

House Infrastructure Bill Includes Language Related to Dyed Diesel

The latest House version of the Infrastructure Bill includes a provision that will allow suppliers of dyed diesel to claim a refund for federal excise taxes previously paid on the product. The federal excise tax on diesel is imposed when clear diesel is removed from the bulk terminal/transfer system via truck or rail car. Under current law, there is a provision that allows a credit or refund of the tax paid on such diesel if it is re-entered into the bulk terminal/transfer system and then removed again in what would be a second taxable event. In order to avoid double taxation of the same product, the second tax imposed can be credited subject to certain rules and provision of certain documents.

However, where the re-entered diesel is subsequently dyed, such that it is exempt from tax, there is no second tax triggered when that dyed fuel is removed from a terminal and currently no provision allowing for a refund of the first tax. As a result, a taxpayer who dyes previously taxed diesel is left selling tax paid product, notwithstanding that the dyed fuel is statutorily exempt. The proposed provision would allow a taxpayer who dyes diesel in a terminal in accordance with the dye rules to claim a credit or refund of the tax previously paid on the clear diesel.

If passed, the provision removes a hardship from the industry in terms of having to handle tax-paid dyed diesel. It is important to note, however, that the proposed refund provision will only apply to fuel dyed at an IRS terminal in accordance with the mechanical dye rules. Taxpayers who dye tax paid diesel in any other location will not be eligible for the refund.