or documentation to Treasury to substantiate the refund claim for the applicable tax period:

1. Motor fuel purchase invoices (whether on paper or in an electronic format or CD) showing the purchase date, seller's name and address, purchaser's name and address, fuel type (e.g., gasoline or diesel fuel), number of gallons purchased, and that the motor fuel tax for which a refund is claimed was charged to the taxpayer and paid;
2. Fuel specification document(s) (e.g., computer system printouts) that: (a) describe by part number or related nomenclature the type of fuel that is the subject of the specification, and (b) established, controlled, directed, or which otherwise verify the actual amount (e.g., gallons) of fuel that was placed into the fuel supply tanks of each vehicle for which the refund is claimed [*See affidavit requirement in item 4*];
3. Report(s), spreadsheet(s), schedule(s), or other document(s) that summarize(s) information concerning the exported vehicles and fuel fill amounts for each tax period for which the refund is claimed [*See affidavit requirement in item 4*]. At a minimum, this information should include:
 - the number of exported vehicles by make and model at each Michigan assembly plant/facility for each month of the period(s) relevant to the refund claim.
 - the total number of exported vehicles by make and model relevant to the refund claim.
 - the fuel fill specification(s) (e.g., gallons) applicable for each make and model of vehicle at each Michigan assembly plant/facility that ties to the fuel specification documents described in item 2 above for each month of the period(s) relevant to the refund claim.
 - the total number of gallons and corresponding tax for which the refund is claimed.
 - the type of fuel that is the subject of the claim (e.g., gasoline, diesel fuel).
 - the tax rate(s) applicable to the tax period(s) for which the refund applies.

4. Sworn affidavit(s) from relevant persons that establish the taxpayer as an “end user” of the fuel for non-highway purposes under *AutoAlliance*, and which lay the foundation for (and describe/explain) the various documents and information set forth in items 2 and 3 above and how the documents and information relate to and support the refund claim.

Note: With the prior written approval of Treasury, any information or documentation other than that described above, that is substantially similar to the above or otherwise conveys the information sought by the Department, can be used to support a refund claim.