



SC REVENUE RULING 93-2

SUBJECT: Racing Gasoline and Other Racing Fuels
(Gasoline and Motor Fuel Taxes)

TAX ANALYST: Jean Croft

EFFECTIVE DATE: All periods open under statute

REFERENCES: S.C. Code Ann. Section 12-27-230 (Supp. 1991)
S.C. Code Ann. Section 12-29-310 (Supp. 1991)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1991)
S.C. Revenue Procedure #87-3

SCOPE: A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Question:

Is high octane racing gasoline or other racing fuel subject to tax under Chapter 27 or Chapter 29 of Title 12?

Facts:

Racing gasoline is designed for use in high-compression ratio or turbocharged, high-powered engines installed in race cars and speed boats. It generally contains high levels of lead antiknock, although some unleaded racing fuels are sold. Racing gasoline can be used in automobiles. The high octane level will not harm the engine, but the lead can foul the emission control system. The automobile would also be hard to start in cold weather and have poor warmup driveability.

Racing gasoline may also be blended with motor gasoline to improve the octane level of the motor gasoline. This could be attractive to owners of older high compression ratio automobiles that were originally designed to use premium leaded gasoline which is no longer available. This blending procedure would likely eliminate the starting and driveability problems, but does not eliminate the lead fouling problems for emission controlled vehicles.

Gasoline is not the only fuel used in racing vehicles. Some drag racers use pure alcohol while others may use a mixture of gasoline and other fuels.

Discussion:

Chapter 27 of Title 12 provides for the imposition of two distinct, but complementary, license taxes on "gasoline or any substitute therefor or combination thereof". For purposes of this document, any reference to gasoline includes any "substitute therefor or combination thereof".

Article 1 of the chapter requires every oil company to pay to the State a license tax of 16 cents per gallon on all "original sales" of gasoline. An original sale is defined, in part, as first sale of gasoline or the first "distribution, transfer, consignment or bailment" of gasoline, other than tank car lot, within the State. (See Code Sections 12-27-210, 12-27-220, and 12-27-230.)

Article 3 of the chapter requires any person importing gasoline for use to pay a license tax of 16 cents per gallon on all gasoline stored or used, provided it has lost its interstate character. (See Code Section 12-27-510.) Furthermore, the statute provides that it is the intent of the law to levy and assess the tax upon the consumer and to consider the dealer as the collection agent of the State. (See Section 12-27-10.)

Chapter 27 provides several exemptions from the tax; however, there is no exemption provided for the sale, storage, or use of racing gasoline. Therefore, the racing gasoline, as described in the facts, is subject to the tax under Chapter 27 of Title 12.

We must now consider other types of racing fuel to fully understand the tax implications for the racing industry.

It has been the longstanding policy of the Commission that only gasoline, or any substantially gasoline based fuel such as gasohol or fuel ethanol blends, are subject to the taxes imposed under Chapter 27. Administrative interpretations of statutes by the agency charged with their administration and not expressly changed by the legislative body are entitled to great weight. *Marchant v. Hamilton*, 309 S.E.2d 781 (1983).

Fuels that are not substantially gasoline based, such as diesel fuel, have not been taxed under Chapter 27. It has been an established practice of the Commission to tax these fuels under the provisions of Chapter 29.

S.C. Code Section 12-29-310 imposes a tax on all fuel sold or delivered by any supplier to any person not licensed as a supplier. Code Section 12-29-10(1) defines fuel as all combustible gases and liquids used, purchased, or sold for use, in an internal combustion engine or motor for the generation of power to propel licensed motor vehicles on the highways except such fuels as are subject to the tax imposed by Chapter 27 of this title. (Emphasis added.)

"Highway", as defined in Code Section 12-29-10(2), "shall mean and include every way or place of whatever nature whether public or private that is accessible for licensed, vehicular travel in this State, including the streets and alleys in cities and towns". Therefore, any place, including a racing track, which is accessible to licensed vehicles is deemed to be a highway for purposes of this chapter.

Hence, any fuel which is not considered gasoline under Chapter 27 but is used in a licensed motor vehicle is subject to the tax under Chapter 29.

Conclusion:

High octane racing gasoline is taxable under Chapter 27 of Title 12.

Racing fuel, other than gasoline or a substantially gasoline based fuel, is subject to the tax under Chapter 29 of Title 12 when used in a licensed motor vehicle. If such racing fuel is used in a racing vehicle that cannot be licensed for use of the State's highways, it is not subject to the tax under Chapter 29 of Title 12.

A person who purchases and uses gasoline and other motor fuels taxed by Chapter 27 or Chapter 29 may apply for a refund of the fuel tax paid on Form L-325, Application for Tax Refund on Special Fuel. (See Code Section 12-27-1510.)

SOUTH CAROLINA TAX COMMISSION

s/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Chairman

s/T. R. McConnell

T. R. McConnell, Commissioner

s/James M. Waddell

James M. Waddell, Jr., Commissioner

Columbia, South Carolina
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