DEPARTMENT OR REVENUE

Taxpayer Service Division – Tax Group

GASOLINE AND SPECIAL FUEL TAX

1 CCR 201-16

[Editor’s Notes follow the text of the rules at the end of this CCR Document.]

Regulation 39-27-102.5(2)(A) BIODIESEL USED IN BLENDING

For purposes of §39-27-102.5(2)(a), C.R.S, biodiesel shall refer to the fuel known in the industry as B100.

Regulation 39-27-103 GASOLINE AND SPECIAL FUEL TAX

1) Definitions

   a) Account Percentage – a percentage assigned to a particular account, representing the proportion of taxable fuel used for purposes other than the operation of a motor vehicle upon the highways of this state.

   b) Alternate-Jurisdiction Percentage – an exempt-use percentage used in another state.

   c) Default Percentage – an exempt-use percentage to be assigned to new account-holders whose activities closely mirror that of the average industry participant.

   d) Established Account Percentage – an exempt-use percentage previously assigned to an account by the Department of Revenue.

   e) Industry-Group Proffered Standard – the percentage obtained from an industry association, or other disinterested party.

   f) Industry Segment – a group of companies or businesses engaged in similar activities using similar vehicles and/or equipment.

   g) Industry Segment Historical Average – a percentage derived from the historical, non-highway fuel usage of previously established accounts identified as being in the industry.

   h) Refund Permit Account – an account established for an entity allowing it to claim refunds for exempt use of fuel.

   i) Refundable Gallons – the account percentage multiplied by the gallons purchased and used for the period.

2) Qualifying fuel

   a) The gallons included in the percentage calculations, on the refund claims, and in all other aspects of the refund process under §39-27-103 C.R.S., can only be those upon which Colorado motor fuel excise tax was paid. Red-dyed diesel, fuel purchased in another jurisdiction, and fuel purchased tax-exempt does not qualify.

3) Exempt use of fuel
a) Fuel used in vehicles licensed and plated for on-road use in the state of Colorado does not qualify as exempt fuel. In the calculation for an industry percentage for exempt-fuel use, the fuel is treated as taxable use. The only exception is fuel used as a power source for a qualifying exempt purpose other than powering the vehicle over the road. The fuel must have been accounted for by the Colorado Department of Revenue in the approved percentage, or with utilization and pursuant to this regulation.

4) Establishing the default percentage for a given industry

a) Based on the Department of Revenue’s determination as to what is most reliable, the default percentage shall be:

   i) The Industry Segment Historical Average;
   
   ii) An Industry-Group Proffered Standard; or,

   iii) An Alternate-Jurisdiction Percentage.

b) The Department of Revenue may change default percentages, should it obtain information deemed to be more reliable.

5) Assigning an account percentage to a new account

a) The default percentage shall be assigned to entities whose activities closely mirror those of the average industry participant.

b) Otherwise:

   i) A weighted average of the relevant industry default percentages shall be assigned to entities whose activities span more than one industry.

   ii) Entities whose activities are not representative of established industry segments must provide documentation enabling the Department of Revenue to assign a percentage. Documentation must include information concerning actual use of fuel, equipment used, mileage over the road, miles per gallon, etc. This documentation must span one year of activity.

6) Documentation for an industry-group proffered standard

a) Proposal documentation shall include:

   i) A definition of the segment;

   ii) An explanation of typical business operations for the segment;

   iii) Identification of the typical equipment used;

   iv) Information concerning any seasonal or cyclical events that might affect the industry;

   v) An explanation of the measuring method used. Information and testing results provided by a manufacturer may be considered here;

   vi) Fuel records and other data;
vii) Identification of the period of time involved in the study. To be valid, a period of study must span one year, as well as any relevant cyclical or seasonal patterns.

7) Protests of the assigned percentage

a) An applicant may file a protest with the Department of Revenue if the applicant disagrees with the assigned percentage. Supporting documentation must be included with any request for a change of percentage.

b) Documentation must include sufficient information to support an alternative percentage. Documentation must include information concerning actual use of fuel, equipment used, mileage over the road, miles per gallon, etc. This documentation must span one year of activity.

c) Subsequent appeal procedures will be handled under the provision of §39-21-104 C.R.S and §39-21-105 C.R.S.

8) Audits of accounts

a) If the Department of Revenue, through the examination of records concerning actual use of fuel, equipment used, mileage over the road, miles per gallon, etc., of an established account holder, finds that the account has an incorrect percentage, it may adjust the percentage.

b) The new percentage shall be arrived at as if a new account were being established.

9) Change in business operations by an established account holder

a) Entities whose business operations change, such that a refund issued under the previously-set percentage would be incorrect, must notify the Department of Revenue.

b) The Department will require a new application.

c) The new application will be processed, and the previously-held account shall be closed.

10) Taxpayers holding International Fuel Tax Agreement (IFTA) licenses

a) Taxpayers wishing to receive a refund on fuel placed in the ordinary fuel tank of a vehicle whose miles are reported on an IFTA return, as allowable within the provisions of subsection 3) of this regulation, must obtain an account specifically for this purpose. In addition, taxpayers wishing to receive a refund on fuel placed in the ordinary fuel tank of a vehicle whose miles are reported on an IFTA return, as well as fuel used in other equipment, must obtain two accounts. Taxpayers holding two accounts must separate the activity.

b) Taxpayers presently holding an account to receive refunds on both fuel placed in the ordinary tank of an IFTA vehicle, and upon fuel placed in other vehicles or equipment, must re-apply and obtain separate accounts.

c) Taxpayers holding an account upon which they shall receive a refund of fuel placed in the ordinary fuel tank of a vehicle whose miles are reported on an IFTA return must attach a copy of the corresponding IFTA return to each quarterly claim for refund.

d) For the purposes of this regulation, the ordinary fuel tank of a vehicle is that which is drawn upon to propel the vehicle down the road.

11) Filing quarterly claims
a) Claims may be filed by calendar quarter. Gallons claimed must be those purchased in the specified quarter.

12) Invoice requirements and record-retention

a) A claim for refund shall be postmarked no later than twelve months after the purchase of the fuel. Invoices are the delivery tickets issued at the time of sale and delivery. Billing invoices prepared subsequently are not acceptable, unless accompanied by a delivery ticket. Invoices must be retained for a period of three years from the date of the purchase of the fuel, or the date of the refund claim, whichever is later. These invoices must be available for audit, or review, upon request, by the Department.

b) Invoices must show the following information:

   i) Dealer’s name and address, and the address of the delivery;

   ii) Purchaser’s name and address;

   iii) Correct date of sale and delivery, as to month, day, and year;

   iv) Bill of lading number, if applicable;

   v) Delivery ticket number;

   vi) Type and quantity of gasoline or special fuel sold;

   vii) Price per gallon, total amount of Colorado tax, and total amount paid.

Editor’s Notes

History

Entire rule eff. 03/02/2011.