



10-29-2009

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Recommended Citation

Darden, Ron, "Technical Bulletins: IRS Rules for Diesel Fuel and Gasoline Purchases (2009)" (2009). *MTAS Publications: Technical Bulletins*.
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October 29, 2009

IRS RULES FOR DIESEL FUEL AND GASOLINE PURCHASES

Ron Darden, Municipal Management Consultant

Gasoline, diesel, and certain other fuels purchased for the exclusive use of a state or local government are exempt from the federal excise taxes on those fuels (18.45 cents per gallon for diesel fuel; 21.45 cents per gallon for gasoline). Since your city can buy the fuel tax free, it need not request a refund.

The Omnibus Budget Reconciliation Act (P.L. 103-66), enacted in August 1993, made the collection point for the excise taxes on diesel fuel the same as the collection point for gasoline. The act also provided that diesel fuel dyed in accordance with IRS regulations may be sold at a tax-excluded price if the fuel is for a nontaxable use (e.g., the exclusive use of a state or local government).

State and local governments can purchase dyed diesel fuel (blue for high-sulfur fuel for use in off-highway vehicles and red for low-sulfur fuel for use in motor vehicles) at a price *that excludes the federal excise tax*. Dyed fuel may be purchased from any vendor who sells it. The vendor will post a notice stating “DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE.” This notice will appear on retail pumps, all bills, shipping paper, etc.

According to IRS rules, the only legal way to purchase *undyed* diesel fuel without paying taxes is to buy it from a certified vendor. The vendor alone is responsible for seeking a refund of excise taxes from the IRS. To obtain the refund, the vendor must be a “registered ultimate vendor,” and the local government must give the vendor a “Model Certificate A” certificate of farming use or state use to support the vendor’s claims for credit or payments under section 6427 of the Internal Revenue Code.

Local governments may purchase gasoline and diesel products from retail stations tax free provided such purchases are made through a fleet credit card or an oil company credit card that has been issued by the oil company to a governmental agency that holds an exemption permit issued by the state commissioner of revenue. The state gasoline tax rate is 21.45 cents per gallon and 18.45 cents per gallon for diesel fuel.

Anyone who illegally uses dyed diesel or gasoline fuels — fuels that have been exempted from the federal excise tax — will be severely penalized.

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