



DEFENSE LOGISTICS AGENCY
DEFENSE ENERGY SUPPORT CENTER
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IN REPLY
REFER TO DESC-CPA

JUL 07 2004

CONTRACTING INSTRUCTION (CI): 04-11
MEMORANDUM FOR CI Distribution

SUBJECT: Application of Federal Excise Tax to Specific Products.

This CI is being issued to update tax coverage in DEPI 29.2 by adding 29.202(101), which describes the tax rules, by product type, for Federal Excise Taxes. The new coverage is written to enable accuracy and consistency among Commodity Business Units (CBUs) in the application of Federal Excise taxes.

This CI is effective immediately and expires upon inclusion in the DEPI. Point of contact is Cheryl Creason, extension 8471.

GABRIELLA M. EARHARDT
Center Senior Procurement Official

Attachment:
DEPI coverage



PART 29

TAXES

SUBPART 29.2 FEDERAL EXCISE TAXES

29.202 General exemptions

(101) Application of FET to specific products

(a) In some cases, Defense Energy Support Center (DESC) is exempt from Federal Excise (FET) taxes. Sometimes a tax exemption certificate may be required by the supplier at time of award. In some cases, DESC pays the tax and applies for a refund. In other cases, DESC pays FET because it is not exempt.

(b) There are occasions when DESC does not owe FET and a tax exemption certificate is not required. For example, DESC does not pay FET for overseas acquisitions. (However, there are some special rules that apply and are discussed below when purchasing for import or export.) F76 is non-taxable per Federal Code.

(c) There are some products to which FET does not apply because the fuel can only be used for a non-taxable purpose, e.g., dyed fuels. Refer to the Current State Fuel Tax Compilation, which can be accessed at the DESC web page under "Doing Business with DESC/Tax Compilation/Current State Fuel Tax Compilation". There is a listing of applicable FETs after the introduction and the list of individual states. If still unsure if tax is applicable, contact the Office of Counsel (DESC-G) for an interpretation.

(d) Jet fuel used in a vessel of war (military aircraft) and kerosene used in an aircraft are always exempt from FET. When awarding contracts for these items, the Contracting Officer/Contract Specialist will provide tax-exempt certificates to our suppliers. These certificates are DESC forms 29.2 and 29.3 and may be found on the Q drive at Q\C\Forms. More specific guidance concerning military jet fuels can be found at (102).

(e) For commercial jet fuel, DESC pays the FET and Defense Finance and Accounting Services (DFAS) applies for reimbursement. Into-plane jet fuel products as well as J50, JA1, JAA, and JAB are commercial jet fuels.

(f) The U.S. Government is not exempt from FET on gasoline and diesel used in vehicles. See the appropriate list in the Fuel Tax Tabulation for information on specific products.

(g) Import/export. FET does not apply to fuel that is exported from the United States. The most common DESC situation is movement of fuel from the terminal rack by pipeline into a tanker or barge and transportation of that fuel outside the United States. In that case, the fuel never "breaks rack" so tax would not apply; it is an entirely tax free transaction. DESC does not have to provide a tax exemption certificate to the vendor. If the fuel moves in such a way that tax is applicable, and the fuel is exported, under 26 USC § 6416(b)(2), DESC's vendor does not have to collect the tax from DESC if DESC supplies proof of export paperwork to the vendor as "position holder" before the vendor has to file its next tax return. The vendor could take a credit on its return based on the proof of exportation. The paperwork does not necessarily have to be a certificate; it can be a bill of lading or other documentation showing export from DESC or the Activity's records. If the above does not apply to your situation, contact DESC-G for further guidance.