

Please note that the following Policy Statement, although correct at the time of issue, may not have been updated to reflect any subsequent legislative changes.

ET/SL Policy Statement

EP-001 The Meaning of the Term “Heating Oil” for the Purpose of the Definition of “Diesel Fuel” in Subsection 2(1) of the *Excise Tax Act* (ETA)

Date of Issue

April 29, 2002

Subject

THE MEANING OF THE TERM “HEATING OIL” FOR THE PURPOSE OF THE DEFINITION OF “DIESEL FUEL” IN SUBSECTION 2(1) OF THE *EXCISE TAX ACT* (ETA)

Legislative Reference(s)

Subsection 2(1) of the ETA

National Coding System File Number(s)

52100-10

Issue and Decision

Subsection 2(1) of the ETA defines “diesel fuel” to include,

any fuel oil that is suitable for use in internal combustion engines of the compression-ignition type, other than any such fuel oil that is intended for use and is actually used as **heating oil**.

The meaning of the term “heating oil” is not defined in the ETA. Historically, the Canada Customs and Revenue Agency (CCRA) has interpreted the term in accordance with its “ordinary meaning” to mean,

any fuel oil for use in heating homes, buildings, or other rooms or structures that are regularly or habitually occupied by persons or whose primary function or purpose is to house equipment or goods, but where persons would be present, at least from time to time.

However, in a recent court decision, it was ruled that the term “heating oil” is to be interpreted in accordance with its “technical meaning”.

In this regard, the CCRA's position is that the term "heating oil" means,

any fuel oil for use in oil-burning equipment for the generation of heat for domestic or industrial purposes.

Furthermore, the CCRA construes the term "oil-burning equipment" to mean,

any liquid-fuel-burning device that contains a burner to produce an open flame but does not include internal combustion engines.

Examples of oil-burning equipment include oil-burners, boilers and furnaces.

Determinative Factors

The CCRA's new position concerning the meaning of the term "heating oil" does not change the fact that heating oil is conditionally excluded from the definition of "diesel fuel" in subsection 2(1) of the ETA based on two determining factors: the intended use of the fuel oil **and** the actual use of the fuel oil.

The CCRA maintains its existing policy of examining how a fuel oil is manufactured and marketed in determining the intended use of the fuel oil. In this regard, a fuel oil will be considered to be intended for use as heating oil where it is manufactured and marketed commercially for use in oil-burning equipment.

The CCRA also maintains its existing policy of examining the end-use of a fuel oil in determining the actual use of the fuel oil. In this regard, a fuel oil will be considered to be actually used as heating oil where it is in fact consumed in oil-burning equipment.

The CCRA recognizes that it may be difficult for licensed manufacturers or producers to ensure that fuel oils are actually consumed in a manner consistent with how they are manufactured and marketed, especially given that manufacturers frequently sell fuel oils to licensed wholesalers or other distributors and not directly to end-users. In this regard, any fuel oil intended by the licensed manufacturer or producer for use as "heating oil" will be conditionally excluded from excise tax and permitted to be sold through the distribution chain on an excise tax-excluded basis. This is, of course, on condition that it is sold to a licensed wholesaler or other distributor of fuel oil who subsequently sells it to an end-user for actual use as "heating oil" and not diverted to a taxable sale or use.

Other Factors

The CCRA acknowledges that some fuel oils are used interchangeably between oil-burning equipment and internal combustion engines of the compression-ignition type regardless of the intended use of the fuel oil. Where the actual use of the fuel oil varies from its intended use, the CCRA has traditionally and will continue to place a greater

emphasis on the actual use of the fuel oil in determining whether the fuel oil is subject to excise tax.

1. Persons who purchase commercial diesel fuel for use **exclusively** as heating oil (i.e., for use in oil-burning equipment) will be permitted to purchase the fuel oil on an excise tax-excluded basis. To substantiate their usage claim, the purchaser should provide a written certificate of exemption to his supplier at the time of purchase in order to receive the fuel oil exempt from excise tax. The certificate of exemption should read,

We hereby certify that this diesel fuel/fuel oil is for excise tax-excluded purposes provided for in subsection 2(1) of the *Excise Tax Act* and is for use by us exclusively as heating oil.

Signature of Purchaser

The supplier may then file a refund application with the CCRA to recover any excise tax paid on the diesel fuel.

2. Pursuant to subsection 23(9.1) of the ETA, any heating oil that is purchased or imported without payment of excise tax is subject to tax when the fuel oil is sold or appropriated for a purpose for which the excise tax on diesel fuel is payable (e.g., for use in internal combustion engines of the compression-ignition type). The tax is payable by the person who sells or appropriates the heating oil for a purpose for which the excise tax on diesel fuel is payable at the following time:

- where the heating oil is sold for a purpose for which the excise tax on diesel fuel is payable, at the time of delivery to the purchaser; and
- where the heating oil is appropriated for a purpose for which the excise tax on diesel fuel is payable, at the time of that appropriation.

As a result of these provisions, a licensed manufacturer or producer, as well as a licensed wholesaler or other distributor of fuel oil is required to account for excise tax on any heating oil that he knowingly sells for use in internal combustion engines of the compression-ignition type. If the heating oil is appropriated for use in internal combustion engines of the compression-ignition type after the time of purchase then the person who appropriates the fuel oil is required to account for excise tax at that time.

Example #1

Facts

1. A paving contractor purchases commercial heating oil for use in the production of asphalt.
2. The fuel oil has been sold through the distribution chain on an excise tax-excluded basis as it was intended for use as heating oil.
3. The fuel oil is consumed in a mobile oil-burner.

Issue

Is the fuel oil considered to be “heating oil” for the purpose of the definition of “diesel fuel” in subsection 2(1) of the ETA?

Comments

The fuel oil used by the paving contractor in the production of asphalt is considered to be “heating oil” for the purpose of the definition of “diesel fuel” in subsection 2(1) of the ETA and is not subject to excise tax.

The fuel oil is both intended for use and is actually used in oil-burning equipment and therefore qualifies as heating oil.

Example #2

Facts

1. A paving contractor intends to purchase commercial diesel fuel for use in the production of asphalt.
2. The fuel oil has been sold through the distribution chain on an excise tax-paid basis as it was intended for use as diesel fuel.
3. The fuel oil is to be consumed exclusively in a mobile oil-burner.

Issue

Is the fuel oil considered to be “heating oil” for the purpose of the definition of “diesel fuel” in subsection 2(1) of the ETA?

Comments

The fuel oil used by the paving contractor in the production of asphalt is considered to be “heating oil” for the purpose of the definition of “diesel fuel” in subsection 2(1) of the ETA and is not subject to excise tax.

The paving contractor should provide a written certificate of exemption to his supplier at the time of purchase in order to obtain the fuel oil exempt from excise tax. The supplier may then file a refund application with the CCRA in order to recover the excise tax paid on the fuel oil.

Although the fuel oil is not intended for use as heating oil by the manufacturer, it is to be used **exclusively** in oil-burning equipment and therefore qualifies as heating oil. If the fuel oil is not actually used in oil-burning equipment then the paving contractor will be liable to pay excise tax on the fuel oil when it is diverted to a taxable sale or use.

Example #3

Facts

1. A farmer buys commercial heating oil for use in heating buildings on his farm. The fuel oil is to be consumed in oil-burning equipment.
2. The farmer instructs his supplier to deliver a portion of the fuel oil into a storage tank which he uses for fuelling his diesel-engine tractor.
3. The fuel oil has been sold through the distribution chain on an excise tax-excluded basis as it was intended for use as heating oil.

Issue

Is the fuel oil considered to be “heating oil” for the purpose of the definition of “diesel fuel” in subsection 2(1) of the ETA?

Comments

1. The fuel oil used in heating the farmer’s buildings is considered to be “heating oil” for the purpose of the definition of “diesel fuel” in subsection 2(1) of the ETA and is not subject to excise tax.

The fuel oil for heating the farmer’s buildings is intended for use and actually used in oil-burning equipment and therefore qualifies as heating oil.

2. The fuel oil delivered into the storage tank for use in the farmer’s diesel-engine tractor is considered to be diesel fuel under the ETA and is subject to excise tax.

Although the fuel oil delivered into the storage tank was intended for use in oil-burning equipment, it is **diverted** for use in internal combustion engines of the compression-ignition type and therefore does not qualify as heating oil.

Pursuant to subsection 23(9.1) of the ETA the supplier is required to remit excise tax at the rate of \$0.04 per litre on the quantity of fuel oil delivered into the storage tank for use as diesel fuel.