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## REVENUE ADMINISTRATIVE BULLETIN 2016-22

Approved: November 7, 2016

### NOTICE OF PREPAID SALES TAX RATES ON FUEL IN EFFECT FOR THE MONTH OF DECEMBER 2016

(Replaces Revenue Administrative Bulletin 2016-19)

Pursuant to MCL 205.6a, a taxpayer may rely on a Revenue Administrative Bulletin issued by the Department of Treasury after September 30, 2006, and shall not be penalized for that reliance until the bulletin is revoked in writing. However, reliance by the taxpayer is limited to issues addressed in the bulletin for tax periods up to the effective date of an amendment to the law upon which the bulletin is based or for tax periods up to the date of a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired that overrules or modifies the law upon which the bulletin is based.

**RAB 2016-22.** This Revenue Administrative Bulletin (RAB) sets forth the sales tax prepayment rates applicable to the purchase or receipt of gasoline and diesel fuel pursuant to Section 6a of the General Sales Tax Act, MCL 205.56a, for the month of **December 2016**.

This RAB also identifies the calculation method used to determine the prepaid sales tax rate for gasoline and diesel fuel. This RAB supersedes RAB 2016-19.

#### ISSUES

- I. What are the applicable prepaid sales tax rates for gasoline and diesel fuel?
- II. Why does the Department change the prepaid sales tax rates?
- III. How will changes in the prepayment rates be announced?
- IV. What are the recent historical prepayment rates for gasoline and diesel fuel?

#### CONCLUSIONS

- I. Effective for the period **December 1, 2016 through December 31, 2016**, the prepaid sales tax rates for the purchase or receipt of gasoline and diesel fuel are:
  - Gasoline: **11.5** cents per gallon.
  - Diesel Fuel: **12.9** cents per gallon.
- II. Section 6a(4) of the General Sales Tax Act requires that the Department determine the prepayment rates for both gasoline and diesel fuel every month.

- III. The Department will publish an RAB setting forth prepayment rates for both gasoline and diesel fuel no later than the tenth day of the month immediately preceding the month in which the rates are effective. **The RAB will be published in the Reports & Legal Resources (Revenue Administrative Bulletins) section of the Michigan Department of Treasury website at: [www.michigan.gov/treasury](http://www.michigan.gov/treasury).**
- IV. Recent historical sales tax prepayment rates for gasoline and diesel fuel, as applicable, are set forth below:
- a. Effective December 1, 2015 through December 31, 2015, the rate for gasoline was established at 12.5 cents per gallon and the rate for diesel fuel was established at 14.9 cents per gallon.
  - b. Effective January 1, 2016 through January 31, 2016, the rate for gasoline was established at 11.0 cents per gallon and the rate for diesel fuel was established at 14.6 cents per gallon.
  - c. Effective February 1, 2016 through February 29, 2016, the rate for gasoline was established at 9.5 cents per gallon and the rate for diesel fuel was established at 12.9 cents per gallon.
  - d. Effective March 1, 2016 through March 31, 2016, the rate for gasoline was established at 9.0 cents per gallon and the rate for diesel fuel was established at 11.4 cents per gallon.
  - e. Effective April 1, 2016 through April 30, 2016, the rate for gasoline was established at 8.1 cents per gallon and the rate for diesel fuel was established at 10.4 cents per gallon.
  - f. Effective May 1, 2016 through May 31, 2016, the rate for gasoline was established at 10.0 cents per gallon and the rate for diesel fuel was established at 10.9 cents per gallon.
  - g. Effective June 1, 2016 through June 30, 2016, the rate for gasoline was established at 10.9 cents per gallon and the rate for diesel fuel was established at 11.2 cents per gallon.
  - h. Effective July 1, 2016 through July 31, 2016, the rate for gasoline was established at 12.2 cents per gallon and the rate for diesel fuel was established at 12.2 cents per gallon.
  - i. Effective August 1, 2016 through August 31, 2016, the rate for gasoline was established at 13.5 cents per gallon and the rate for diesel fuel was established at 12.9 cents per gallon.
  - j. Effective September 1, 2016 through September 30, 2016, the rate for gasoline was established at 11.9 cents per gallon and the rate for diesel fuel was established at 12.7 cents per gallon.
  - k. Effective October 1, 2016 through October 31, 2016, the rate for gasoline was established at 12.0 cents per gallon and the rate for diesel fuel was established at 12.6 cents per gallon.
  - l. Effective November 1, 2016 through November 30, 2016, the rate for gasoline was established at 11.6 cents per gallon and the rate for diesel fuel was established at 12.7 cents per gallon.

## LAW & ANALYSIS

Beginning April 1, 2013, the sales tax prepayment collection and reporting obligations under Section 6a of the General Sales Tax Act were expanded pursuant to Public Act 509 of 2012 (“PA 509”) to include a broader category of fuels. This was accomplished by requiring prepayments with respect to “fuel,” which is a defined term added to Section 6a(11) by PA 509 that includes “gasoline” and “diesel fuel” as those terms are defined in the statute. MCL 205.56a(11). Under PA 509, “gasoline” excludes diesel fuel, dyed diesel fuel, dyed kerosene, and an excluded liquid as those terms are defined in the statute. With the enactment of Public Act 264 of 2015 (“PA 264”), the definition of “gasoline” includes “transmix” beginning April 1, 2016. Under PA 509, “diesel fuel” does not include dyed diesel fuel or an excluded liquid as those terms are defined in the statute. With the enactment of PA 264, the definition of “diesel fuel” expressly includes “kerosene” and expressly excludes “dyed kerosene” beginning April 1, 2016.

With the enactment of PA 264, beginning 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” shall prepay a portion of the sales tax at a rate determined and certified by the Department unless any of the following apply:

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

Under PA 264, beginning April 1, 2016, 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.
- The transaction involves a “bulk transfer,” a “two-party exchange,” or a receipt of fuel as part of a bulk transfer as those terms are defined in the statute. This is accomplished by excluding each of these from the definition of “purchase,” “receipt,” or “shipment” under MCL 205.56a(q).

Under Section 6a(4) of the General Sales Tax Act, as amended by PA 264 and Public Act 1 of 2013, the prepayment rates for both gasoline and diesel fuel will be determined by the Department on a monthly basis and published by the Department no later than the 10<sup>th</sup> day of the month immediately preceding the month in which the new prepayment rates will be in effect. MCL

205.56a(4). The prepayment rate for gasoline will be based on 6% of the statewide average retail price of a gallon of self-serve unleaded regular gasoline and the prepayment rate for diesel fuel will be based on 6% of the statewide average retail price of a gallon of undyed No.2 ultra-low sulfur diesel fuel. Each rate will be rounded up to the nearest 1/10 of 1 cent.

The prepayment rates for gasoline and diesel fuel effective for the month of **December 2016** were determined by the Department based on the statewide average retail prices of self-serve unleaded regular gasoline and undyed No.2 ultra-low sulfur diesel fuel for the period commencing October 1, 2016 and ending October 31, 2016.

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