

**§ 48.4081-2**

**§ 48.4081-2 Taxable fuel; tax on removal at a terminal rack.**

(a) *Overview.* This section provides the general rule that all removals of taxable fuel at a terminal rack are subject to tax and the position holder with respect to the fuel is liable for the tax.

(b) *Imposition of tax.* Tax is imposed on the removal of taxable fuel from a terminal if the taxable fuel is removed at the rack.

(c) *Liability for tax—(1) In general.* The position holder with respect to the taxable fuel is liable for the tax imposed under paragraph (b) of this section.

(2) *Joint and several liability of terminal operator; unregistered position holder—(i) In general.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (b) of this section if—

(A) The position holder with respect to the taxable fuel is a person other than the terminal operator and is not a taxable fuel registrant; and

(B) The terminal operator has not met the conditions of paragraph (c)(2)(ii) of this section.

(ii) *Conditions for avoidance of liability.* A terminal operator is not liable for tax under this paragraph (c)(2) if, at the time of the removal, the terminal operator—

(A) Is a taxable fuel registrant;

(B) Has an unexpired notification certificate (as described in § 48.4081-5) from the position holder; and

(C) Has no reason to believe that any information in the notification certificate is false.

(3) *Joint and several liability of terminal operator; incorrect information provided.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (b) of this section if, in connection with the removal of diesel fuel or kerosene that is not dyed and marked in accordance with § 48.4082-1, the terminal operator provides any person (including the position holder with respect to the fuel) with any bill of lading, shipping paper, record, or similar document indicating that the diesel fuel or kerosene is dyed and marked in accordance with § 48.4082-1.

(4) *Example.* The following example illustrates this paragraph (c) and § 48.4082-1:

*Example.* (i) TO is a terminal operator and PH is the position holder with respect to, and owner of, 8,000 gallons of diesel fuel stored in TO's terminal. TO and PH are taxable fuel registrants. When the fuel is removed from the terminal at the rack, the fuel is not dyed and marked in accordance with § 48.4082-1, and TO does not provide any person with any paperwork indicating that the fuel is dyed and marked. After the removal from the terminal, PH sells the fuel to individuals for use as heating oil, a nontaxable use.

(ii) Because PH is the position holder of the fuel at the time of the removal from the terminal, PH is liable for the tax imposed by section 4081. The removal is subject to tax because the fuel is not dyed and marked in accordance with § 48.4082-1, and later use of the fuel in a nontaxable use does not make the removal from the terminal exempt from tax.

(iii) Because PH is a taxable fuel registrant and TO did not provide any person with any paperwork indicating that the fuel is dyed and marked, TO is not jointly and severally liable for tax under paragraph (c) (2) or (3) of this section.

(d) *Rate of tax.* For the rate of tax generally, see section 4081(a). For the rate of tax on gasohol and on gasoline removed for gasohol production, see § 48.4081-6.

(e) *Exemptions.* For exemptions from the tax imposed under this section, see §§ 48.4081-4 (relating to gasoline blendstocks), 48.4082-1 (relating to dyed diesel fuel and dyed kerosene), 48.4082-5 (relating to diesel fuel and kerosene used in Alaska), 48.4082-6 (relating to aviation-grade kerosene), and 48.4082-7 (relating to kerosene used for a feedstock purpose).

(f) *Effective date.* This section is applicable after December 31, 1993.

[T.D. 8659, 61 FR 10455, Mar. 14, 1996, as amended by T.D. 8879, 65 FR 17156, Mar. 31, 2000]

**§ 48.4081-3 Taxable fuel; taxable events other than removal at the terminal rack.**

(a) *Overview.* Although tax is imposed when taxable fuel is removed from the terminal at the rack, tax also is imposed in certain other situations described in this section.

(b) *Tax on removal from a refinery—(1) Imposition of tax.* Tax is imposed on the following removals from a refinery:

(i) A removal of taxable fuel by bulk transfer if the refiner or the owner of

the taxable fuel immediately before the removal is not a taxable fuel registrant.

(ii) A removal of taxable fuel at the rack.

(iii) After September 30, 1995, a removal of a batch of gasohol from an approved refinery by bulk transfer if the refiner treats itself with respect to the removal as a person that is not registered under section 4101. See § 48.4101-1(a). For the rule providing that no deposit is required in the case of the tax imposed under this paragraph (b)(1)(iii), see § 40.6302(c)-1(f)(4) of this chapter. For the rule allowing inspections of facilities where gasohol is produced, see section 4083.

(2) *Exception for certain refineries.* The tax imposed under paragraph (b)(1)(ii) of this section does not apply to a removal of taxable fuel if—

(i) The taxable fuel is removed from an approved refinery that is not served by pipeline (other than a pipeline for the receipt of crude oil) or vessel;

(ii) The taxable fuel is received at a facility that is operated by a taxable fuel registrant and is located within the bulk transfer/terminal system;

(iii) The removal from the refinery is by—

(A) Rail car; or

(B) In the case of diesel fuel, a trailer or semi-trailer that is used exclusively for the transport service described in paragraphs (b)(2)(i) and (b)(2)(ii) of this section;

(iv) In the case of taxable fuel removed by rail car, the facility at which the fuel is received is operated by the same person that operates the refinery from which the fuel was removed; and

(v) In the case of diesel fuel removed by a trailer or semi-trailer, the facility at which the fuel is received is less than 20 miles from the refinery from which the diesel fuel was removed.

(3) *Liability for tax.* The refiner is liable for the tax imposed under paragraph (b)(1) of this section.

(c) *Tax on entry into the United States—(1) Imposition of tax.* Tax is imposed on the entry of taxable fuel into the United States if—

(i) The entry is by bulk transfer and the enterer is not a taxable fuel registrant; or

(ii) The entry is not by bulk transfer.

(2) *Liability for tax—(i) In general.* The enterer is liable for the tax imposed under paragraph (c)(1) of this section.

(ii) *Joint and several liability of the importer of record.* The importer of record with respect to the taxable fuel is jointly and severally liable with the enterer for the tax imposed under paragraph (c)(1) of this section if—

(A) The importer of record is not the enterer of the taxable fuel; and

(B) The enterer is not a taxable fuel registrant.

(iii) *Conditions for avoidance of liability.* The importer of record is not liable for the tax under paragraph (c)(2)(ii) of this section if, at the time of the entry, the importer of record—

(A) Has an unexpired notification certificate (as described in § 48.4081-5) from the enterer; and

(B) Has no reason to believe that any information in the notification certificate is false.

(iv) *Customs bond.* The Customs bond posted with respect to the importation of the fuel will not be charged for the tax imposed on the entry of the fuel if the enterer is a taxable fuel registrant. A Customs bond will not be charged for the tax imposed on the entry of the fuel covered by the bond, if at the time of entry, the surety—

(A) Has an unexpired notification certificate (as described in § 48.4081-5) from the enterer; and

(B) Has no reason to believe that any information in the notification certificate is false.

(d) *Tax on bulk transfers from a terminal by an unregistered position holder—(1) Imposition of tax.* Tax is imposed on the removal by bulk transfer of taxable fuel from a terminal if the position holder with respect to the taxable fuel is not a taxable fuel registrant.

(2) *Liability for tax—(i) In general.* The position holder with respect to the taxable fuel is liable for the tax imposed under paragraph (d)(1) of this section.

(ii) *Joint and several liability of terminal operator.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (d)(1) of this section if—

(A) The position holder with respect to the taxable fuel is a person other than the terminal operator; and

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(B) The terminal operator has not met the conditions of paragraph (d)(2)(iii) of this section.

(iii) *Conditions for avoidance of liability.* A terminal operator is not liable for tax under this paragraph (d)(2) if, at the time of the bulk transfer, the terminal operator—

(A) Is a taxable fuel registrant;

(B) Has an unexpired notification certificate (described in § 48.4081-5) from the position holder; and

(C) Has no reason to believe that any information in the notification certificate is false.

(e) *Tax on bulk transfers not received at an approved terminal or refinery—(1) Imposition of tax.* Tax on taxable fuel is imposed if—

(i) Taxable fuel is removed by bulk transfer from a refinery or terminal, or entered by bulk transfer into the United States;

(ii) No tax was imposed on such removal or entry under paragraph (b), (c), or (d) of this section; and

(iii) Upon removal from the pipeline or vessel, the taxable fuel is not received at an approved terminal or refinery (or at another pipeline or vessel).

(2) *Liability for tax—(i) In general.* The owner of the taxable fuel when it is removed from the pipeline or vessel is liable for the tax imposed under paragraph (e)(1) of this section if the owner has not met the conditions of paragraph (e)(2)(ii) of this section.

(ii) *Conditions for avoidance of liability.* An owner of taxable fuel is not liable for tax under paragraph (e)(2)(i) of this section if, at the time the taxable fuel is removed from the pipeline or vessel, the owner of the taxable fuel—

(A) Is a taxable fuel registrant;

(B) Has an unexpired notification certificate (described in § 48.4081-5) from the operator of the terminal or refinery where the taxable fuel is received; and

(C) Has no reason to believe that any information in the notification certificate is false.

(iii) *Liability of the operator of the facility where the taxable fuel is received.* The operator of the facility where the taxable fuel is received is liable for the tax imposed under paragraph (e)(1) of this section if the owner of the taxable fuel has met the conditions of para-

graph (e)(2)(ii) of this section and is jointly and severally liable for the tax if the owner has not met such conditions.

(f) *Tax on sales within the bulk transfer/terminal system—(1) Imposition of tax.* Tax is imposed on the sale of taxable fuel located within the bulk transfer/terminal system if the sale is to a person that is not a taxable fuel registrant and tax has not been imposed on such taxable fuel under § 48.4081-2, or paragraph (b), (c), (d), or (e) of this section.

(2) *Exception for certain sales of taxable fuel for export.* The tax imposed under paragraph (f)(1) of this section does not apply to a sale of taxable fuel if—

(i) The buyer's principal place of business is not within the United States;

(ii) The sale of the fuel occurs as the fuel is delivered into a transport vessel;

(iii) The vessel has a capacity of at least 20,000 barrels of fuel;

(iv) The seller is a taxable fuel registrant and the exporter of record of the fuel; and

(v) The fuel was exported in due course.

(3) *Liability for tax—(i) In general.* The seller of the taxable fuel is liable for the tax imposed under paragraph (f)(1) of this section if the seller has not met the conditions of paragraph (f)(3)(ii) of this section.

(ii) *Conditions for avoidance of liability.* A seller is not liable for tax under paragraph (f)(3)(i) of this section if, at the time of the sale, the seller—

(A) Is a taxable fuel registrant;

(B) Has an unexpired notification certificate (described in § 48.4081-5) from the buyer; and

(C) Has no reason to believe that any information in the certificate is false.

(iii) *Liability of the buyer.* The buyer of the taxable fuel is liable for the tax imposed under paragraph (f)(1) of this section if the seller of the taxable fuel has met the conditions of paragraph (f)(3)(ii) of this section and is jointly and severally liable for the tax if the seller has not met such conditions.

(4) *Example.* The following example illustrates this paragraph (f) and the definition of the term *sale* in § 48.4081-1:

*Example.* PH owns one million gallons of untaxed gasoline that is stored in TO's terminal. PH also is the position holder with respect to the gasoline. While the gasoline remains stored in the terminal, PH transfers title to 200,000 gallons of the gasoline to A, a person that is not a taxable fuel registrant. PH continues to hold the inventory position on TO's records with respect to the one million gallons. Because PH continues as the position holder with respect to the gasoline, the transfer of title to the gasoline from PH to A is not a sale of gasoline. Because this transfer of title from PH to A is not a sale of gasoline, the tax imposed under paragraph (f) of this section does not apply to the transfer.

(g) *Tax on removal or sale of blended taxable fuel by the blender*—(1) *Imposition of tax.* A tax is imposed on the removal or sale of blended taxable fuel by the blender thereof. Tax is computed on the difference between the total number of gallons of blended taxable fuel removed or sold and the number of gallons of previously taxed taxable fuel used to produce the blended taxable fuel. For this purpose, the alcohol in gasohol is treated as previously taxed taxable fuel.

(2) *Liability for tax*—(i) *Liability of the blender.* The blender is liable for the tax imposed under paragraph (g)(1) of this section.

(ii) *Liability of seller of untaxed liquid.* On and after April 2, 2003, a person that sells any liquid that is used to produce blended taxable fuel is jointly and severally liable for the tax imposed under paragraph (g)(1) of this section on the removal or sale of that blended taxable fuel if the liquid—

(A) Is described in § 48.4081-1(c)(1)(i)(B) (relating to liquids on which tax has not been imposed under section 4081); and

(B) Is sold by that person as gasoline, diesel fuel, or kerosene that has been taxed under section 4081.

(3) *Examples.* The following examples illustrate the provisions of this paragraph (g) and the definitions of *blended taxable fuel* and *diesel fuel* in § 48.4081-1(c):

*Example 1.* (i) *Facts.* W is a wholesale distributor of petroleum products and R is a retailer of petroleum products. W sells to R 1,000 gallons of an untaxed liquid (a liquid described in § 48.4081-1(c)(1)(i)(B)) and delivers the liquid into a storage tank (tank) at R's retail facility. However, W's invoice to R states that the liquid is undyed diesel fuel.

At the time of the delivery, the tank contains 4,000 gallons of undyed diesel fuel, a taxable fuel that has been taxed under section 4081. The resulting 5,000 gallon mixture is suitable for use as a fuel in a diesel-powered highway vehicle because it has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle. The mixture does not satisfy the dyeing requirements of § 48.4082-1. R sells the mixture from the tank to a construction company for off-highway business use.

(ii) *Analysis*—(A) *Production of blended taxable fuel.* R is a blender within the meaning of § 48.4081-1 because R has produced blended taxable fuel, as defined in § 48.4081-1, by mixing 1,000 gallons of a liquid that has not been taxed under section 4081 with 4,000 gallons of diesel fuel that has been taxed under section 4081. The mixing occurs outside of the bulk transfer/terminal system and the resulting product is diesel fuel because it is suitable for use as a fuel in a diesel-powered highway vehicle.

(B) *Imposition of tax.* Under paragraph (g)(1) of this section, tax is imposed on R's sale of the 5,000 gallons of blended taxable fuel to the construction company. Even though the blended taxable fuel is sold for off-highway business use, which is a nontaxable use as defined in section 4082(b), the sale is not exempt from tax because the blended taxable fuel does not satisfy the dyeing requirements of § 48.4082-1. Tax is computed on 1,000 gallons, which is the difference between the number of gallons of blended taxable fuel R sells (5,000) and the number of gallons of previously taxed taxable fuel used to produce the blended taxable fuel (4,000).

(C) *Liability for tax.* R, as the blender, is liable for this tax under paragraph (g)(2)(i) of this section. W is jointly and severally liable for this tax under paragraph (g)(2)(ii) of this section because the blended taxable fuel is produced using an untaxed liquid that W sold as undyed diesel fuel (that is, as diesel fuel that was taxed under section 4081).

*Example 2.* (i) *Facts.* W, a wholesale distributor of petroleum products, buys 7,000 gallons of diesel fuel at a terminal rack. The diesel fuel is delivered into a tank trailer. Tax is imposed on the diesel fuel under § 48.4081-2 when the diesel fuel is removed at the rack. W then goes to another location where X, the operator of a chemical plant, sells W 1,000 gallons of an untaxed liquid (a liquid described in § 48.4081-1(c)(1)(i)(B)). However, X's invoice to W states that the liquid is undyed diesel fuel. This liquid is delivered into the tank trailer already containing the 7,000 gallons of diesel fuel. The resulting 8,000 gallon mixture is suitable for use as a fuel in a diesel-powered highway vehicle because it has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle. The

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mixture does not satisfy the dyeing requirements of § 48.4082-1. W sells the mixture to R, a retailer of petroleum products, and delivers the mixture into a storage tank at R's retail facility. R sells the mixture to its customers.

(ii) *Analysis*—(A) *Production of blended taxable fuel*. W is a blender within the meaning of § 48.4081-1 because W has produced blended taxable fuel, as defined in § 48.4081-1, by mixing 1,000 gallons of a liquid that has not been taxed under section 4081 with 7,000 gallons of diesel fuel that has been taxed under section 4081. The mixing occurs outside of the bulk transfer/terminal system and the resulting product is diesel fuel because it is suitable for use as a fuel in a diesel-powered highway vehicle. Thus, R has bought blended taxable fuel.

(B) *Imposition of tax*. Under paragraph (g)(1) of this section, tax is imposed on W's sale of the 8,000 gallons of blended taxable fuel to R. Tax is computed on 1,000 gallons, which is the difference between the number of gallons of blended taxable fuel W sells (8,000) and the number of gallons of previously taxed taxable fuel used to produce the blended taxable fuel (7,000). No tax is imposed on R's subsequent sale of the blended taxable fuel because tax is imposed only with respect to a removal or sale by the blender.

(C) *Liability for tax*. W, as the blender, is liable for this tax under paragraph (g)(2)(i) of this section. X is jointly and severally liable for this tax under paragraph (g)(2)(ii) of this section because the blended taxable fuel is produced using an untaxed liquid that X sold as undyed diesel fuel (that is, as diesel fuel that was taxed under section 4081). R has no liability for tax because R is not a blender and did not sell any untaxed liquid as a taxed taxable fuel. R only sold taxed taxable fuel, the blended taxable fuel bought from W.

(h) *Rate of tax*. For the rate of tax generally imposed under this section, see section 4081(a). For the rate of tax on gasohol and on gasoline removed or entered for gasohol production, see § 48.4081-6.

(i) *Exemptions*. For exemptions from the taxes imposed under this section, see §§ 48.4081-4 (relating to gasoline blendstocks), 48.4082-1 (relating to dyed diesel fuel and dyed kerosene), 48.4082-5 (relating to diesel fuel and kerosene used in Alaska), 48.4082-6 (relating to aviation-grade kerosene), and 48.4082-7 (relating to kerosene used for a feedstock purpose).

(j) *Effective/applicability date*: This section is applicable January 1, 1994, except that paragraphs (c)(2)(ii) through (iv) of this section are applica-

ble to entries of taxable fuel after September 27, 2004.

[T.D. 8659, 61 FR 10455, Mar. 14, 1996, as amended by T.D. 8879, 65 FR 17156, Mar. 31, 2000; T.D. 9051, 68 FR 15941, Apr. 2, 2003; T.D. 9145, 69 FR 45588, July 30, 2004; T.D. 9346, 72 FR 41223, July 27, 2007]

### § 48.4081-4 Gasoline; special rules for gasoline blendstocks.

(a) *Overview*. This section provides rules exempting from tax certain removals, entries, and sales of gasoline blendstocks. Generally, under prescribed conditions, tax is not imposed on gasoline blendstocks that are not used to produce finished gasoline or that are received at an approved terminal or refinery.

(b) *Nonbulk removals and entries of gasoline blendstocks not used to produce gasoline*—(1) *Removals and entries not in connection with sales*. Tax is not imposed under § 48.4081-2(b), § 48.4081-3(b)(1)(ii), or § 48.4081-3(c)(1)(ii) on the removal or entry of gasoline blendstocks not in connection with a sale if—

(i) The person otherwise liable for tax under § 48.4081-2(c)(1) (the position holder), § 48.4081-3(b)(3) (the refiner), or § 48.4081-3(c)(2) (the enterer) is a taxable fuel registrant; and

(ii) Such person does not use the gasoline blendstocks to produce finished gasoline.

(2) *Removals and entries in connection with sales*. Tax is not imposed under § 48.4081-2(b), § 48.4081-3(b)(1)(ii), or § 48.4081-3(c)(1)(ii) on the removal or entry of gasoline blendstocks in connection with a sale if—

(i) The person otherwise liable for tax under § 48.4081-2(c)(1) (the position holder), § 48.4081-3(b)(3) (the refiner), or § 48.4081-3(c)(2) (the enterer) is a taxable fuel registrant; and

(ii) At the time of the sale, such person has an unexpired certificate (described in paragraph (e) of this section) from the buyer and has no reason to believe any information in the certificate is false.

(3) *Tax on sales after certain nonbulk removals or entries*—(i) *In general*. If paragraph (b) (1) or (2) of this section applies to the removal or entry of gasoline blendstocks, tax is imposed on any