

Hurricane Irma Impact Upon Federal and Certain State Fleet/Fuel Taxes and Fuel Procurement

Overview

In response to fuel shortages caused by Hurricane Irma, the United States Environmental Protection Agency ("EPA"), the Internal Revenue Service ("IRS") and the State of Florida have issued fuel waivers related to the sale and use of dyed diesel fuel in highway vehicles. The waivers are intended to minimize disruption of diesel fuel supply in the provision of emergency response and disaster recovery services in areas affected by Hurricane Irma. Under qualifying circumstances, entities will temporarily avoid federal and state penalties associated with using dyed diesel fuel in on-road vehicles. Additionally, the IRS as well as various state agencies have issued temporary filing extensions for taxpayers affected by Hurricane Irma.

In this Tax Alert, we summarize the temporary federal and Florida fuel waivers as well as the filing extensions.¹

Current Federal and Florida Law Regarding Sales of Dyed Diesel Fuel

The Internal Revenue Code ("IRC") exempts vendors from collecting and paying federal excise tax (except for Leaking Underground Storage Tank Trust Fund ("LUST") tax) on dyed diesel fuel sold and used in a nontaxable manner (i.e., in units not registered for highway use).² If dyed diesel fuel is sold for or used in a taxable manner (i.e., on-road), the vendor is subject to a penalty of either \$1,000 or \$10 for each gallon of dyed diesel fuel, whichever is greater.³

Florida similarly exempts vendors from collecting and paying the state motor fuel tax on dyed diesel fuel purchased and used only for certain exempt purposes (e.g., non-highway registered equipment) and imposes penalties for selling or using dyed diesel fuel for a non-exempt purpose.⁴⁵

EPA and IRS Temporarily Allow Use of Dyed Diesel Fuel in Highway Vehicles

On September 6, 2017, in response to a shortage of undyed diesel fuel for use in emergency response and disaster recovery vehicles, the EPA issued a waiver allowing dyed diesel fuel with a sulfur level of 15 ppm or lower to be sold, distributed, and used in highway vehicles in Florida, effective through September 22, 2017.⁶

On September 11, 2017, the IRS announced that it will not impose a penalty when dyed diesel fuel is sold or used for highway use in Florida.⁷ This IRS waiver is effective from September 6, 2017 through September 22, 2017. The IRS will require fuel vendors to collect the full amount of the federal excise tax of 24.3 cents per gallon normally applied to undyed diesel fuel, as well as the 0.1 cents per gallon LUST tax. The IRS will also waive any penalty for failure to make the semi-monthly excise tax deposit normally due on September 14, 2017,⁸ so long as the deposits were made

¹ For details on the IRS/EPA waivers associated with Hurricane Harvey that expired on September 15, 2017, please refer to our September 8, 2017 External Multistate Tax Alert available [here](#).

² IRC § 4082(a).

³ IRC § 6715(b)(1).

⁴ FLA. STAT. § 206.874(3); FLA. ADMIN. CODE ANN. R. 12B-5.140(2)(c)(1); FLA. STAT. §§ 206.872(11)(a)(1)-(2).

⁵ FLA. STAT. §§ 206.872(11)(a)(1)-(2).

⁶ LETTER FROM U.S. ENVTL. PROT. AGENCY ADM'R E. SCOTT PRUITT TO FLA. GOVERNOR SCOTT, 2017 FUEL WAIVER CONCERNING THE USE OF RED DYED 15 PPM NON-ROAD DIESEL LOCOMOTIVE AND MARINE FUEL IN THE STATE OF FLORIDA, <https://www.epa.gov/sites/production/files/2017-09/documents/floridafuelswaiver090617.pdf>.

⁷ I.R.S. News Release IR-2017-149 (Sept. 11, 2017), available at: <https://www.irs.gov/newsroom/irs-waives-diesel-fuel-penalty-in-florida-due-to-hurricane-irma>.

⁸ Treas. Reg. § 40.6302(c)-1(c)(1).

External Multistate Tax Alert

by September 19, 2017.⁹ In addition, excise tax returns normally due on October 31, 2017¹⁰ will be granted additional time to file through January 31, 2018.¹¹

On September 13, 2017, the EPA issued a “No Action Assurance (NAA) for the Use of Non-Ultra Low Sulfur Diesel in Limited Diesel-Powered Highway and Nonroad Vehicles and Equipment.” The NAA allows the use of certain diesel reserves containing approximately 4 million gallons of dyed diesel fuel with a sulfur level of 15 ppm but no greater than 20 ppm.¹² As a condition to the NAA, the EPA requires such fuel to be used in on-road response vehicles and non-road equipment owned and operated by utility workers engaged in hurricane response activity.

Florida Lifts Restrictions on the Use of Dyed Diesel Fuel

On September 14, 2017, the Florida Department of Revenue (“Department”) announced that it will waive penalties related to the sale or use of dyed diesel fuel for highway use.¹³ The penalty waiver applies beginning September 6, 2017 through September 22, 2017. Similar to the federal excise tax, the Department requires fuel vendors to collect, report, and remit the full amount of the state motor fuel tax applied to undyed diesel fuel.¹⁴

Florida and Other States Extend Certain Tax Filing Due Dates For Taxpayers Affected by Hurricane Irma

On September 15, 2017, the Department issued an emergency order¹⁵ to extend certain motor fuel tax filing due dates for Florida taxpayers affected by Hurricane Irma.¹⁶ In addition to Florida, the states of Alabama,¹⁷ Arkansas,¹⁸ Delaware,¹⁹ District of Columbia,²⁰ Georgia,²¹ Idaho,²² Illinois,²³ New Hampshire,²⁴ New Jersey,²⁵ and South Carolina²⁶ have also issued due date filing extensions for affected taxpayers.

⁹ I.R.S. News Release FL-2017-04 (Sept. 12, 2017), available at: <https://www.irs.gov/newsroom/tax-relief-for-victims-of-hurricane-irma-in-florida>.

¹⁰ Treas. Reg. § 40.6071(a)-1(a).

¹¹ I.R.S. News Release FL-2017-04 (Sept. 12, 2017), available at: <https://www.irs.gov/newsroom/tax-relief-for-victims-of-hurricane-irma-in-florida>.

¹² LETTER FROM U.S. ENVTL. PROT. AGENCY ADM’R E. SCOTT PRUITT TO FLA. GOVERNOR SCOTT, NO ACTION ASSURANCE FOR THE USE OF NON-ULTRA LOW SULFUR DIESEL IN LIMITED DIESEL-POWERED HIGHWAY AND NONROAD VEHICLES AND EQUIPMENT, available at: <https://response.epa.gov/sites/12382/files/No%20Action%20Assurance%20for%20Florida%20Utility%20Response%20Vehicles.pdf>.

¹³ FLORIDA DEP’T OF REVENUE T.I.P. 17B05-02, SALES AND REPORTING OF DYED DIESEL FUEL DURING PENALTY RELIEF PERIOD, https://revenue.floridarevenue.com/LawLibraryDocuments/2017/09/TIP-121365_TIP%2017B05-02%20FINAL%20RLL.pdf.

¹⁴ Terminal suppliers who sell dyed diesel to wholesalers are not impacted by this waiver and therefore should continue to sell dyed diesel to wholesalers without collecting fuel tax.

¹⁵ FLA. DEP’T OF REVENUE ORDER OF EMERGENCY WAIVER/DEVIATION #17-235-DOR-003 (Sept. 15, 2017), <http://floridarevenue.com/emdisaster/ExecutiveOrdersEmergencyWaivers/Emergency%20Order%20Irma%2017-235%20DOR%20003.pdf>.

¹⁶ Florida Department of Revenue specifically extended the deadline for submitting various motor fuel tax returns and payments to September 29, 2017.

¹⁷ ALA. DEP’T OF REVENUE, ADOR PROVIDING TAX RELIEF TO VICTIMS OF HURRICANE IRMA (Sept. 12, 2017), <https://revenue.alabama.gov/2017/09/12/ador-providing-tax-relief-to-victims-of-hurricane-irma/>.

¹⁸ ARK. DEP’T OF FIN. & ADMIN., TAX FILING DEADLINE EXTENDED FOR FLORIDA TAXPAYERS (Sept. 13, 2017), <http://www.dfa.arkansas.gov/offices/incomeTax/Documents/NewsRelease-FloridaFilingExtension.pdf>.

¹⁹ STATE OF DELAWARE, HURRICANE IRMA – ADDITIONAL EXTENSION OF TIME TO FILE (Sept. 13, 2017), <http://news.delaware.gov/2017/09/13/hurricane-irma-additional-extension-time-file/>.

²⁰ D.C. OFFICE OF TAX AND REVENUE NOTICE-2017-04, TAX RELIEF FOR VICTIMS OF HURRICANE HARVEY OR IRMA (Sept. 14, 2017), https://otr.cfo.dc.gov/sites/default/files/dc/sites/otr/release_content/attachments/OTR%20TAX%20NOTICE%20HURRICANE%20DRAFT.pdf.

²¹ GA. DEP’T OF REVENUE, DEPARTMENT OF REVENUE EXTENDS RELIEF TO VICTIMS OF HURRICANE IRMA (Sept. 19, 2017), https://dor.georgia.gov/sites/dor.georgia.gov/files/related_files/press_release/updated-DOR%20Extends%20Relief%20to%20IRMA%20Victims%209-19-2017%20.pdf.

²² IDAHO STATE TAX COMM’N, IDAHO GRANTS TAX RELIEF TO VICTIMS OF HURRICANE IRMA (Sept. 15, 2017), <https://tax.idaho.gov/n-feed.cfm?idd=4135>.

²³ ILL. DEP’T OF REVENUE, TAXPAYERS AFFECTED BY HURRICANE HARVEY AND HURRICANE IRMA (Sept. 11, 2017), <http://www.revenue.state.il.us/News/2017HurricaneHarvey.htm>.

²⁴ N.H. DEP’T OF REVENUE ADMIN. TIR 2017-007, HURRICANE DISASTER RELIEF (Sept. 15, 2017), <https://www.revenue.nh.gov/tirs/documents/2017-007.pdf>.

²⁵ N.J. DEP’T OF TREAS., HURRICANE IRMA VICTIMS GRANTED NEW JERSEY EXTENSION OF FILING AND PAYMENT DEADLINES (Sept. 14, 2017), <http://www.state.nj.us/treasury/taxation/hurricaneirma.shtml>.

²⁶ S.C. DEP’T OF REVENUE, SCDOR OFFERS TAX RELIEF FOR CERTAIN TAXPAYERS AFFECTED BY HURRICANE IRMA (Sept. 15, 2017), <https://dor.sc.gov/resources-site/media-site/Pages/SCDOR-OFFERS-TAX-RELIEF-FOR-CERTAIN-TAXPAYERS-AFFECTED-BY-HURRICANE-IRMA0915-2543.aspx>.

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