



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

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SC REVENUE RULING #17-3

SUBJECT: Natural Gas Compressed or Liquefied for Use in a Motor Vehicle
(Motor Fuel User Fee and Sales and Use Tax)

EFFECTIVE DATE: April 21, 2016¹

REFERENCES: S.C. Code Ann. Section 12-28-110(1) (2014)
S.C. Code Ann. Section 12-28-110(73) and (74) (Act No. 160 of 2016)
S.C. Code Ann. Section 12-28-120 (Act No. 160 of 2016)
S.C. Code Ann. Section 12-28-310 (2014)
S.C. Code Ann. Section 12-28-970 (2014)
S.C. Code Ann. Section 12-36-2120(2) and (9) (2014)
S.C. Code Ann. Section 12-36-2120(15) (2014; Act No. 160 of 2016)

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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

OVERVIEW

Domestic use of compressed natural gas as an alternative fuel for transportation is on the rise due to its low cost, clean burning properties, and abundant domestic supply. Natural gas is not commonly or commercially sold or known as a fuel suitable for vehicles unless it is compressed or liquefied. Compressed natural gas and liquefied natural gas vehicles can either be refueled at fueling stations or refueled using on-site refueling appliances.

This advisory opinion addresses questions related to how South Carolina's motor fuel user fee and sales and use tax provisions apply to the sale and use of compressed natural gas and liquefied natural gas used in motor vehicles in South Carolina.

¹ Act No. 160 of 2016, which added several sales and use tax and motor fuel user fee provisions concerning natural gas compressed or liquefied for use in a motor vehicle, became effective on April 21, 2016.

QUESTIONS

1. What are the sales and use tax and motor fuel user fee implications if a gas company sells natural gas to a fueling station at wholesale and the fueling station compresses the natural gas and makes a retail sale of the compressed natural gas to an end user for use in its motor vehicles in South Carolina?
2. What are the sales and use tax and motor fuel user fee implications if a gas company sells natural gas to a fueling station at wholesale and the fueling station cools the natural gas and makes a retail sale of the liquefied natural gas to an end user for use in its motor vehicles in South Carolina?
3. What are the sales and use tax and motor fuel user fee implications if a gas company sells natural gas to an end user, which uses an on-site vehicle refueling appliance to compress (or otherwise compresses) natural gas for use in its motor vehicles in South Carolina?
4. What are the sales and use tax and motor fuel user fee implications if a gas company sells natural gas to an end user, which uses an on-site vehicle refueling appliance to cool natural gas to make liquefied natural gas for use in its motor vehicles in South Carolina?

CONCLUSIONS

1. Sales of Natural Gas to be Compressed by Fueling Stations for Sale as Compressed Natural Gas

Sales and Use Tax

The sales and use tax implications when a gas company sells natural gas to a fueling station at wholesale and the fueling station compresses the natural gas and makes a retail sale of the compressed natural gas to an end user for use in its motor vehicles in South Carolina are:

- (a) The sale by a gas company of natural gas to a fueling station for resale is a wholesale sale and is therefore not subject to sales or use tax.
- (b) The retail sale of compressed natural gas by a fueling station to an end user for use in its motor vehicles in South Carolina qualifies for the exemption from sales and use tax provided in Code Section 12-36-2120(15)(a).

Motor Fuel User Fee

The motor fuel user fee implications when a gas company sells natural gas to a fueling station at wholesale and the fueling station compresses the natural gas and makes a retail sale of the compressed natural gas to an end user for use in its motor vehicles in South Carolina are:

- (a) The sale of natural gas by the gas company to a fueling station is not subject to the motor fuel user fee pursuant to Code Section 12-28-310.

- (b) The retail sale of compressed natural gas by a fueling station to an end user for use in its motor vehicles in South Carolina is subject to the motor fuel user fee pursuant to Code Sections 12-28-310 and 12-28-970.

2. **Sales of Natural Gas to be Cooled by Fueling Stations for Sale as Liquefied Natural Gas**

Sales and Use Tax

The sales and use tax implications when a gas company sells natural gas to a fueling station at wholesale and the fueling station cools the natural gas and makes a retail sale of the liquefied natural gas to an end user for use in its motor vehicles in South Carolina are:

- (a) The sale by a gas company of natural gas to a fueling station for resale is a wholesale sale and is therefore not subject to sales or use tax.
- (b) The retail sale of liquefied natural gas by a fueling station to an end user for use in its motor vehicles in South Carolina qualifies for the exemption from sales and use tax provided in Code Section 12-36-2120(15)(a).

Motor Fuel User Fee

The motor fuel user fee implications when a gas company sells natural gas to a fueling station at wholesale and the fueling station cools the natural gas and makes a retail sale of the liquefied natural gas to an end user for use in its motor vehicles in South Carolina are:

- (a) The sale of natural gas by the gas company to a fueling station is not subject to the motor fuel user fee pursuant to Code Section 12-28-310.
- (b) The retail sale of liquefied natural gas by a fueling station to an end user for use in its motor vehicles in South Carolina is subject to the motor fuel user fee pursuant to Code Sections 12-28-310 and 12-28-970.

3. **Sales of Natural Gas to be Compressed by an End User for use as Compressed Natural Gas**

Sales and Use Tax

The gas company's sale of natural gas (not compressed natural gas) to an end user to compress (or otherwise compresses) natural gas for use in its motor vehicles in South Carolina qualifies for the exemption from sales and use tax pursuant to Code Section 12-36-2120(15)(e), provided the end user purchasing the natural gas has a miscellaneous motor fuel user fee license pursuant to Section 12-28-1139 for the purpose of remitting the motor fuel user fee on the compressed natural gas.

Motor Fuel User Fee

The motor fuel user fee implications when a gas company sells natural gas to an end user, which uses an on-site vehicle refueling appliance to compress (or otherwise compresses) natural gas for use in its motor vehicles in South Carolina are:

- (a) The sale of natural gas by the gas company to an end user is not subject to the motor fuel user fee pursuant to Code Section 12-28-310.
- (b) The end user compressing natural gas for use in its vehicles is subject to the motor fuel user fee pursuant to Code Sections 12-28-310 and 12-28-970.

4. **Sales of Natural Gas to be Cooled by an End User for use as Liquefied Natural Gas**

Sales and Use Tax

The gas company's sale of natural gas to an end user to cool natural gas for use in its motor vehicles in South Carolina as liquefied natural gas qualifies for the exemption from sales and use tax pursuant to Code Section 12-36-2120(15)(e), provided the end user purchasing the natural gas has a miscellaneous motor fuel user fee license pursuant to Code Section 12-28-1139 for the purpose of remitting the motor fuel user fee on the liquefied natural gas.

Motor Fuel User Fee

The motor fuel user fee implications when a gas company sells natural gas to an end user, which uses an on-site vehicle refueling appliance to cool natural gas for use in its motor vehicles in South Carolina as liquefied natural gas are:

- (a) The sale of natural gas by the gas company to an end user is not subject to the motor fuel user fee pursuant to Code Section 12-28-310.
- (b) The end user cooling natural gas for use in its vehicles as liquefied natural gas is subject to the motor fuel user fee pursuant to Code Sections 12-28-310 and 12-28-970.

DISCUSSION

Sales and Use Tax:

Code Section 12-36-910 imposes a sales tax on the gross proceeds of sales on every person engaged or continuing within this State in the business of selling tangible personal property at retail. Code Section 12-36-1310 imposes a use tax on the use, storage, or consumption of tangible personal property purchased at retail for storage, use, or consumption in South Carolina, regardless of whether the retailer is engaged in business in South Carolina.

Code Section 12-36-60 defines the term "tangible personal property" and states, in part:

"Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses.

Code Section 12-36-110 defines the terms "retail sale" and "sale at retail" to mean, in part:

Sale at retail and retail sale mean all sales of tangible personal property except those defined as wholesale sales. The quantity or sales price of goods sold is immaterial in determining if a sale is at retail.

Code Section 12-36-120 defines the terms “wholesale sale” and “sale at wholesale” to mean, in part, the sale of:

- (1) tangible personal property to licensed retail merchants, jobbers, dealers, or wholesalers for resale, and do not include sales to users or consumers not for resale[.]

Code Section 12-36-2120(15)(a) provides an exemption from sales and use tax for the gross proceeds of sales or sales price of “motor fuel, blended fuel, and alternative fuel subject to tax under Chapter 28, Title 12.”

Code Section 12-36-2120(15), effective April 21, 2016 (Act No. 160 of 2016), provides additional exemptions from sales and use tax for the gross proceeds of sales or sales price of:

(e) natural gas sold to a person with a miscellaneous motor fuel user fee license pursuant to Section 12-28-1139, who will compress it to produce compressed natural gas, or cool it to produce liquefied natural gas, for use as a motor fuel and remit the motor fuel user fees as required by law; and

(f) liquefied petroleum gas sold to a person with a miscellaneous motor fuel user fee license pursuant to Section 12-28-1139, who will use the liquefied petroleum gas as a motor fuel and remit the motor fuel user fees as required by law[.]

Based on the above, a retail sale of compressed natural gas used to propel a motor vehicle on the highways is exempt from sales and use tax under Code Section 12-36-2120(15)(a) since it is an “alternative fuel” subject to a motor fuel user fee under Code Section 12-28-310. In addition, the retail sale of natural gas to a person with a miscellaneous motor fuel user fee license pursuant to Code Section 12-28-1139, who will compress it to produce compressed natural gas, or cool it to produce liquefied natural gas, for use as a motor fuel is exempt from the sales and use tax.

Note: While this advisory opinion only concerns natural gas compressed or liquefied for use in a motor vehicle, it should be noted that Act No. 160 of 2016 also added a sales and use tax exemption (Code Section 12-36-2120(15)(f)) for “liquefied petroleum gas sold to a person with a miscellaneous motor fuel user fee license pursuant to Section 12-28-1139, who will use the liquefied petroleum gas as a motor fuel and remit the motor fuel user fees as required by law.”

Motor Fuel User Fee:

Code Section 12-28-310 imposes a motor fuel user fee on:

... 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.²

(emphasis added).

² Code Section 12-28-110(41) defines “motor vehicle” as “a vehicle that is propelled by an internal combustion engine or motor and is designed to permit the vehicle’s mobile use on highways.”

Code Section 12-28-970(A) establishes a backup motor fuel user fee to Code Section 12-28-310 that is imposed upon delivery of certain motor fuels, including alternative fuels, in South Carolina into the fuel supply tank of a motor vehicle. Code Section 12-28-970(B) further provides:

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.

Code Section 12-28-970(C)(2) establishes a backup motor fuel user fee to Code Section 12-28-310 for any liquid or gas not otherwise taxed pursuant to Chapter 28 of Title 12, which is commonly or commercially known or sold as fuel for use in a motor vehicle. The fee is due upon the first sale or use of the product when produced in South Carolina and is imposed on the producer of the product.

Code Section 12-28-110(1) defines “alternative fuel” as:

... a liquefied petroleum gas, liquefied natural gas, compressed natural gas product, or a combination of liquefied petroleum gas and a compressed natural gas product used in an internal combustion engine or motor to propel any form of vehicle, machine, or mechanical contrivance. It includes all forms of fuel commonly or commercially known or sold as butane, propane, or compressed natural gas.

(emphasis added).

Code Section 12-28-110(69) defines “substitute fuel” as:

... a liquid that is commonly and commercially known or sold as a fuel that is suitable for use in a highway vehicle. The fuel meets this requirement if, without further processing or blending, the fuel is a fluid and has practical and commercial fitness for use in the propulsion of a highway vehicle. This includes all liquids regardless of temperature or pressure.

Finally, effective April 21, 2016 (Act No. 160 of 2016), the following definitions concerning the imposition of the motor fuel user fee on compressed natural gas, liquefied natural gas, and liquefied petroleum gas were added to Code Section 12-28-110:

(73) “Diesel gallon equivalent” or “DGE” means the amount of liquefied natural gas containing the same energy content as one gallon of diesel. For purposes of calculating the motor fuel user fee on liquefied natural gas that is used or consumed in this State in producing or generating power for propelling a motor vehicle, each 6.06 pounds of liquefied natural gas equals one gallon of motor fuel.

(74) “Gasoline gallon equivalent” or “GGE” means the amount of compressed natural gas or liquefied petroleum gas containing the same energy content as one gallon of gasoline. For purposes of calculating the motor fuel user fee on compressed natural gas or liquefied petroleum 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 pounds if the compressed natural gas is dispensed via a mass flow meter, equals one gallon of motor fuel and each gallon of liquefied petroleum gas equals .73 of a gallon of motor fuel.

Code Section 12-28-120 was also enacted effective April 21, 2016 (Act No. 160 of 2016) to state:

For purposes of this chapter, any reference to the term gallon with respect to liquefied natural gas means diesel gallon equivalent (DGE) and any reference to the term gallon with respect to compressed natural gas or liquefied petroleum gas means gasoline gallon equivalent (GGE). For any gaseous product for which a conversion factor is not provided for in this chapter, based on the best information available, the department shall establish a temporary conversion factor to determine the gallon equivalent. The department shall subsequently submit to the General Assembly a recommended legislative change for this conversion factor.

Therefore, a motor fuel user fee is imposed on compressed natural gas products and liquefied natural gas products used or consumed in South Carolina to propel a motor vehicle.³ Natural gas (not compressed or not liquefied) is not subject to the motor fuel user fee imposed by Code Section 12-28-310.

Note: While this advisory opinion only concerns natural gas compressed or liquefied for use in a motor vehicle, it should be noted that Act No. 160 of 2016 also added provisions to the motor fuel user fee law that clarify that the sale or use of liquefied petroleum gas as a motor fuel in motor vehicles in South Carolina is subject to the motor fuel user fee.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

March 10, 2017
Columbia, South Carolina

³ Code Section 12-28-320 provides “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.”