Illinois Motor Fuel Taxes

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Like many states, Illinois and a number of Illinois localities impose motor fuel taxes. Although these taxes are each generally similar, they function slightly differently and are administered by different agencies. It is important not only for retailers of motor fuel, but any business that uses motor fuel in the operation of its business to understand the different layers of motor fuel taxes in Illinois.

Illinois Overview

Illinois’ motor fuel tax is imposed on the retail sale of motor fuel.\(^1\) Indeed, the tax is explicitly imposed on the consumers of motor fuel.\(^2\) However, the tax must be prepaid by a motor fuel retailer, meaning that rather than provide a resale certificate to its supplier, the retailer must pay tax to its supplier.\(^3\) Sales from distributors to other distributors that are not registered with the State as distributors but who are otherwise registered in the state to make retail sales are also subject to the tax.\(^4\) Sales at the gas station pump can never be treated as sales for resale.\(^5\)

The motor fuel tax must also be prepaid. On the first of January and July each year, the Department of Revenue (“Department”) uses the average selling price per gallon of motor fuel sold in Illinois during the previous six months and subject that to a 6.25% tax rate to determine the amount of tax that should be imposed on each gallon. Different rates are applied to sales of biodiesel and gasoline/gasohol. The applicable rates during any six month period can be found on the Department’s website.

Local Overview

A number of localities also impose motor fuel taxes, including Chicago, Cook County, DuPage County, Kane County, and McHenry County. Municipalities with populations in excess of 100,000 are entitled to impose motor fuel taxes by referendum. Although the Illinois statute provides that such municipalities may impose a tax of one cent per gallon on motor fuel sold at retail within such municipalities,\(^6\) a number of localities have adopted taxes substantially higher. For instance, the Cities of Bloomington, Belvidere, and Highland Park (all of which have populations below 100,000), each impose their own motor fuel tax which must be remitted directly to each city.

Chicago

Technically, the City of Chicago imposes the Vehicle Fuel Tax, not a motor fuel tax. The tax is imposed on the privilege of purchasing or using in the City vehicle fuel purchased at retail. The tax is imposed at a rate of five cents per gallon of fuel. As with Illinois, although the tax is imposed upon the purchaser or user of the fuel, the tax must be collected by each fuel distributor who sells such fuel to a retail fuel dealer doing business in the city.\(^7\) Fuel distributors doing business in the city are required to register with the City Department of Finance and must file returns with the city on a monthly basis.

Chicago does provide a number of exemptions from the Vehicle Fuel Tax, including (1) sales by a distributor to another distributor holding a valid registration certificate, (2) sales by a distributor to a distributor or retailer of vehicle fuel whose place of business is outside the city, (3) sale or use for purposes other than for propulsion or...
operation of a vehicle, and (4) sales to or use by any air common carrier, among others.\[8\] The burden of demonstrating that a sale is not subject to the tax is on the distributor, dealer, or purchaser claiming the exemption.\[9\]

**Cook County**

Cook County imposes a [Gasoline and Diesel Fuel Tax](#). The Cook County tax is imposed on the retail sale in Cook County of gasoline, diesel fuel, biodiesel fuel, and g.diesel fuel at the rate of six cents per gallon. Cook County's ordinance creates three classes of "taxable transactions." The ordinance provides that the tax shall be collected by each distributor or supplier who sells a taxable fuel to (1) a retail dealer doing business in the County, (2) a consumer who purchases taxable fuel from a gas distributor for delivery in the County, or (3) another gas distributor doing business in the County that is not holding a valid registration certificate.\[10\] Gas distributors must register with Cook County file returns directly with the Cook County Department of Revenue.\[11\]

Cook County's exemptions are slightly different from Chicago's, exempting only sales to (1) another gas distributor holding a valid Cook County Department of Revenue gas tax certificate of registration, (2) another gas distributor, or a retail dealer where the selling distributor, or its agent, delivers the gasoline, diesel fuel, biodiesel fuel or diesel fuel to a location outside of the County, or (3) the United States of America, the State, or their instrumentalities.\[12\]

**Discussion**

Illinois state and local fuel taxes have raised a number of controversies over the years, leading to a substantial body of case law in the state.\[13\] Much of the litigation, aside from audit methodology issues, relates to whether fuel is being sold for resale or, alternatively, for use in Illinois or a locality. In 2014, for instance, the Illinois Appellate Court held that a car manufacturer owed Chicago vehicle fuel tax where it manufactured cars in the city with fuel in the tank. The court held that this transfer of fuel into the individual gas tanks, regardless of where the cars were actually going to be driven, constituted "use" of the fuel, and was therefore subject to tax.\[14\] Although the car manufacturer ultimately sold the vehicles with fuel to purchasers, and the fuel was listed in a line item for sales to car dealers in Chicago, the court was not satisfied that this fuel was actually sold the customers, noting that it "leads to the inference that the amount of fuel stated on the invoice corresponded with the amount of fuel [the company] initially dispensed into its cars, before consuming some of the fuel by test running and driving the cars onto trucks for delivery."\[15\]

The most complex aspect of complying with Illinois motor fuel taxes is adhering to the different rules in various jurisdictions. As described above, Illinois, Chicago, and Cook County each imposes its own motor fuel tax, and each tax uses slightly different language. Both Chicago and Cook County take the position that an Illinois determination with respect to the taxability of a sale of fuel is not dispositive of the treatment in each jurisdiction. Thus, a motor fuel distributor in Chicago must separately register and comply with distinct obligations in all three jurisdictions. Cook County, for instance, has been very aggressive in interpreting the reach of its Gasoline and Diesel Fuel Tax Ordinance, taking the position in some cases that trading in financial instruments regarding the futures of gas contracts constitutes a taxable sale.

Finally, because the taxes are imposed on sales from distributors to retailers or, in some instances, distributors to other distributors, the risks of multiple taxation are high. It is very common for a distributor in one jurisdiction to either deliver fuel to a pipeline or to use a common carrier to ship fuel to another distributor. Because sales or use of fuel should not be subject to multiple taxation, businesses should be careful in how they document these sales to make it clear that delivery will occur outside of the jurisdiction from which the fuel is originating.

**Conclusion**

While uniformity among state and local motor fuel taxes in Illinois would be preferable, it is unlikely that will happen any time soon. As a result, businesses engaging in activities relating to fuel in any way, even those which do not believe themselves to be retailers or distributors, should be apprised of potential multi-jurisdictional obligations regarding the various Illinois motor fuel taxes. Because the motor fuel tax, moreover, is a tax that is imposed on the user of fuel but collected at the wholesale transaction level, moreover, there is often a substantial risk of multiple taxation. A comprehensive understanding of Illinois’ motor fuel taxes will help businesses best document their business activities to ensure the correct treatment of any potential tax obligations.

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\[1\] 35 ILCS 105/3-10; 35 ILCS 120/2-10; 86 Ill. Admin. Code 130.2060;
A quick glance through the Illinois Tax Tribunal's website, for instance, shows many cases filed by various gas stations with respect to the Department's methodology for estimating taxable sales at gas stations. These issues are not unique to the motor fuel tax, however. Many businesses in the hospitality industry also will at some point in the course of their business have an issue with the Department's audit samples and methods of estimating tax due over many tax periods.


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