
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 12265, Columbia, South Carolina 29211
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SC REVENUE RULING #06-3

SUBJECT: Racing Gasoline
(Motor Fuel User Fee)

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

SUPERSEDES: All previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-28-310 (Supp. 2005)
S. C. Code Ann. Section 12-28-330 (Supp. 2005)
S. C. Code Ann. Section 12-28-110(15) (2000)
S. C. Code Ann. Section 12-28-110(28) (Supp. 2005)
S. C. Code Ann. Section 12-28-710(15) (Supp. 2005)
S. C. Code Ann. Section 12-28-710(16) (2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 2000)
S. C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #05-2

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. 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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Question:

Are racing gasolines subject to the motor fuel user fee imposed under Code Section 12-28-310?

Conclusion:

All racing gasolines (volatile mixtures of flammable liquid hydrocarbons derived chiefly from crude petroleum and used principally as a fuel for internal combustion engines) 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 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 gasolines are sold) and has 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,” “racing fuel,” or may interchangeably refer to the same product as both “racing gasoline” and “racing fuel.”

Racing gasoline may legally be used only in racing vehicles and is not intended for street or highway use. Racing gasoline 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 tax 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 used or consumed for any purpose in this State; and

(2) all diesel fuel 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 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. (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, 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 taxable motor fuel. (Emphasis added)

Therefore, the user fee is imposed on “all gasoline used or consumed for any purpose in this State” and is also imposed on “all diesel fuel used or consumed in this State in producing or generating power for propelling motor vehicles.”

Code Section 12-28-110 defines the terms “gasoline” and diesel fuel” as follows:

(15) “Diesel fuel” means a liquid 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.

* * * *

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

Furthermore, diesel fuel contaminated by dye so as to be unsaleable and unusable as highway fuel is exempt from the user fee (Code Sections 12-28-710(11) and 12-28-770). (Note: A backup user fee is imposed under Code Section 12-28-970 on diesel fuel that contains dye and is used in a highway vehicle.)

The above cited imposition section and definitions demonstrate the distinction the General Assembly has drawn between gasoline and diesel fuel. All 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. Diesel fuel, however, must be suitable for use in a highway vehicle in order to be subject to the user fee.

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 tax. 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.

Furthermore, in South Carolina, it is a commonly accepted practice to resort to the dictionary to determine the meaning of words. *Hay v. South Carolina Tax Commission*, 273 S.C. 269, 255 S.E.2d 837 (1979). “Gasoline” is defined as a “volatile mixture of flammable liquid hydrocarbons derived chiefly from crude petroleum and used principally as a fuel for internal combustion engines and as a solvent, illuminant and thinner.” *The American Heritage Dictionary, Second College Edition*.

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. 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.

Based on the above, all racing gasolines (volatile mixtures of flammable liquid hydrocarbons derived chiefly from crude petroleum and used principally as a fuel for internal combustion engines) 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.”

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens
Ray N. Stevens, Director

May 19, 2006
Columbia, South Carolina