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LANSING

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REVENUE ADMINISTRATIVE BULLETIN 2015-11

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ENVIRONMENTAL PROTECTION REGULATORY FEE

Replaces Revenue Administrative Bulletin 2014-12

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 2015-11.

This Revenue Administrative Bulletin (“RAB”) updates the discussion of the environmental protection regulatory fee contained in RAB 2014-12 to reflect the enactment of 2014 PA 416 (“PA 416”), which became effective December 31, 2014.

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 is applied to petroleum products refined or imported into Michigan for resale or consumption within Michigan. Beginning on 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.

As explained in RAB 2014-12, the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.101 *et seq.*, (“NREPA”) expressly repealed the MUSTFAA and also imposed an environmental protection regulatory fee (“Fee”) equal to 7/8 of 1 cent on each gallon of refined petroleum sold for resale or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 In general, 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 2012 PA 509 and 2013 PA 1.² Under PA 416, the Fee does not apply to a bulk transfer or a 2-party exchange beginning January 1, 2015. 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*

¹ MCL 324.21508(1), as amended by PA 416.

² MCL 324.21508(2).

Environmental Protection Regulatory Fee for Refiners, Terminal Operators and Importers (Rev. 4/13). Under PA 416, which established the Underground Storage Tank Cleanup Fund (“USTCF”) under MCL 324.21506b, the first \$20 million collected by the Department from the Fee each fiscal year is to be deposited into the USTCF with the remainder deposited into the Refined Petroleum Fund established by MCL 324.21506a.³

Prior to the enactment of PA 416, the Fee was scheduled to sunset on December 31, 2015. Under PA 416, the sunset was repealed so the Fee remains in effect indefinitely.⁴

Key Terms added to the NREPA (or Amended) by PA 416

- **Bulk Transfer:** a transfer of refined petroleum or a refined petroleum product from, or purchase for resale by, a refiner, pipeline terminal operator, supplier, or marine terminal operator to or from another refiner, pipeline terminal operator, supplier, or marine terminal operator through pipeline tender or marine delivery, including pipeline movements of refined petroleum or a refined petroleum product from 1 or more marine vessel movements of refined petroleum or a refined petroleum product. Refined petroleum or a refined petroleum product in a refinery, pipeline, terminal, or marine vessel transporting refined petroleum or a refined petroleum product to a refinery or terminal is in the bulk transfer terminal system.⁵
 - Refined petroleum or a refined petroleum product transferred or purchased for resale by a refiner, pipeline terminal operator, supplier, 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.⁶
- **Bulk Transfer Terminal System:** the refined petroleum or refined petroleum product distribution system consisting of refineries, pipelines, marine vessels, and terminals and includes refined petroleum or refined petroleum product storage tanks and refined petroleum or refined petroleum product 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.⁷
- **Excluded Liquid:** has the same meaning as given to that term in 26 CFR 48.4081-1.⁸ Under that federal regulation, an “excluded liquid” is a liquid that contains less than 4% normal paraffins *or* has a (i) distillation range of 125° F. or less; (ii) sulfur content of 10 ppm or less, and minimum color of +27 Saybolt.

³ MCL 324.21508(4).

⁴ Enacting section 1 of PA 416 repealed MCL 324.21550, which contained the sunset provision.

⁵ MCL 324.21502(h).

⁶ Id.

⁷ MCL 324.21502(i).

⁸ MCL 324.21502(r).

- **Marine Terminal Operator:** a person that stores refined petroleum or a refined petroleum product at a boat terminal transfer.⁹
- **Pipeline Terminal Operator:** a person that receives and stores refined petroleum or a refined petroleum product in tanks and other equipment used in receiving and storing refined petroleum or a refined petroleum product from interstate and intrastate pipelines, pending wholesale bulk reshipment.¹⁰
- **Rack:** a mechanism for delivering refined petroleum or a refined petroleum product from a refiner, a pipeline terminal operator, or a marine terminal operator into a railroad tank car, a transport truck, a tank wagon, or the fuel supply tank of a marine vessel.¹¹
- **Refined Petroleum:** aviation gasoline, middle distillates, jet fuel, kerosene, gasoline, residual oils, and any oxygenates that have been blended with any of these. Refined petroleum includes refined petroleum products and transmix. Refined petroleum does not include excluded liquids.¹²
- **Refiner:** a person that (i) manufactures or produces refined petroleum or a refined petroleum product at a refinery; and (ii) is a taxable fuel registrant that is a refiner for purposes of 26 CFR 48.4081-1.¹³
- **Refinery:** a facility used by a refiner to produce refined petroleum or a refined petroleum product from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons by any process involving substantially more than the blending of refined petroleum and from which refined petroleum or a refined petroleum product may be removed by pipeline or marine vessel or at a rack.¹⁴
- **Removal or Removed:** a physical transfer other than by evaporation, loss, or destruction of refined petroleum or a refined petroleum product from a refiner, pipeline terminal operator, or marine terminal operator.¹⁵
- **Supplier:** a supplier or permissive supplier licensed under the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170 (“MFTA”).¹⁶
- **Tank Wagon:** a straight truck having 1 or more compartments other than the fuel supply tank designed or used to carry fuel.¹⁷

⁹ MCL 324.21502(x).

¹⁰ MCL 324.21503(b).

¹¹ MCL 324.21503(d).

¹² MCL 324.21503(e) as amended by PA 416.

¹³ MCL 324.21503(h).

¹⁴ MCL 324.21503(i).

¹⁵ MCL 324.21503(m).

¹⁶ MCL 324.21503(p).

¹⁷ MCL 324.21503(q).

- **Terminal:** a refined petroleum or refined petroleum products storage and distribution facility that (i) is registered as a qualified terminal by the internal revenue service, (ii) is supplied by a pipeline or a marine vessel, and (iii) has a rack from which refined petroleum or refined petroleum products may be removed.¹⁸
- **Transmix:** 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 refinery or terminal that results in an off-grade mixture.¹⁹
- **Transport Truck:** a semitrailer combination rig designed or used for the purpose of transporting refined petroleum or a refined petroleum product over the public roads or highways.²⁰
- **Two-Party Exchange:** means a transaction, including a book transfer, in which refined petroleum or a refined petroleum product is transferred from 1 supplier to another supplier and (i) the transaction includes a transfer of refined petroleum or a refined petroleum product from the person that holds the original inventory position for the refined petroleum or refined petroleum product in storage tanks as reflected in the records of the refiner, pipeline terminal operator, or marine terminal operator; (ii) the exchange transaction is completed before removal across the rack by the receiving supplier, and; (iii) 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 refined petroleum or refined petroleum product across a rack for purposes of reporting the transaction to the Department under the MFTA.²¹

Refined Petroleum Products Subject to the Fee

In general, 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 a refined petroleum underground storage tank at any point after the petroleum is refined.”²² As noted above, “refined petroleum” means aviation gasoline, middle distillates, jet fuel, kerosene, gasoline, residual oils, any oxygenates that have been blended with any of these products, refined petroleum products and transmix.²³ However, refined petroleum does not include an “excluded liquid.”²⁴

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

¹⁸ MCL 324.21503(r).

¹⁹ MCL 324.21503(s).

²⁰ MCL 324.21503(t).

²¹ MCL 324.21503(u).

²² MCL 324.21508(1), as amended by PA 416.

²³ The references to refined petroleum products and transmix were added by PA 416.

²⁴ MCL 324.21503(e), as amended by PA 416.

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,” defined under the NREPA as “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),”²⁵ then the Fee would not apply so long as the blendstock has not been blended with “refined petroleum.” The Fee also does not apply to an “excluded liquid.”

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. Motor oil, which is derived from lubricating oils, does not fall within the definition of “refined petroleum” and is not subject to the Fee.
4. 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.
5. Pure biodiesel (e.g., B100) and certain biodiesel blends (e.g., B99.9) are not subject to the Fee because they fall within the definition of an excluded liquid.²⁶

Notably, under PA 416, the Fee is not imposed on a “bulk transfer” or “2-party exchange”²⁷ involving refined petroleum or refined petroleum products beginning January 1, 2015.²⁸ For example, a supplier imports refined petroleum into Michigan for resale or consumption in

²⁵ MCL 324.21502(x).

²⁶ At the point where a biodiesel product is blended with a sufficient quantity of refined petroleum (e.g., diesel fuel) so that the final blend contains at least 4 percent normal paraffins (or meets the other qualifications), the product ceases to be an excluded liquid, and becomes subject to the Fee.

²⁷ PA 416 excludes a “2-party exchange” from the imposition of the Fee. The defined term added by PA 416 is in regard to a “two-party exchange.” The Department is interpreting this difference as a non-substantive drafting error and will administer the Fee as if the referenced “2-party exchange” and the defined term “two-party exchange” are synonymous.

²⁸ MCL 324.21508(1) as amended by PA 416.

Michigan, but delivers the refined petroleum to a refiner as a bulk transfer. The Fee does not apply to the refined petroleum until the refined petroleum is removed across the rack.

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.²⁹ “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.³⁰ “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.³¹

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 person solely in consideration of that person making available a like volume of refined petroleum products to the other party at some other location.”³²

Until January 1, 2015, 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.³³ Effective January 1, 2015, the provisions governing 2-party exchanges added by PA 416 effectively govern these types of transactions.

Importers of Refined Petroleum Products

Except for a bulk transfer or 2-party exchange, the NREPA requires the Department to collect the Fee from persons who import refined petroleum into Michigan for resale or consumption in Michigan.³⁴ 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.

²⁹ MCL 324.21509(1).

³⁰ MCL 324.21509(1).

³¹ MCL 324.21508 as amended by PA 416.

³² MCL 324.21509(2).

³³ MCL 324.21509(2) as amended by PA 416.

³⁴ MCL 324.21508(2) as amended by PA 416.

The examples that follow assume that the transaction is neither a bulk transfer nor a 2-party exchange.

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.

Wholesaler Distributors and Retailers of Refined Petroleum Products

Under the NREPA, the Department collects the Fee from refiners and importers of refined petroleum.³⁵ Accordingly, the Department may not collect the Fee directly from wholesale 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.

³⁵ MCL 324.21508 as amended by PA 416.

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.³⁶ The NREPA defines “petroleum” as “crude oil, crude oil fractions, and refined petroleum fractions including gasoline, kerosene, heating oils, and diesel fuels.”³⁷

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:

³⁶ MCL 324.21508(3).

³⁷ 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: _____