

STATE OF COLORADO



DEPARTMENT OF REVENUE
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John W. Hickenlooper
Governor

Barbara J. Brohl
Executive Director

GIL-13-025

December 9, 2013

XXXXXXXXXXXXXXXXXX
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XXXXXXXXXXXXXXXXXX

Re: Special Fuels Used for Non-taxable Purposes

Dear XXXXXXXXX,

You submitted a request for guidance to determine the applicability of Colorado excise tax on special fuels used for home heating and other non-taxable uses.

The Colorado Department of Revenue ("Department") issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues and is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department but not on the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see Department regulation 24-35-103.5 at www.colorado.gov/revenue/tax > Tax Library > Rulings.

The Department initially treats your request as one of a general information letter. If you would like the Department to issue a private letter ruling on the issues you raise, you can resubmit a request and fee in compliance with regulation 24-35-103.5. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not a determination of the tax consequence of any particular action or inaction.

Issue

Can a vendor sell special fuel to an end user for use in a home heating system or other non-taxable uses without having paid the excise tax?

Background

HB13-1110 repealed a special fuel excise tax exemption and decal system under which owners of vehicles powered by liquefied petroleum gas and natural gas paid an annual license tax fee in lieu of the special fuels excise tax. In an effort to create tax parity among special fuels, this bill also provides for reduced special fuels excise tax rates based on the differences in each fuel's energy content. Finally, the bill created a new exemption for

compressed natural gas used to propel a vehicle on the state highways if it is supplied to the user at a residential home.

Following the passage of HB13-1110, the Department has received inquiries regarding whether it would allow exemptions for the use of special fuels to propel vehicles when supplied from a residential home and for special fuels used for home heating and other non-vehicle uses such as propane grills.

Discussion

Colorado levies an excise tax on the sale of special fuel acquired, sold, offered for sale, or used in Colorado for any purpose whatsoever.¹ "Special fuel" is defined as diesel engine fuel, kerosene, liquefied petroleum gas, and natural gas used for the generation of power to propel a motor vehicle on Colorado highways.² Special fuels used in a home heating system do not fall within the definition of special fuels and, thus, would not be subject to the excise tax when used in such a manner. Similarly, other non-vehicle uses do not fall within the definition of "special fuels."

Moreover, Section 39-27-103(3)(a)(I)(I), C.R.S. allows for a refund of the excise tax for any use that entitles a person to a refund under the provisions of federal law. The Department has historically interpreted IRS Publication 510 Excise Taxes to allow for such a refund. Publication 510 states that home heating is a non-taxable use which may entitle the ultimate purchaser to a credit or refund. Consequently, even if fuels sold for home heating purposes had been subject to the tax on special fuels, the use of such fuels in home heating would qualify for a refund of the tax.

Because the tax must sometimes be paid before the ultimate use is established, only fuel that the distributor is certain will be used non-taxable purposes, including home heating, may be sold without the tax.³ The Department will accept that propane delivered to a stationary tank that does not have any attachments to extract the propane and used solely for home heating may be sold tax free.

Because liquefied petroleum gas is not subject to Colorado excise tax when used in a home heating system, we then look to whether these two products are subject to Colorado sales or use taxes. Section 39-26-715(1)(a)(II) provides an exemption from sales and use taxes for all sales and purchases of electricity, coal, wood, gas, fuel oil, or coke sold, to occupants of residences for the purpose of operating a home heating system. However, local government sales taxes may be due if such local government has not expressly adopted an exemption for all sales and purchases of electricity, coal, wood, gas, fuel oil, or coke sold to occupants of residences for the purpose of

¹ §39-27-102(1)(a), C.R.S. You can view statutes on the Department's website at www.colorado.gov/revenue/tax > Tax Library > Statutes.

² §39-27-101(29), C.R.S.

³ However, if a distributor is not certain that the special fuel will be used for a non-taxable purpose and sells the special with the tax included, the purchaser who uses the special fuel for a non-taxable purpose may file a claim for refund with the Department to recoup the taxes paid.

operating a home heating system.⁴ Therefore, the liquefied petroleum gas is exempt from both the state excise and sales and use tax, but may be subject to the city or county sales and use taxes when used to operate a home heating system.

Miscellaneous

This letter represents the good faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination here on any of the issues raised and the Department is not bound by this general information letter.

Enclosed is a redacted version of this letter. Pursuant to statute and regulation, this redacted letter will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted letter.

Sincerely,

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⁴ See Department Form DR 1002 for a list of cities and counties that exempt fuel used for residential heating purposes.