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DEPARTMENT OF TREASURY
LANSING

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NOTICE REGARDING CHANGES TO PREPAID SALES TAX UNDER 2015 PA 264

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On December 23, 2015, 2015 PA 264 was signed into law. PA 264 affects the prepaid sales tax on fuel by amending section 6a of the General Sales Tax Act, MCL 205.56a. The changes made by PA 264 are **effective April 1, 2016, and include:**

- Excluding from the definitions of “purchase,” “receipt,” or “shipment” (thereby prohibiting the imposition of the prepaid sales tax) any of the following:
 - (i) a “two-party exchange”
 - (ii) a “bulk transfer”
 - (iii) a “receipt of fuel as part of a bulk transfer”
- Excluding the purchase or receipt of fuel in Michigan by a “supplier” or “exporter” licensed under the Motor Fuel Tax Act (MFTA) from the prepaid sales tax when the fuel is purchased or received for immediate export as evidenced by the terminal’s shipping papers or bills of lading.
- *Amends* certain definitions in the statute for both curative purposes and to effectuate the changes made by PA 264, and also *adds* new definitions to the statute. This includes amending the definition of “refiner” and adding a definition for “refinery”;¹ (ii) adding “transmix”² to the definition of “gasoline,” and; (iii) expressly excluding dyed kerosene from the prepaid sales tax.

Prepaid Sales Tax on Fuel (effective April 1, 2016)

At the time of purchase or shipment *in Michigan* from a refiner, pipeline terminal operator, or marine terminal operator, a purchaser or receiver of “fuel” (i.e., “gasoline” and/or “diesel fuel” as defined under the statute) shall remit the prepaid sales tax to the refiner, pipeline terminal operator, or marine terminal operator unless any of the following apply:

¹ Under PA 264, a “refiner” must, among other things, manufacture or produce fuel “at a refinery” by any process involving substantially more than the blending of fuel. To constitute a “refinery” under PA 264, a facility must, among other things, produce fuel “from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons” Accordingly, an ethanol plant does not constitute a “refiner” under PA 264.

² “Transmix” means “the mixed product that results from the buffer or interface of 2 different products in a pipeline shipment, or a mixture of 2 different products within a terminal operated by a pipeline terminal operator, within a boat terminal transfer operated by a marine terminal operator, or at a refinery that results in an off-grade mixture.”

- The purchase or receipt of the fuel is made by a “supplier” or “exporter” for immediate export (i.e., for immediate shipment and subsequent sale outside Michigan) as evidenced by the terminal’s shipping papers or bill of lading.³
- The transaction involves a “bulk transfer,” a “two-party exchange,” or a receipt of fuel as part of a bulk transfer. This is accomplished by excluding each of these from the definition of “purchase,” “receipt,” or “shipment” under MCL 205.56a(q).
 - (i) A “bulk transfer” means a transfer of fuel *from*, or purchase for resale *by*, a refiner, pipeline terminal operator, or marine terminal operator *to or from* another refiner, pipeline terminal operator, or marine terminal operator through pipeline tender or marine delivery, including pipeline movements of fuel or marine vessel movements of fuel.⁴
 - Bulk transfer also includes a transaction involving the transfer by any transportation means *to*, or purchase for resale *by*, a refiner, pipeline terminal operator, or marine terminal operator of *alcohol* to be used exclusively for blending with gasoline.
 - (ii) A “two-party exchange” is a transaction, including a book transfer, in which fuel is transferred from one supplier to another supplier where all of the following occur: (1) the transaction includes a transfer of fuel from the person who holds the original inventory position for the fuel in fuel storage tanks as reflected in the records of the refiner, pipeline terminal operator, or marine terminal operator; (2) the exchange transaction is completed before removal across the rack by the receiving supplier, and; (3) the refiner, pipeline terminal operator, or marine terminal operator in its books and records treats the receiving exchange party as the supplier that removes the fuel across a rack for purposes of reporting the transaction to the Department under the MFTA.⁵

If the purchase or receipt of fuel is made ***outside Michigan for shipment into and subsequent sale within Michigan***, the purchaser or receiver shall remit the prepaid sales tax directly to the Department unless any of the following apply:

- The purchaser or receiver of the fuel is a refiner, pipeline terminal operator, or marine terminal operator as part of a bulk transfer.

³ A “supplier” is defined as a supplier or permissive supplier licensed under section 70 or 73 of the MFTA and an “exporter” is defined as a person who exports fuel and is licensed under section 86 of the MFTA.

⁴ Fuel transferred to, or purchased for resale by, a refiner, pipeline terminal operator, or marine terminal operator must be delivered to, or otherwise remain within, the *bulk transfer terminal system* prior to removal across the rack in order to constitute a bulk transfer. The “bulk transfer terminal system” is the fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals and includes fuel storage tanks and fuel storage facilities that are part of a refinery, boat terminal transfer, or terminal owned, operated, or controlled by a refiner, marine terminal operator, or pipeline terminal operator.

⁵ With the addition of a definition for “two-party exchange,” PA 264 strikes the references to an “exchange of fuel or an exchange transaction between refiners, pipeline terminal operators, or marine terminal operators” in the definition of “purchase” or “shipment.”

- The transaction involves a bulk transfer, a two-party exchange, or a receipt of fuel as part of a bulk transfer. This is accomplished by excluding each of these from the definition of “purchase,” “receipt,” or “shipment” under MCL 205.56a(q).

The following examples illustrate the application of PA 264 under certain scenarios:

Example 1: MFTA-licensed supplier purchases diesel fuel from a pipeline terminal operator located in Michigan for immediate export as evidenced by the terminal’s shipping papers or bill of lading. **Result: No prepaid sales tax is due, so prepaid sales tax is not to be collected by the pipeline terminal operator.**

Example 2: Refiner located in Michigan purchases ethanol for blending with gasoline from an ethanol plant located in Michigan. **Result: No prepaid sales tax is due, so prepaid sales tax is not to be collected by the ethanol plant.**⁶

Example 3: Marine terminal operator located in Michigan purchases gasoline from a refiner located in Michigan and the gasoline is delivered to, and remains within, the bulk transfer terminal system prior to removal across the rack. **Result: the transaction constitutes a bulk transfer for which no prepaid sales tax is due, so prepaid sales tax is not to be collected by the refiner.**

Example 4: Fuel vendor receives ethanol in Iowa and imports the ethanol into Michigan by truck for transfer to a Michigan refiner. The Michigan refiner will blend the ethanol with gasoline and resell the blended fuel in Michigan. The ethanol is delivered to the refiner and remains within the bulk transfer terminal system prior to removal across the rack. **Result: the transaction constitutes a bulk transfer for which no prepaid sales tax is due, so the fuel vendor is not required to make the prepayment of sales tax directly to the Department.**

Example 5: Supplier receives natural gasoline in Texas and imports it into Michigan for resale to an ethanol plant located in Michigan for the purpose of producing denatured ethanol for blending with gasoline. **Result: prepaid sales tax is due, so the supplier must make a prepayment of sales tax directly to the Department.**⁷

Example 6: In addition to the facts in Example 5, a refiner purchases the denatured ethanol from the ethanol plant for blending with gasoline that will be resold in Michigan. The denatured ethanol is delivered to, and remains within, the bulk transfer terminal system prior to removal across the rack. **Result: the transaction constitutes a bulk transfer for which no prepaid sales tax is due, so prepaid sales tax is not to be collected by the ethanol plant.**

To read the new law in its entirety, please refer to 2015 PA 264 at www.legislature.mi.gov.

⁶ Under PA 264, the ethanol plant is not a “refiner,” and it is assumed for purposes of this illustration that the ethanol plant does not fit within the “pipeline terminal operator” or “marine terminal operator” definitions.

⁷ This example assumes that the supplier is not a refiner, pipeline terminal operator or marine terminal operator.