



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

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REVENUE ADMINISTRATIVE BULLETIN 2014-12

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ENVIRONMENTAL PROTECTION REGULATORY FEE

Replaces Revenue Administrative Bulletin 1990-33

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 2014-12.

This Revenue Administrative Bulletin (“RAB”) updates the discussion of the environmental protection fee contained in RAB 1990-33 to reflect legislation enacted after the issuance of RAB 1990-33. That legislation includes the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.101 *et seq.* (“NREPA”), 2012 PA 113 (“PA 113”), 2012 PA 509 (“PA 509”), and 2013 PA 1 (“PA 1”).

Background

1989 PA 152 amended the Michigan Underground Storage Tank Financial Assurance Act (“MUSTFAA”) and established an environmental protection regulatory fee to fund the federally-mandated cleanup of leaking underground storage tanks. This fee applied to petroleum products refined or imported into Michigan for resale or consumption within Michigan. Beginning in August 1, 1989, refiners of petroleum and importers of refined petroleum were required to pay a regulatory fee of 7/8 of 1 cent on each gallon of refined petroleum sold in Michigan. RAB 1990-33 discussed the environmental protection regulatory fee established by the MUSTFAA.

The NREPA expressly repealed the MUSTFAA. Like the MUSTFAA, the NREPA imposes an environmental protection regulatory fee (“Fee”) equal to 7/8 of 1 cent on each gallon of refined petroleum sold for resale or consumption in Michigan.¹ The Fee is to be collected by the Department of Treasury (“Department”) from persons who refine petroleum in Michigan or import petroleum into Michigan for resale or consumption in Michigan, at the same time as the prepaid sales tax on gasoline and diesel fuel under MCL 205.56a, as amended by PA 509 and PA 1.² Accordingly, the Fee is to be reported and paid by refiners, terminal operators and importers to the Department on Form 173, *Report of Fuel Sales Tax Prepayment and Environmental*

¹ MCL 324.21508(1).

² MCL 324.21508(2).

Protection Regulatory Fee for Refiners, Terminal Operators and Importers (Rev. 4/13). The Fee collected by the Department under the NREPA is deposited into the Refined Petroleum Fund created pursuant to MCL 324.21506a.³

Prior to the enactment of PA 113, the Fee was scheduled to sunset on December 31, 2012. Under PA 113, the Fee is scheduled to sunset December 31, 2015.⁴

Refined Petroleum Products Subject to the Fee

The Fee is charged against “all refined petroleum products” sold by the refiner or importer for resale or consumption in Michigan “so as not to exclude any products that may be stored in an underground storage tank at any point after the petroleum is refined.”⁵ The NREPA defines “refined petroleum” as “aviation gasoline, middle distillates, jet fuel, kerosene, gasoline, residual oils and any oxygenates that have been blended with any of these products.”⁶

In general, a “middle distillate” comprises a range of products from the middle fraction of crude oil. For purposes of the Fee, this includes any such product used as a heating fuel, internal combustion engine fuel or turbine engine fuel. Examples include No. 1 and No. 2 distillate fuel oils or diesel fuels. Products commonly referred to as middle distillates, but not used as heating fuel, internal combustion engine fuel, or turbine engine fuel are not subject to the Fee. For purposes of the Fee, “residual oils” means fuels commonly known No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy and No. 6 fuel oils.

Gasoline blendstocks must be evaluated on a case-by-case basis depending on the nature of the blendstock in order to determine whether the Fee is to be imposed on the sale or importation of the blendstock. To the extent the blendstock constitutes “refined petroleum,” the Fee would apply. On the other hand, if the blendstock constitutes an “oxygenate,” then the Fee would not apply so long as the blendstock has not been blended with “refined petroleum.”

Examples:

1. Raffinate (i.e., a substance remaining after a refining process has been completed to distill, extract or otherwise remove a desired compound, fuel or substance from petroleum) which is sold for resale or consumption in Michigan as a fuel is subject to the Fee. If raffinate is sold solely as a feed stock for a refined petroleum product, it is not subject to the Fee. However, the Fee must be charged against the resulting refined petroleum product for which the raffinate was used as a feed stock.
2. Butane and propane, although commonly used as fuels, are not subject to the Fee because neither constitutes “refined petroleum” under the NREPA.

³ MCL 324.21508(4).

⁴ MCL 324.21550(1).

⁵ MCL 324.21508(1).

⁶ MCL 324.21503(e).

3. Motor oil, which is derived from lubricating oils, does not fall within the definition of “refined petroleum” and is not subject to the Fee.

An “oxygenate” under the NREPA means “an organic compound containing oxygen and having properties as a fuel that are compatible with petroleum, including, but not limited to, ethanol, methanol, or methyl tertiary butyl ether (MTBE).”⁷

Examples:

1. Ethanol refined in (or imported into) Michigan is not subject to the Fee until it is blended with aviation gasoline, a middle distillate, jet fuel, kerosene, gasoline or residual oils because it is expressly defined in the NREPA as an oxygenate.
2. Pure biodiesel (e.g., B100) refined in (or imported into) Michigan is not subject to the Fee until it is blended with aviation gasoline, a middle distillate, jet fuel, kerosene, gasoline or residual oils because it is an oxygenate under the NREPA. Biodiesel which has been blended with refined petroleum (e.g., B99.9) is subject to the Fee.

Fee Base

The volume of oil fluctuates due to changes in temperature. “Light” petroleum products are sold on the basis of gross gallons or metered gallons. Therefore, the Fee shall be calculated and paid on the gross or metered gallons with respect to all “light” petroleum products.⁸ “Light” petroleum products include gasoline, aviation gasoline, middle distillates, jet fuel, and kerosene and any oxygenates that have been blended with any of these products.

“Heavy” petroleum products (No. 4, No. 5 and No. 6 residual oils) are sold on a “temperature-corrected” basis. The Fee shall be calculated and paid upon the net or temperature-corrected gallons with respect to “heavy” petroleum products.⁹ “Heavy” petroleum products mean residual oils and any oxygenates that have been blended with any of these products.

Refiners of “Refined Petroleum” Products

The NREPA requires the Department to collect the Fee from persons who refine petroleum in Michigan for resale or consumption in Michigan.¹⁰

Product Exchange Agreements

A product exchange agreement is defined as “an agreement between buyers and sellers of refined petroleum products in which refined petroleum products in bulk quantity are made available to a

⁷ MCL 324.21502(x).

⁸ MCL 324.21509(l).

⁹ MCL 324.21509(l).

¹⁰ MCL 324.21508.

person solely in consideration of that person making available a like volume of refined petroleum products to the other party at some other location.”¹¹

A person receiving refined petroleum products in Michigan for resale or consumption in Michigan under a product exchange agreement is considered the taxpayer and must report and pay the Fee.¹²

Importers of Refined Petroleum Products

The NREPA requires the Department to collect the Fee from persons who import refined petroleum into Michigan for resale or consumption in Michigan.¹³ For the purpose of administering the Fee, the Department considers an importer to be the person having legal ownership of (including, but not limited to, title to) the refined petroleum at the time it is brought into Michigan.

Examples:

1. Company A refines petroleum in another state and sells it to a purchaser in Michigan. Company A will constitute the importer when title to the refined petroleum products passes to the Michigan purchaser in Michigan under any of the following (non-exhaustive) situations:

- The refined petroleum is brought into Michigan in Company A’s truck.
- Company A hires a contract carrier to haul the refined petroleum into Michigan.
- A common carrier transports the refined petroleum into Michigan and title passes in Michigan rather than another state.

2. The Michigan purchaser is considered to be the importer of refined petroleum when title passes to the Michigan purchaser in another state under any of the following (non-exhaustive) situations:

- The refined petroleum is transported into Michigan in the purchaser’s truck.
- Title to the refined petroleum passes to the Michigan purchaser in another state and a common carrier transports the refined petroleum to the Michigan purchaser.
- Title to the refined petroleum passes to the Michigan purchaser in another state and is moved into Michigan by pipeline into a Michigan terminal.

Wholesaler Distributors and Retailers of Refined Petroleum Products

Under the NREPA, the Department collects the Fee from refiners and importers of refined petroleum.¹⁴ Accordingly, the Department may not collect the Fee directly from wholesale

¹¹ MCL 324.21509(2).

¹² MCL 324.21509(2).

¹³ MCL 324.21508(2).

¹⁴ MCL 324.21508.

distributors or retailers of refined petroleum products. However, suppliers may pass the Fee on to wholesale distributors and retailers.

Sales for Resale of Refined Petroleum for Immediate Export

MCL 324.21508(1) imposes the Fee on refined petroleum sold for resale or consumption in Michigan. Sales of refined petroleum for immediate export are not subject to the Fee. When the customer is claiming exemption from the Fee because the refined petroleum being purchased is for immediate export, the purchaser must provide an exemption claim to the seller identifying the specific load by invoice number or load number. A statement that the load being purchased is for immediate export to a specific destination outside Michigan and that the refined petroleum will not be returned to Michigan must be included. This exemption claim must be made for each load of refined petroleum being exported. In lieu of a paper statement and exemption claim, an exemption from the Fee based on sales of refined petroleum for immediate export may also be claimed through the use of a card system at the terminal rack which verifies that the specific load being purchased and removed from the terminal is for immediate export to a destination outside Michigan.

Interstate Commerce

Sales made to an out-of-state purchaser and delivered by the seller to the out-of-state location are sales in interstate commerce and are not subject to the Fee.

Petroleum Used by a Public Utility for the Generation of Steam or Electricity

A public utility with more than 500,000 Michigan customers is exempt from the Fee if the petroleum is used by the public utility for the generation of steam or electricity.¹⁵ The NREPA defines “petroleum” as “crude oil, crude oil fractions, and refined petroleum fractions including gasoline, kerosene, heating oils, and diesel fuels.”¹⁶

To claim this exemption, a public utility must present an exemption certificate to the seller at the time of the purchase. The exemption certificate shall be in the form as follows:

¹⁵ MCL 324.21508(3).

¹⁶ MCL 324.21503(b).

**ENVIRONMENTAL PROTECTION REGULATORY FEE
EXEMPTION CERTIFICATE**

(PURCHASES OF REFINED PETROLEUM BY A QUALIFYING PUBLIC UTILITY ONLY)

The undersigned hereby claims exemption from the Environmental Protection Regulatory Fee imposed under MCL 324.21508 on the purchase of "refined petroleum," as defined in MCL 324.21503(e), from the Seller listed below:

Seller's Name and Address: _____

The undersigned hereby certifies, under penalty of perjury, that the refined petroleum being purchased by the public utility identified below is to be used by the public utility for the generation of steam or electricity, and that the public utility has more than 500,000 customers in the State of Michigan. In the event this claim is disallowed, the transferee promises to reimburse the Seller for the amount of the environmental protection regulatory fee involved. This certifies that this exemption claim is based upon the purchaser's proposed use of the refined petroleum and the status of the purchaser as a public utility with more than 500,000 customers in the State of Michigan.

Name of Public Utility: _____

Business Address: _____

City, State, Zip Code: _____

Business Telephone Number (include Area Code): _____

Name of Officer or Authorized Representative (Print): _____

Signature and Title: _____

Date of Purchase: _____

Date Signed: _____