

MEMORANDUM

TO: James Mason
Director of Field Audit

FROM: Mark C. Haskins
Director of Policy Development

DATE: April 8, 2011

SUBJECT: Motor Fuels Disclosure, Refunds, and Heavy Motor Vehicles

This is in response to inquiries from audit staff as to 1) whether TAX can provide information regarding Motor Vehicle Fuel Sales Tax audits to the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, 2) how dealers should provide refunds for exempt dyed diesel sales where the tax is included in the pump price, 3) whether certified pollution control equipment and facilities qualify for the Retail Sales and Use Tax exemption regardless of the actual use of the tangible personal property, and 4) heavy vehicles that are exempt from the Motor Vehicle Sales and Use Tax.

Disclosure of Information

Virginia Code § 58.1-3 provides that TAX may disclose to the Executive Directors of the Potomac and Rappahannock Transportation Commission and the Northern Virginia Transportation Commission for their confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax. TAX also has a Memorandum of Agreement with the Transportation Boards regarding Offers in Compromise and Appeals. Under the agreement, TAX will "furnish the Designated Disclosure Officer with copies of the appeal and any papers submitted by the taxpayer in support of the appeal or offer in compromise; and with TAX's preliminary conclusion containing TAX's rationale for the proposed disposition. All such materials will be redacted to remove any confidential tax information not directly related to fuel tax."

TAX interprets the phrase "to facilitate the collection of the motor vehicle fuel sales tax" to mean that TAX may release to the Executive Directors information needed to facilitate the administration of the tax and not just delinquent collections matters. In order to comply with *Va. Code* § 58.1-3 and the memoranda of agreement, TAX may

provide the distributor name, address, FEIN, and amount of the audit assessment or revenue reallocation to the Executive Director of the respective commission or to his designee. As this information is considered confidential, materials released to the Transportation Commissions should contain a statement similar to the one below:

Please note that this information contains confidential taxpayer information. Although TAX is authorized to release this information to you and your staff under Code of Va. § 58.1-3(C) for your confidential use as may be necessary to facilitate the collection of the motor vehicle fuel sales tax, it may not be divulged to other persons, including the members of the Transportation Commission.

Retail Sales and Use Tax Refunds for Certain Fuels

For exempt sales where the Retail Sales and Use Tax is included in the pump price, the dealer may either subtract out the amount of tax before accepting payment or refund the amount after the sale has been made. As stated in Tax Bulletin 10-9, 23 VAC 10-210-220 sets forth the bracket system used to determine the amount of tax included in the pump price for each gallon.

23 VAC 10-210-220 provides that the bracket system is used to eliminate fractions of \$.01 and must be used to compute the tax on transactions of \$5.00 or less. On transactions over \$5.00, the tax is computed at a straight 5.0%, with one half cent or more treated as \$.01. Any dealer who collects the tax in accordance with the bracket system set forth shall be deemed to not have over collected the tax. Below is the bracket system for the combined state and local tax of 5.0% on transactions of \$5.00 or less:

Sales Price	Tax Due
0.01 to 0.09	0
0.10 to 0.29	0.01
0.30 to 0.49	0.02
0.50 to 0.69	0.03
0.70 to 0.89	0.04
0.90 to 1.09	0.05
1.10 to 1.29	0.06
1.30 to 1.49	0.07
1.50 to 1.69	0.08
1.70 to 1.89	0.09
1.90 to 2.09	0.1
2.10 to 2.29	0.11
2.30 to 2.49	0.12

Sales Price	Tax Due
2.50 to 2.69	0.13
2.70 to 2.89	0.14
2.90 to 3.09	0.15
3.10 to 3.29	0.16
3.30 to 3.49	0.17
3.50 to 3.69	0.18
3.70 to 3.89	0.19
3.90 to 4.09	0.2
4.10 to 4.29	0.21
4.30 to 4.49	0.22
4.50 to 4.69	0.23
4.70 to 4.89	0.24
4.90 to 5.00	0.25

In order to determine the amount of tax that should be subtracted out or refunded, the dealer can use the same bracket system, multiply by the number of gallons sold and round to the nearest \$0.01. For example, if the customer bought 10 gallons at a pump price between \$3.90 and \$4.09, the tax would be \$0.20 [from the bracket system above] multiplied by 10, or \$2.00.

Alternatively, the dealer may calculate the amount of tax to be refunded using the total amount charged in the following manner. The dealer would multiply the total amount charged by $(1 - (1/1.05))$ and rounding to the nearest \$0.01. For example, if the customer bought \$21 worth of gas, the tax would be \$21 multiplied by $(1 - (1/1.05))$, or \$1.00.

Certified Pollution Control Equipment and Facilities

Virginia Code § 58.1-609.3(9) provides a Retail Sales and Use Tax exemption for "[c]ertified pollution control equipment and facilities as defined in § 58.1-3660, except for any equipment that has not been certified to the Department of Taxation by a state certifying authority pursuant to such section." *Virginia Code* § 58.1-3660 defines "certified pollution control equipment and facilities" and provides that the "state certifying agency" means the Department of Mines, Minerals, and Energy ("DMME") for coal, oil, and gas production, the State Water Control Board for water pollution, the State Air Pollution Control Board for air pollution, and the Virginia Waste Management Board for waste disposal facilities. The Department of Environmental Quality ("DEQ") administers the environmental regulations approved by the three regulatory boards.

23 VAC 10-210-2090 provides that "any property which is certified as used for these purposes is not subject to the tax." Under this policy, regardless of whether the auditor disagrees with the certifying agency's finding that the property is used directly to abate pollution, if it has been certified as pollution control equipment by a state certifying agency, it is exempt from the Retail Sales and Use Tax.

Motor Vehicle Sales and Use Tax

Virginia Code § 58.1-2402 levies the Motor Vehicle Sales and Use Tax upon the sale or use of all motor vehicles in the Commonwealth other than **1) vehicles with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more**, or 2) a sale to or use by a person for rental as an established business or part of an established business or incidental or germane to such business.

Under current law, generally, if a motor vehicle is not subject to the Motor Vehicle Sales and Use Tax, it is subject to the Retail Sales and Use Tax, unless another

exemption applies. However, this result was clearly not intended by the legislature when it passed the legislation exempting heavier vehicles from the Motor Vehicle Sales and Use Tax. In 1997, the General Assembly enacted House Bill 2159 (*Acts of Assembly 1997, Chapter 283*) to provide for permanent trailer and tractor truck registration. The bill increased the registration fee for vehicles with a gross weight rating exceeding 26,000 pounds and exempted the same vehicles from the Motor Vehicle Sales and Use Tax. This legislation was also a recommendation of the Joint Subcommittee Studying the Taxation of Equipment of Motor Carriers, established by Senate Joint Resolution 366 (1995). There is no evidence that the Joint Subcommittee realized that exempting vehicles from the Motor Vehicle Sales and Use Tax would result in them being subject to the Retail Sales and Use Tax.

Effective July 1, 2011, this issue will be fixed by House Bill 1945 and Senate Bill 1281, which provide that trucks, tractor trucks, trailers, and semitrailers with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more are subject to the Motor Vehicle Sales and Use Tax at a zero percent rate. As these vehicles will be subject to the Motor Vehicle Sales and Use Tax, such vehicles are exempt from the Retail Sales and Use Tax. Policy Development recommends that no further assessments on this basis be made.