



PTSA

Petroleum Transportation & Storage Association

REGULATORY ALERT

September 16, 2005

LUST FUND TAX APPLIES TO DYED DIESEL AND KEROSENE BEGINNING 10/01/05

ISSUE: The 1/10 of a cent per gallon federal Leaking Underground Storage Tank trust fund tax is imposed on dyed diesel fuel and dyed kerosene beginning October 1, 2005. The change was mandated by Congress under the Safe Accountable, Flexible, Efficient Transportation: Legacy for Users Act of 2005 (the highway bill H.R. 3).

BACKGROUND: The LUST tax has been imposed on gasoline and clear diesel fuel since the late 1980s. The 1/10th of a cent per gallon LUST tax was added to clear kerosene when Congress imposed the 23.3 cents per gallon federal excise tax on kerosene several years ago. However, dyed diesel fuel and dyed kerosene were exempt from the LUST tax *until now*.

COMPLIANCE:

- The LUST tax is imposed at the terminal rack on dyed diesel fuel and dyed kerosene beginning 10/01/05.
 - The 1/10 of a cent per gallon LUST tax is *paid by refiners* and often passed down in the form of a surcharge or price increase.
 - The LUST tax *may* appear on supplier shipping papers or bills of lading as a separate line item as a way to explain the 1/10 of a cent per gallon price increase, but petroleum marketers *are not required* to list the LUST tax on invoices.
 - The LUST tax is **non-refundable** even for sales made to tax exempt users.
 - IRS tax rates for *claims involving sales to tax exempt users (state and local governments) are as follows:
 - 24.3 cents per gallon for clear diesel fuel and clear kerosene, and
 - 18.3 cents per gallon for gasoline.
- * Farmers *must* file their own claims beginning October 1.
- Do not add the 1/10 of a cent per gallon LUST tax to IRS claims. The LUST tax is non-refundable and the IRS will reject your claim.

Got Questions? Contact Mark S. Morgan, Esq. at mmorganpts@cox.net or (202) 364-6767