

FINAL PRIVATE LETTER RULING

REQUEST LETTER

12-006

May 24, 2012

Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134

Taxpayer Name: COMPANY-1
Taxpayer FEIN: #####-1
Taxpayer Utah Account ID: #####-2

REQUEST FOR EXPEDITED PRIVATE LETTER RULING

Dear Commissioners:

COMPANY-1 respectfully requests a private letter ruling pursuant to Utah Admin. R. R861-1A-34. We request an expedited ruling since the activity in Utah discussed below began during December 2011 and we want to ensure that the activity is properly reported on Form TC-109, Utah Fuel Tax Return. We have sought prior guidance in telephone discussions with NAME-1, Audit Manager, and NAME-2, Senior Auditor, from the Utah State Tax Commission on this issue.

This letter contains COMPANY-1's statement of facts and issues to be submitted.

FACTS

COMPANY-1, FEIN #####-1, ("Company 20") began transferring undyed diesel fuel received from the UTAH CITY-1 Refinery in Utah to the UTAH CITY-2 Terminal via the PIPELINE in December 2011. Company 20 received the undyed diesel fuel via intercompany transaction from COMPANY-2, FEIN #####-2, and ("Company 61").

Upon receipt from the Pipeline, Company 20 holds the undyed diesel fuel in inventory at the UTAH CITY-2 Terminal. Company 20 subsequently sells the undyed diesel fuel from Company 20's inventory position at the UTAH CITY-2 Terminal via truck to a variety of customers.

The UTAH CITY-2 Terminal currently receives product via Pipeline and truck and disburses product via the terminal rack into trucks.

Company 20 and Company 61 are Utah Licensed Special Fuel Suppliers. Company 20 and Company 61 are part of a consolidated group for income tax purposes and are both wholly-owned subsidiaries of a common parent company.

ISSUES

1. When is the Utah Special Fuel Tax imposed on Pipeline receipts from Company 61 that are transferred from the UTAH CITY-1 Refinery via the PIPELINE to the UTAH CITY-2 Terminal?
2. Does Company 20 qualify for “refiner” status for purposes of filing Form TC-109, Utah Fuel Tax Return? If not, how should Company 20 report Pipeline receipts and transfers between the UTAH CITY-1 Refinery and the UTAH CITY-2 Terminal for purposes of filing Form TC-109, Utah Fuel Tax Return?

DISCUSSION

The Utah Special Fuel Tax is imposed on the removal of undyed diesel fuel from any refinery or terminal.¹ The tax is imposed only once on any special fuel.² The Utah Special Fuel Tax is paid by the supplier.³

- “Removal” means the physical transfer of diesel fuel from a production, manufacturing, terminal, or refinery facility. Removals do not include transfers between refineries, racks, or terminals.⁴
- “Terminal” means a facility for the storage of diesel fuel which is supplied by a motor vehicle, Pipeline, or vessel and from which diesel fuel is removed for distribution at a rack.⁵
- “Rack” means a deck, platform, or open bay which consists of a series of metered pipes and hoses for the delivery or removal of diesel fuel from a refinery or terminal into a motor vehicle, rail car, or vessel.⁶

Company 20 receives undyed diesel fuel from Company 61 at the Pipeline flange of the PIPELINE that connects to the UTAH CITY-1 Refinery. The PIPELINE connects the UTAH CITY-1 Refinery to the UTAH CITY-2 Terminal. Company 20 transfers undyed diesel fuel received from Company 61 from the UTAH CITY-1 Refinery to the UTAH CITY-2 Terminal via the PIPELINE.

Since the UTAH CITY-2 Terminal receives product via Pipeline and disburses product via the truck rack, the UTAH CITY-2 Terminal meets the definition of a “terminal” under Utah statute.

¹ Utah Code Ann. § 59-13-301(1)(a)(i) and (ii)

² Utah Code Ann. § 59-13-301(1)(b)

³ Utah Code Ann. § 59-13-301(5)

⁴ Utah Code Ann. § 59-13-102(15)

⁵ Utah Code Ann. § 59-13-102(18)

⁶ Utah Code Ann. § 59-13-102(14)

Tax is imposed on “removal” from a terminal or refinery. “Removal” is defined under Utah statute as a physical transfer of diesel fuel, *but specifically excludes transfers between refineries and terminals*. Accordingly, the transfer of undyed diesel fuel via the PIPELINE from the UTAH CITY-1 Refinery to the UTAH CITY-2 Terminal does not meet the definition of “removal” and, therefore, should not be subject to the Utah Special Fuel Tax.

When the product is removed for sale from the UTAH CITY-2 Terminal via the terminal rack into trucks, the Utah Special Fuel Tax should be imposed. The removal of undyed diesel fuel from the rack into a truck meets the definition of “removal” under Utah statute for purposes of the imposition of the tax.

If the receipt and transfer of undyed diesel fuel via the PIPELINE is deemed to be tax free, Company 20 will need to report inventory on Form TC-109, Utah Fuel Tax Return. Inventory reporting allows Company 20 to report the Pipeline receipts and transfers that are held in UTAH CITY-2 Terminal inventory tax free until removed at the UTAH CITY-2 Terminal rack, the first taxable removal in Utah. Without inventory reporting, the return effectively taxes all receipts of product, including Pipeline receipts destined for a terminal.

Current Utah policy limits inventory reporting on Form TC-109, Utah Fuel Tax Return, to refiners. Company 20 does not operate a refinery but should qualify for exemption for the Pipeline receipt and transfer of undyed diesel fuel from the UTAH CITY-1 Refinery to the UTAH CITY-2 Terminal. Based on this exemption, we request approval for Company 20 to qualify as a “refiner” for reporting purposes of reporting inventory and tax free Pipeline receipts and transfers on Form TC-109, Utah Fuel Tax Return.

CONCLUSION

When the product is removed for sale from the UTAH CITY-2 Terminal via the terminal rack into trucks, the Utah Special Fuel Tax should be imposed as this is the first “removal” for purposes of the tax.

Company 20’s Pipeline receipts from Company 61 at the UTAH CITY-1 Refinery and subsequent Pipeline transfer to the UTAH CITY-2 Terminal are not subject to the Utah Special Fuel Tax. These transactions do not meet the definition of “removal” under Utah statute, which specifically excludes transfers between refineries and terminals, and, therefore are not considered taxable imposition points for the Utah Special Fuel Tax.

In order to report tax free Pipeline receipts from the UTAH CITY-1 Refinery and Pipeline transfers between the UTAH CITY-1 Refinery and the UTAH CITY-2 Terminal, Company 20 requests approval to report under “refiner” status. “Refiner” status will allow Company 20 to report inventories of the fuel transferred via Pipeline and stored at the UTAH CITY-2 Terminal in anticipation of removal at the terminal rack, the first taxable removal.

Thank you for your time and consideration in reviewing this expedited private letter ruling request.

Please call me directly at PHONE NUMBER-1 if you have any questions or comments about the foregoing facts or analysis.

Sincerely,

NAME-3
TITLE
COMPANY-3

RESPONSE LETTER

September 4, 2012

NAME-3
TITLE
COMPANY-3
ADDRESS-1
CITY, STATE ZIP CODE-1

Re: Private Letter Ruling Request on the Application of the Utah Special Fuel Tax to the Transaction Presented

Dear NAME-3:

In your request letter, you explained that you want to properly report a certain transaction for the Utah Special Fuel Tax (alternatively called “Tax”). You described this transaction as follows. First, through an intercompany transaction, COMPANY-2 UTAH CITY-1 (“Company 61”) transfers undyed diesel fuel (“Undyed Diesel”) to COMPANY-1 (“Company 20”). Both Company 61 and Company 20 are wholly-owned subsidiaries of a common parent company and also are Utah Licensed Special Fuel Suppliers. Next, Company 20 then physically transfers the Undyed Diesel from a UTAH CITY-1, Utah refinery to the UTAH CITY-2, Utah Terminal (“Terminal”) by way of the PIPELINE (“Pipeline”). In general, the Terminal receives fuel by Pipelines and trucks and disburses fuel through a rack into trucks. In response to your request, the Auditing Division of the Utah State Tax Commission commented that Company 20 is licensed by the IRS as a refiner or terminal. Last, as you explained, Company 20 holds the Undyed Diesel at the Terminal as inventory until it subsequently sells the Undyed Diesel and delivers it to customers via trucks.

I. Issues

You presented the following two issues in your private letter ruling request:

1. When is the Utah Special Fuel Tax imposed on Pipeline receipts from Company 61 that are transferred from the UTAH CITY-1 Refinery via the PIPELINE to the UTAH CITY-2 Terminal?
2. Does Company 20 qualify for “refiner” status for purposes of filing Form TC-109, Utah Fuel Tax Return? If not, how should Company 20 report Pipeline receipts and transfers between the UTAH CITY-1 Refinery and the UTAH CITY-2 Terminal for purposes of filing Form TC-109, Utah Fuel Tax Return?

As explained further after the applicable law section, the Tax is imposed when the Undyed Diesel is removed from the Terminal through a rack into a truck, and Company 20 qualifies for

“refiner” status for purposes of filing Form TC-109, allowing Company 20 to report its beginning and ending inventories on that form.

II. Applicable Law

The applicable law for this private letter ruling includes the following:

Under § 59-13-301, Utah imposes the following Tax, only once, on undyed diesel fuel and the Tax is to be paid by the supplier; the statute is as follows in pertinent part:

- (1) (a) . . . a tax is imposed at the same rate imposed under Subsection 59-13-201(1)(a) [24-1/2 cents per gallon] on the:
 - (i) removal of undyed diesel fuel from any refinery;
 - (ii) removal of undyed diesel fuel from any terminal;
 - (iii) entry into the state of any undyed diesel fuel for consumption, use, sale, or warehousing;. . . .
 - (b) The tax imposed under this section shall only be imposed once upon any special fuel.
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- (5) The special fuel tax shall be paid by the supplier.

Section 59-13-102(15) defines removal to exclude certain transfers, as follows in pertinent part:

- (15) "Removal," as used in Part 3, Special Fuel, means the physical transfer of diesel fuel from a production, manufacturing, terminal, or refinery facility and includes use of diesel fuel. Removal does not include:

. . . .

 - (b) transfers between refineries, racks, or terminals.

Section 59-13-102 defines other terms also used in this private letter ruling, as follows in part:

- (4) (a) "Diesel fuel" means any liquid that is commonly or commercially known, offered for sale, or used as a fuel in diesel engines.
 - (b) "Diesel fuel" includes any combustible liquid, by whatever name the liquid may be known or sold, when the liquid is used in an internal combustion engine for the generation of power to operate a motor vehicle licensed to operate on the highway, except fuel that is subject to the tax imposed in Part 2, Motor Fuel, and Part 4, Aviation Fuel, of this chapter.
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- (16) (a) "Special fuel" means any fuel regardless of name or character that:
 - (i) is usable as fuel to operate or propel a motor vehicle upon the public highways of the state; and

- (ii) is not taxed under the category of aviation or motor fuel.
- (b) Special fuel includes:

.....

- (ii) diesel fuel.

- (17) "Supplier," as used in Part 3, Special Fuel, means a person who:
 - (a) imports or acquires immediately upon importation into this state diesel fuel from within or without a state, territory, or possession of the United States or the District of Columbia;
 - (b) produces, manufactures, refines, or blends diesel fuel in this state;
 - (c) otherwise acquires for distribution or sale in this state, diesel fuel with respect to which there has been no previous taxable sale or use; or
 - (d) is in a two party exchange where the receiving party is deemed to be the supplier.

- (18) "Terminal," as used in Part 3, Special Fuel, means a facility for the storage of diesel fuel which is supplied by a motor vehicle, Pipeline, or vessel and from which diesel fuel is removed for distribution at a rack.

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- (20) "Undyed diesel fuel" means diesel fuel that is not subject to the dyeing requirements in accordance with 26 U.S.C. Sec. 4082 or United States Environmental Protection Agency or Internal Revenue Service regulations.

A taxpayer reports the Tax imposed § 59-13-301 on the Utah State Tax Commission's Form TC-109. See <http://tax.utah.gov/forms/currentforms>. On Form TC-109, the Tax on Undyed Diesel is calculated in Column B., rows 1-33. Below is a partial list of the Form TC-109's row descriptions, followed by the corresponding PIPELINE instructions from the Form TC-109's Instructions.

Form TC-109's Row Descriptions

Form TC-109's PIPELINE Instructions

Receipts

1. Beginning physical inventory (Utah refiners only)

PIPELINE 1 *For Utah refiners only.* Enter the beginning physical gallons in your inventory for this month. This must match the last month's ending inventory.

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6. Imported to Utah

PIPELINE 6 Enter gallons you imported to Utah.

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10. Untaxed purchases (Undyed and Dyed Diesel)

PIPELINE 10 Enter gallons of undyed and dyed diesel you bought without paying tax.

.....

12. Total fuel available (add PIPELINEs 1 thru 11)

PIPELINE 12 Add PIPELINEs 1-11 . . .

Deductions

....	
22. Ending physical inventory (Utah refiners only)	PIPELINE 22 <i>For Utah refiners only.</i> Enter the ending physical gallons in your inventory.
23. Total deductions (add PIPELINES 13 thru 22)	PIPELINE 23 Add PIPELINES 13-22 . . .
24. Taxable gallons (subtract PIPELINE 23 from PIPELINE 12)	PIPELINE 24 Enter total gallons subject to Utah tax.
....	
30. Tax rate [.245]	PIPELINE 30 This rate is prepopulated.
31. Tax subtotal (PIPELINE 24 X PIPELINE 30) . . .	PIPELINE 31 Multiply PIPELINE 24 by PIPELINE 30 . . .
32. [N/A for Undyed Diesel]	
33. Calculated tax due (subtract PIPELINE 32 from PIPELINE 31)	PIPELINE 33 Subtract PIPELINE 32 from PIPELINE 31 and enter total.

Taxpayers can also reference the Utah State Tax Commission’s Publication 66 for more general information about the fuel tax. This Publication is available on PIPELINE at <http://tax.utah.gov/forms/pubs/pub-66.pdf>.

III. Analysis

A. The Tax is Imposed When the Undyed Diesel is Disbursed at the Terminal Through the Rack into the Trucks, which Deliver the Undyed Diesel to Company 20’s Customers.

Under § 59-13-301(1)(i) and (ii), the Tax is imposed upon removal of Undyed Diesel from any refinery or terminal. Under § 59-13-102(15)-(15)(b), removal means a “physical transfer of diesel fuel from a production, manufacturing, terminal, or refinery facility” but does not include “transfers between refineries, racks, or terminals.” The intercompany transaction between Company 61 and Company 20 is a nonphysical transfer, and thus, is not a removal and Tax is not imposed at that time. Company 20’s physical transfer of the Undyed Diesel to the Terminal through the Pipeline also does not involve a removal. Instead, it is a transfer between a refinery and a terminal. Under the situation you presented, the first removal occurs when the Undyed Diesel is disbursed at the Terminal through the rack into trucks. At this time, the Tax is imposed based on § 59-13-301(1)(a)(ii), as a “removal of undyed diesel fuel from any terminal.” Notably, Company 20’s terminal is licensed by the IRS as a fuel terminal. Under § 59-13-301(5), Company 20 is responsible for paying the Tax because it is a supplier, as defined in § 59-12-102(17).

B. Company 20 Qualifies for “Refiner” Status for Purposes of Filing Form TC-109, Allowing Company 20 to Report its Beginning and Ending Inventories on that Form.

On Form TC-109, Company 20 should report its total receipts of Undyed Diesel from Company 61 transferred to the Terminal via the Pipeline on PIPELINE 10 as untaxed purchases of undyed diesel. PIPELINE 10 corresponds to Schedule 2A, on which Company 20 individual purchase transactions are reported. Additionally for the Undyed Diesel received through the Pipeline, Company 20 may use other PIPELINES on Form TC-109 that are marked “(Utah refiners only),” such as PIPELINES 1 and 22 for the beginning and ending physical inventories of Undyed Diesel. Company 20 is allowed to carry inventory gallons because it is licensed as a refiner by the IRS. Notably, if Company 20 were not allowed to use PIPELINES 1 and 22 for inventory amounts of Undyed Diesel, then Form TC-109 would incorrectly tax the Undyed Diesel that was received through the Pipeline but still held in inventory.

C. This Private Letter Ruling Does Not Cover Other Possible Transactions in Which Company 20 Might Receive Fuel at the Terminal by Truck or Railcar.

The conclusions of this private letter ruling only apply to this transaction you presented and not to other possible transactions. For example, if Company 20 were to receive at the Terminal undyed diesel fuel via truck or railcar from a source out of state, the Tax on that fuel would be imposed under § 59-13-301(1)(a) (iii) upon entry of that fuel into the state; the Tax would not be imposed when the fuel is later removed through the Terminal’s rack. Also for this situation, Company 20 would report the undyed diesel fuel received via truck or railcar on PIPELINE 6 as fuel imported to Utah and not on PIPELINE 1 as untaxed purchase of undyed diesel fuel. If Company 20 were to receive at the Terminal both Undyed Diesel via the Pipeline and other undyed diesel fuel imported via truck or railcar, Company 20 must separately track those inventories of undyed diesel fuel. For more information on the application of the Tax to this or other possible situations, you may contact the Technical Research Unit of the Utah State Tax Commission at 801-297-7705.

IV. Conclusion

We find that for the transaction you presented, the Tax is imposed when the Undyed Diesel is disbursed at the Terminal through the rack into the trucks, and Company 20 qualifies for “refiner” status for purposes of filing Form TC-109, allowing Company 20 to report beginning and ending inventories of Undyed Diesel. For more direction on this and other possible transactions, you may contact the Technical Research Unit of the Utah State Tax Commission at 801-297-7705.

The Tax Commission's conclusions are based on the facts as you described them and the Utah law currently in effect. Should the facts be different or if the law were to change, a different conclusion may be warranted. If you feel we have misunderstood the facts as you have presented them, you have additional facts that may be relevant, or you have any other questions, please feel free to contact the Commission.

For the Commission,

D'Arcy Dixon Pignanelli
Commissioner

DDP/aln
12-006