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Comments Due by: **March 9, 2018**

SC REVENUE RULING #18-DRAFT 2/15/18

- SUBJECT:** Racing Gasoline
(Motor Fuel User Fee)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** SC Revenue Ruling #06-3, Revenue Ruling #93-2, and all previous advisory opinions and any oral directives in conflict herewith.
- REFERENCES:** S. C. Code Ann. Section 12-28-310 (2014) (as amended by Act No. 40 of 2017)
S. C. Code Ann. Section 12-28-330 (Supp. 2014)
S. C. Code Ann. Section 12-28-110 (2014 and Supp. 2016)
S. C. Code Ann. Section 12-28-710(15) (2014)
S. C. Code Ann. Section 12-28-710(16) (2014)
- AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2014)
S. C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3
- SCOPE:** The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

Purpose:

The purpose of this advisory opinion is to update SC Revenue Ruling #06-3 in response to legislative changes. Specifically, it is being issued to address the increase in the motor fuel user fee as well as gasohol and blended fuels.

Question:

Are racing gasolines, racing gasohol, and racing blended fuels containing gasoline (all of which are referred to as "racing gasolines" for purposes of this document) subject to the motor fuel user fee imposed under Code Section 12-28-310?

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Conclusion:

All racing gasolines used or consumed in South Carolina are subject to the motor fuel user fee under Code Section 12-28-310 since they are “commonly or commercially known or sold as gasoline suitable for use as a motor fuel” within the meaning of Section 12-28-110(28). This is true whether the producer of the product labels the gasoline as “racing gasoline” or “racing fuel.”

Facts:

Racing gasolines are designed for use in high-compression ratio or turbocharged, high-powered engines installed in race cars and speedboats. They generally contain high levels of lead antiknock (although some racing gasolines are unleaded) and have an octane rating of 110 or higher.

Racing gasolines are produced by various oil companies. These oil companies may label their products as “racing gasoline” or “racing fuel,” and may interchangeably refer to the same product as both “racing gasoline” and “racing fuel.”

Racing gasolines may legally be used only in racing vehicles and are not intended for street or highway use. Racing gasolines could be used in “street or highway” automobiles and the high octane level would not harm the engine; however, the lead would foul the emission control system. The automobile would also be hard to start in cold weather and have poor warmup driveability.

The issue is whether racing gasolines, which are not designed or produced for street or highway use, are subject to the motor fuel user fee imposed in Chapter 28 of Title 12.

Discussion:

Code Section 12-28-310 provides for the user fee on gasoline as follows:

(A) Subject to the exemptions provided in this chapter, a user fee of sixteen cents a gallon is imposed on:

(1) all gasoline, gasohol, or blended fuels containing gasoline that are used or consumed for any purpose in this State; and

(2) all diesel fuel, substitute fuels, or alternative fuels, or blended fuels containing diesel fuel that are used or consumed in this State in producing or generating power for propelling motor vehicles.

(B) The user fee levied on motor fuel subject to the user fee pursuant to this chapter is a levy and assessment on the consumer, and the levy and assessment on

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other persons as specified in this chapter are as agents of the State for the collection of the user fee. This section does not affect the method of collecting the user fee as provided in this chapter. The user fee imposed by this section must be collected and paid at those times, in the manner, and by the persons specified in this chapter.

(C) The license user fee imposed by this section is instead of all sales, use, or other excise tax that may be imposed otherwise by any municipality, county, or other local political subdivision of the State.

(D) On July 1, 2017, and each July first thereafter until after July 1, 2022, the department shall permanently increase the amount of the user fee imposed pursuant to subsection (A) by two cents, for a total of twelve cents. All the funds raised by the increase in the motor fuel imposed by this subsection must be credited to the Infrastructure Maintenance Trust Fund. (Emphasis added)

Code Section 12-28-330 states:

The department considers it a rebuttable presumption, subject to proof of exemption pursuant to Article 7 of this chapter, that all motor fuel subject to the user fee removed from a terminal in this State, or imported into this State other than by a bulk transfer within the bulk transfer terminal system or delivered into an end user's storage tank, is to be used or consumed in this State, in the case of gasoline, gasohol, or blended fuels containing gasoline and is to be used or consumed on the highways in this State in producing or generating power for propelling motor vehicles in the case of all other motor fuel. (Emphasis added)

Therefore, the user fee is imposed on “all gasoline, gasohol, or blended fuels containing gasoline that are used or consumed for any purpose in this State....”

Code Section 12-28-110 defines the following terms:

(3) “Blended fuel” means a mixture composed of gasoline or diesel fuel and another liquid, other than a de minimis amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.

* * * *

(27) “Gasohol” means blended fuel composed of gasoline and fuel alcohol.

(28) “Gasoline” means all products commonly or commercially known or sold as gasoline that are suitable for use as a motor fuel. It does not include a product sold as a product other than gasoline and has an American Society for Testing Materials octane number of less than seventy-five as determined by the “motor method” and does not include aviation gasoline if the buyer is registered to

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purchase aviation gasoline free of user fees and the seller obtains certification of that fact satisfactory to the Department before making the sale.

The above cited imposition section and definitions demonstrate that all gasoline, gasohol, or blended fuels containing gasoline, regardless of whether it is used to propel a highway vehicle, propel some other vehicle, or operate a machine or engine, is subject to the user fee unless otherwise exempt.

This interpretation is further supported by the exemptions listed in Code Section 12-28-710. This section specifically exempts from the user fee:

(15) gasoline subject to the user fee used in operating tractors or other farm equipment used exclusively in farm operations, no part of which is used in any vehicle or equipment driven upon the public roads, streets, or highways of this State. A claim for refund must be made under Section 12-28-790;

(16) gasoline used in aircraft.

These exemptions for gasoline used in tractors or other farm equipment used exclusively in farm operations and aircraft would not be necessary if gasoline were only subject to the user fee when used to propel a highway vehicle.

In addition, the definition of “gasoline” in Code Section 12-28-110(28) does not include “aviation gasoline” sold to a buyer furnishing satisfactory proof that it is registered with the Department to purchase such fuel free of user fees. This exception also demonstrates the breadth of the statutory definition of “gasoline” and would not be necessary if gasoline were only subject to the user fee when used to propel a highway vehicle.

While there are differences in the specific properties of “racing gasoline” and “gasoline,” such as vapor pressure, specific gravity, distillation temperatures, and the amounts of octane, light alkylate, and lead, these differences do not change “racing gasoline” into something other than “gasoline.” The same basic ingredients – petroleum hydrocarbons – that are present in “racing gasoline” are present in “gasoline.”

Finally, since the inception of the current law, the Department’s interpretation has been that racing gasoline is taxable under Code Section 12-28-310. The longstanding administrative interpretation of a statute is entitled to significant weight. *Etiwan Fertilizer v. S.C. Tax Commission*, 217 S.C. 354, 60 S.E.2d 682 (1950).¹

¹ The original version of Code Section 12-28-310, enacted by Act 136 of 1995 with an effective date of May 1, 1996, stated:

Subject to the exemptions provided in this chapter, a tax of sixteen cents a gallon is imposed on all gasoline used or consumed in this State and upon all diesel fuel used or consumed in this State in producing or generating power for propelling motor vehicles. The tax levied on taxable motor fuel pursuant to this chapter is a levy and assessment on the consumer, and the levy and assessment on other persons as specified in this chapter are as agents of the State for the collection of the tax.

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Based on the above, all racing gasolines used or consumed in South Carolina are subject to the motor fuel user fee under Code Section 12-28-310.

This section does not affect the method of collecting the tax as provided in this chapter. The tax imposed by this section must be collected and paid at those times, in the manner, and by those persons specified in this chapter. (Emphasis added.)

Since the inception of this law in 1996, the Department's interpretation has been that racing gasolines are taxable under Code Section 12-28-310. (Note: A subsequent amendment substituted "user fee" for "tax.")

In addition, the Department held that racing gasoline was taxable under the gasoline tax law in effect prior to 1996 under Chapter 27 of Title 12. See SC Revenue Ruling #93-2 and SC Revenue Ruling #06-3.