

NOTICE TO SELLERS

Change in Erroneous Collection Processing

Erroneous collections occur when the seller has the information necessary to document an ex-tax sale, but inadvertently collects the tax. These do not occur in retail situations; they are limited almost exclusively to cardlock (non-retail) transactions.

Following law changes effective in 2004 and 2009, grace periods were granted to allow sellers time to obtain exemption certificates and assign cards to a specific vehicle. The administrative rules, however, clearly set forth the requirements so Fuels Tax Group is providing this notice to inform sellers that the grace period has ended effective February 1, 2011. Nothing in this notice invalidates existing valid exemption certificates.

Beginning February 1, 2011, the Fuels Tax Group will process erroneous collection requests that meet the administrative rule requirements:

- The customer has provided a signed exemption certificate, including information to have ex-tax cards issued to a specific vehicle.
- The seller inadvertently collected the tax on the transactions after the date the exemption certificate was signed.
- The periods eligible for credit will be subject to statutory limitations (generally up to three years prior to the request, but not earlier than the date the exemption certificate was signed by the customer).

To provide an example, if the exemption certificate is signed on December 1, 2010 and tax is collected after that date, Fuels Tax Group will consider the tax to have been erroneously collected. If the tax is collected prior to that, it is not erroneously collected even if the customer had exempt vehicles prior to that date. The date the exemption certificate is signed will be used to determine whether the tax was erroneously collected. Exemption certificates should NOT be signed by the seller; they must be completed and signed by the customer

Customers who have vehicles subject to weight-mile taxes may not be able to obtain a credit for taxes paid on fuel used in those vehicles if they have not submitted an exemption certificate and/or do not have cards issued to a specific vehicle. Similarly, customers with equipment used off-road may not be eligible for a credit if they have not provided their supplier with an exemption certificate and/or do not have cards issued specifically to the equipment.

Sellers with non-retail (cardlock) operations will receive a letter from their assigned auditor requesting additional information on existing ex-tax customers. If you have non-retail operations and have not received a letter by March 1, 2011, please contact the Fuels Tax Group.

Administrative Rules which support the policy addressed in this notice:

OAR 735-176-0017 Use Fuel Seller Reporting Requirements

(7) A seller, as defined by ORS 319.520(13)(b), who sells fuel at non-retail facilities in Oregon and does not collect the tax from a purchaser whose account is owned by the seller, must retain written certification signed by the purchaser on forms provided by the Department that the use of the fuel is tax deferred or exempt from the tax imposed under ORS 319.530.

(a) "Certifies to the Seller" means the customer completes and signs the "Certification of Oregon Use Fuel Exempt Tax Status" form as provided by the Department. The seller is responsible for collecting and remitting the tax until the signed and dated exemption certificate is received from the customer. The form will contain:

- (A) The name and address of the seller;
- (B) The name, address, account number and signature of the purchaser;
- (C) The reason that the use fuel tax should not be collected by the seller;
- (D) A list of vehicles and cards; and

(E) A statement from the purchaser that for all use fuel purchased at Oregon non-retail facilities on account with the seller, such fuel will be used only for purposes that are tax deferred or exempt from use fuel taxation under ORS 319.510 through 319.880.

(b) A seller may not sell use fuel without the tax until a valid exemption certificate is completed, signed and returned to the seller; and

(c) The customer provides the identifying information for each cardlock card to qualify the tax deferred status.

OAR 735-176-0045 Refunds and Credits of Use Fuel Tax

(3) An erroneous collection occurs when the seller has the information to correctly and completely document a tax deferred sale at the time of the transaction, but the seller collected the tax in error.

(a) Erroneous collection claims are filed with the fuel supplier/seller and must be made within three years of the date of purchase.

(b) Erroneous collections may occur in non-retail sales.

(c) Erroneous collections do not occur in retail sales with the exception of fleet fueling operations

The law and rule change in 2009 allowed ex-tax sales at any card-operated non-retail fueling location that could generate an electronic invoice. The card being issued to a specific vehicle or equipment creates an electronic ex-tax sales invoice to meet documentation requirements.