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Federal Excise Tax Credit Opportunity: Off-Highway Business Use

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Businesses across a variety of industries should be mindful of certain opportunities to claim federal credits or refunds of tax for fuel used for off-highway business purposes. Currently, fuel used for off-highway business purposes—for example fuel for construction equipment or generators—may be eligible for a credit. Additionally, fuel used in a separate motor of a highway vehicle to operate special equipment, such as certain refrigeration equipment on highway trailers, may also qualify for a credit. The IRS and Treasury Department are considering expanding the existing rules to allow a credit for fuel used in equipment operated by power take off (“PTO”). The IRS estimated the federal excise tax related PTO use was approximately \$275 million. Should the rules be expanded, additional credit opportunities may exist. This article provides an overview of off-highway business uses and explains why industries would benefit if the rules are updated to accommodate technological developments.

Background

Federal excise tax applies to diesel fuel, gasoline, kerosene, and alternative fuels used in the propulsion engine of a highway vehicle. These taxes fund the Highway Trust Fund, expenditures from which are generally used to repair and expand the federal highway system of the United States. To that end, these taxes are imposed on fuels that are used to power highway vehicles. However, statutory and

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regulatory exceptions exist for certain nontaxable uses. For example, a credit may be allowable to the end user of the fuel for “off-highway business use,” which is a statutory nontaxable use.

Depending on the fuel, the credit opportunity is as follows:

Amount of credit per gallon	Type of liquid fuel ¹
\$0.243	Undyed diesel fuel Kerosene Liquefied natural gas
\$0.183	Gasoline Liquefied petroleum gas Compressed natural gas (gasoline gallon equivalent)

Off-Highway Business Use

Off-highway business use means fuel used in a trade or business or in an income-producing activity other than as a fuel in a highway vehicle registered or required to be registered for use on public highways. Off-highway business use includes fuels used in any of the following ways:

- In stationary machines such as generators, compressors, power saws, and similar equipment
- For cleaning purposes
- In forklift trucks, bulldozers, and earthmovers

Generally, this use does not include nonbusiness use of fuel, such as use by minibikes, snowmobiles, or personal use of power lawn mowers, chain saws, and other yard equipment.

Other off-highway business uses are discussed below.

Credits or refunds of tax allowed for fuel used in a separate motor to operate special equipment

In addition to the uses identified above, existing regulations allow for an off-highway business use credit for fuel used in a *separate* motor to operate special equipment. The rule applies whether or not the special equipment is mounted on a highway vehicle. If the fuel used in the separate motor is drawn

¹ Note a credit is *not* available for dyed diesel fuel or dyed kerosene.

from the same fuel tank used for the propulsion engine of a highway vehicle, a reasonable determination of the quantity of fuel used in the separate motor may be made. The separate motor may operate large equipment on the truck such as refrigeration units or construction equipment, or it may be a small motor such as a diesel particulate filter.

No credits or refunds of tax currently allowed for fuel used in dual use motors to operate special equipment

Existing regulations provide that no credit is allowable for fuel used to operate special equipment when the vehicle's motor is used to both propel the vehicle and power the special equipment ("dual use motor"). When the vehicle's motor is used in PTO or other power transfers that transmit engine power to operate non-propulsion equipment, all fuel is considered used in the propulsion engine. For example, under the current rules no credit is allowed for fuel used to operate the mixing unit on a concrete mixer truck powered by PTO. Similarly, no credit is allowed for fuel used in a tanker truck when the truck is using power transfer to operate its fuel pumps to discharge fuel into a customer's storage tank.

Potential change to allow credits or refunds of tax for fuel used in dual use motors to operate special equipment

Due to technological advances that are capable of quantifying the amount of fuel used in PTO and other power transfers in dual use motor vehicles, the IRS and Treasury have been asked to revise the current regulations to allow a credit for fuel used in dual use motors that operate special equipment, such as a concrete mixing units or tanker truck fuel pumps. According to a 2007 report published by the IRS, as much as 20 percent of the fuel used in a highway vehicle is used to power PTO equipment.² The IRS estimated that the federal excise tax related PTO use was approximately \$275 million.³ Guidance on this issue has been included in the IRS and Treasury's 2016-2017 Priority Guidance Plan.

Observations

Now is a good time for businesses to evaluate whether they are fully claiming available fuel credits, including credits for off-highway business use.

Businesses should also consider whether an opportunity to claim additional credits would exist if the IRS and Treasury change the existing rules to allow for credits for fuel used in PTO or other power transfer to operate special equipment. Industries that would be affected by the implementation of changes to the rules include the following:

- Power and utilities
- Construction
- Refuse and recycling

² See SAFETEA-LU Section 11144-PTO Report, PHL0019, July 2007.

³ See *id.*

- Food distribution services
- Fuel distributors
- Oil field servicing

While the IRS and Treasury's 2016-2017 Priority Guidance Plan issued August 15, 2016, included the PTO project, it is possible that the project may face some delays as the new administration sorts out priorities for federal tax guidance.

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