

§ 48.4081-1

26 CFR Ch. I (4-1-21 Edition)

(2) Section 4222, relating to registration, and the regulations thereunder in subpart H;

(3) Section 4223, relating to special rules pertaining to further manufacture, and the regulations thereunder in subpart H; and

(4) 28 FR 348, January 12, 1963, relating to the authorization of an exemption from the tax imposed by section 4071 by the Secretary of the Treasury under section 4293 for sales of certain tires and inner tubes sold to the American Red Cross on or after March 1, 1963.

(Secs. 4071(b), 4071(c), 4073(c), and 7805, Internal Revenue Code of 1954; 80 Stat. 331, 26 U.S.C. 4071(b); 68A Stat. 482, 26 U.S.C. 4071(c); 70 Stat. 389, 26 U.S.C. 4073(c); 68A Stat. 917, 26 U.S.C. 7805)

[T.D. 7809, 47 FR 6008, Feb. 10, 1982]

TAXABLE FUEL

SOURCE: T.D. 8421, 57 FR 32424, July 22, 1992, unless otherwise noted.

§ 48.4081-1 Taxable fuel; definitions.

(a) *Overview.* This section provides definitions for purposes of the tax on taxable fuel imposed by section 4081.

(b) *Definitions.*

Approved terminal or refinery means a terminal or refinery that is operated, respectively, by a taxable fuel registrant that is a terminal operator, or by a taxable fuel registrant that is a refiner.

Aviation gasoline means all special grades of gasoline that are suitable for use in aviation reciprocating engines and covered by ASTM specification D 910 or military specification MIL-G-5572. For availability of ASTM and military specifications, see paragraph (d) of this section.

Blender means any person that produces blended taxable fuel.

Bulk transfer means any transfer of taxable fuel by pipeline or vessel.

Bulk transfer/terminal system means the taxable fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Thus, taxable fuel in a refinery, pipeline, vessel, or terminal is in the bulk transfer/terminal system. Taxable fuel in the fuel supply tank of any engine, or in any tank car, rail car, trailer, truck, or other equip-

ment suitable for ground transportation is not in the bulk transfer/terminal system.

Bus means automobile bus.

Diesel-powered bus means any bus that is propelled by a diesel-powered engine.

Diesel-powered highway vehicle means a highway vehicle, as defined in § 48.4061(a)-1(d), that is propelled by a diesel-powered engine.

Diesel-powered train means any diesel-powered equipment or machinery that rides on rails. Thus, for example, the term includes a locomotive, work train, switching engine, and track maintenance machine.

Enterer generally means the importer of record (under customs law) with respect to the taxable fuel, except that—

(1) If the importer of record is a customs broker engaged by the owner of the taxable fuel, the person for whom the broker is acting is the enterer; and

(2) If there is no importer of record for taxable fuel entered into the United States, the owner of the taxable fuel at the time it is brought into the United States is the enterer.

Entry of taxable fuel into the United States occurs when—

(1) The taxable fuel is brought into the United States and applicable customs law requires that the taxable fuel be entered into the United States for consumption, use, or warehousing; or

(2) The taxable fuel is brought into the United States from Puerto Rico and applicable customs law would require that the taxable fuel be entered into the United States for consumption, use, or warehousing if the taxable fuel were brought into the United States from somewhere other than Puerto Rico.

Excluded liquid means any liquid that—

(1) Contains less than four percent normal paraffins; or

(2) Has a—

(i) Distillation range of 125 °F. or less;

(ii) Sulfur content of 10 ppm or less; and

(iii) Minimum color of + 27 Saybolt.

Finished gasoline means all products (including gasohol (as defined in § 48.4081-6(b)(2))) that are commonly or

commercially known or sold as gasoline and are suitable for use as a motor fuel, other than products that have an ASTM octane number of less than 75 as determined by the motor method.

Gasoline means finished gasoline and gasoline blendstocks.

Industrial user means any person that receives gasoline blendstocks by bulk transfer for its own use in the manufacture of any product other than finished gasoline.

Kerosene means any liquid that meets the specifications for kerosene or would meet those specifications but for the presence in the liquid of a dye of the type described in § 48.4082-1(b). A liquid meets the specifications for kerosene if it is one of the two grades of kerosene (No. 1-K and No. 2-K) covered by ASTM specification D 3699, or kerosene-type jet fuel covered by ASTM specification D 1655 or military specification MIL-DTL-5624T (Grade JP-5) or MIL-DTL-83133E (Grade JP-8). For availability of ASTM and military specifications, see paragraph (d) of this section. However, the term does not include *excluded liquid*.

Position holder means, with respect to taxable fuel in a terminal, the person that holds the inventory position in the taxable fuel, as reflected on the records of the terminal operator. A person holds the inventory position in taxable fuel when that person has a contractual agreement with the terminal operator for the use of storage facilities and terminaling services at a terminal with respect to the taxable fuel. The term also includes a terminal operator that owns taxable fuel in its terminal.

Rack means a mechanism capable of delivering taxable fuel into a means of transport other than a pipeline or vessel.

Refiner means any person that owns, operates, or otherwise controls a refinery.

Refinery means a facility used to produce taxable fuel and from which taxable fuel may be removed by pipeline, by vessel, or at a rack. However, the term does not include a facility where only blended fuel or gasohol (as defined in § 48.4081-6(b)(2)), and no other type of taxable fuel, is produced. For this purpose blended fuel is any mix-

ture that, if produced outside the bulk transfer/terminal system, would be blended taxable fuel.

Removal means any physical transfer of taxable fuel, and any use of taxable fuel other than as a material in the production of taxable fuel or special fuels. However, taxable fuel is not removed when it evaporates or is otherwise lost or destroyed.

Sale means—

(1) The transfer of title to, or substantial incidents of ownership in, taxable fuel (other than taxable fuel in a terminal) to the buyer for a consideration, which may consist of money, services, or other property; or

(2) The transfer of the inventory position in the taxable fuel in a terminal if the transferee becomes the position holder with respect to the taxable fuel.

State includes any State, any political subdivision of a State, the District of Columbia, the American Red Cross, and, to the extent provided by section 7871, any Indian tribal government.

Taxable fuel means gasoline, diesel fuel, and kerosene.

Taxable fuel registrant means an enterer, industrial user, refiner, terminal operator, or throughputter that is registered as such under section 4101.

Terminal means a taxable fuel storage and distribution facility that is supplied by pipeline or vessel and from which taxable fuel may be removed at a rack. However, the term does not include any facility at which gasoline blendstocks are used in the manufacture of products other than finished gasoline and from which no gasoline is removed. Also, effective January 2, 1998, the term does not include any facility where finished gasoline, undyed diesel fuel, or undyed kerosene is stored if the facility is operated by a taxable fuel registrant and all such taxable fuel stored at the facility has been previously taxed under section 4081 upon removal from a refinery or terminal.

Terminal operator means any person that owns, operates, or otherwise controls a terminal.

Throughputter means any person that—

(1) Owns taxable fuel within the bulk transfer/terminal system (other than in a terminal); or

(2) Is a position holder.

Vessel means a waterborne taxable fuel transporting vessel.

(c) *Blended taxable fuel, diesel fuel, and gasoline blendstocks; definitions*—(1) *Blended taxable fuel*—(i) *In general.* Except as provided in paragraphs (c)(1)(ii) and (c)(1)(iii) of this section, *blended taxable fuel* means any taxable fuel that is produced outside the bulk transfer/terminal system by mixing—

(A) Taxable fuel with respect to which tax has been imposed under section 4041(a)(1) or 4081(a) (other than taxable fuel for which a credit or payment has been allowed); and

(B) Any other liquid on which tax has not been imposed under section 4081.

(ii) *Exclusion; minor blending.* A mixture described in paragraph (c)(1)(i) of this section is not blended taxable fuel if, during the calendar quarter in which the blender removes or sells the mixture, all such mixtures removed or sold by the blender contain, in the aggregate, less than 400 gallons of liquid described in paragraph (c)(1)(i)(B) of this section.

(iii) *Exclusion; gasohol.* Blended taxable fuel does not include any gasohol (as defined in § 48.4081-6(b)(2)) if, disregarding the alcohol, the gasohol is not blended taxable fuel and contains, in addition to permitted amounts of liquids described in paragraph (c)(1)(i)(B) of this section, only gasoline with respect to which—

(A) Tax was imposed under section 4081(a) at a rate described in § 48.4081-6(e) (relating to the gasohol production tax rate and the gasohol tax rate); or

(B) A valid claim is made under section 6427(f).

(2) *Diesel fuel*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, *diesel fuel* means any liquid that, without further processing or blending, is suitable for use as a fuel in a diesel-powered highway vehicle or diesel-powered train. A liquid is suitable for this use if the liquid has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train. A liquid may possess this practical and commercial fitness even though the specified use is not the liquid's predominant use. However, a liquid does not possess this practical and

commercial fitness solely by reason of its possible or rare use as a fuel in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train.

(ii) *Exclusion.* *Diesel fuel* does not include gasoline, kerosene, excluded liquid, No. 5 and No. 6 fuel oils covered by ASTM specification D 396, or F-76 (Fuel Naval Distillate) covered by military specification MIL-F-16884. For availability of ASTM and military specifications, see paragraph (d) of this section.

(3) *Gasoline blendstocks*—(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, *gasoline blendstocks* means—

- (A) Alkylate;
- (B) Butane;
- (C) Butene;
- (D) Catalytically cracked gasoline;
- (E) Coker gasoline;
- (F) Ethyl tertiary butyl ether (ETBE);
- (G) Hexane;
- (H) Hydrocrackate;
- (I) Isomerate;
- (J) Methyl tertiary butyl ether (MTBE);
- (K) Mixed xylene (not including any separated isomer of xylene);
- (L) Natural gasoline;
- (M) Pentane;
- (N) Pentane mixture;
- (O) Polymer gasoline;
- (P) Raffinate;
- (Q) Reformate;
- (R) Straight-run gasoline;
- (S) Straight-run naphtha;
- (T) Tertiary amyl methyl ether (TAME);
- (U) Tertiary butyl alcohol (gasoline grade) (TBA);
- (V) Thermally cracked gasoline;
- (W) Toluene; and
- (X) Transmix containing gasoline.

(ii) *Exclusion.* *Gasoline blendstocks* does not include any product that cannot, without further processing, be used in the production of finished gasoline. For example, a mixed hydrocarbon stream that is produced in a natural gas processing plant is not a gasoline blendstock if the stream cannot be used to produce finished gasoline without further processing.

(d) *ASTM and military specifications.* ASTM specifications may be obtained from the American Society for Testing

and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428. Military specifications may be obtained from the Standardization Document Order Desk, Building 4, Section D, 700 Robins Avenue, Philadelphia, PA 19111.

(e) *Other definitions.* For other definitions relating to taxable fuel, see §§ 48.4081-6(b), 48.4082-5(b), 48.4082-6(b), 48.4082-7(b), 48.4101-1(b), 48.6427-9(b), 48.6427-10(b), and 48.6427-11(b).

(f) *Effective date.* (1) Except as provided in paragraph (f)(2) of this section, this section is applicable after December 31, 1993.

(2) In paragraph (b) of this section the definition of *aviation gasoline* and the third sentence in the definition of *terminal* are applicable after January 1, 1998, the definition of *kerosene, excluded liquid*, and *taxable fuel* are applicable after June 30, 1998, and the definition of *enterer* is applicable to entries of taxable fuel after September 27, 2004. Paragraph (c)(2) of this section is applicable after December 31, 1997.

[T.D. 8659, 61 FR 10453, Mar. 14, 1996, as amended by T.D. 8748, 63 FR 25, Jan. 2, 1998; T.D. 8879, 65 FR 17155, Mar. 31, 2000; T.D. 9051, 68 FR 15940, Apr. 2, 2003; T.D. 9145, 69 FR 45588, July 30, 2004; T.D. 9346, 72 FR 41223, July 27, 2007]

§ 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.