
Notice of Proposed Rulemaking
and Notice of Public Hearing

Kerosene Tax; Aviation Fuel Tax;
Tax on Heavy Trucks and
Trailers

REG-119227-97

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 48

AGENCY: Internal Revenue Service
(IRS), Treasury.

ACTION: Proposed rule, notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In T.D. 8774, page 5 of this Bulletin, the IRS is issuing temporary regulations relating to the kerosene and aviation fuel excise taxes and the tax on the first retail sale of certain tractors, truck, trailer, and semitrailer chassis and

bodies. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments must be received by September 29, 1998. Requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for Wednesday, November 4, 1998, must be received by September 29, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-119227-97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8:00 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-119227-97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Frank Boland (202) 622-3130; concerning submissions and the hearing, LaNita VanDyke (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget** Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service** Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by August 31, 1998. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this notice of proposed rulemaking is in §§48.4052-1, 48.4082-7(a), 48.4082-8(e), 48.4091-3(c), 48.4101-2(a)(4), 48.4101-3(d), and 48.6427-11. This information is required to support exempt transactions and to inform consumers of the type of fuel that is being purchased. The likely respondents are businesses and other for-profit organizations.

Estimated total annual reporting burden: 3,340 hours.

The estimated annual burden per respondent varies from .20 hours to 1 hour, depending on individual circumstances, with an estimated average of .29 hour.

Estimated number of respondents: 11,600.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations published in T.D. 8774 provide rules relating to the kerosene tax, certain aviation fuel tax refunds allowed by section 4091(d), and registration requirements for certain heavy vehicle manufacturers and retailers. The text of those regulations also serves as the text of these proposed regulations relating to kerosene. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C.

chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the time required to prepare and submit the exemption certificates described in these regulations (many of which are similar to certificates that are already in use) is minimal and will not have a significant impact on those small entities that choose to provide the certificates. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted (in the manner described in the ADDRESSES caption) timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, November 4, 1998, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit comments by September 29, 1998, and submit an outline of the topics to be discussed and the time to be devoted to each topic by September 29, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Frank Boland, Office of the Assistant

Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 48 is proposed to be amended as follows:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Paragraph 1. The authority citation for part 48 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 48.4052-1 also issued under 26 U.S.C. 4052 * * *

Sections 48.4082-6, 48.4082-7, and 48.4082-8 also issued under 26 U.S.C. 4082 * * *

Section 48.4101-3 also issued under 26 U.S.C. 4101(a) * * *

Sections 48.6427-10 and 48.6427-11 also issued under 26 U.S.C. 6427(n) * * *

Par. 2. In subpart H, §48.4052-1 is added to read as follows:

§48.4052-1 Special rule.

After June 30, 1998, the sale of an article is a taxable sale unless the seller has in good faith accepted from the purchaser a statement that the purchaser executed in good faith and that is in substantially the same form as the certificate described in §145.4052-1(a)(6) of this chapter, except that the statement must be signed under penalties of perjury and need not include a registration number.

Par. 3. Section 48.4081-1 is amended as follows:

1. Paragraph (b) is amended by adding the definition of kerosene.

2. Paragraph (d) is revised.

The addition and revision read as follows:

§48.4081-1 Taxable fuel; definitions.

* * * * *

(b) * * *

Kerosene means—

(1) The two grades of kerosene (No. 1-K and No. 2-K) described in ASTM Specification D 3699; and

(2) Kerosene-type jet fuel described in ASTM Specification D 1655 and military

specifications MIL-T-5624R and MIL-T-83133D (Grades JP-5 and JP-8). For availability of ASTM and military specification material, see §48.4081-1(c)(2)(i).

* * * * *

(d) *Effective date.*

(1) Except as provided in paragraph (d)(2) of this section, this section is applicable January 1, 1994.

(2) In paragraph (b) of this section—

(i) The definition of aviation gasoline and the third sentence in the definition of terminal are applicable January 2, 1998; and

(ii) The definition of kerosene is applicable July 1, 1998.

Par. 4. Sections 48.4082-6, 48.4082-7, 48.4082-8, 48.4082-9 and 48.4082-10 are added to read as follows:

§48.4082-6 Kerosene; treatment as diesel fuel in certain cases.

[The text of this proposed section is the same as the text of §48.4082-6T published in T.D. 8774.]

§48.4082-7 Kerosene; notice required with respect to dyed kerosene.

[The text of this proposed section is the same as the text of §48.4082-7T published in T.D. 8774.]

§48.4082-8 Kerosene; exemption from aviation-grade kerosene.

[The text of this proposed section is the same as the text of §48.4082-8T published in T.D. 8774.]

§48.4082-9 Kerosene; exemption from non-fuel feedstock purposes.

[The text of this proposed section is the same as the text of §48.4082-9T published in T.D. 8774.]

§48.4082-10 Kerosene; additional exemption from floor stocks tax.

[The text of this proposed section is the same as the text of §48.4082-10T published in T.D. 8774.]

Par. 5. Section 48.4091-3 is added to read as follows:

§48.4091-3 Aviation fuel; conditions to allowance of refunds of aviation fuel tax under section 4091(d).

[The text of this proposed section is the same as the text of §48.4091-3T published in T.D. 8774.]

Par. 6. Section 48.4101-2 is amended by adding paragraph (a)(4) to read as follows:

§48.4101-2 Information reporting.

(a) * * *

(4) *Registered aviation fuel producers.*

[The text of this proposed paragraph is the same as the text of §48.4101-2T(a)(4) published in T.D. 8774.]

Par. 7. Section 48.4101-3 is added to read as follows:

§48.4101-3 Registration; special rules for kerosene.

[The text of this proposed section is the same as the text of §48.4101-3T published in T.D. 8774.]

Par. 8. Sections 48.6427-10 and 48.6427-11 are added to read as follows:

§48.6427-10 Claims with respect to kerosene.

[The text of this proposed section is the same as the text of §48.6427-10T published in T.D. 8774.]

§48.6427-11 Special rules for claims by registered ultimate vendors of kerosene (blocked pump).

[The text of this proposed section is the same as the text of §48.6427-11T published in T.D. 8774.]

Michael P. Dolan,
Deputy Commissioner of
Internal Revenue.

(Filed by the Office of the Federal Register on June 26, 1998, 2:02 p.m., and published in the issue of the Federal Register for July 1, 1998, 63 F.R. 35893)