

State of Rhode Island and Providence Plantations

Rhode Island Department of Revenue

Division of Taxation

Public Notice of Proposed Rule-Making

Pursuant to the provisions of 42-35-3(a)(1) of the General Laws of Rhode Island, and in accordance with the Administrative Procedures Act (Chapter 42-35 of the General Laws), The Division of Taxation hereby gives notice of its intent to issue a regulation regarding Biodiesel Fuel

The purpose of this regulation is to implement Chapter 31-36 of the Rhode Island General Laws. This Section defines manufactured biodiesel fuel. These rules govern the interpretation and application of motor fuel tax as it applies to biodiesel fuel.

The proposed regulation and concise summary of non-technical requirements and proposed new rules are available for public inspection at www.tax.ri.gov, in person at The Rhode Island Division of Taxation, or requested by e-mail at mcanole@tax.ri.gov or by calling Michael Canole at (401) 574-8729.

In the development of the proposed regulation, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by November 9, 2009 to Michael Canole, Rhode Island Division of Taxation, One Capitol Hill, Providence, RI – telephone number (401) 574-8729, or by e-mail at mcanole@tax.ri.gov. A public hearing to consider the proposed regulation will be held on November 9, 2009 at the Rhode Island Division of Taxation, One Capitol Hill, Providence, RI, at which time and place all persons interested therein will be heard. The room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing to Michael Canole at Rhode Island Division of Taxation, One Capitol Hill, Providence, RI 02908 or by calling 401 574-8729.

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Concise Summary of ALL Non-technical requirements pursuant to RIGL Section 42-35-3(a)(1)

Rules and Regulation on Biodiesel Fuel – MFT 09-01

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State of Rhode Island - Division of Taxation

Biodiesel Fuel

Regulation MFT 0 9-01

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RULE 1. PURPOSE

These rules and regulations implement Chapter 31-36 of the Rhode General Laws. This Section defines manufactured biodiesel fuel. These rules govern the interpretation and application of motor fuel tax as it applies to biodiesel fuel.

RULE 2. AUTHORITY

These rules and regulations are promulgated pursuant to RIGL §44-1-4 and RIGL §31-36-22 as amended. The rules and regulations have been prepared in accordance with the requirements of RIGL §§42-35-1 et. seq. (Rhode Island Administrative Procedures Act).

RULE 3. APPLICATION

These rules and regulations shall be liberally construed so as to permit the Division of Taxation to effectuate the purpose of Chapter §31-36 and other applicable state laws and regulations.

RULE 4. SEVERABILITY

If any provision of these rules and regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the rules and regulations shall not be affected thereby.

RULE 5. DEFINITIONS

"Fuels" includes gasoline and other volatile and inflammable liquids used or suitable for use for operating or propelling motor vehicles with internal combustion engines. This term does not include oils used for heating purposes or manufactured biodiesel fuel as defined below.

"Manufactured biodiesel fuel" means mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats which conform to ASTM D6751 specifications for use in diesel engines, that results in employment in Rhode Island at a fixed location at a manufacturing facility for biodiesel fuel.

"Manufacturing facility" is a factory at a fixed location in Rhode Island primarily engaged in the manufacturing of biodiesel fuel.

"Processing" means a series of actions or occurrences or a continuous operation, whereby a result or effect is produced.

RULE 6. GENERAL

Biodiesel fuel refers to pure fuel that has not been blended with petroleum diesel fuel. Biodiesel fuels that are processed and blended with petroleum fuels are denoted as "BXX" with "XX" representing the percentage of biodiesel contained in the blend (ex: B20 is 20% biodiesel and 80% petroleum diesel).

Biodiesel fuel that is processed and then blended with other fuels and meets the definition of manufactured biodiesel fuel in Rule 5 is exempt from motor fuel tax. To qualify for the exemption, the biodiesel fuel must be produced at a manufacturing facility in Rhode Island and sold as blended product B99 (blended so manufacturer can receive federal blending credit). A biodiesel manufacturer must receive as a raw material mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats and process these raw materials so they conform to ASTM D6751 specifications for use in diesel engines. The mere blending of biodiesel with petroleum diesel does not meet the manufacturing requirement.

If a manufacturer of biodiesel fuel does not meet (i) the specifications in accordance with ASTM D6751 and the related BQ 9000 requirements, (ii) results in employment in Rhode Island at a fixed location at a manufacturing facility for Biodiesel fuel, the product is not considered "manufactured biodiesel fuel" and would be subject to the motor fuel tax.

Motor fuel tax is due on the sale of fuels as defined in Rule 5 and RIGL 31-36-1 (4).

Manufacturers must apply for a permit to sell biodiesel fuel that is exempt from the motor fuel tax by submitting a Biodiesel Permit Application to the Rhode Island Division of Taxation. A qualifying manufacturer will be issued a certificate with a permit number and will be required to file a monthly Biodiesel Manufacturing Tax Report on a form prescribed by the Tax

Administrator. When filing the monthly Biodiesel Manufacturing Tax Report, a biodiesel fuel manufacturer is required to attach the most current BQ 9000 certification or similar certification from a certified biodiesel testing laboratory that meets the ASTM D6751 specifications.

RULE 7. EXAMPLES

Only the biodiesel percentage of the blend with petroleum diesel is exempt from motor fuel tax.

Example 1

A licensed distributor blends 200 gallons of biodiesel fuel (which is exempt from motor fuel tax) with 800 gallons of petroleum diesel (subject to motor fuel tax). The tax on this blended product is calculated as follows:

200 gallons of biodiesel / 1,000 total gallons (200 + 800) = 20% (B20)

1,000 gallons x .80 (80% is the taxable percentage of a B20 blend) = 800 gallons X .32 (the current motor fuel tax rate).

Example 2

A licensed distributor blends 200 gallons of **B20** (only 20% of this blend is biodiesel fuel and is exempt from motor fuel tax) with 800 gallons of petroleum diesel (which is subject to motor fuel tax). The tax on the blended product is calculated as follows:

200 gallons of B20 = 40 gallons (200 x .20 = 40) which is exempt from the motor fuel tax.

160 gallons of this blend of product is petroleum diesel and subject to motor fuel tax

800 gallons of petroleum diesel fuel to be blended with the B20 blend above is subject to motor fuel tax (160 gallons + 800 gallons = 960 gallons subject to motor fuel tax).

40 gallons biodiesel / 1,000 total gallons = B4

1,000 gallons x .96 (96% is the taxable percentage of a B4 blend) = 960 gallons X .32 (the current motor fuel tax rate).

RULE 8. EFFECTIVE DATE: This Regulation shall take effect January 1, 2010

DAVID SULLIVAN
TAX ADMINISTRATOR