

Fuel Excise Tax Refunds

Introduction

From time to time, municipalities receive letters from tax refund collection agencies offering to assist them in the recovery of federal fuel tax refunds, and to check for possible refunds on other excise taxes. The fee for this service is generally one-third of the refund collected. If you do decide to execute a contract with a tax refund collection agency, we suggest that you have your local attorney review it. You may want to consider filing for the fuel tax refund on your own.

Federal Excise Tax

The federal government has an excise tax of \$.184/gallon on all gasoline sold and \$.244 on all diesel sold. However, local governmental entities are exempt from this tax, though they often pay it at the pump. Getting this tax refunded is simply a matter of filing a Form 8849, including Schedule 1, with the Internal Revenue Service. The only information you need is your municipality's name, address, taxpayer identification number (TIN), telephone number, month your fiscal year ends, and number of gallons of gasoline on which the municipality paid fuel tax during the year.

For once, the form is simple. Your identification information goes at the top and you check the box opposite Schedule 1. Schedule 1 requires only the name of the city/village and the TIN at the top. Then complete line 1, Nontaxable Use of Gasoline and Gasohol. The type of use is 14; the rate (currently) is \$.184; "gallons" is the number of gallons of gasoline on which you paid the fuel tax. The amount of the refund is $\$.184 \times \text{number of gallons used}$ (e.g. if you used 1,000 gallons of gasoline during the year this refund would be $1000 \times .184$, or \$184.00). Similar calculations are required for diesel and undyed kerosene—both of these are currently taxed at \$.244. You can total the refund amounts and enter it in the "Total Refund" box at the top of the form. Have the form signed and send it to the IRS, Cincinnati, OH 45999-0002.

Other federal excise taxes from which local governments are exempt are tax on heavy trucks, trailers and tractors, and luxury tax. You are less likely to have been charged these excise taxes. If you feel you have paid them in error, you can file for a refund on Form 8849 with Schedule 6 (www.irs.gov/pub/irs-pdf/f8849s6.pdf) which you may also download. You will probably want to have your accountant/auditor help you with this.

State Gasoline Tax

Local governments are also exempt from the state gasoline tax. To begin the claims process, contact the Department of Treasury at 517-636-4600.



Fuel Tax Exemptions for Government Entities

Federal Excise Tax Refund Guidelines for Fuel Used by Governments

Generally, federal excise taxes are imposed on taxable fuels, (i.e., gasoline, kerosene, and diesel), when removed from a taxable fuel terminal. Federal law provides a fuel excise tax exemption for the sale of any liquid used as a fuel in a motor vehicle, motorboat, or aircraft for the exclusive use of any state, or any political subdivision of a governmental entity, or the District of Columbia. This fuel excise tax exemption does not include Leaking Underground Storage Tank (LUST) tax.

A local government includes any political subdivision of a state. An Indian tribal government is treated as a state only if the fuel is used in an activity that involves the exercise of an essential tribal government function. (**Note:** The American Red Cross is treated as a state for fuel excise tax exemption purposes.)

To qualify for tax-free treatment, a government entity must purchase the fuel for its own exclusive use. A resale of taxable fuel from one governmental entity to a second governmental entity, for its own exclusive use, is permissible. A sale from a governmental entity to a nonprofit education organization, other than the American Red Cross, does not qualify as exclusive use by a government.

The evidence required for a governmental entity tax-free sale is a certificate, executed and signed by an officer or employee authorized by the governmental entity to execute and sign the certificate. In cases where it is impracticable to furnish a separate certificate, due to purchase frequency, a certificate covering orders between specific dates (not to exceed one year) is acceptable. The certificates and proper records of invoices, orders, etc., relative to tax-free sales must be retained by the fuel distributor (ultimate vendor) and credit card issuer.

In general, a fuel distributor (ultimate vendor) sells tax-free fuel to a governmental entity and submits a claim for refund of the fuel excise tax, if they paid federal excise tax on the fuel, have not collected the federal excise tax from the governmental entity, and are registered under Internal Revenue Code section 4101.

In the case where a fuel card (credit card) is issued to a governmental entity for use in purchasing tax exempt fuel, the person extending the credit to the governmental entity is entitled to the fuel excise tax refund, as long as the person extending the credit:

1. Is registered under section 4101, and
2. Has established, under the section 48.4101 Regulations, that such person:
 1. has not collected the amount of the tax from the person who purchased the article, or
 2. has obtained the written consent from the ultimate purchaser to the allowance of the credit or refund, and
3. Has established that such person has:
 1. repaid or agreed to repay the amount of the tax to the ultimate vendor,
 2. obtained the written consent of the ultimate vendor to the allowance of the credit or refund, or
 3. otherwise made arrangements that directly or indirectly provide the ultimate vendor with reimbursement of the tax.

If the person extending the credit fails to meet the above requirements, the law limits the claim to the governmental entity (ultimate purchaser). In this case, the person extending the credit shall collect the tax from the governmental entity so that a claim can be filed.

As noted above, to purchase tax free fuel, a certificate, (model M for gasoline and Model P for diesel and kerosene; see Publication 510), must be executed and retained by the fuel distributor or credit card issuer.

Note: Generally, a governmental entity cannot submit a fuel excise tax claim for refund of diesel fuel, kerosene, kerosene for use in aviation, gasoline, or aviation gasoline, unless the purchase was made with a fuel credit card.

In summary, claims may only be filed as follows:

1. By the registered credit card issuer if the governmental entity or local government (or nonprofit educational organization if applicable) used a credit card and the credit card issuer meets the requirements.
2. By the registered ultimate vendor if the ultimate purchaser did not use a credit card and the ultimate vendor meets the requirements.
3. By the ultimate purchaser if the ultimate purchaser used a credit card and neither the registered credit card issuer nor the registered ultimate vendor is eligible to make the claim.

Governmental entities should exercise care in the purchase of fuel to ensure that the fuel supplier or credit card issuer meets the necessary requirements to process tax exempt transactions.

Additional Information on motor fuel excise tax and fuel credits is provided in Publication 510, Excise Taxes and Form 884, Claim for Refund of Excise Taxes. Contact Ron Sass, Senior Tax Fuel Policy Analyst, at Ronald.D.Sass@irs.gov, with any questions regarding this document.

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