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DEPARTMENT OF REVENUE

Information Guide

December 2016

Nebraska Motor Fuels Tax Laws

Overview

Nebraska imposes an excise tax on all fuel sold or delivered in Nebraska, unless a specific exemption applies. The excise tax is collected on gasoline, gasohol, ethanol, diesel, biodiesel, and compressed fuels. A separate excise tax is imposed on aviation fuels. In addition, all liquid fuels are subject to environmental fees.

All persons producing, importing, exporting, or purchasing fuels for resale in Nebraska must obtain the appropriate licenses prior to operating in Nebraska. Licenses are also required for persons transporting fuel or operating pipeline terminals in Nebraska.

This guidance document is advisory in nature but is binding on the Nebraska Department of Revenue (Department) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of the Department and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

This guidance document may change with updated information or added examples. The Department recommends you do not print this document. Instead, sign up for the subscription service at revenue.nebraska.gov to get updates on your topics of interest.

Fuel Types

Motor Fuels

The term "motor fuels" is used in this document as an all-inclusive term describing motor vehicle fuel, diesel fuel, and aviation fuel.

- **Motor vehicle fuel** includes all products and fuel commonly or commercially known as gasoline, including ethanol and the various ethanol/gasoline blends such as E-10 and E-85. It also includes casing head or natural gasoline which is normally used to denature agricultural ethanol. Tax is remitted by either a licensed producer, supplier, distributor, wholesaler, or importer on a monthly consolidated electronic return.
- **Diesel fuel** includes all combustible liquids suitable for the generation of power for diesel-powered vehicles, including biodiesel and the various biodiesel/diesel blends such as B-2 and B-10. Kerosene is not included under the definition of diesel. However, kerosene is often blended with diesel in cold weather and when blended, the kerosene component loses its identity and becomes an inseparable part of the diesel and is taxed. Tax is remitted by either a licensed producer, supplier, distributor, wholesaler, or importer on a monthly consolidated electronic return.

3-473-2004 Rev. 12-2016
Supersedes 3-473-2004 Rev. 10-2016

- **Aviation fuel** includes gasoline or jet fuel suitable for propelling an aircraft. Tax is remitted by either a licensed supplier, distributor, wholesaler, or importer on a monthly consolidated electronic return.

Compressed Fuel

Compressed fuel includes compressed natural gas, liquefied petroleum gas, liquefied natural gas, butane, and any other type of compressed gas or compressed liquid suitable for fueling a vehicle. Tax is imposed on the retail sale of this fuel when it is placed in the supply tank of a licensed motor vehicle or sold for use in a licensed motor vehicle. Tax is remitted as part of the consolidated electronic filing or through use of the "online" return located on the Department's website.

Alternative Fuel

Alternative fuel includes electricity, solar power, and any other source of energy not otherwise taxed under the motor fuel tax laws. Any vehicle powered by an alternative fuel is subject to a fee, imposed at the rate of $75 per registration year. This fee is collected by the Nebraska Department of Motor Vehicles at the time of vehicle registration.

Basis for Tax

Nebraska imposes an excise tax on each gallon of motor fuel sold for consumption in vehicles registered to be operated on the highways. The tax is imposed on motor fuels, including motor vehicle fuels and diesel fuels, as well as compressed fuels. The rate is subject to change semiannually and can be found on the Department's website at revenue.nebraska.gov, then clicking on "Motor Fuels," and "Fuel Tax Rates."

Nebraska also imposes an excise tax on each gallon of aircraft fuel sold within the state. This rate, five cents per gallon of aviation gasoline and three cents per gallon of jet fuel, is set by statute and has not changed in several years.

The tax is imposed on the consumer; however, state law requires the tax be "pre-collected" from the consumer by the seller. The tax may be "passed-through" to the wholesaler level, provided all parties are properly licensed.

> **Example:** The supplier who owns the fuel in the pipeline may sell it tax-free to a licensed distributor who, in turn, may sell it tax-free to a licensed wholesaler. This is the limit to which the tax may be deferred. If any customer in the chain is not properly licensed, they are charged the tax upon their purchase.

Exempt Sales

Fuel sales that are exempt from the excise tax include:

- Fuel which is exported for exclusive use in a state other than Nebraska;
- Sales to the U.S. Government, its agencies, and federal corporations wholly owned by the U.S. Government;
- Sales to the Omaha Metropolitan Transit Authority;
- Diesel which is indelibly dyed in accordance with IRS guidelines;
- Natural gasoline purchased for use as a denaturant by an ethanol producer; and
- Purchases of 50 gallons or less of diesel placed into the supply tank of a temperature control unit (reefer) or power take-off unit not connected to the engine propelling the unit, pursuant to a completed Nebraska Tax Exempt Certificate for Purchase of Undyed Diesel Fuel, Form 91EX.

Sales to Nebraska Governmental Entities

Nebraska **does not** exempt sales of motor fuels to the State of Nebraska and its agencies, county or local governmental entities, or political subdivisions including school districts, educational institutions, or public or rural power districts.

However, these entities are allowed to use dyed diesel in licensed motor vehicles. Dyed diesel is purchased tax-free and the entities are then required to report any applicable motor fuels tax on gallons of dyed diesel consumed in licensed motor vehicles on the quarterly Nebraska Motor Fuels Use Tax Return, Form 74.

Environmental Fees

Motor fuels and aircraft fuels are also subject to the Nebraska Petroleum Release Remedial Action Fee (PRF) which is generally imposed at the same taxation point as motor fuel and aircraft fuel taxes. This environmental fee is imposed on all motor fuels and aircraft fuels, including dyed diesel. There are two occasions when fuel tax is not due, but the PRF is due:

- When gallons are sold tax exempt pursuant to a Nebraska Tax Exempt Certificate for Purchase of Undyed Diesel Fuel, Form 91EX; and
- When dyed diesel is sold.

Upon completing the Nebraska Monthly Fuel Tax Return, Form 73, the PRF fees are automatically calculated and included with the motor fuels tax due.

Environmental fees are not imposed on compressed fuels.

License

Any person wishing to engage in the business of buying, selling, or transporting fuels in Nebraska must secure the appropriate licenses. These are obtained by submitting a Nebraska Motor Fuels License Application, Form 20MF. This form is available on the Department's website.

There is no application fee for any Motor Fuels license. Once issued, the license is permanent and nontransferable.

The following are brief descriptions of the various classes of licensing available.

Motor Fuels or Aviation Fuels

- **Supplier.** A supplier is any person who owns motor fuels imported by barge, barge line, or pipeline and stored at a barge, barge line, or pipeline terminal in this state. Unless sold to an unlicensed purchaser, the supplier may sell the motor fuels tax-free to a licensed purchaser (normally a distributor). A supplier's license also allows them to act as an importer or exporter.
- **Distributor.** A distributor is any person who acquires ownership of motor fuels directly from a producer or supplier at a barge, barge line, pipeline terminal, or ethanol or biodiesel facility in this state. Unless sold to an unlicensed purchaser, the distributor may sell the motor fuels tax-free to a licensed purchaser (normally a wholesaler). A distributor's license also allows them to act as an importer or exporter.
- **Wholesaler.** A wholesaler is any person, other than a producer, supplier, distributor, or importer, who acquires motor fuels for resale. While a licensed wholesaler may purchase motor fuels tax-free, due to their level in the chain of distribution, they are not allowed to "pass the tax through" to another purchaser. They must remit the appropriate tax and sell it tax-paid to their customer (normally a retailer). A wholesaler's license also allows them to act as an importer or exporter.

- **Importer.** An importer is any person who owns motor fuels at the time the fuels enter the State of Nebraska by any means other than barge, barge line, or pipeline. An importer does not include a person who imports motor fuels in a tank directly connected to the engine of a motor vehicle, train, watercraft, or airplane for purposes of providing fuel to the engine to which the tank is connected.
- **Exporter.** An exporter is any person who acquires ownership of motor fuels from any licensed producer, supplier, distributor, wholesaler, or importer exclusively for use or resale in another state.
- **Retailer.** A retailer is any person who acquires motor fuels from a producer, supplier, distributor, wholesaler or importer, for resale to consumers of the fuel. Normally, the retailer's vendor will be either a wholesaler or distributor who must charge the appropriate motor fuels tax. Because retailers purchase all motor fuels with tax included, they are waived from filing and bonding requirements; however, they are required to be licensed and are subject to periodic field reviews. As with other licensees, retailers may also be subject to an audit which generally encompasses three years. Refer to the Nebraska Motor Fuels Retailers and Compressed Fuel Retailers Information Guide.

Ethanol or Biodiesel Producer

A **producer** is any person who manufactures agricultural ethyl alcohol (ethanol) or biodiesel at an ethanol or biodiesel facility located in this state. Unless sold to an unlicensed purchaser, the producer will sell the motor fuels tax-free to a licensed purchaser (normally a supplier or distributor). Refer to the Nebraska Motor Fuel Ethanol and Biodiesel Producer Information Guide.

Compressed Fuel Retailer

A **compressed fuel retailer** is any person engaged in the business of selling or otherwise providing compressed fuel to consumers of the fuel for use in motor vehicles. A compressed fuel retailer also includes any person, other than the consumer of compressed fuel, who has equipment capable of dispensing compressed fuel into a motor vehicle. Tax is imposed on the retail sale of that fuel when it is placed in the supply tank of a licensed motor vehicle or sold for use in a licensed motor vehicle. Tax is remitted as part of the consolidated electronic filing or through use of the online return located on the Department's website. Depending on the amount of tax liability, compressed fuel retailers are required to file returns either monthly, quarterly, or annually. Refer to the Nebraska Motor Fuels Retailers and Compressed Fuel Retailers Information Guide.

Liquid Fuel Carrier

A **liquid fuel carrier** is any person transporting motor fuels in a transport vehicle (such as a tanker or tank wagon) into, within, or out of Nebraska. Liquid fuel carriers must obtain a liquid fuel carrier license. A copy of the license must be carried in the transport vehicle whenever motor fuels are carried in this state. In addition, a copy of the bill of lading, manifest, bill of sale, purchase order, sales invoice, delivery ticket, or similar documentation must be carried in the transport vehicle at all times when transporting motor fuels in Nebraska. Refer to the Nebraska Liquid Fuel Carriers Information Guide.

Terminal Operator

A **terminal operator** is any person operating a motor fuel pipeline terminal in Nebraska. Terminal operators must have a terminal operator's license and electronically file the Nebraska Motor Fuels Terminal Operator Report, Form 87.

Security

All new licensees are required to maintain a surety bond for the first year of their license. The security must be in the form of a bond issued by a surety company licensed and authorized to do business in Nebraska. The bonding requirements apply independently to specific tax programs:

- The amount of the motor fuels bond must equal at least three times the anticipated monthly motor fuels tax liability, with a minimum bond amount of $20,000;
- An aircraft fuels license requires a surety bond equal to at least three times the anticipated monthly aircraft fuels tax liability, with a minimum bond of $10,000; and
- Compressed fuel retailers are required to have a minimum bond of $1,000.

There is no bonding requirement for the Nebraska PRF program or Liquid Fuel Carrier license.

During the initial year of a license, the account is monitored to ensure the appropriate bonding level is maintained. If, after that first year, the account is found to be in good standing, the surety bond may be canceled. However, if the account is not in good standing or reported liabilities materially exceed the bonded projections, an extension or increase in the bond may be required.

Return Filing Requirements

Nebraska's automated fuel tracking system requires monthly reports of all fuel receipts and disbursements. These returns are required to be filed via electronic data interchange (EDI). The Department's website contains a listing of several commercial vendors from whom this software is available. It also contains a software guide containing the necessary mapping to allow licensees to create the software in-house.

The software provides for the filing of a consolidated monthly return, Nebraska Monthly Fuel Tax Return, Form 73, for the following products:

- Gasoline, ethanol, and ethanol blends;
- Undyed diesel and undyed biodiesel blends;
- Dyed diesel and dyed biodiesel blends;
- Kerosene when blended with both undyed and dyed diesel;
- Propane and compressed natural gas; and
- Aviation gasoline and jet fuel.

In addition, because PRF is imposed at the same point as the motor fuels tax, the software automatically computes the appropriate PRF, allowing for one payment.

For those filers having a limited filing responsibility, the Department provides the ability to file certain returns online. These filings are limited to the Nebraska Motor Fuels Use Tax Return, Form 74, and the Nebraska Compressed Fuel Retailer Return, Form 86.

Returns are filed for all activity occurring within a calendar month. The return is considered timely filed if electronically transmitted on or before the 20th day of the month following the close of the reporting month. If the 20th falls on a Saturday, Sunday, or legal holiday, the return will be considered timely filed if transmitted on or before the next business day following the 20th.

Commissions are also calculated on the returns, and are provided to defer the costs of collecting and remitting the tax and maintaining any required surety bonds. Commissions are not allowed on environmental fees.

Payment

All liabilities are consolidated and remitted with one payment on the due date of the return. While the Department strongly encourages payment via electronic funds transfer (EFT), it is only required when the annual aggregate liabilities exceed $5,000.

Penalties and Interest

Penalties are structured to encourage timely filing of returns and payments; however, penalties automatically escalate if the necessary corrective action is not taken within a prescribed time period.

A late return, regardless of whether there is a tax balance due, receives a $50 penalty if filed within 10 days of the due date. If the return is filed beyond 10 days of the due date, an additional penalty is assessed equal to $100 or 10% of the tax due, whichever is greater.

Interest is independent of penalties and will be assessed on the unpaid tax at the statutory rate from the due date until payment is received.

Record Requirements

Normal books and records must be maintained pursuant to the Generally Accepted Accounting Principles established by the American Institute of Certified Public Accountants. If the appropriate returns have been filed, records need only be retained for a period of three years. If the appropriate returns have not been filed, a five-year period is open for review. Failure to maintain records for this period could result in assessments being issued based upon the best information available.

Refunds

Taxes paid on motor fuels consumed in unlicensed motor vehicles, equipment, and watercraft are subject to refund. The amount of tax paid must be $25 or greater per calendar year in order to receive a refund.

PRF is subject to refund on fuel that is exported, destroyed, or purchased by the U.S. Government or its agencies if the claimed amount is at least $10 per calendar year.

Claims are submitted on a properly completed Nebraska Ag Use Motor Fuels Tax Refund Claim, Form 84AG, or Nebraska Non-Ag Use Motor Fuels Tax Refund Claim, Form 84, and must be filed within three years from the date of purchase of the claimed fuel. See the Nebraska Motor Fuels Tax Refunds Information Guide.

Resource List

Information Guides

- Nebraska Liquid Fuel Carriers Information Guide
- Nebraska Motor Fuels Retailers and Compressed Fuel Retailers Information Guide
- Nebraska Motor Fuel Ethanol and Biodiesel Producer Information Guide
- Nebraska Motor Fuels Tax Refunds Information Guide

Regulations

- Nebraska Motor Fuels Tax Regulations

revenue.nebraska.gov/fuels
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