

810-8-1-.06 Statement of Gross Sales Exclusion. **(REPEALED)**

(1) According to Code of Alabama 1975, Section 40-17-2, motor fuel shall not be subject to any other excise tax. The Alabama Department of Revenue concedes that the wholesale oil license fee levied under Code Section 40-17-174 is an excise tax. Therefore, based upon an Administrative Law Judge Ruling, if the excise tax levied under Code Section 40-17-2 is ultimately paid to the State of Alabama then the diesel fuel would not be subject to the wholesale oil license fee levied under Code Section 40-17-174.

(a) However, the burden of establishing the right to this exclusion is on the taxpayer claiming the exclusion.

(b) This exclusion will be allowed under any of the following circumstances:

1. The clear diesel fuel is sold tax-paid by the initial wholesaler and the state excise tax is remitted to the State of Alabama on the monthly motor fuel excise tax return.

2. The initial wholesaler is the sole supplier of the clear diesel fuel sold tax-free to a licensed distributor. The licensed distributor must remit the motor fuel excise tax to the State of Alabama and list the initial wholesaler as the only supplier on the monthly motor fuel excise tax returns. As documentation for this exemption, the initial wholesaler is required to obtain and keep a copy of the monthly State of Alabama motor fuel excise tax returns in its files. If a petition for a refund of tax is based upon this situation, the initial wholesaler is required to submit copies of the customer's monthly tax returns along with the petition for refund. In addition, the refund petition must include documentation as to the sales price for each load of fuel sold to the customer.

3. The initial wholesaler is not the "sole" supplier for the licensed distributor of the clear diesel fuel sold tax-free to the licensed distributor and the licensed distributor remits the state excise tax to the Department of Revenue. The initial wholesaler is required to obtain and furnish the following documentation to the Department of Revenue:

(i) Copies of the licensed distributor's monthly State of Alabama motor fuel excise tax returns.

(ii) Copies of each bill of lading and invoice that shows the sales price of the fuel and point of delivery.

(iii) Copies of each of the licensed distributor's bills of lading and invoices showing the excise tax billed to the licensed distributor's customer(s). The invoices must balance back to the initial wholesaler's invoice for the total gallons billed.

(iv) If this product is commingled with fuel purchased from other suppliers in the licensed distributor's bulk storage facility, no exclusion will be allowed. However, if the licensed distributor that the initial wholesaler sells to has several suppliers and pays the excise tax on 100% of receipts the exclusion will be allowed. As documentation for this exemption, the initial wholesaler is required to obtain and keep a copy of the monthly State of Alabama motor fuel excise tax returns in its files. If a petition for a refund of tax is based upon this situation, the initial wholesaler is required to submit copies of the customer's monthly tax returns along with the petition for refund. In addition, the refund petition must include documentation as to the sales price for each load of fuel sold to the customer.

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Authority: Sections 40-2A-7(a)(5), 40-17-2 and 40-17-174, Code of Alabama 1975

History: New rule: Filed September 6, 2006, effective October 11, 2006.