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Comments Due by: **January 6, 2016**

SC REVENUE RULING #15-XX [Draft – 12/09/2015]

SUBJECT: Compressed and Liquefied Natural Gas Conversion to Gallon Equivalents (Motor Fuel User Fee)

DATE: Applies to all periods open under the statute.

REFERENCES: S.C. Code Ann. Section 12-28-110 (2014)
S.C. Code Ann. Section 12-28-310 (2014)
S.C. Code Ann. Section 12-28-970 (2014)
S.C. Code Ann. Section 12-28-2355 (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 It is the Department’s position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

QUESTION

What guidelines can the Department provide to assist in calculating the measure of the motor fuel user fee on compressed and liquefied natural gas used in a motor vehicle?

LAW AND DISCUSSION

Code Section 12-28-310 imposes the motor fuel user fee and reads, in part:

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

...

(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.

Code Section 12-28-970 imposes a “back-up” user fee on certain fuels and reads:

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(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:

...

(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.

Based on the above, when used in a motor vehicle both compressed natural gas, an alternative fuel,¹ and liquefied natural gas, a substitute fuel,² are subject to the motor fuel user fee under Code Section 12-28-310 or under the imposition of the “back-up” user fee under Code Section 12-28-970.

In addition to the 16 cents per gallon rate imposed under Code Section 12-28-310, a .25 (one-fourth) cent per gallon fee is imposed as an inspection fee pursuant to Code Section 12-28-2355(A) and a .5 (one-half) cent per gallon fee is imposed as an environmental impact fee under Code Section 12-28-2355(B). Therefore, the total user fee is imposed at a rate of 16.75 cents per gallon.

Since the motor fuel user fee is imposed on a per gallon basis, the Department has been asked to provide guidance on the calculation of the motor fuel user fee for compressed and liquefied natural gas used in a motor vehicle.

The Internal Revenue Service has developed a calculation to convert cubic feet, the measure of compressed natural gas, into gallons for purposes of determining the federal excise tax on motor fuel. The Internal Revenue Service imposes the federal excise tax on compressed natural gas on a gasoline gallon equivalent in which 126.67 cubic feet of compressed natural gas equals one gallon of gasoline for purposes of taxation.

¹ See Code Section 12-28-110(1)

² See Code Section 12-28-110(69)

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Based on the above, the Department has determined that for the purpose of calculating the motor fuel user fee on compressed natural gas that is used or consumed in South Carolina in producing or generating power for propelling a motor vehicle, each 126.67 cubic feet of compressed natural gas (or 5.66 lbs. if the compressed natural gas is dispensed via a mass flow meter) equals one gallon of motor fuel.

Additionally, because liquefied natural gas is commonly used as a substitute for diesel it must be converted to a diesel gallon equivalent. Accordingly, the Department has determined that the diesel gallon equivalent for liquefied natural gas is 6.06 lbs.

For additional information please contact the Department's Motor Fuel Section at (803) 896-1990.