

# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **April 12, 2018**

## SC REVENUE RULING #18-x [DRAFT - 3/5/18]

**SUBJECT:** Kerosene  
(Motor Fuel User Fee)

**EFFECTIVE DATE:** Applies to all periods open under the statute.

**SUPERSEDES:** SC Revenue Ruling #98-20 and all previous documents and any oral directives in conflict herewith.

**REFERENCES:** S.C. Code Ann. Section 12-28-110 (Supp. 2017)  
S.C. Code Ann. Section 12-28-310 (2014, Supp. 2017)  
S.C. Code Ann. Section 12-28-320 (2014)  
S.C. Code Ann. Section 12-28-330 (2014)  
S.C. Code Ann. Section 12-28-970 (2014)  
S.C. Code Ann. Section 12-28-990 (2014)  
S.C. Code Ann. Section 12-28-1390 (2014)

**AUTHORITY:** S.C. Code Ann. Section 12-4-320 (2014)  
S.C. Code Ann. Section 1-23-20(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 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 It is the Department's position until superseded or modified by a change in the statute, regulation, court decision, or another Department advisory opinion.

### Purpose:

The purpose of this advisory opinion is to update SC Revenue Ruling #98-20 to address the increase in the motor fuel user fee contained in Act No. 40 of 2017, "The South Carolina Infrastructure and Economic Development Act." This legislation increases the motor fuel user fee over the next several years from sixteen cents per gallon to twenty-eight cents per gallon. The increase will be fully implemented on July 1, 2022. This advisory opinion also addresses the application of the motor fuel user fee to blended fuels containing kerosene. However, the Department's longstanding position as to when kerosene is subject to the motor fuel user fee remains unchanged.

# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **April 12, 2018**

## Question:

Is kerosene subject to the user fee on motor fuels (“user fee”) under Chapter 28 of Title 12 of the South Carolina Code of Laws?

## Conclusion:

Kerosene is subject to the user fee:

- (1) under the provisions of Code Section 12-28-970 upon its delivery into the fuel supply tank of a highway vehicle;
- (2) under the provisions of Code Sections 12-28-310 and 12-28-990 when it is blended in South Carolina with undyed diesel fuel;
- (3) under the provisions of Code Section 12-28-310(A)(1) when sold as part of a blended fuel of gasoline and kerosene; or
- (4) under the provisions of Code Section 12-28-310(A)(2) when sold as part of a blended fuel of undyed diesel fuel and kerosene for use or consumption in South Carolina for producing or generating power for propelling motor vehicles.

## Discussion:

The question has arisen as to how kerosene is subject to the user fee under Chapter 28 of Title 12 of the South Carolina Code of Laws. In order to determine the method by which kerosene is subject to the user fee, we must first review the various imposition sections<sup>1</sup> and definitional sections under the law.

Code Section 12-28-310 imposes a user fee upon certain types of motor fuels and reads:

(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 purposes 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.

---

<sup>1</sup> For purposes of this ruling, there is no need to include a discussion of the floorstock user fee imposed under Code Section 12-28-530(A).

# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **April 12, 2018**

(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 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 12-28-320 establishes a presumption concerning the delivery of motor fuel subject to the user fee into a motor vehicle fuel supply tank and states:

Except as otherwise provided under Article 7 of this chapter, the department shall consider it a presumption that all motor fuel subject to the user fee delivered in this State into a motor vehicle fuel supply tank is to be used or consumed on the highways in this State producing or generating power for propelling motor vehicles.

Code Section 12-28-330 establishes a rebuttable presumption concerning motor fuel subject to the user fee and 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.)

# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **April 12, 2018**

Code Section 12-28-970, which authorizes a “backup user fee,” states:

(A) A backup user fee equal to the user fee imposed by Section 12-28-310 is imposed and must be administered in accordance with procedures established by the department on the use on the highways of motor fuel subject to the user fee by an end user, including operators of state and local government vehicles, American Red Cross vehicles, and buses, and other persons exempted from the full federal highway tax, unless the person is exempted otherwise under Section 12-28-710(12), upon the delivery in this State into the fuel supply tank of a highway vehicle of:

- (1) diesel fuel that contains a dye;
- (2) motor fuel subject to the user fee on which a claim for refund has been made;
- (3) alternative fuels; or
- (4) substitute fuel on which a user fee previously has not been imposed by this chapter.

(B) The ultimate vendor of motor fuel subject to the user fee is jointly and severally liable for the user fee imposed by subsection (A) if the ultimate vendor knows or has reason to know that the motor fuel, as to which the user fee imposed by this chapter has not been paid, is or will be consumed in a nonexempt use.

(C)(1) A back-up user fee equal to the user fee imposed by Section 12-28-310 is imposed on a liquid or gas that is not otherwise taxed pursuant to this chapter and that is commonly or commercially known or sold as a fuel suitable for use in a highway vehicle. The user fee is due upon the first receipt of the product when received from a source outside of South Carolina by any wholesaler, retailer, or end-user and the user fee is imposed upon, and is the liability of, the wholesaler, retailer, or end-user who first received the product into the State.

(2) A back-up user fee equal to the user fee imposed by Section 12-28-310 is imposed on any liquid or gas that is not otherwise taxed pursuant to this chapter and that is commonly or commercially known or sold as a fuel suitable for use in a highway vehicle. The user fee is due upon the first sale or use of the product when produced in this State by a person and the user fee is imposed upon the first in-state sale or use by that person. The user fee is imposed upon, and is the liability of, the producer of the product.

Code Section 12-28-990, which concerns persons blending materials on which the user fee has not been paid, including blendstocks, additives, fuel grade ethanol, and renewable fuels, with motor fuels subject to the user fee, states:

# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **April 12, 2018**

(A) A person (i) blending materials including blendstocks, additives, fuel grade ethanol, and renewable fuels on which the user fee has not been paid, with motor fuels subject to the user fee for which the user fee has been paid or accrued; or (ii) manufacturing or otherwise producing a substitute fuel or diesel fuel, unless dye was added in a manner that conforms to federal requirements established by the Internal Revenue Code and regulations exempting the product from the motor fuel tax pursuant to Section 12-28-710(11) shall remit the user fee imposed by this chapter.

(B) A fuel vendor subject to the user fee under subsection (A) shall remit the user fee with the report required pursuant to Section 12-28-1390(B).

(C) A person other than a fuel vendor liable for the user fee payable pursuant to subsection (A) shall remit the user fee directly to the department within thirty days of the blending or manufacturing event in accordance with procedures established by the department.

(D) A person subject to the user fee payable pursuant to subsection (A) must be licensed by the department as a blender or a manufacturer.

Code Section 12-28-1390, which concerns a fuel vendor's reports and the reporting of blending, states:

(A) A fuel vendor shall file an annual report of total gallons of gasoline sold at retail through a retail outlet accessible to the general public by that vendor by county before February twenty-eighth annually for the preceding calendar year.

(B) A fuel vendor shall make and file quarterly reports on the last day of the month following the close of each calendar quarter of sales of K-1 kerosene, or other blendstocks not subject to the user fee, other than dyed diesel fuel, in accordance with regulations promulgated by the department. The department may waive this report requirement if it becomes unnecessary to the administration of this chapter. Persons who are required to identify separately and schedule sales and transfers of undyed K-1 kerosene in reports otherwise required by this article are exempt from this requirement.

(C) A fuel vendor making sales of K-1 kerosene or other blendstocks not subject to the user fee for blending with diesel fuel or gasoline subject to the user fee or which sells K-1 kerosene, other motor fuel, or blendstocks not subject to the user fee shall remit monthly a report on or before the last day of the following month and remit with the report any user fee payable pursuant to this section or Section 12-28-990.

# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **April 12, 2018**

(D) A fuel vendor shall retain for three years all purchase invoices for motor fuel subject to the user fee which clearly must designate the amount of user fees paid to this State as a separate line item. This line item also must be described generally as a "South Carolina Motor Fuel User Fee". In the absence of invoices with the disclosures, the fuel vendor is jointly liable for the state user fee imposed by this chapter and the department has authority to proceed against the fuel vendor to collect the user fee.

(Emphasis added.)

In understanding the above imposition section, we must review the following definitions found in Code Section 12-28-110:

\* \* \*

(15) "Diesel fuel" means a liquid, including biodiesel and a biodiesel blend that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the propulsion engine of a diesel-powered highway vehicle. "Diesel fuel" does not include jet fuel if the buyer is registered to purchase jet fuel subject to federal taxes applicable to jet fuel and the seller obtains certification of that fact satisfactory to the Internal Revenue Service before making the sale.

\* \* \*

(37) "K-1 kerosene" means burner fuel designed for unvented space heaters which meets American Society for Testing Materials standard D-3699, in effect January 1, 1995, and successor rules, as the specification for #1-K kerosene.

(38) "Liquid" means a substance that is liquid in excess of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds a square inch absolute.

(39) "Motor fuel" means gasoline, diesel fuel, substitute fuel, renewable fuel, alternative fuel, and blended fuel.

\* \* \* \*

(55) "Motor fuel subject to the user fee" means gasoline, diesel fuel, kerosene, blended fuel, substitute fuel, alternative fuel and blends of them and any other substance blended with them.

# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **April 12, 2018**

“In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction.” Higgins v. State, 307 S.C. 446, 415 S.E.2d 799 (1992). Smalls v. Weed, 293 S.C. 364, 360 S.E.2d 531 (Ct. App. 1987).

Based on the above, blends of undyed diesel fuel and kerosene that are capable of use in a highway vehicle are subject to the user fee provisions of Code Section 12-28-310(A)(2) since:

1. the imposition provisions of Code Section 12-28-310 apply to gasoline, gasohol, blended fuels containing gasoline, that are used or consumed for any purpose in this State; and diesel fuel, substitute fuels, alternative fuels, and blended fuels containing diesel fuel that are used or consumed in this State in producing or generating power for propelling motor vehicles;
2. the presumptive provisions of Code Section 12-28-330, while applying to motor fuel subject to the user fee, do not apply to kerosene since these provisions can only apply to a motor fuel subject to the user fee for which a user fee is imposed upon its removal from the terminal, its importation into the State, or its delivery into an end user’s storage tank;
3. the provisions of Code Sections 12-28-990 and 12-28-1390 indicate that kerosene is not subject to the user fee until such time it is blended with diesel fuel subject to the user fee or gasoline or sold for use as motor fuel subject to the user fee; and
4. kerosene falls within the definition of a “liquid” as set forth in Code Section 12-28-110(38).

In addition, a mixture of kerosene and diesel fuel falls within the definition of diesel fuel found in Code Section 12-28-110(15) and must be subject to the user fee in the same manner as “pure” undyed diesel fuel. As such, kerosene mixed with undyed diesel fuel is subject to the user fee at the time it is blended with the undyed diesel fuel. However, kerosene that is not blended with motor fuel as noted above is not subject to the user fee.

Therefore, kerosene is subject to the motor fuel user fee: (a) under the provisions of Code Section 12-28-970 upon its delivery into the fuel supply tank of a highway vehicle; (b) under the provisions of Code Sections 12-28-310 and 12-28-990 when it is blended in South Carolina with undyed diesel fuel; (c) under the provisions of Code Section 12-28-310(A)(1) when sold as part of a blended fuel of gasoline and kerosene; or (d) under the provisions of Code Section 12-28-310(A)(2) when sold as part of a blended fuel of undyed diesel fuel and kerosene for use or consumption in South Carolina for producing or generating power for propelling motor vehicles.