§ 48.4082–2 Diesel fuel and kerosene; notice required for dyed fuel.

(a) In general. A legible and conspicuous notice stating “DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE” must be posted by a seller on any retail pump or other delivery facility where it sells dyed diesel fuel for use by its buyer. A legible and conspicuous notice stating “DYED KEROSENE, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE” must be posted by a seller on any retail pump or other delivery facility where it sells dyed kerosene for use by its buyer. Any seller that fails to post the required notice on any retail pump or other delivery facility where it sells dyed fuel is, for purposes of the penalty imposed by section 6715, presumed to know that the fuel will not be used for a nontaxable use.

(b) Cross reference; terminal operators. For the requirement that terminal operators provide a notice with respect to dyed fuel, see § 48.4101–1(h)(3) (relating to terms and conditions of registration for terminal operators).

(c) Effective date. This section is applicable with respect to diesel fuel and installed, and the reason for the installation:

(ii) Visually inspect each installed seal not less than once during every 24 hour period to ascertain that each seal and lock mechanism, if applicable, has not been physically altered;

(iii) Check the identifying number or code for each seal against the records maintained by the terminal operator no less frequently than once during each seven day period and record each inspection and verification;

(iv) Promptly notify the Commissioner if inspection of a seal reveals any inconsistency in the records pertaining to that seal, or if the seal has been damaged or removed (other than a removal authorized by the operator for testing or maintenance);

(v) Maintain a record of each seal that has been replaced to include the seal number or code, the date the seal was issued, the location of the seal, the date the seal was replaced, and the reason the seal was replaced;

(vi) Promptly destroy and replace seals that have been removed from the system;

(vii) Restrict access to unused seal inventory to individuals specifically designated by the operator and maintain a record of such individuals;

(viii) Maintain a record of each installation, inspection, and destruction described in this paragraph (d)(4), including the name of the individual who conducts the installation, inspection, or destruction;

(ix) Make available for the Commissioner’s immediate inspection the seals and records described in this paragraph (d)(4); and

(x) Promptly notify the Commissioner if, and when, the dye injection system is placed out of service.

(5) Mechanical injection system; revocation or suspension of approval. The Commissioner may revoke or suspend its approval of a dye injection system if the Commissioner determines that the system does not meet the standards of paragraph (d)(2) of this section or if the operator of the system has not complied with the requirements of paragraph (d)(4) of this section.

(6) Sales and entries. For purposes of determining whether tax is imposed by section 4081 on a sale or entry of diesel fuel or kerosene, such fuel satisfies the dyeing requirements of this paragraph (d) only if the dye required by § 48.4082–1(b) is combined with the fuel before the sale or entry and the seller or enterer has in its records evidence (such as a certificate from the terminal operator providing the fuel) establishing that the dye was combined with the fuel by means of a mechanical injection system. Thus, for example, diesel fuel or kerosene that is entered into the United States by means of nonbulk transfer (such as a railroad car) does not satisfy the requirements of this paragraph (d) if the required dye and marker are combined with diesel fuel or kerosene after the diesel fuel or kerosene has been entered into the United States.

(7) Cross reference. For the penalty relating to mechanical dye injection systems, see section 6715A.

(e) and (e)(1) [Reserved]. For further guidance, see § 48.4082–1(e) and (e)(1).

(2) This section is applicable on October 24, 2005.

[T.D. 9199, 70 FR 21333, Apr. 26, 2005]
Internal Revenue Service, Treasury

§ 48.4082–4 Diesel fuel and kerosene; back-up tax.

(a) Imposition of tax—(1) In general. Tax is imposed by section 4041 on the delivery into the fuel supply tank of the propulsion engine of a diesel-powered highway vehicle (other than a diesel-powered bus) of—

(i) Any diesel fuel or kerosene on which tax has not been imposed by section 4081;

(ii) Any diesel fuel or kerosene for which a credit or payment has been allowed under section 6427; or

(iii) Any liquid (other than taxable fuel) for use as fuel.

(2) Liability for tax—(i) In general. The operator of the highway vehicle into which the fuel is delivered is liable for the tax imposed under paragraph (a)(1) of this section.

(ii) Joint and several liability of the seller. The seller of the fuel is jointly and severally liable for the tax imposed under paragraph (a)(1) of this section if the seller knows or has reason to know that the fuel will not be used in a non-taxable use.

(3) Rate of tax. The rate of tax is the rate imposed on diesel fuel by section 4081(a).

(b) Tax on diesel fuel and kerosene; buses and trains—(1) In general. Tax is imposed by section 4041 on the delivery into the fuel supply tank of the propulsion engine of a diesel-powered bus or a diesel-powered train of—

(i) Any diesel fuel or kerosene on which tax has not been imposed by section 4081;

(ii) Any diesel fuel or kerosene for which a credit or payment has been allowed under section 6427; or

(iii) Any liquid (other than taxable fuel) for use as fuel.

(2) Liability for tax—(i) In general. Except as provided in paragraph (b)(2)(ii) of this section, the operator of the bus or train into which the fuel is delivered is liable for the tax imposed under paragraph (b)(1) of this section.

(ii) Special rule for certain train operators. The person that delivers the fuel into the fuel supply tank of a train, rather than the train operator, is liable for the tax imposed under paragraph (b)(1) of this section if, at the time of the delivery—

(A) The deliverer of the fuel and the operator of the train are both registered as train operators under §48.4101–1; and

(B) A written agreement between the deliverer of the fuel and the operator requires the deliverer to pay the tax imposed under paragraph (b)(1) of this section.

(3) Rate of tax—(i) Buses—(A) In general. The rate of tax under paragraph (b)(1) of this section is the sum of the rates described in sections 4041(a)(1)(C)(iii)(I) and 4041(d)(1) (the bus rate) if the bus is used to furnish (for compensation) passenger land transportation available to the general public and either such transportation is scheduled and along regular routes or the seating capacity of the bus is at least 20 adults (not including the driver). A bus is available to the general public if the bus is available for hire to more than a limited number of persons, groups, or organizations.

(B) Other uses. The rate of tax under paragraph (b)(1) of this section is the rate of tax imposed on diesel fuel by section 4081(a) if the bus is used for a purpose other than that described in paragraph (b)(3)(i)(A) of this section.

(ii) Trains. The rate of tax under paragraph (b)(1) of this section is the rate prescribed in section 4041 for diesel fuel sold for use in a train (the train rate).

(4) Cross reference. For the registration requirement relating to certain bus and train operators, see §48.4101–1(c)(2).

(c) Exemptions. The taxes imposed under paragraphs (a) and (b) of this section do not apply to a delivery of any liquid for—

(1) Use on a farm for farming purposes as that term and related terms are defined in §48.6420–4 (a) through (g);

(2) The exclusive use of a State;

(3) Use described in section 4041(h) (relating to use in a vehicle owned by an aircraft museum);