



STATE OF CONNECTICUT
DEPARTMENT OF REVENUE SERVICES **PS 2001(10)**

25 Sigourney Street
Hartford CT 06106-5032

POLICY STATEMENT

**Exemptions From Petroleum Products Gross Earnings Tax and
Reduced Threshold for Imposition of Tax on Importers**

Purpose: This Policy Statement discusses and explains what are exempt petroleum products for purposes of the petroleum products gross earnings tax; describes the circumstances in which **CERT-116, Exempt Petroleum Products Certificate**, must be issued; and describes the procedures for filing refund claims. It also describes the amendment to Conn. Gen. Stat. §12-587(c) that was made during the 2001 session of the Connecticut General Assembly. This amendment lowered the threshold for imposition of tax on the importation of petroleum products for sale, use, or consumption in this state from \$100,000 to \$3,000 worth of product per quarter. The amendment is effective for calendar quarters that begin on or after October 1, 2001.

Effective Date: Effective October 1, 2001.

Statutory Authority: Conn. Gen. Stat. §12-587(a)(3) and (4); Conn. Gen. Stat. §12-587(b)(2), as amended by 2001 Conn. Pub. Acts 6, §67 (June Spec. Sess.); and Conn. Gen. Stat. §12-587(c), as amended by 2001 Conn. Pub. Acts 6, §31 (June Spec. Sess.).

Background: In general, the petroleum products gross earnings tax is imposed on the gross earnings derived from the first sale in Connecticut of petroleum products. Conn. Gen. Stat. §12-587(a)(4) defines *petroleum products* as “those products which contain or are made from petroleum or a petroleum derivative,” but Conn. Gen. Stat. §12-587(b)(2) excludes the gross earnings derived from the first sale in Connecticut of certain products described in that subsection from the petroleum products gross earnings tax. In this publication, those products where the gross earnings from the first sale in Connecticut are excluded from tax are *exempt petroleum products*.

Whether or not a product is an exempt petroleum product depends on the use to which it will ultimately be put. Frequently, a petroleum product that might ultimately be put to an exempt use is, after its first sale in Connecticut, sold several times before being purchased by its ultimate user. This created a dilemma for the person making the first sale of petroleum products that were to be resold. Before issuing **Policy Statement 94(4), Petroleum Products Gross Earnings Tax Exemptions**, the Department of Revenue Services (DRS) dealt with this dilemma by requiring those persons making first sales in Connecticut of exempt petroleum products to pay the tax on the gross earnings derived from those first sales, if the sales were made to persons who would be reselling the products. DRS would refund the tax if it was established that the product was ultimately put to an exempt use by an end user.

In **Policy Statement 94(4)**, DRS announced a new policy that requires any person who purchases, for resale to others, exempt petroleum products from the person making their first sale in Connecticut to issue **CERT-116** to the seller to establish that charges for these products are not subject to the petroleum products gross earnings tax. If a seller takes a properly completed **CERT-116** from the purchaser, and the seller has no knowledge of facts that give rise to a reasonable inference that the product is not an exempt petroleum product, the gross earnings from that first sale are not subject to the petroleum products gross earnings tax.

Exempt Petroleum Products: The following are exempt petroleum products for petroleum products gross earnings tax purposes:

- The product designated by the American Society for Testing and Materials as “Specification for Heating Oil D396-69,” commonly known as number 2

heating oil, used exclusively for heating purposes or used in a commercial fishing vessel that qualifies for an exemption under Conn. Gen. Stat. §12-412;

- Kerosene, commonly known as number 1 oil, used exclusively for heating purposes, provided delivery is of both number 1 and number 2 oil, and via a truck with a metered delivery ticket to a residential dwelling or to a centrally metered system serving a group of residential dwellings;
- The product identified as propane gas, used exclusively for heating purposes or as a fuel for a motor vehicle from July 1, 2001, through June 30, 2002;
- Bunker fuel oil, intermediate fuel, marine diesel oil, and marine gas oil used in any vessel having a displacement exceeding 4,000 deadweight tons;
- Any first sale occurring on or after July 1, 2002, of number 6 fuel oil, as defined in regulations adopted according to Conn. Gen. Stat. §16a-22c, used exclusively by a company which, in accordance with census data contained in the *Standard Industrial Classification (SIC) Manual*, 1987, is included in code classifications 2000 to 3999, inclusive, or in Sector 31, 32, or 33 in the *North American Industry Classification Systems (NAICS) United States*, 1997;
- Any first sale occurring on or after July 1, 2002, of number 2 heating oil used exclusively in a vessel primarily engaged in interstate commerce, which vessel qualifies for an exemption under Conn. Gen. Stat. §12-412; and
- Paraffin or microcrystalline waxes.

Circumstances in Which CERT-116 Must Be Issued: CERT-116 must be issued to every person selling exempt petroleum products (*including* the person making the first sale in Connecticut of those products) by any person who is:

- Purchasing exempt petroleum products for resale to others; or
- Purchasing (but not for resale) bunker fuel oil, intermediate fuel, marine diesel oil, and marine gas oil to be used in any vessel having a displacement exceeding 4,000 deadweight tons; propane gas to be used exclusively as fuel for a motor vehicle; or
- Purchasing (but not for resale) number 2 heating oil to be used in a commercial fishing vessel by a person who has been issued **Form OR-256**, *Commercial Fisherman Tax Exemption Permit*, by

DRS and who is purchasing the fuel on or after the date the permit is issued, but on or before the date the permit expires.

Acceptance by the seller of **CERT-116**, when properly completed by the purchaser, relieves the seller from the burden of proving that the seller's gross earnings from the sale of an exempt petroleum product were not subject to the petroleum products gross earnings tax. **CERT-116** is valid only if taken in good faith by the seller. The good faith of the seller will be questioned if the seller has knowledge of facts that give rise to a reasonable inference that the product sold is not an exempt petroleum product (for example, because the seller knows that number 2 heating oil that the seller has sold to the purchaser is likely to be used as fuel for a motor vehicle).

The seller must keep a copy of **CERT-116** and bills or invoices to the purchaser for at least three years from the date of purchase (or, if the certificate is used for a continuing line of exempt purchases, three years from the date of the last purchase). The seller must mark the bills, invoices, or records covering all purchases made under the certificate with the words "Exempt Petroleum Products Certificate" or "Exempt under **CERT-116**" to indicate that an exempt purchase has occurred.

A purchaser who is required to issue **CERT-116** must keep a copy of the certificate and records that substantiate the information entered on the certificate for at least three years from the date it is issued.

Any person who purchases petroleum products for resale to others and who issues **CERT-116** when purchasing these products and who then resells the products in Connecticut must pay the petroleum products gross earnings tax on the gross earnings from the sale, unless issued **CERT-116** by the person to whom the products are resold. The tax is due with **Form OP-161**, *Petroleum Products Gross Earnings Tax Return*, on or before the last day of the month following the quarterly period in which the products are resold.

Any person who purchases petroleum products (but not for resale to others) must pay the petroleum products gross earnings tax on the consideration paid (or contracted to be paid) for those products if that person:

- Issued **CERT-116** to the seller at the time of purchasing those products; and
- Then put those products to a non-exempt use.

The tax is due with **Form OP-161** on or before the last day of the month following the quarterly period in which the products are purchased.

Any person who is purchasing any product (but not for resale) that is an exempt petroleum product (other than bunker fuel oil, intermediate fuel, marine diesel oil, or marine diesel gas oil) to be used exclusively for heating purposes is not required to issue **CERT-116** to the person from whom the product was purchased.

New Reduced Threshold for Imposition of Tax on Importers: Under Conn. Gen. Stat. §12-587(b), a person is subject to the tax if the person is engaged in the refining or distribution, or both, of petroleum products and makes the first sale in Connecticut of the products.

Under Conn. Gen. Stat. §12-587(c), a person *other than* a person subject to and having paid the tax under Conn. Gen. Stat. §12-587(b), as described above, is subject to the tax if the person imports or causes to be imported into Connecticut for sale, use, or consumption in a calendar quarter, petroleum products for which more than **\$3,000** is paid (or contracted to be paid). Previously, the threshold for these importers to be subject to the tax under Conn. Gen. Stat. §12-587(c) was the purchase of more than \$100,000 worth of product per quarter. **The threshold has been reduced effective October 1, 2001.**

Policies and Procedures for Filing Refund Claims: When a person who is subject to the petroleum products gross earnings tax pays the tax on gross earnings that are not subject to tax, the person may claim a refund by filing an amended **Form OP-161** “within three years from the due date for which such overpayment [of tax] was made, stating the specific grounds upon which the claim is founded.” Conn. Gen. Stat. §12-589(a).

A person who is *not subject to the tax* who purchases exempt petroleum products from a seller who is subject to the tax may not claim a refund even though the person may bear the economic burden of the tax.

Van Eck v. Gavin, No. 552501 Conn. Super. Ct. Tax Sess., (Feb. 1, 1996). (If the seller paid the petroleum products gross earnings tax on those gross earnings, the seller could claim a refund, as discussed above.)

Effect on Other Documents: Policy Statement 94(4.1), Exemptions for Petroleum Products Gross Earnings Tax Purposes, is modified and superseded.

Effect of This Document: A Policy Statement is a document issued by DRS that explains in depth a current position, policy, or practice affecting the tax liability of taxpayers.

For Further Information: For more information about the petroleum products gross earnings tax, call the Excise/Public Services Taxes Subdivision at **860-541-3225**.

If you have questions about other Connecticut taxes, please call DRS during business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday:

- **1-800-382-9463** (toll-free within Connecticut), or
- **860-297-5962** (from anywhere)

TTY, TDD, and Text Telephone users only may transmit inquiries 24 hours a day by calling 860-297-4911.

Forms and Publications: Forms and publications are available all day, seven days a week:

- **Internet:** Preview and download forms and publications from the DRS Web site: **www.drs.state.ct.us**
- **DRS TAX-FAX:** Call **860-297-5698** from the handset attached to your fax machine and select from the menu.
- **Telephone:** Call **860-297-4753** (from anywhere), or **1-800-382-9463** (toll-free within Connecticut) and select **Option 2** from a touch-tone phone.