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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[TD 8945]

RIN 1545-AY85

Taxable Fuel Measurement

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the measurement of taxable fuel. The regulations affect certain blenders, enterers, refiners, terminal operators, and throughputters.

DATES: Effective Date: These regulations are effective May 18, 2001.

Applicability Date: These regulations are applicable January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Frank Boland (202) 622-3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 4081 imposes a tax on certain removals, entries, and sales of taxable fuel. Section 4083 provides that taxable fuel means gasoline, diesel fuel, and kerosene.

Before July 1, 2000, regulations provided that gallons of taxable fuel could be measured on the basis of actual volumetric gallons or gallons adjusted to 60 degrees

Fahrenheit. However, regulations that were published in the **Federal Register** on March 31, 2000, (TD 8879; 65 FR 17149) provide that beginning July 1, 2000, for each period from July 1 through the following June 30 a person liable for tax on a removal may use only one of the two bases of measurement with respect to taxable fuel removed from any particular terminal, refinery, or blending facility. This rule (the consistency requirement) also applies to taxable entries and sales.

After publication of TD 8879, the IRS and the Treasury Department determined that many taxpayers would have had to change their accounting systems to comply with the consistency requirement and would have been unable to complete the necessary changes by July 1, 2000. Accordingly, Notice 2000-33 (2000-27 I.R.B. 97) provided that taxpayers would not be required to comply with the consistency requirement before July 1, 2001. In the meantime, a taxpayer could use either basis of measurement for each taxable removal, entry, or sale of taxable fuel.

Explanation of Provisions

The IRS and the Treasury Department have now determined that the consistency requirement would force many taxpayers to alter current standard business practices and potentially could make routine IRS examinations more time consuming and burdensome. To avoid these adverse consequences, the final regulations in this document remove the consistency requirement and reinstate the provision that was in effect before July 1, 2000.

Effect on Other Documents

Notice 2000-33 (2000-27 I.R.B. 97) is obsolete as of May 18, 2001.

Special Analyses

This rule relieves taxpayer burden by eliminating a requirement with respect to the measurement of taxable fuel. Therefore, it has been determined that notice and public comment are unnecessary and contrary to the public interest. For the same reason, a delayed effective date under 5 U.S.C. 553(d) is not required. Because no preceding notice of proposed rulemaking is required for this Treasury decision and the rule does not impose on small entities a collection of information requirement, the provisions of the Regulatory Flexibility Act do not apply. It also has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to section 7805(f) of the Code, these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Frank Boland, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 48

Excise taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 48 is amended as follows:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Paragraph 1. The authority citation for part 48 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 48.4081-8 is revised to read as follows:

§48.4081-8 Taxable fuel; measurement.

(a) In general. Volumes of taxable fuel may be measured on the basis of actual volumetric gallons or gallons adjusted to 60 degrees Fahrenheit.

(b) Effective date. This section is applicable January 1, 1994.

Robert E. Wenzel

Deputy Commissioner of Internal Revenue

Approved: May 10, 2001

Mark A. Weinberger

Assistant Secretary of the Treasury