



MAINE REVENUE SERVICES SALES, FUEL AND SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN Excise Tax Bulletin #2 GASOLINE EXCISE TAX

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains information of interest regarding issues commonly faced by your business. Taxpayers are solely responsible for reviewing and complying with relevant Maine statutory laws. Additional questions about these and other issues you may have should be directed to Maine Revenue Services Sales, Fuel, and Special Tax Division. Contact information and portions of the Gasoline Tax Act referred to in this bulletin can be found at the end of the bulletin in Attachment #1.

An excise tax is levied and imposed on *internal combustion engine fuel* used or sold within the State. The tax rate may be adjusted each July 1 for inflation. (See Section 4 for tax rates) The tax is a levy on the ultimate consumer; however the distributor is primarily responsible for collecting and remitting the tax.

All Gasoline Distributors, Importers, and Exporters doing business in this State must apply for a certificate with the State Tax Assessor. A copy of the Certificate must be displayed in each place of business. Each Distributor, Importer, and Exporter is required to file monthly reports with the Assessor.

1. DEFINITIONS

A. Internal combustion engine fuel

References to gasoline or fuel throughout this bulletin include internal combustion engine fuel. *Internal combustion engine fuel* includes all products commonly or commercially known, used, sold, or offered for sale as gasoline or fuel for use in an internal combustion engine, including piston engine aircraft engines. Internal combustion engine fuel includes casinghead, absorption and natural gasoline.

B. Person

References to *person* throughout this bulletin means an individual, firm, partnership, association, society, club, corporation, financial institution, estate, trust, business trust, receiver, assignee or any other group or combination acting as a unit, the State or Federal Government or any political subdivision or agency of either government.

2. ACCOUNT CLASSIFICATION

A. Distributor, Importer, or Exporter

A *distributor* is any person

- importing gasoline into the State;
- producing, refining, manufacturing or compounding gasoline in the State; or
- purchasing gasoline in the State,

where the fuel is intended to be primarily sold to others in bulk.

A person that imports or exports, but does not primarily resell to others in bulk is not considered a *distributor*, but is instead classified as an *importer* or *exporter*, based on its primary business activity.

B. Retail dealer

A *retail dealer* is a person that sells gasoline at retail and delivers the fuel directly into the tank of a motor vehicle, watercraft, or piston engine aircraft.

3. LICENSING

A distributor, importer, or exporter cannot operate within the State without a certificate issued by the State Tax Assessor. The appropriate certificate is issued once a properly completed application for tax registration is filed with Maine Revenue Services. An Application for Registration can be obtained by contacting Maine Revenue Services or visiting our web site.

A copy of the certificate must be displayed in each place of business. Certificates must be surrendered to the Assessor if the business operations cease.

A certificate may be revoked for reasonable cause by the Assessor after notice has been given to the certificate holder. Reasons for cancellation include filing a false return; failing, refusing, or neglecting to file a required return; or failure to pay the full amount of tax due on a return.

4. IMPOSITION OF TAX

A. Legal incidence of tax

An excise tax is imposed on each gallon of gasoline sold or used in the State. The tax is a levy on the ultimate consumer; however the distributor that first receives the fuel in the State is primarily responsible for paying the tax.

There are specific exemptions from the excise tax for gasoline that is sold:

- and delivered to a licensed exporter wholly for export,
- in bulk to any agency or political subdivision of the State of Maine,
- to another Maine licensed gasoline distributor,
- to a person who will use the fuel for an international flight, or
- to the United States Government.

Exemptions are discussed in detail in Section 5.

B. Tax rates and indexing

The excise tax is based on each gallon of fuel sold or used in the State. When fuel is blended from more than one type of fuel, the tax law governing the predominant fuel type prevails.

The tax rate for fuel used to propel a jet or turbojet engine aircraft is 3.4 cents per gallon.

The tax rate for all other gasoline was set at 22 cents per gallon in 2001. Beginning in 2003, the excise tax imposed on gasoline became subject to an annual adjustment based on the consumer price index.

The excise tax rate change is effective July 1st of each year. Effective tax rates in cents per gallon through 06/30/08 are as follows:

Inflation Index		1.118	1.023	1.027	1.034	1.032
Tax Type	Through 06/30/03	07/101/03-06/30/04	07/01/04-06/30/05	07/01/05-06/30/06	07/01/06-06/30/07	07/01/07-06/30/08
Gasoline	22.0	24.6	25.2	25.9	26.8	27.6
Jet Fuel	3.4	3.4	3.4	3.4	3.4	3.4

Current excise tax rates are available on the Fuel Tax section of the Maine Revenue Services web page or by contacting Maine Revenue Services.

5. EXEMPTIONS

The following exemptions are provided by statute:

A. Political subdivisions

For purposes of this exemption, references to “political subdivision” include the State of Maine, an agency of the State of Maine, or a political subdivision of the State. This exemption is not available to other states or provinces or to their agencies or subdivisions.

Gasoline sold in bulk to a Maine political subdivision is exempt from excise tax. For bulk sales, the gasoline distributor must maintain copies of delivery slips and invoices that clearly identify the purchaser as the State of Maine, an agency of the State, or a political subdivision of the State. Sales made without proper documentation will be considered taxable by the State Tax Assessor. Sales to political subdivisions must be listed on Schedule 9 of the monthly tax return.

The tax associated with retail sales to Maine political subdivisions are refundable to the political subdivision. Exempt entities making retail purchases of gasoline must apply for a refund of the tax using a Political Subdivision Refund application available from Maine Revenue Services. A Maine political subdivision may assign its right to a refund to a third party.

B. Sales to the Federal Government

Gasoline sold to the U. S. Government is exempt from excise tax. For bulk sales, the gasoline distributor must maintain copies of delivery slips and invoices that clearly identify the purchaser as the U.S. Government. Sales made without proper documentation will be considered taxable by the State Tax Assessor. Sales to the U.S. Government must be listed on Schedule 8 of the monthly tax return.

Federal government agencies that make retail purchases of gasoline must file for a refund of the tax using a Political Subdivision Refund application available from Maine Revenue Services.

If a licensed gasoline distributor wishes to make a refund to a retail dealer for excise tax collected on retail sales of gasoline, a copy of Federal Tax Exemption Certificate Form 1094 is required to support

the sale by the retail dealer to the U.S. Government. The certificate is not required if the sale is charged on the distributor's credit or courtesy card.

C. Sales for resale

Sales of gasoline to other gasoline distributors for resale are exempt from excise tax. A copy of the purchaser's "Gasoline Distributor Certificate" with the appropriate signed affidavit must be kept in the seller's file to document this exemption. Exempt sales of gasoline to other gasoline distributors must be listed on Schedule 6 of the monthly tax return.

While the tax law gives gasoline distributors the ability to make tax exempt sales to each other, a gasoline distributor is not required to make the sale excise tax exempt. Maine Revenue Services provides a list of licensed Gasoline Distributors on its web site www.maine.gov/revenue/fueltax.

A retail dealer may not purchase fuel exempt from excise tax. Fuel that is delivered into a retail tank is considered taxable at the time it is placed into the retail tank. For purposes of taxation, any storage tank connected to a pump fitted to fuel motor vehicles is considered to be a retail tank.

An importer may not make purchases tax exempt from a Maine licensed gasoline distributor. Purchases made within the State must be tax paid.

D. Exports

Gasoline exported to another State is exempt from excise tax. Delivery slips and invoices which clearly indicate the purchaser, point of origin, and destination are required to document these sales. Exports must be listed on Schedule 7 of the monthly tax return.

Exporters purchasing fuel in Maine that will not be exported from the State must pay the Maine excise tax at the time of purchase.

E. International Flights

A flight must originate or terminate outside the United States to be considered international. The exemption for fuel used in international flights is only available to the distributor selling directly to the airline carrier or airport. If the purchaser intends to resell the gasoline to be consumed in an international flight, the proper exemption would be a sale to another licensed distributor for resale. Sales for international flights must be listed on Schedule 10 of the monthly tax return.

6. REQUIRED RETURNS

Maine Revenue Services generates and mails returns in advance of the due date. Blank forms, schedules, and instructions are available from the Maine Revenue Services web site or by contacting Maine Revenue Services directly. **Failure to receive a tax return does not excuse a taxpayer from the requirement to file returns as prescribed by law.** Payment for any tax due must be made with the filed return. Penalties apply for failure to file returns timely or to include the required payment.

All amounts must be reported in gross gallons.

Transactions must be reported in the month they occur, not when they are billed.

Maine Revenue Services offers electronic funds transfer as a payment option. Information is available by clicking on electronic services from the Maine Revenue Services web page.

A. Monthly returns and required schedules

All gasoline distributors, importers, exporters, and wholesalers must file a monthly return listing inventories, receipts and disbursements from the prior month. The return is due on or before the 21st day of each month. Tax returns are required to be filed even if a certificate holder has zero inventory or activity in a particular reporting period.

Returns are considered incomplete if the applicable schedules are not attached or properly filled out. Detailed instructions are available on the Fuel Tax portion of the Maine Revenue Services web site or by contacting Maine Revenue Services directly.

Withdrawals of fuel from inventory for a person's own use must be reported as a taxable sale, unless the use is covered by one of the exemptions detailed in Section 5. When gasoline is delivered on a consignment basis to a consumer or to a retail outlet, whether or not the retail outlet is wholly owned by the distributor, the fuel is considered to have been sold. The gallons should be reported on the monthly return as a taxable sale at the time the gallons are delivered into the retail tank. Any storage tank connected to a pump fitted to fuel motor vehicles is considered to be a retail tank. Gallons in retail inventory should not be included in reported inventories.

B. Shrinkage - Distributor

An allowance may be made by the State Tax Assessor to cover the loss through shrinkage, evaporation or handling sustained by a *distributor* on the transportation of fuel. The allowance can be no more than ½ of 1% of the amount of fuel received by a distributor, plus ½ of 1% on all transfers in vessels, tank cars or full tank truck loads by the distributor in the regular course of business from one of the distributor's places of business to another of the distributor's places of business within this State. The total allowance must be supported by documentation satisfactory to the Assessor and is calculated on a calendar year basis.

Further allowances may be requested from the State Tax Assessor by submitting proof of a loss sustained through fire, accident or unavoidable calamity. The event must be reported to the Assessor in a timely fashion to allow the Assessor to verify the excess loss. Failure to report these losses promptly may result in refusal of a credit for excess shrinkage or loss.

Distributors, importers, and exporters must file an annual shrinkage return listing inventories, total receipts, and total sales. Annual shrinkage returns are due by January 21st for the prior calendar year.

C. Shrinkage – Retail Dealer

An allowance may be made by the State Tax Assessor to cover the loss through shrinkage or evaporation by a *retail dealer*. The allowance can be no more than ½ of 1% of the tax paid on gross purchases that have been delivered into a retail tank for sale to consumers.

The total allowance must be supported by certification from retail dealers' vendor that the fuel was purchased tax paid. Returns are filed for a six month period. Claims for January-June are due no later

than September 30. Claims for July-December must be filed no later than March 31. Claims filed late or without proper vender certification will be denied.

A distributor may qualify as a retail dealer for the portion of fuel it has properly taxed and placed in a retail tank.

D. Floor stock

An *inventory tax* is imposed on all tax-paid fuel held by a distributor, importer, exporter, or retail dealer in inventory on the date of the annual indexing. For more information on indexing, see Section 4B. The tax is calculated by multiplying the number of gallons of tax-paid fuel held in inventory at the end of the day on June 30th by the difference between the tax rate already paid and the new tax rate that is effective on July 1st. An annual Floor Stock Return must be filed no later than August 15th.

7. SALES TAX ISSUES

Gasoline sold exempt from excise tax is subject to Maine sales and use tax. Exemptions from sales and use tax are contained within the Sales Tax portion of Title 36. Sales and Use Tax Instructional Bulletin #13 provides guidance on taxable and exempt fuel transactions. The Bulletin is available from the Sales and Use tax section of the Maine Revenue Services web page or by contacting Maine Revenue Services.

8. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common issues regarding the Excise Tax Law faced by your business. It is not intended to be all-inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to:

MAINE REVENUE SERVICES
SALES, FUEL & SPECIAL TAX DIVISION
24 STATE HOUSE STATION
AUGUSTA, ME 04333-0024
TEL: (207) 624-9609
FAX: (207) 287-6628
NEXTALK: (888) 577-6690

Visit our website at www.maine.gov/revenue/fueltax
e-mail us at fuel.tax@maine.gov

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ATTACHMENT #1

Excerpts taken from 36 M.R.S.A.

36 §2902, sub-§1. Distributor. "Distributor" means any person, as defined, importing into the State, or producing, refining, manufacturing or compounding within the State, or purchasing within the State, principally for resale to others in bulk, internal combustion engine fuel as defined. [1967, c. 94, §1 (rpr).]

36 §2902, sub-§1-A. Exporter. "Exporter" means any person, as defined, other than a licensed distributor, who purchases internal combustion engine fuel in this State and exports, or causes to be exported such fuel other than in fuel tanks attached to and forming a part of a motor vehicle and used in the engine of said motor vehicle. [1967, c. 94, §2 (new).]

36 §2902, sub-§1-B. Importer. "Importer" means any person, as defined, other than a licensed distributor, wherever resident or located, importing or causing to be imported for sale or for use in this State, with the exception set forth, any internal combustion engine fuel as defined. [1967, c. 94, §3 (new).]

36 § 2902, sub-§3. Internal combustion engine fuel. "Internal combustion engine fuel", except as respects fuel used for propelling aircraft, shall mean all products commonly or commercially known or sold as gasoline, including casinghead and absorption or natural gasoline, regardless of their classification or uses; and any liquid prepared, advertised, offered for sale or sold for use as or commonly and commercially used as a fuel in internal combustion engines, which when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene and similar petroleum products (American Society for Testing Materials Designation D-86) show not less than 10% distilled (recovered) below 347° Fahrenheit (175° Centigrade) and not less than 95% distilled (recovered) below 464° Fahrenheit (240° Centigrade). The term "internal combustion engine fuel" shall not include commercial solvents or naphthas which distil, by American Society for Testing Materials Method D-86, nor more than 9% at 176° Fahrenheit and which have a distillation range of 150° Fahrenheit, or less, or liquefied gases which would not exist as liquids at a temperature of 60° Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

"Internal combustion engine fuel" shall mean any motor fuel used or sold for use in the propulsion of aircraft. [1959, c.32, §1.]

36 §2902, sub-§6. Wholesaler. "Wholesaler" means a person that owns, operates or otherwise controls a terminal or a person that holds the internal combustion engine fuel inventory position in a terminal when that person has a contract with the terminal operator for the use of storage facilities and terminal services for fuel at the terminal. [1997, c. 738, §1 (new).]

36 §2903. Tax levied; rebates. 1. Excise tax imposed. An excise tax is imposed on internal combustion engine fuel used or sold within this State, including sales to the State or a political subdivision of the State, at the rate of 22¢ per gallon, except that the rate is 3.4¢ per gallon on internal combustion engine fuel, as defined in section 2902, bought or used for the purpose of propelling jet or turbojet engine aircraft. The tax rate provided by this section is subject to annual inflation adjustment pursuant to section 3321 except with respect to the tax imposed upon fuel bought or used for the purpose of propelling jet or turbojet engine aircraft. [2001, c. 688, §1 (amd).]

36 §2903, sub-§1-C. Inventory tax. On the date that any increase in the rate of tax imposed under this chapter takes effect, an inventory tax is imposed by this subsection upon all internal combustion engine

fuel that is held in inventory by a distributor or retail dealer as of the end of the day prior to that date with respect to which the tax imposed pursuant to subsection 1 has been paid. The inventory tax is computed by multiplying the number of gallons of tax-paid fuel held in inventory by the difference between the tax rate already paid and the new tax rate. Distributors and retail dealers that hold such tax-paid inventory shall make payment of the inventory tax on or before the 15th day of the next calendar month, accompanied by a form prescribed and furnished by the State Tax Assessor. In the event of a decrease in the tax rate, the distributor or retail dealer is entitled to a refund or credit, which must be claimed on a form designed and furnished by the assessor. This section does not apply to internal combustion engine fuel purchased or used for the purpose of propelling jet or turbojet engine aircraft. [2001, c. 688, §3 (new).]

36 §2903, sub-§3. Legal incidence of tax. Internal combustion engine fuel may be taxed only once under this section. The tax imposed by this section is declared to be a levy and assessment on the ultimate consumer and other persons levied and assessed pursuant to this chapter are agents of the State for the collection of the tax. The distributor that first receives the fuel in this State is primarily responsible for paying the tax except when the fuel is sold and delivered to a licensed exporter wholly for exportation from the State or to another distributor in the State, in which case the purchasing distributor is primarily responsible for paying the tax. [1997, c. 738, §4 (new).]

36 §2903, sub-§4. Exemptions. The tax imposed by this section does not apply to internal combustion engine fuel:

- A. Sold wholly for exportation from this State; [1997, c. 738, §4 (new).]
- B. Brought into this State in the ordinary standardized equipment fuel tank attached to and a part of a motor vehicle and used in the operation of that vehicle in this State; [1997, c. 738, §4 (new).]
- C. Sold in bulk to any agency of this State or any political subdivision of this State; [2005, c. 457, Pt. AAA, §1 (amd).]
- D. Bought or used by any person to propel jet or turbojet engine aircraft in international flights; [2003, c. 588, §12 (amd).]
- E. Brought into this State in the fuel tanks of an aircraft; or [1997, c. 738, §4 (new).]
- F. On which the collection of the tax imposed by this section is precluded by federal law or regulation. [1997, c. 738, §4 (new).]

[2005, c. 457, Pt. AAA, §1 (amd).]

36 §2904. Distributors' certificates. Every distributor of internal combustion engine fuel in the State, except distributors described in section 2907, shall file an application for a certificate with the State Tax Assessor on forms prescribed and furnished by him, which shall contain the name under which the distributor is transacting business within the State, the place or places of business, and location of distributing stations, and agencies of the distributor, the names and addresses of the several persons constituting the firm or partnership, and, if a corporation, its corporate name and the names and addresses of its principal officers and agents within the State. No such distributor may sell or distribute any such internal combustion engine fuel until the certificate is furnished by the State Tax Assessor and displayed as required by this section. One copy of each certificate, certified by the State Tax Assessor, shall be displayed in each place of business of the distributor. The State Tax Assessor, having reasonable cause to believe that the distributor has ceased to do business or that he has violated any of the provisions of this chapter or of the rules made under this chapter, may on reasonable notice to the

distributor suspend the distributor's certificate until satisfied to the contrary. In such a case, the distributor shall not act as a distributor until his certificate is restored by the State Tax Assessor either of his own initiative or at the request of the distributor and upon the State Tax Assessor being satisfied that cause for suspension no longer exists or upon order of court. In case of such a suspension, all certificates shall at once be surrendered to the State Tax Assessor upon his request. Notices shall be sufficient if sent by mail, addressed to the distributor at the address designated in the certificate and appeals may be taken in the same manner as provided in section 151. This section shall apply to importers and to exporters. [1987, c. 772, §29 (amd).]

36 §2906, sub-§1. Monthly reports from distributors, importers and exporters.

Every licensed distributor, importer and exporter shall file with the assessor on or before the 21st day of each month a report stating the number of gross gallons of internal combustion engine fuel received, sold and used in the State by that distributor, importer or exporter during the preceding calendar month. The report must be filed on a form prescribed and furnished by the assessor and must contain any other information reasonably required by the assessor. [1997, c. 738, §5 (rpr).]

36 §2906, sub-§2. Payment of tax.

At the time of filing the report required by this section, each distributor and importer shall pay to the assessor the tax imposed by section 2903 on each gallon reported as sold, distributed or used. [1997, c. 738, §5 (rpr).]

36 §2906, sub-§3. Allowance for certain losses.

An allowance of not more than 1/2 of 1% from the amount of fuel received by a distributor, plus 1/2 of 1% on all transfers in vessels, tank cars or full tank truck loads by a distributor in the regular course of the distributor's business from one of the distributor's places of business to another within the State, may be granted by the assessor to cover losses sustained by the distributor through shrinkage, evaporation or handling. The total allowance for these losses must be supported by documentation satisfactory to the assessor and may not exceed 1% of the receipts by the distributor. The allowance must be calculated on an annual basis. A further deduction may not be allowed unless the assessor is satisfied upon definite proof submitted to the assessor that a further deduction should be allowed for a loss sustained through fire, accident or some unavoidable calamity.[1997, c. 738, §5 (rpr).]

36 §2906, sub-§4. Refunds to retailers.

A retail dealer is entitled to a refund for tax paid on account of shrinkage or loss by evaporation of motor fuel in an amount no greater than 1/2 of 1% of the tax paid on gross purchases. The procedure for such a refund is as follows.

A. All applications for refunds must be made under penalties of perjury and must be made semiannually within 90 days after June 30th and December 31st respectively. [1997, c. 738, §5 (new).]

B. The application must be made on a form prescribed and furnished by the assessor and must be accompanied by a statement from the distributor, supplier or wholesaler of the gross purchases of motor fuel made by the retail dealer during the relevant 6-month period. [1997, c. 738, §5 (new).]

C. The assessor shall calculate the amount of the refund due on all properly completed applications and shall certify that amount and the name of the person entitled to the refund to the Treasurer of State. The

Treasurer of State shall make a certified refund from taxes imposed by this chapter. [1997, c. 738, §5 (new).]

36 §2910-B. Refund to state agencies and political subdivisions.

Any agency of this State and any political subdivision of this State that buys and uses internal combustion engine fuel and that has paid a tax as provided by this chapter must be reimbursed in the amount of the tax paid upon presenting to the State Tax Assessor a statement accompanied by the original invoices showing the purchases. By contractual agreement, an agency of this State or a political subdivision of this State may assign to another person its right to receive refunds under this section. Applications for refunds must be filed with the assessor within 12 months from the date of purchase. [2005, c. 457, Pt. AAA, §3 (new).]

36 §3321. Annual adjustment of tax rates

1. Generally. Beginning in 2003, and each calendar year thereafter, the excise tax imposed upon internal combustion engine fuel pursuant to section 2903, subsection 1 and the excise tax imposed upon distillates pursuant to section 3203, subsection 1 are subject to an annual rate of adjustment pursuant to this section. On or about February 15th of each year, the State Tax Assessor shall calculate the adjusted rates by multiplying the rates in effect on the calculation date by an inflation index as computed in subsection 2. The adjusted rates must then be rounded to the nearest 1/10 of a cent and become effective on the first day of July immediately following the calculation. The assessor shall publish the annually adjusted fuel tax rates and shall provide all necessary forms and reports to suppliers, distributors and retail dealers.[2001, c. 688, §8 (new).]

2. Method of calculation; inflation index defined. The inflation index for 2003 is 1.118, representing annual inflation adjustments for the years 1999 to 2002, inclusive. Starting in 2004 and every year thereafter, the inflation index is the Consumer Price Index as defined in section 5402, subsection 1 for the calendar year ending on the December 31st immediately preceding the calculation date, divided by the Consumer Price Index for the prior calendar year.[2001, c. 688, §8 (new).]

3. Exclusion. This section does not apply to internal combustion engine fuel purchased or used for the purpose of propelling jet or turbojet engine aircraft.[2001, c. 688, §8 (new).]

4. Legislative review. Starting in 2003 and each odd-numbered year thereafter, the Department of Transportation shall submit a bill by the cloture date established for departments and agencies that repeals any adjustment in fuel tax rates in the upcoming biennium resulting from the operation of this section.[2001, c. 688, §8 (new).]

Relevant Rules: None