

Part IV – Items of General Interest

The Service will not assert the penalty under § 6715 of the Internal Revenue Code for diesel fuel that has been delivered by wholesale dealers to retail dealers for resale to highway users or has been sold by wholesale dealers directly to end users for highway use for the period September 2, 2004, through October 5, 2004 (as amended).

Announcement 2004-70

(as amended by Announcement 2004-77, extending the relief period to 10/5/04.)

The Internal Revenue Service will not assert the penalty under section 6715 of the Internal Revenue Code with respect to dyed diesel fuel that, due to shortages of clear diesel fuel in the State of Florida caused by Hurricanes Charley and Frances, has been delivered by wholesale dealers to retail dealers for resale to highway users or has been sold by wholesale dealers directly to end users for highway use. This relief from the section 6715 penalty will apply only to dyed diesel fuel that wholesale dealers deliver or sell in the State of Florida and only to fuel delivered or sold by wholesale dealers during the period September 2, 2004, through October 5, 2004. In the case of wholesale dealers, penalty relief will be available only if the wholesale dealer reports and pays the tax on the dyed diesel fuel that is delivered or sold for highway use. The return and payment will be due on October 31, 2004, and the IRS will not assert penalties for failure to make semimonthly deposits of the tax. Wholesale dealers should call 1-866-699-4096 (a toll free number) for instructions on the proper method for reporting and paying this tax.

In general, diesel fuel may be removed tax free from a terminal if it is dyed in the manner specified in the regulations under section 4082 of the Internal Revenue Code. Section 4081(b) of the Internal Revenue Code imposes a tax on blended diesel fuel created by mixing dyed diesel fuel with clear diesel fuel that has been previously taxed. Under regulations, the seller of the dyed fuel in the mixture is liable for this tax if the dyed fuel is sold as fuel that has previously been taxed. A sale of dyed diesel fuel by a wholesaler to a retailer will be treated as meeting this condition if the wholesaler delivers the dyed fuel into the retailer's storage tank for clear diesel fuel and the fuel qualifies for relief from the section 6715 penalty. Section 4041(a) of the Internal Revenue Code imposes a tax on sales of dyed diesel fuel that has not been previously taxed to persons that will use the fuel in a taxable highway use. Section 6715 of the Internal Revenue Code imposes a penalty if dyed diesel fuel is sold for highway use or is knowingly used on the highway.

Recent and imminent hurricanes in Florida have resulted in critical shortages of clear, low-sulfur diesel fuel in that State. The Internal Revenue

Service and the Environmental Protection Agency are concerned that these shortages could impair the ability of emergency vehicles and utility repair vehicles to respond to existing damage from Hurricane Charley and expected damage from Hurricane Frances. Although limited quantities of dyed, high-sulfur diesel fuel are also available in Florida, Clean Air Act restrictions and the section 6715 penalty restrict this fuel to nontaxable off-highway uses. The relief announced today by the Internal Revenue Service and the Environmental Protection Agency's exercise of its enforcement discretion under the Clear Air Act restrictions will make all diesel fuel in the State of Florida available for highway use.

The principal author of this announcement is Barbara Franklin of the Office of the Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this announcement contact Ms. Franklin at (202) 622-3130 (not a toll free call).