CAT 2013-04/PAT 2013-01 - Commercial Activity Tax & Petroleum Activity Tax: New CAT Exclusion and Replacement Tax –Issued October, 2013; Updated February, 2014

The purpose of this information release is to provide guidance following the recent legislative change in Am. Sub. H.B. 59 of the 130th General Assembly, which impacts receipts from the sale and other disposition of motor fuel for purposes of the commercial activity tax (CAT) and the petroleum activity tax (PAT).

CAT Exclusion

Beginning on July 1, 2014, receipts from the sale, transfer, exchange, or other disposition of motor fuel will be excluded from the definition of gross receipts for purposes of the CAT. At that time, suppliers of motor fuel will pay the replacement PAT, which is a gross receipts tax modeled after the CAT, measured by a supplier's gross receipts from the sale, transfer, exchange, or other disposition of motor fuel in this state.

PAT – In General

Beginning on July 1, 2014, the PAT is levied on the supplier of motor fuel and measured by the supplier's gross receipts from the first sale, transfer, exchange, or other disposition of motor fuel in Ohio to a point outside of the distribution system. The PAT is levied at a rate of 0.65%. Unlike the CAT, there is no annual minimum tax (AMT), nor is there an exclusion corresponding to that AMT.

Who is defined as a Supplier (i.e., taxpayer)?

The PAT is imposed on the "supplier". A "supplier" of motor fuel is any person that meets one of the following requirements:

(1) Sells, transfers, or otherwise distributes motor fuel from a terminal or refinery rack to a location in this state and that point is outside of a distribution system; or

(2) Imports or causes the importation of motor fuel for sale, exchange, transfer, or other distribution by the person to location in this state and that point is outside of a distribution system.

Example: An Ohio licensed motor fuel dealer obtains motor fuel in a bulk lot vehicle from a motor fuel dealer in Indiana and transports the fuel to its customers in Northwest Ohio. The dealer is a supplier because the dealer imported motor fuel into Ohio for sale to a point outside of the distribution system.

Example: A terminal operates as a corporation. Such terminal does not own title to any fuel stored at the terminal's location. Position holders are the owners of the fuel and pay the terminal a fee for storage of the fuel. Because the terminal does not own the fuel and is not selling, exchanging, transferring, or otherwise distributing the motor fuel, the terminal is not the supplier of this fuel. However, the position holder is considered a supplier for purposes of the PAT.

What is Motor Fuel?

Motor fuel has the same meaning as that in Chapter 5735 of the Revised Code (R.C.). "Motor fuel" means gasoline, diesel fuel, K-1 kerosene, or any other liquid motor fuel, including, but not limited to, liquid petroleum gas or liquid natural gas, but excluding substances prepackaged and sold in containers of five gallons or less. *See* R.C. 5736.01 referencing R.C. 5735.01.

What is the Distribution System?

The distribution system is the bulk transfer or terminal system for the distribution of motor fuel. The distribution system consists of refineries, pipelines, marine vessels (i.e., barges), and terminals. The distribution system does not include ground transportation, such as tank cars, rail cars, trailers, or trucks.

What are Gross Receipts?

Gross receipts are broadly defined in R.C. 5736.01(E), as "the total amount realized by a person, without deduction for the cost of goods sold or other expenses incurred, from the first sale of motor fuel" within Ohio. However, there are four exclusions from the definition of gross receipts.

- **Exports**.

Any fuel sold by a supplier to a point outside of Ohio is <u>not</u> included in the supplier's tax base for purposes of the PAT.

Example: An Ohio licensed motor fuel dealer purchases motor fuel from a supplier at a terminal. The terminal dispenses the motor fuel into a bulk lot vehicle. The motor fuel dealer then takes the product to Indiana for delivery to a retail customer. The dealer can show on the bill of lading that the product was delivered to a location outside of Ohio (i.e., Indiana). As such, the supplier may exclude the receipts from that sale from the supplier's gross receipts pursuant to R.C. 5736.01(E)(1).

- **Federal and State Excise Taxes**.

Current Excise Tax Rates for Motor Fuel (per gallon)		
	Federal	State
Motor Fuel – Gasoline	$0.184	$0.28
Motor Fuel – Other than Gasoline	$0.244	$0.28

- **Bad Debts**.

- **Receipts from the Sale of an Account Receivable**.

Licensing

All suppliers that will be subject to the PAT as of July 1, 2014 must apply for a license with the Tax Commissioner on or before March 1, 2014. A new supplier should obtain a license within thirty days of engaging in the distribution or importation of motor fuel into Ohio for consumption. All suppliers are required to renew their licenses each year on or before March 1. The following license fees apply to suppliers:

Applicant that solely imports or causes the importation of motor fuel for sale, exchange, or transfer in this state	$300
Applicant that sells, transfers, exchanges, or otherwise disposes of motor fuel to a point outside of the distribution system	$1,000
Applicant that operates as both an importer and a distributor of fuel for purposes of the PAT	$1,000[1]

Returns and Payment

Due Dates for Quarterly Returns		
	Tax Period	Due Date
1st Quarter	January 1 – March 31	May 10
2nd Quarter	April 1 – June 30	August 10
3rd Quarter	July 1 – September 30	November 10
4th Quarter	October 1 – December 31	February 10

Each supplier is required to file a quarterly return electronically on the tenth day of May, August, November, and February.[2]

A supplier will be required to identify on its return those receipts attributable to motor fuel used for propelling vehicles on public highways, railways, and waterways compared with all other receipts. The bifurcation is necessary to ensure proper distribution of revenue from the tax.

Penalties

[1] Only one license fee applies to each supplier, so in the event an applicant qualifies as both an importer and a distributor, the licensing fee is $1,000, total.

[2] The Department will work through the Joint Committee on Agency Rule Review (JCARR) to mandate the electronic filing and payment of the PAT.

Civil penalties are generally imposed on the taxpayer at the point of an assessment.

Failure to Timely File a Return or Pay	$50 or 10% of the Tax Required to be Paid
Additional Tax Found Due	Up to 15% of the Additional Tax Found Due
Failure to File and Pay Electronically	First two calendar quarters – 5% of the Payment Amount Subsequent calendar quarters – 10% of the Payment Amount

Criminal penalties may be imposed on the taxpayer for filing a fraudulent return; engaging in distributing, importing, or causing the importation of motor fuel for consumption in this state without a license; or violating any provision of Chapter 5736.

Refunds

A refund may only be requested by a taxpayer for the amount of PAT that was overpaid, paid illegally or erroneously, or paid on any illegal or erroneous assessment. Since the PAT is imposed on the supplier and not the supplier's customer, unlike the motor fuel tax, there is no provision for a non-taxpayer to request a refund of the tax paid.

Example: A supplier sold motor fuel to an Ohio-licensed motor fuel dealer at a terminal point in Northeast Ohio. The motor fuel dealer picked up the fuel and, pursuant to shipping documents, was going to transport the fuel to Youngstown, OH. However, once the fuel was picked up from the terminal, it was diverted to Sharon, PA. The supplier originally reported this amount as a gross receipt for purposes of the PAT. The supplier may request a refund of the amount of PAT paid on this sale. However, the supplier must be able to document the diversion in order to request a refund.

Example: A supplier sold motor fuel to an Ohio-licensed motor fuel dealer for highway use. Ultimately, the retail dealer sells the fuel to a farmer for off-road usage. Since the same rate applies for both fuel used to propel vehicles on public highways, waterways, and railways as fuel that is not, there is no avenue for refund for receipts attributable to that sale of fuel.

Please contact the CAT Division at 1-888-722-8829 with questions regarding this release.