

SC REVENUE PROCEDURE #04-2

SUBJECT: "Late Loads" and Other Supplier Return Adjustments
(Motor Fuel User Fee)

EFFECTIVE DATE: June 1, 2004

REFERENCE: S.C. Code Ann. Section 12-28-915(C) (Supp. 2000)
S.C. Code Ann. Section 12-28-1300(B) (Supp. 2000)
S.C. Code Ann. Section 12-28-1730(H) (Supp. 2002)
S.C. Code Ann. Section 12-54-90 (Supp. 2000)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2000)
S.C. Code Ann. Section 1-23-10(4) (Supp. 2003)
SC Revenue Procedure #03-1

SCOPE: The purpose of a Revenue Procedure is to provide procedural guidance to the public and Department personnel. It is a written statement issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. **A Revenue Procedure is an advisory opinion; it does not have the force or effect of law, and is not binding on the public.** It is, however, binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Introduction:

Code Section 12-28-1300 of the South Carolina Motor Fuel User Fee Code requires licensed motor fuel suppliers to file returns that accurately reflect removal of motor fuel from terminals and the motor fuel user fee due for each calendar month. Code Section 12-28-915(C) requires that these returns and the user fees due be filed with the Department no later than the twenty-second day of the following month. For example, fuel removed from a terminal during the month of April must be reported on the April return that must be filed no later than May 22nd.

From time to time fuel that is removed from a terminal late in the month will not be reported on the return for the month. These are generally referred to as "late loads." For example, fuel removed from a terminal on April 30th may not be reported by the supplier on the April return (which must be filed no later than May 22nd).

Unlike returns filed with respect to other taxes and fees, the motor fuel user fee returns filed by suppliers list every transaction in which motor fuel is removed from the terminal. While filing these returns has become easier as a result of modern technology and while these returns can be

filed electronically, there are still circumstances in which a load of motor fuel will not be properly listed on the return for the month it was removed from the terminal.

This advisory opinion will establish a procedure for reporting “late loads” that will consider the situations in which late loads will occur, the unique nature of the massive amount of information required on a supplier’s monthly motor fuel user fee return, the technology for electronically filing and maintaining this information, the requirements of the motor fuel law, the Department’s authority with respect to penalties, and the Department’s goal of fostering voluntary compliance by easing taxpayers’ administrative burden.

Law:

Code Section 12-28-310 imposes the user fee on gasoline and diesel fuel and states:

Subject to the exemptions provided in this chapter, a user fee of sixteen cents a gallon is imposed on all gasoline used or consumed in this State and upon all diesel fuel used or consumed in this State in producing or generating power for propelling motor vehicles. The user fee levied on motor fuel subject to the user fee pursuant to this chapter is a levy and assessment on the consumer, and the levy and assessment on other persons as specified in this chapter are as agents of the State for the collection of the user fee. This section does not affect the method of collecting the user fee as provided in this chapter. The user fee imposed by this section must be collected and paid at those times, in the manner, and by those persons specified in this chapter. The license user fee imposed by this section shall be in lieu of all sales, use, or other excise tax which may otherwise be imposed by any municipality, county, or other local political subdivision of the State. (Emphasis added.)

Code Section 12-28-520 establishes the measure of the user fee and states:

(A) Except as provided in Section 12-28-510, the user fee imposed by this chapter on the use of motor fuel subject to the user fee must be measured by invoiced gallons of motor fuel subject to the user fee removed, other than by a bulk transfer, by a licensed supplier from a qualified terminal or refinery within this State, and from a qualified terminal or refinery outside this State for delivery to a location in South Carolina as represented on the shipping papers if the supplier imports the motor fuel subject to the user fee for his own account or the supplier has made a user fee pre-collection election under Section 12-28-910. This user fee otherwise generally must be determined in the same manner as the tax imposed by Section 4081 of the Internal Revenue Code of 1986, or the Code of Federal Regulations as it exists as of January 1, 1995, or as subsequently modified.

(B) The user fee imposed by this chapter on use of motor fuel subject to the user fee in this State as measured by gallons removed by a supplier, or terminal operator, from terminals in this State must be complemented by a user fee measured annually at each terminal in this State by the amount by which net gallons lost or unaccounted for, including transmix, within each terminal exceed

the sum of net gallon gains plus one-half of one percent times the number of all net gallons removed from the terminal across the rack or in bulk. (Emphasis added.)

Code Section 12-28-915 concerns the user fee collected and remitted by supplier and the due date for the return, and states:

(A) The user fee imposed by Section 12-28-310 measured by motor fuel subject to the user fee removed by a licensed supplier from a terminal or refinery in this State other than a bulk transfer, must be collected and remitted to the State by the supplier, as shown in the terminal operator's records, who removes the gallons subject to the user fee.

(B) The supplier and each reseller shall list the amount of user fees as a separate line item on all invoices or billings.

(C) All user fees to be paid by a supplier with respect to gallons removed on his account during a calendar month is due and payable before the twenty-second day of the following month unless the day falls upon a weekend or state or banking holiday in which case the liability is due the next succeeding business day.

(D) A supplier shall give notification of late user fees remitted to the supplier by an eligible purchaser and give timely notification to the department of late remittances if that supplier previously gave notice to the department of an uncollectible user fee amount pursuant to Section 12-28-940(B). (Emphasis added.)

Code Section 12-28-1300 concerns the information required on each month's return, and states:

(A) For the purpose of determining the amount of motor fuel user fees due, every supplier shall file with the department, on forms prescribed and furnished by the department, a verified statement by the supplier. The department may require the reporting of information reasonably necessary to determine the amount of motor fuel user fees due.

(B) The reports required by this article must be filed with respect to information for the preceding calendar month on or before the twenty-second day of the current month.

(C) The supplier report required by this section must include the following information, with respect to billed gallons of motor fuel subject to the user fee, for all products in the aggregate, and the supplier shall identify if the billed gallon is net or gross:

(1) all shipments of motor fuel subject to the user fee removed from a terminal in this State as to which the user fee imposed by this chapter previously was paid or accrued for direct delivery outside this State by the exporter;

- (2) removal of gallons of diesel fuel or heating oil from terminals in this State by the reporting supplier, user fee exempt, as to which dye has been added in accordance with Sections 12-28-710(A)(9) and 12-28-785;
- (3) removal of gallons of motor fuel from terminals in this State by the reporting supplier, user fee exempt, for export from this State by that supplier and as to which the proper motor fuel user fee for that other destination state has been collected or accrued by the reporting supplier at the time of removal from the terminal, sorted by state of destination;
- (4) removal of gallons of motor fuel from terminals in this State by the reporting supplier, destination state user fee exempt, for export by the persons, sorted by state of destination under claim of destination state user fee exemption for an exempt use recognized by the department under Section 12-28-710(A)(1)(c);
- (5) removal of gallons of motor fuel from terminals in this State by the reporting supplier, user fee exempt, for sale to exporters, for export by the persons, and as to which the proper motor fuel user fee for that other destination state has been collected or accrued by the reporting supplier at the time of removal from the terminal, sorted by state of destination;
- (6) removal of gallons of motor fuel from terminals within this State for sale by the reporting supplier directly to the United States Government and its agencies or instrumentalities, or United States military posts;
- (7) removal of gallons of motor fuel from terminals within this State for sale by the reporting supplier directly to end users other than the federal government, its agencies and instrumentalities, and United States military posts, for any other exempt use for which the end users properly have assigned refund claims to the ultimate vendor and each distributor in the chain including the reporting supplier;
- (8) total removals in this State;
- (9) removal of gallons of motor fuel from a terminal in another state by the reporting supplier, for sale to a licensed importer, user fee exempt, for import into this State by that licensed importer.
- (10) removal of gallons of motor fuel from a terminal in another state by the reporting supplier for import other than by bulk transfer by that supplier into this State, or for sale by the reporting supplier to a person for import into this State by that person, and in either case, as to which this state's user fee was accrued by the reporting supplier at the time of removal from the out-of-state terminal;
- (11) removal of gallons of diesel fuel or heating oil from a terminal in another state by the reporting supplier, for import or for sale for import into this State, as to which dye has been added in accordance with Sections 12-28-710(A)(9) and 12-28-785;
- (12) total removals from out-of-state terminals with this State as the state of destination;
- (13) corrections made by the supplier pursuant to Section 12-28-1525 for changes in destination state which affect the supplier's or his customer's user fee liability to this State;
- (14) gallons removed by the supplier from a terminal within or without this State and sold to another distributor for resale to an end user for an exempt purpose as to which a refund claim has been assigned by all parties to the supplier;

(15) other information which the department in its discretion determines is reasonably required to determine user fee liability under this chapter.

(D) Every licensed supplier or permissive supplier separately shall disclose and identify in a written statement to the department with the supplier or permissive supplier report any removal and sale from the bulk transfer/terminal system in another state by that supplier to a person other than a licensed supplier, permissive supplier, or importer of gallons of motor fuel subject to the user fee, other than diesel fuel dyed in accordance with Sections 12-28-710(A)(9) and 12-28-785(1) which gallons are destined for this State, as shown by the terminal-issued shipping paper, and as to which gallons the user fee imposed by this chapter has not been collected or accrued by the supplier upon removal. A person who knowingly violates or knowingly aids or abets another to violate this subdivision is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

(E) Each supplier separately shall identify each sale of K-1 kerosene, other than dyed diesel fuel, sold free of user fees in accordance with reporting requirements established by the department.

Based on the above code sections, the user fee imposed on gasoline and diesel fuel is measured by the gallons removed from the terminal by the supplier during the calendar month. Information concerning such removals must be reported by the twenty-second of the month following the calendar month in which the gasoline or diesel fuel was removed from the terminal. Therefore, each month must represent the activity that occurred during a particular calendar month.

Code Section 12-28-1300(A) states that these returns must be filed “on forms prescribed and furnished by the department.” Code Section 12-54-250 concerns the Department’s authority to require payment with immediately available funds, and states:

(A) The South Carolina Department of Revenue may require, consistent with the cash management policies of the State Treasurer, that any person owing fifteen thousand dollars or more in connection with any return, report, or other document to be filed with the department shall pay the tax liability to the State no later than the date the payment is required by law to be made in funds which are available immediately to the State on the date of payment. Payment in immediately available funds may be made by any means established by the department, with the approval of the State Treasurer, which ensures the availability of those funds to the State on the date of payment. Evidence of the payment must be furnished to the department on or before the due date of the tax as provided by law. Failure to make timely payment in immediately available funds or failure to provide evidence of payment in a timely manner subjects the taxpayer to penalties and interest as provided by law for delinquent or deficient tax payments.

(B) The department by rule may prescribe alternative periodic filing and payment dates later than the dates otherwise provided by law for any taxes collected by the department in those instances where it is considered to be in the best interest of

the State. An alternative date may not be later than the last day of the month in which the tax was otherwise due.

(C) The department may prescribe rules and the State Treasurer banking procedures necessary for the administration of the provisions of this section.

(D) The department may prescribe alternative means other than paper to file returns and reporting documents necessary for the administration of this section.

(E) Payment by immediately available funds and filing of the return are considered simultaneous acts with respect to penalties and interest for failure to file and failure to pay. Penalties and interest must be calculated based on the later of the return postmark date or payment date. (Emphasis added.)

Finally, pursuant to Code Section 12-60-30, the term “tax” as used in Chapter 54 includes all fees imposed under Title 12. Therefore, the provisions of Code Section 12-54-250, as cited above, apply to the motor fuel user fee.

Based on the above, the Department may require suppliers, under certain circumstances, to file the monthly motor fuel user fee return and to remit the user fee due electronically.

Finally, under procedures established by the Department, the Department may reduce or waive penalties. See Code Section 12-54-160.

Procedure:

(A) Effective June 1, 2004, the Department has established the following procedure with respect to suppliers motor fuel user fee returns that are filed electronically and “late loads” or other prior period adjustments:

(1) A supplier may include late loads in the current month’s return without interest or penalty being assessed provided the late load is the result of a transaction (removal of fuel from the terminal) that occurred in the month immediately prior to the current month and the current month’s return, and the user fees due with that return, are timely filed and paid.

For example, a transaction that occurred in February, but that was not included on the February return when it was filed on or before March 22nd (late load), may be included on the March return which is due on April 22nd without interest or penalties being assessed, provided the March return, and the user fees due with the March return, are timely filed and paid.

Note: While a supplier may include a late load in a current month’s return as outlined above, the supplier still has the option of filing a traditional amended return to report the late loads in the month in which the transaction occurred. Interest and penalties will not be assessed provided the traditional amended return and user fees are filed and paid by the due date of the return for the following month. For example, if a traditional amended

return is filed for February to include a late load inadvertently not included on the original February return, interest and penalties will not be due if the amended return and user fees due are filed and paid by April 22nd (the due date of the return for the following month (March)).

(2) A supplier should **not** include late loads in the current month's return and should file a separate amended return if the late load is the result of a transaction (removal of fuel from the terminal) that occurred earlier than the month immediately prior to the current month return.

For example, if a transaction occurred in January, but that was not included on the January or February returns when filed, the transaction should **not** be included on the March return or any return thereafter since the late load is the result of a transaction (removal of fuel from the terminal) that occurred earlier than the month immediately prior to the current month return. A separate amended return for January should be filed to report this late load and to pay the user fee associated with this late load. All applicable interest and penalties will apply to the user fee associated with this late load.

(B) Notwithstanding the above procedures, all applicable interest and penalties that would otherwise be waived under the above procedures will be assessed on a late load transaction if it is determined that the exclusion of a transaction from the proper month's return was due to gross negligence or was a deliberate attempt to delay the payment of the user fee.

(C) Refusal to file a separate amended return under the procedures established above, or the exclusion of a transaction from the proper month's return due to gross negligence or due to a deliberate attempt to delay the payment of the user fee, may result in revocation of all licenses held by the supplier (SC Code Section 12-54-90).

Note: For purposes of the above procedure, any reference to motor fuel user fees includes the environmental impact fees and inspection fees imposed and collected pursuant to Chapter 28 of Title 12.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III
Burnet R. Maybank III, Director

May 13, 2004
Columbia, South Carolina