

## § 48.4041-4

the rate specified in § 48.4041-1(b)(2)(i)(C). If the unregistered truck and forklift are not used in qualified business uses, then the special motor fuel sold for use in these vehicles is taxable at the rate specified in § 48.4041-1(b)(2)(i)(A) since both are motor vehicles. No tax is payable with respect to the special motor fuel sold for use in the ditch digging machine since that machine is not a motor vehicle. On and after April 1, 1983, and before October 1, 1988, special motor fuel sold for use in the registered trucks is taxable at the rate specified in § 48.4041-1(b)(2)(ii)(A) because the trucks are motor vehicles. On and after April 1, 1983, and before October 1, 1988, special motor fuel sold for use in the unregistered truck and the fork lift, assuming that both vehicles are used in off-highway business uses, is exempt from tax as specified in § 48.4041-1(b)(2)(ii)(C). If the unregistered truck and fork lift are not used in off-highway business uses, then the special motor fuel sold for use in these vehicles is taxable at the rate specified in § 48.4041-1(b)(2)(ii)(A) since both are motor vehicles. No tax is payable with respect to the special motor fuel sold for use in the ditch digging machine since that machine is not a motor vehicle.

(e) *Cross reference.* (1) For the tax applicable in certain cases based on the use of special motor fuel as a fuel in a motor vehicle or motorboat, see § 48.4041-6.

(2) For the definition of the terms “highway”, “motor vehicle”, “special motor fuel”, and “registered”, see paragraphs (a), (c), (f), and (i) of § 48.4041-8. For the definition of the term “off-highway business use”, see section 6421(d)(2).

(3) For the exemption from tax with respect to special motor fuel sold for use on a farm for farming purposes or as supplies for vessels, see §§ 48.4041-9 and 48.4041-10, respectively.

(4) For credit or refund of tax paid on special motor fuel resold or used otherwise than for the purpose for which purchased, see section 6427(a).

[T.D. 8066, 51 FR 14, Jan. 2, 1986]

### § 48.4041-4 Application of tax on sales of liquid for use as fuel in aircraft in noncommercial aviation.

(a) *In general.* The taxes imposed by subparagraphs (1)(A) and (2)(A) of section 4041(c) apply to the taxable sale of any liquid by any person to an owner, lessee, or other operator of an aircraft, for use as a fuel in the aircraft in noncommercial aviation.

## 26 CFR Ch. I (4-1-09 Edition)

(b) *Liability of tax.* The tax on the taxable sale of any liquid used as fuel in aircraft in noncommercial aviation is payable by the person who sells the liquid to the owner, lessee, or operator of an aircraft in noncommercial aviation.

(c) *Rate of tax.* Tax is imposed on the sale of liquids used as fuel in aircraft in noncommercial aviation at the rate applicable on the date on which the liquid is sold. See § 48.4041-1(b)(3) for rates.

(d) *Cross references.* (1) For the tax applicable on the basis of the use of fuel in an aircraft in noncommercial aviation, see § 48.4041-6.

(2) For the definition of the term “noncommercial aviation”, see paragraph (j) of § 48.4041-8.

(3) For the exemption of tax with respect to liquids used as fuel in aircraft in noncommercial aviation sold for use on a farm for farming purposes or as supplies for vessels or aircraft, see §§ 48.4041-9 and 48.4041-10, respectively. For tax-free sales if sellers and purchasers are registered, see § 48.4041-11.

(4) For credit or refund of tax paid on fuel used in noncommercial aviation that is resold or used otherwise than for the purpose for which purchased, see section 6427(a).

(e) *Effective date.* The provisions of this section shall apply to sales or uses occurring before October 1, 1980, and to sales or uses occurring on or after September 1, 1982, and ending before January 1, 1988.

[T.D. 8066, 51 FR 15, Jan. 2, 1986]

### § 48.4041-5 Sales of diesel and special motor fuels and fuel for use in aircraft; rules of general application.

(a) *Taxability of liquid fuel delivered into purchaser's tanks—*(1) *Fuel supply tanks.* (i) The sale of diesel fuel to an owner, lessee, or other operator of a diesel-powered highway vehicle, or of special motor fuel to an owner, lessee, or other operator of a motor vehicle or motorboat, or of fuel to an owner, lessee, or other operator of an aircraft used in noncommercial aviation is considered a taxable sale of the liquid fuel if the liquid fuel is delivered by the seller into the fuel supply tank of the vehicle, motorboat, or aircraft. For purpose of this paragraph (a), liquid fuel sold at a location unattended by

the seller (such as under a cardlock or meter system) on or after January 2, 1986, is considered to be delivered into the fuel supply tank by the seller except as provided in paragraph (a)(1)(ii) of this section. In this regard, see section 6427(a) for credit or refund of tax if liquid fuel acquired in a transaction subject to tax is used in a nontaxable use.

(ii) If the seller maintains special devices at the unattended location to account accurately for sales of liquid fuel for nontaxable uses (such as assigning a separate "nontaxable" meter or, in a cardlock system, issuing a special "nontaxable" card to a customer who regularly purchases fuel for nontaxable uses), then such sales of liquid fuel shall be considered nontaxable. The seller must maintain sufficient records of such nontaxable sales and include in these records the name of the purchaser, the date of the purchase, and the quantity of fuel purchased in each sale.

(2) *Bulk tanks.* The sale of diesel fuel to an owner, lessee, or other operator of a diesel-powered highway vehicle, or of special motor fuel to an owner, lessee, or other operator of a motor vehicle or motorboat, or of fuel to an owner, lessee, or other operator of an aircraft used in noncommercial aviation is considered a taxable sale of the liquid fuel if—

(i) The liquid fuel is delivered by the seller into a bulk supply tank (or other container) that is not the fuel supply tank of a vehicle, motorboat, or aircraft; and

(ii) The purchaser furnishes a written statement to the seller before or at the time of the sale stating that the entire quantity of the liquid fuel covered by the sale is for a taxable purpose as a fuel in such a vehicle, motorboat, or aircraft.

If the purchaser fails to provide the written statement required by paragraph (a)(2)(ii) of this section, the purchaser is liable for the tax on the later taxable sale or use. If a purchaser acquires both fuel that is to be used for taxable purposes and fuel that is to be used for nontaxable purposes, and the fuel that is to be used for taxable purposes is stored in a different storage tank (or container) from the tank used

to store the fuel to be used for nontaxable purposes, the written statement described in paragraph (a)(2)(ii) of this section will relate to the fuel to be used for taxable purposes if proper records are kept by the purchaser that sufficiently identify the tanks (or containers) into which tax-paid fuel is delivered and the quantities of fuel delivered into those tanks (or containers). If only occasional sales for delivery into a bulk storage tank (or other container) are made to a purchaser, a separate statement must be furnished for each order. However, if sales are regularly or frequently made to a purchaser, a written statement covering all orders for a specified period not to exceed 12 calendar quarters is acceptable.

(b) *Sales for resale and to consignees.*  
(1) A sale to a dealer for resale is not subject to tax even if it is known at the time of the sale that the liquid fuel will be resold by the dealer for use as a fuel in a diesel-powered highway vehicle, motor vehicle, motorboat, or aircraft.

(2) The tax is payable by the person who makes the taxable sale. If a taxable liquid fuel is consigned to a person for sale and the consignor retains ownership in the liquid fuel until it is disposed of by the consignee, the consignor is the person liable for the tax when a taxable sale of the liquid fuel is made by the consignee. If the consignor transfers ownership in the taxable liquid fuel to the consignee before sale of the liquid fuel by the consignee, the consignee is the person liable for the tax upon a subsequent taxable sale of the liquid. However, if ownership of the liquid fuel is transferred back to the consignor or to another person before a taxable sale is made, as described in paragraph (a) of this section, and thereafter a taxable sale of the liquid fuel is made by such person or by another person acting as the person's agent, such person is liable for the tax. See paragraph (d) of § 48.4041-8 for definition of the term "taxable liquid fuel."

[T.D. 8066, 51 FR 15, Jan. 2, 1986, as amended by T.D. 8154, 52 FR 32008, Aug. 25, 1987]