

FTA MOTOR FUEL UNIFORMITY COMMITTEE

Oklahoma City, Oklahoma

April 22, 2010

Minutes

The FTA Motor Fuel Tax Section Uniformity Committee met at the Renaissance Hotel in Oklahoma City, Oklahoma on April 22, 2010. Marcia Leichner, (NE) Uniformity State Chair called the meeting to order. Twenty-five (25) were in attendance. (See attached list of attendees)

Minutes

The minutes of the January 2010 Uniformity Committee meeting in Austin, Texas were approved.

Presentation

Edie Martin (KS) gave a presentation on how to fill out the form for the Federal Highway Grant.

Uniformity Chairs

State Co-Chair Marcia Leichner – State of Nebraska
Industry Co-Chair Bob Donnellan – Global Companies

Subcommittee Chairs

Compliance Subcommittee

State Co-Chair Jeremy Neeck, State of Minnesota
Industry Co-Chair Sharon Templin – Shell Oil

Communication and Coordination Subcommittee

State Co-Chair Christy Dixon – State of Oklahoma
Industry Co-Chair Debbie Compton, Exxon Mobil

Electronic Commerce Subcommittee

State Co-Chair Traci Bullock – State of South Carolina
Industry Co-Chair Gene Holland, ConocoPhillips

Forms Management Subcommittee

State Co-Chair Lee Gonzales, State of Florida
Industry Co-Chair Scott Louie – Chevron

Subcommittee Reports

The Compliance Subcommittee Jeremy Neeck (MN) gave a report on what the committee discussed:

Training

Advanced Fraud Class was held January 24-28, 2010 in Austin, Texas. There were 18 in attendance.

Basic Training Class will be held August 1-5, 2010 in Portsmouth, Virginia

Advanced Training Class will be held August 22-26, 2010 in Savannah, Georgia

Dyed Diesel Stats

The new dyed fuel statistics spreadsheet was reviewed and it was suggested that we could add what vehicles are in violation and what industry they are from.

New Projects

Electric Vehicles how do we tax them?
Dyed fuel use in Canadian vehicles coming into the USA
G Diesel what is it and how will we tax it?

(See the minutes of this subcommittee for more details)

The **Electronic Commerce Subcommittee** Gene Holland (ConocoPhillips) reported there were twenty-five (25) in attendance. The subcommittee discussed the following:

California Request/EDI Guide

California request to establish "DLR" for Jet Fuel Dealer Report.

ExSTARS User Group

Update on the 4030 Data Review Analysis was discussed. The majority of the files continue to be 826's. Kansas showed a decrease in 813 files and Mississippi showed an increase of 813 files

EC Survey

The next survey will be sent out October 2010.

ExSTARS Update

The new Publication 3536 EDI guide was discussed. There is still no change regarding the EIA codes.

XML Schema

Utah is implementing August/September and is currently testing.

(See the minutes of this subcommittee for more details)

The **Forms Management Subcommittee** Scott Louie (Chevron) reported that this committee met with Electronic Commerce. There were twenty-five (25) in attendance. The subcommittee discussed the following:

Uniformity Guide Updates/Document Number

The committee had minimal discussion on changes to the Common and Contract Petroleum Products Carrier Report. The Document/Bill of Lading Number was discussed because of the Barge/Rail movement.

Producer's and Manufactures Report

Instead of adding a new return to the uniformity guide, verbiage will be added to the uniformity guide that would direct states to use the existing format of the supplier or distributor return currently in the uniformity guide.

Utah Schedule Code Request

The State of Utah has requested three additional schedule types to accommodate their new electronic filing program. The schedule types are as follows:

- 1) Gallons sold to non-federally certified air carriers subject to 9 cent fuel tax rate.
- 2) Gallons sold to federally certified air carriers subject to 4 cent fuel tax rate.
- 3) Gallons sold to federally certified air carriers at the Salt Lake International Airport subject to 2.5 cent fuel tax rate.

California Schedule Changes

In mid-March the California Legislature passed, and the governor signed, legislation that increases and creates a two-tiered rate structure for motor vehicle fuel effective July 1, 2010 and decreases our diesel tax effective July 1, 2011. The legislation also provides for annual rate adjustments to both the mvf and diesel rates in subsequent years. California addressed two challenges related to the law changes:

- 1) How to they address out of period reporting.
- 2) How to identify and track at what rate a tax paid credit is being claimed at. The transactions, either S03's or schedule 13's are generally based on an activity occurring after the initial taxable event. It is a certainty that credits will be claimed at a rate that is different (higher or lower) than the current rate for the return being filed.

(See the minutes of this subcommittee for more details)

Approved by the Full Committee

1. Common and Contract Petroleum Products Carrier Report

The minimal changes were adopted on the write up in the Uniformity Booklet

2. Global Definition Change to all forms for Document/Bill of Lading Number

Document/Bill of Lading Number – Enter the identifying number from the manifest issued at the terminal when product was removed over the rack. In the case of pipeline or barge movements, it is the pipeline or barge ticket number. In case of barge, it is the voyage number.

3. Producer's Report Statement in the Uniformity Booklet

States requiring a return to pay tax and report the production and importation of fuel alcohol or bio-diesel (dyed and undyed) should utilize the Federation of Tax Administrator's Supplier/Permissive Supplier or Distributor's Fuel Tax Report format when developing a Producer's Report.

For those states that require an information report only on the production and importation of fuel alcohol or biodiesel (dyed and undyed) they should utilize only the receipts, disbursements and fuel accountability sections of the report.

A uniform Producer's Report is used by the following states at this time:

* North Carolina

4. New Schedules

Schedule 5XD Gallons delivered to an airport and partially taxed

Schedule 13M Refund or credit for the second tax paid when tax paid fuel is removed from a terminal as a second taxable event

Schedule 13N Refund or credit for the second tax paid when tax paid fuel is removed from a terminal as a second taxable event

5. Schedule Verbiage Change

Schedule 13J Tax paid fuel sold tax-free for temperature control units (reefer) and PTO or with exemption certificate or used in an exempt manner

6. Combined Supplier's Common or Contract Carrier's and Terminal Operator's Report

Strike the Combined Supplier's, Common or Contract Carrier's, and Terminal Operator's Report from the Uniformity Guide until the Uniformity Committee can redesign the form.

The **Communication and Coordination Subcommittee** Christy Dixon (OK) reported that twenty-one (21) were in attendance. The subcommittee discussed the following and the April 2010 *Uniformer* was passed out. (See minutes for the publication)

White papers

- Model Legislation for Points of Taxations (finalized)
- Bill of Lading
- Disaster Situation

Annual Booklet that contains

- State Contact Information
- Reference to Statues and Rules
- State Point of Taxation
- State Tax Rates
- Rate Updates
- Collection Allowance
- Alternative Fuels
- Diversions
- Taxability & Tax rates for Biodiesel and Ethanol

Definitions

- Shipping Documents (finalized)
- Racing Fuel
- Renewable Fuel (finalized)
- Voyage Number
- Document Number

(See the minutes of this subcommittee for more details)

Approved by the Full Committee

The following revision to the Model Legislation, Section 1
“Model Legislation for Points of Taxation”

1. Taxpayer Options

When proposing changes to existing motor vehicle fuel and/or diesel fuel tax laws, taxing authorities must decide who the taxpayer will be. In other words, how far back up the distribution chain should the incidence of the tax be placed. Following are some taxpayer options and a reference to some recent legislative actions taken by both federal and state taxing authorities.

A. Tax at the Terminal Rack

Generally, all gasoline, undyed diesel fuel and kerosene are taxed as they cross the terminal loading rack. Some states have passed variations of the federal tax at the rack legislation. rack legislation. Examples of these variations are as follows:

1. Position holder at the Rack.
Tax is due from the position holder when the product crosses the rack.
(the person owning the inventory according to the records of the terminal operator).
2. Position Holder or Exchange Receiver at the Rack (Modified Position Holder).
If the position holder delivers on exchange, the exchange receiver remits the tax.
Tax is due from the position holder when the product crosses the rack.
Exception-tax is due from the receiver if receiving the product under an exchange agreement.
3. First Receiver below the Rack.
The person physically receiving accountable product/motor fuel at the rack remits tax to the taxing jurisdiction, if licensed. If not licensed, then variations 1 or 2 above should be used. Tax is due from the position holder or exchange receiver unless the person physically receiving the product at the rack is a licensed distributor. No subsequent tax-free sales are allowed.

All dyed diesel fuel meeting the United States Environmental Protection Agency (EPA) and Internal Revenue Service (IRS) requirements can be sold tax free and cannot be used on the highways.

B. Tax at the Distributor/Wholesale Level

Sales of gasoline and diesel fuel are taxed at the terminal rack unless the sale is made to another licensed supplier, distributor or wholesaler. It is left up to each taxing jurisdiction to determine and define who qualifies as a license holder for the purpose of purchasing motor fuel tax-free. Examples:

1. Subsequent sales after the rack are exempt, until the product is sold to an unlicensed party. The last licensed distributor in the chain pays the tax.

2. All sales to licensed distributors are exempt. Tax is due from the last licensed distributor who makes a sale to an unlicensed party.
3. Tax jurisdiction may allow only 2 exempt sales to licensed distributors and on the third sale the tax is due to the taxing jurisdiction.

C. Tax at the Retail and/or Use Level

Some taxing jurisdictions license all retail dealers and users of diesel fuel within their state and impose an excise tax on sellers and users who place “special fuel” into the fuel supply tank of a motor vehicle. Usually, every person in the distribution chain is licensed, i.e. distributor, importer, exporter, wholesale, dealer, gasoline jobber, seller-user of special fuel, and retail dealer. Fuel sold to each licensee is sold tax- exempt, and the licensee who places the motor fuel into the supply tank of a motor vehicle becomes the taxpayer. It is left up to each taxing jurisdiction on how and who should be licensed.

D. Tax on First Importation

Another taxpayer option for collecting tax on accountable product/motor fuel is to collect the tax from persons who are responsible for importing, refining, manufacturing, producing, blending, or compounding in a state. If this method is used as an option, consideration must be given to the varying refund provisions that have to be developed.

E. Tax on Importation into State/First Receipt into Storage into a Terminal or Refinery

Tax is paid by the person first receiving product at a terminal or refinery. Tax is also due from the importer when imported directly to the importer’s customer or for the importer’s use.

Definitions

Shipping or Transport Document - A delivery document issued in conjunction with the sale, transfer, or transport of motor fuel. A shipping or transport document issued by a terminal operator shall be machine printed. All other shipping documents shall be typed or handwritten on a preprinted form or machine printed.

Renewable Fuel – Liquid nonpetroleum based fuels that can be placed in vehicle fuel tanks and used as a fuel in a highway vehicle. It includes all forms of fuel commonly or commercially known or sold as biodiesel and ethanol.

Other Business

Rich Little, Internal Revenue Service gave an update on the ExSTARS System. The 3536 publication was just released in March. Some additions:

- Expanding the mode codes to capture imports/exports
- Vessel operators must report transactions for every facility with TCN’s
- They have removed all references to SSN
- Fractional gallons are not accepted
- Currently looking at ethanol/biodiesel plants to report

Mal Bruce, Canadian Fuel Tax Council gave a report on what the Council has been working on.

- General Return
- Inventory of losses, what is reasonable loss
- Dyed injection standards
- Reviewing current definitions

Michael Dougherty, Federal Highway Administration reported that SAFETEA-LU expired on September 30, 2009 and has gone through a series of extension through September 30, 2010. The funding will be the same for FY 2010 as the FY 2009. The majority of the funding supports the IRS Excise Program which includes ExSTARS. There is no word on the 2010 grant and how it will be allocated to States.

Cindy Anders-Robb, FTA requested that all minutes from this meeting, agenda for September meeting and the year end report be submitted by June 1, 2010.

New Business

Cindy Anders-Robb has been getting request to go back to the Friday-Saturday meeting. It was voted on that we go back to this format for the annual meeting in September 2011.

Next Meeting

The next Uniformity Committee meetings are scheduled as follows:

September 10-11, 2010 – Helena, Montana

January 25-26, 2011 – Austin, Texas

April 27-28, 2011 – Oklahoma City, OK

The meeting was adjourned.