

Notice

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Brief Description: Biodiesel Requirements and Questions and Answers - REVISED 9/11/2006
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Kansas Department of Revenue
Division of Taxation

NOTICE 06-06 *REVISED*

**Biodiesel Requirements
And
Questions and Answers**

Note: This notice addresses production, distribution and usage of biodiesel in Kansas and relates to the State of Kansas requirements only. This notice does not address biodiesel produced in another state and imported into Kansas.

Biodiesel (B100 or any blend) is a special fuel per K.S.A. 79-3401(s) and is taxable per K.S.A. 79-3408. Special fuels are defined at K.S.A. 79-3401(s):

K.S.A. 79-3401(s) "special fuels" means all combustible liquids suitable for the generation of power for the propulsion of motor vehicles including, but not limited to, diesel fuel, alcohol and such fuels not defined under the motor-vehicle fuels definition, hereinafter referred to as motor-vehicle fuel;

Motor fuel tax is imposed at K.S.A. 79-3408:

K.S.A. 79-3408. Tax imposed on use, sale or delivery of motor-vehicle fuels or special fuels; incidence of tax imposed on distributor; allowance for certain losses; exempt transactions; reports required. (a) A tax per gallon or fraction thereof, at the rate computed as prescribed in K.S.A. 79-34,141, and amendments thereto, is hereby imposed on the use, sale or delivery of all motor-vehicle fuels or special fuels which are used, sold or delivered in this state for any purpose whatsoever.

The exception to taxation would be K.S.A. 79-3408(c), which provides:

No tax is hereby imposed upon or with respect to the following transactions: . . .(6) The sale or delivery of special fuel which is indelibly dyed in accordance with regulations prescribed pursuant to 26 U.S.C. 4082 and such special fuel is only used for nonhighway purposes.

The following information indicates the **current** statutory requirements for the distribution and manufacturing of motor vehicle fuels or special fuels (biodiesel) in the state of Kansas.

K.S.A. 79-3401 defines distributor and manufacturer:

(f) "distributor" means any person, who:

(4) received and, in any manner, uses, sells or delivers motor-vehicle fuels or special fuels in the state of Kansas on which the tax provided for in this act has not been previously paid;

(j) "manufacturer" or "refiner" means any person who or which produces, refines, prepares, blends, distills, manufactures or compounds motor-vehicle fuels or special fuels in the state of Kansas for such person's own use therein, or for sale or delivery therein...

K.S.A. 79-3403 includes the licensing and bonding requirements:

It shall be unlawful for any distributor to use, sell or deliver any motor-vehicle fuels or special fuels within this state unless such distributor at the time of such use, sale, or delivery, is the holder of a valid, unrevoked motor-vehicle-fuels distributor's license or special fuels distributor's license issued to such distributor in accordance with the provisions of this act for each particular place of business at which such distributor shall use, sell or deliver motor-vehicle fuels or special fuels...

It shall be unlawful for any manufacturer to use, sell or deliver any motor-vehicle fuels or special fuels within this state unless such manufacturer at the time of such use, sale, or delivery is the holder of a valid, unsuspended and unrevoked motor-vehicle fuel manufacturer's license or special fuel manufacturer's license issued to such manufacturer in accordance with the provisions of this act for each particular place of business at which such manufacturer shall use, sell or deliver motor-vehicle fuels or special fuels...

No motor-vehicle-fuels distributor's license or special fuels distributor's license shall be granted and issued until the person applying has filed with the director a bond, payable to the state of Kansas, in such amount as shall be fixed by the director, but in no event less than \$1,000...

No motor-vehicle fuel or special fuel manufacturer's license shall be granted and issued until the person applying has filed with the director a bond payable to the state of Kansas, in such amount as shall be fixed by the director, but in no event less than \$5,000...

QUESTIONS AND ANSWERS

Producer:

Question

Does Kansas offer an incentive for biodiesel production sales?

Answer

2006 Senate Bill 388 establishes the Kansas Qualified Biodiesel Fuel Producer Incentive Fund, which allows for the payment of producer incentives for the production of biodiesel. The incentive is for the production of biodiesel fuel in the amount of \$.30 for each gallon of biodiesel fuel **sold** by the producer. The Kansas qualified biodiesel fuel producer shall file for the production incentive beginning July 1, 2007 and quarterly thereafter. For a detailed, full text copy of the bill, please visit the Kansas Legislature's website at www.kslegislature.org.

Question

As a biodiesel producer, when is the Petroleum Products Inspection and Environmental Assurance Fee applicable to biodiesel?

Answer

The person **first selling, offering for sale, using or delivering biodiesel** is responsible for paying the environmental assurance fee to the state. The environmental assurance fee is \$.01 per gallon pursuant to K.S.A. 65-34,117. The monthly return is form MF-7/7a. The petroleum products inspection fee does not apply to biodiesel (B100) pursuant to K.S.A. 55-426.

Question

As a biodiesel producer in Kansas, am I required to be licensed and bonded with the State of Kansas?

Answer

A manufacturer's license is required pursuant to K.S.A. 79-3403. A manufacturer's bond, in the amount fixed by the director and not less than \$5,000, is also required pursuant to K.S.A. 79-3403.

A distributor's license is required pursuant to K.S.A. 79-3403, if the biodiesel is being imported into or distributed in the state of Kansas. A bond, in the amount fixed by the director and not less than \$1,000 for distributor's and \$5,000 for importer's, is also required pursuant to K.S.A. 79-3403.

Question

If I am a biodiesel producer in Kansas and will be transporting the biodiesel to my customers, am I required to be licensed?

Answer

Yes, a Liquid Fuel Carriers license is required if you are transporting your own manufactured biodiesel **and** meet or exceed the limitations in K.S.A. 55-507, which provides:

Liquid-fuel carrier's license; certificates for vehicles. No person shall transport any liquid fuels or motor fuels from any refinery, place of manufacture or production, or pipeline terminal, or across the state line, in quantities of 120 gallons or more over any of the public highways of this state without having first secured from the director of taxation, and at the time holding, a valid, unrevoked liquid-fuels carrier's license and a certificate thereof for each vehicle in which such person transports such fuels, nor shall any person transport any liquid fuel or motor fuels in quantities of 3,500 gallons or more over any of the public highways of this state from any point of origin **other than** a refinery, place of production or manufacture or pipeline terminal without having first secured from the director of taxation, and at the time holding a valid, unrevoked certificate of a liquid-fuels carrier's license for each vehicle in which such person transports such fuels. This section shall not apply to the transportation by any consumer in the consumer's own vehicle of liquid fuels exclusively for such consumer's own use from the place of purchase to the place where it is to be consumed by such consumer.

Question

As a biodiesel producer in Kansas, if I hire a carrier to transport the biodiesel to my customers, or my customers transport the biodiesel they purchase themselves, am I required to have a Liquid Fuel Carriers license?

Answer

No.

Question

Am I required to remit fuel tax when I produce and sell biodiesel to a terminal storage facility for resale?

Answer

No. The incidence of Kansas fuel tax is at the distributor of first receipt level. The distributor of first receipt must remit the tax when the fuel is subsequently purchased and loaded at the terminal rack.

Question

I am a biodiesel producer and a licensed distributor. Am I required to remit fuel tax when I sell the biodiesel I have produced, to another licensed distributor?

Answer

No. The first sale of biodiesel to another duly licensed distributor is not taxable, pursuant to K.S.A. 79-3408(c)(5).

Question

Is biodiesel taxable if it is sold to a consumer/end user for off-road use?

Answer

If biodiesel is being sold directly to a consumer/end user for off-road use, the biodiesel must be dyed in order to be nontaxable, otherwise it is subject to tax.

Question

If I sell clear B100, should tax be remitted?

Answer

Yes, pursuant to K.S.A. 79-3408. The exception would be if the B100 is dyed pursuant to K.S.A. 79-3408(c), which provides:

No tax is hereby imposed upon or with respect to the following transactions: . . . (6) The sale or delivery of special fuel which is indelibly dyed in accordance with regulations prescribed pursuant to 26 U.S.C. 4082 and such special fuel is only used for nonhighway purposes.

Question

If I produce biodiesel for my own use, is it taxable?

Answer

Yes. Biodiesel placed directly into a motor vehicle fuel supply tank is taxable pursuant to K.S.A. 79-3408.

Distributor:**Question**

How should biodiesel be reported on the Distributor return (MF-52) and schedules (MF-52A/MF-52B)?

Answer

Biodiesel (B100) should be reported on the Distributor return when received, IF it is known to be sold/used as clear or dyed. If the taxability of the biodiesel is not known, the distributor may report the biodiesel when it is determined that the product will be sold/used as clear or dyed. Biodiesel should be reported on Schedule 2, Receipts, (or Schedule 3 for imports) as a special fuel, using product code 284 for undyed biodiesel and product code 290 for dyed biodiesel. Product code 170 should be used for a biodiesel blend undyed and 171 for a biodiesel blend dyed.

**It should be noted that this reporting exception is being allowed as an interim solution, until biodiesel is readily available at Kansas terminals or Kansas biodiesel production facilities.*

Question

If I have paid the fuel tax on biodiesel because it was originally reported to be used for a taxable purpose, placed in bulk storage, then later sold blended with dyed diesel, how do I receive credit for the tax previously paid?

Answer

An amended return should be submitted to claim the credit. The amended return should include only the gallons/tax previously reported as taxable.

Consumer/End User:**Question**

How do I receive a refund for fuel tax paid on biodiesel that I used off-road?

Answer

You must apply for a refund permit (Form MF-51). The permit fee is \$6. Once the permit is received, complete the Refund Claim (Form MF-35) to request the refund. The refund permit must be renewed every 3 years. For refund requirements, see K.S.A. 79-3453 through K.S.A. 79-3463.

TAXPAYER ASSISTANCE

To obtain additional copies of this or any other notice call the Kansas Department of Revenue's voice mail forms request line at 785-296-4937 or download them from our web site: www.ksrevenue.org. If you have any questions about this notice, please contact our Motor Fuel Tax Segment.

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