

# **FUEL TAX – CREDITS AND REFUNDS FOR FARMERS**

## **INTRODUCTION**

Farming can be a fuel-intensive business. Both the federal and state governments impose an excise tax (fuel tax) on each gallon of fuel purchased. The amount of fuel tax can become substantial if the farming operation uses thousands of gallons of fuel to plant and harvest its crops.

There are exemptions from paying the fuel tax for certain off-road uses, including farming. There is no tax on dyed diesel fuel when it is delivered to the farm because it is assumed that the dyed diesel fuel will be used for an exempt purpose. However, for gasoline and un-dyed diesel fuel, the fuel tax is included in the cost of the fuel. If the tax is included in the cost of the fuel used in farming, the farm operator can file for a refund. In the case of the federal fuel tax, instead of a refund, the farm operator has the option of applying the fuel tax credit against any income tax liability. Unfortunately, there is no similar provision in Ohio law and the only avenue open to the farm operator is to apply for a refund of the Ohio fuel tax.

This article focuses on the two main fuels used in farming – gasoline and diesel fuel. Other specialized fuels, such as liquid natural gas and aviation fuel, have their own specific rules and the reader is encouraged to review those rules if specialized fuels are used on the farm.

## **FEDERAL FUEL TAX**

### **TAX IMPOSED ON GASOLINE**

The federal fuel tax on gasoline and the federal fuel tax on un-dyed diesel fuel are found in separate sections of the Internal Revenue Code (IRC). The federal fuel tax on gasoline is imposed when the gasoline is removed from the refinery or terminal (IRC 4081(a)(1)). This code section imposes a tax on the removal of a “taxable fuel”, which includes gasoline. (IRC 4083(a)(1)). The federal tax rate is 18.3 cents per gallon (IRC 4081(a)(2)). The tax is initially paid by the entity that first removes it from the refinery or terminal, but then the tax is passed on to subsequent purchasers until it eventually becomes the responsibility of the end user.

There is a 0.1 cent per gallon fee added to the 18.3 cents per gallon tax which is designated for the Leaking Underground Storage Tank Trust Fund. This 0.1 cent per gallon charge is non-refundable.

### **EXEMPTION FOR GASOLINE USED IN FARMING**

The Internal Revenue Code provides an exemption for gasoline used in farming (IRC 6420(a)). If gasoline is used on a farm for farming purposes, the Secretary of the Treasury shall pay to the end purchaser of the gasoline the amount determined by multiplying the number of gallons used by the tax rate in place on the date when the fuel was purchased.

Gasoline shall be treated as “used on a farm for farming purposes” only if used: (A) in carrying on a trade or business, (B) on a farm situated in the United States, and (C) for farming purposes. (IRC 6420(c)(1)). The term “farm” includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. (IRC 6420(c)(2)).

Gasoline shall be treated as used for “farming purposes” only if used:

- A. By the owner, tenant, or operator of a farm, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, and fur-bearing animals and wildlife, on a farm of which he is the owner, tenant, or operator;
- B. By the owner, tenant, or operator of a farm, in handling, drying, packing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state; but only if such owner, tenant, or operator produced more than one-half of the commodity which he so treated during the period with respect to which claim is filed;
- C. By the owner, tenant or operator of a farm, in connection with—  
The planting, cultivating, caring for, or cutting of trees, or  
The preparation (other than milling) of trees for market, incidental to farming operations; or
- D. By the owner, tenant, or operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment. (IRC 6420(c)(3))

## **TAX IMPOSED ON DIESEL FUEL**

In general, the Internal Revenue Code imposes a federal fuel tax at the retail level on any liquid other than gasoline. (IRC 4041(a)(1)(A)). The federal tax rate on diesel fuel is 24.3 cents per gallon. (IRC 4041 (a)(1)(C)(i); 4081 (a)(2)(A)(iii)). Similar to gasoline, a 0.1 cent per gallon fee is added to the tax for the Leaking Underground Storage Tank fund and is non-refundable.

Diesel fuel used for farm use is exempt from the federal fuel tax. (IRC 4041(f)(1)). For purposes of this exemption, “use on a farm for farming purposes” is identical to the farm exemption for gasoline. (IRC 4041 (f)(2)). Please see the definition of “farming purposes” outlined above.

If a farm operator purchases dyed diesel fuel, the charges for the dyed diesel fuel should not include the federal fuel tax. However, if the farm operator purchases un-dyed diesel fuel which is used for farming purposes, the farm operator may apply for a refund of the tax or apply the credit against any income tax liability as explained in more detail later in this article.

As a side note, it is interesting to note that a seller of dyed diesel fuel can be subject to a penalty for selling dyed diesel fuel when he knew, or should have known, that the fuel would be used for a non-exempt use.

## **CREDITS AND REFUNDS**

If gasoline is used on a farm for farming purposes, repayment of the federal tax paid may be obtained only by claiming a credit against income tax liability. The farm operator does not have the option of applying for a refund of the federal fuel tax paid on gasoline outside of the income tax credit. (Federal Regulation 48.6420(1)).

For diesel fuel, no federal fuel tax should be initially imposed on dyed diesel fuel. However, if a tax is imposed on dyed diesel fuel, or if un-dyed diesel fuel is used on a farm for farming purposes, the farm operator has the option of applying for a refund or applying the credit against income tax liability. One can apply for a refund of the federal fuel tax on diesel fuel only when the refund exceeds \$750 in a calendar quarter. If the amount of the refund does not exceed \$750 in a calendar quarter, the amount of tax below \$750 can be carried forward to subsequent quarters until the \$750 threshold is met. Once the threshold is met, the farm operator can apply for a refund.

Taxpayers with at least \$750 federal fuel tax on diesel fuel in a calendar quarter, or any number of quarters within a year, may file for a refund on [Schedule 1 of IRS Form 8849](#). Taxpayers who claim a credit against income tax liability on gasoline and any exempt diesel fuel must file IRS [Form 4136](#) with their tax returns. Please note that if the expense for the fuel (including tax) is deducted as a business expense, the credit or refund must be included in the taxpayer's gross income.

## **PENALTIES**

There are several penalties for making excessive claims of the fuel tax credit. The civil penalty for claiming an excessive amount of the fuel tax credit, unless there is reasonable cause shown, is the greater of: (1) two times the excessive amount; or (2) \$10. (IRC 6675). The criminal penalty is much more severe. Any person who willfully attempts to evade or defeat any tax shall, in addition to any other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$100,000, imprisoned not more than five years, or both. (IRC 7201).

If a person is caught with dyed diesel fuel in a vehicle on the highway, the penalty is the greater of: (A) \$1,000, or (B) \$10 for each gallon of fuel involved. (IRC 6715). Using farm trucks on a highway, even if considered to be for a farm purpose by the taxpayer, is not included within the definition of "on a farm for farm use" and is not exempt.

If a vehicle is used both on a farm and off the farm, or if it is used on a farm for both farm and non-farm purposes, the credit is allowed only with respect to that portion of the fuel that "was used on the farm for farming purposes." The type of vehicle or equipment and whether or not it is registered for highway use is immaterial. (Federal Regulation 48.6420(a)(2)) Farm operators should keep accurate and substantial records to substantiate any claim for a refund or credit.

## **OHIO FUEL TAX**

An Ohio excise tax applies to all dealers in motor fuel on the use, distribution, or sale of fuel within the boundaries of Ohio. (Ohio Revised Code 5735). In Ohio, fuel includes gasoline and diesel fuel and the tax is the same for both fuels. The Ohio fuel tax has been 28 cents per gallon since July 1, 2005. This amount is actually comprised of five separate levies, each subject to a distribution formula.

### **EXEMPTIONS AND REFUNDS**

Like the federal law, Ohio law provides that there is no fuel tax imposed on the sale or distribution of dyed diesel fuel by a licensed fuel dealer from a location other than a retail service station, as long as the dealer complies with the proper notice requirements. (ORC 5735.024(D)). The proper notice requires the dealer to place on the face of the delivery document or invoice, or both if both are used, a conspicuous notice stating that the fuel is dyed and is not for taxable use, and that taxable use of the fuel is subject to a penalty. (ORC 5735(A)(1)).

Unlike the federal law, Ohio law does not contain a specific exemption from the fuel tax for “use on a farm for farming purposes.” Instead, Ohio law provides that any person who uses any motor fuel for any purpose other than the operation of motor vehicles upon highways or upon waters within the boundaries of this state shall be reimbursed the amount of the tax paid. (ORC 5735.14). Therefore, the distinction turns on whether or not the use was on a public highway or water of the state.

A person claiming reimbursement shall file with the Commissioner of Taxation an application for refund within one year from the date of purchase. To see a copy of the form, [click here](#). The refund can be applied for online. The application must state the quantity of the fuel used for non-taxable purposes. (ORC 5735.14(C)). The person applying for the refund needs to keep accurate and sufficient records to prove non-taxable use. The application is required to be accompanied by documentation from the seller of the fuel that includes the information required by [ORC 5735.15](#). No person shall file an application for a refund of the tax on fewer than 100 gallons of motor fuel. (ORC 5735.14(C)).

### **PENALTY**

Any person that consumes dyed diesel fuel in the operation of a motor vehicle on the public highways or waters within the boundaries of Ohio is subject to a penalty of the greater of:

- (A) \$1,000, or
- (B) \$ 10 per gallon of the vehicle’s fuel supply tank capacity.

If the person has a prior penalty under this law, the total penalty assessed shall be the amount of the penalty calculated above, multiplied by the number of violations by that person. (ORC 5735.124)

In addition to the administrative penalty provided above, a person who uses dyed diesel fuel on the public highways or waters can be charged with a criminal penalty. The person can be charged with a fourth degree misdemeanor which, if convicted, carries a maximum penalty of \$250, or 30 days in jail, or both. (ORC 5735.99).

## **CONCLUSION**

Don't leave money on the table. If your farm operation is using gasoline or diesel fuel on which fuel taxes have been paid for "use on a farm for farming purposes," a refund or credit of those taxes can be obtained. Conversely, there are substantial penalties for using dyed diesel fuel for taxable purposes (i.e. trucks on a highway). As with all taxes, the key is to keep accurate records.