

IRS Hot Topics

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Uncertain future of heavy highway vehicle use excise tax prompts IRS to grant extension for filing returns

On July 15, 2011, the Internal Revenue Service issued a news release and proposed, temporary, and final regulations (collectively, "the guidance") for taxpayers required to file Form 2290, Heavy Highway Vehicle Use Tax Return, prompted by the looming expiration of the heavy highway vehicle use excise tax on September 30, 2011. The guidance is for taxpayers required to file Form 2290 and pay the associated excise tax for periods beginning on or after July 1, 2011. It grants an extension for filing and paying to November 30, 2011, while also addressing issues related to requirements that owners of heavy highway vehicles prove that the excise tax has been paid when registering their vehicles with State authorities.

Background

Section 4481 imposes an excise tax on the use of a highway motor vehicle that has a taxable gross weight of 55,000 pounds or more. The tax is imposed on the person who is, or is required to be, the vehicle's registered owner under State law. The amount of the tax is \$100 per year plus \$22 for each 1,000 pounds (or fraction thereof) that the vehicle weighs in excess of 55,000 pounds. For purposes of this tax, a "year" means the "one-year period beginning on July 1." The maximum tax for any such vehicle is \$550 per taxable period. If the vehicle is not used in the first month of the taxable period, the tax is prorated for the period of use.



Taxpayers subject to the excise tax are required by regulation to file Form 2290 not later than the last day of the month following the month in which the taxpayer becomes liable for the tax. Thus, taxpayers regularly using heavy highway vehicles would normally be required to file Form 2290 and pay the excise tax on or before August 31, for vehicles first used in July.

Pursuant to section 4481(f), the heavy highway vehicle use excise tax is scheduled to expire on September 30, 2011. In addition, section 4482(d) provides for a reduced rate of taxation for the three-month period from July 1, 2011, to September 30, 2011, reducing a taxpayer's liability by 75 percent and effectively resulting in a 25 percent rate of taxation. However, the possibility that the excise tax will be extended has created uncertainty for taxpayers required to file Form 2290 and pay the excise tax. It is with this uncertainty in mind that the IRS issued its guidance.

In addition to paying the heavy highway vehicle excise tax, taxpayers must furnish proof of payment of the tax to State authorities when registering their vehicles. See 23 U.S.C. § 141(c). Applicable Treasury Regulations provide the manner for providing such proof. In general, this consists of providing the State with a receipted copy of Schedule 1 of the Form 2290 for the taxable period that includes the date the State receives the application for registration.

The Guidance

As noted above, the guidance grants an extension until November 30, 2011, to taxpayers required to file Form 2290 and pay the heavy highway vehicle use tax for uses occurring on or after July 1, 2011. The extension operates such that, regardless of the resolution of the

uncertainty over extending the heavy highway vehicle use excise tax, taxpayers will only be required to file a single Form 2290 and pay the tax once for the period ending June 30, 2012 (or earlier if the extension of the tax is not through June 30, 2012). If the Congress does not extend the excise tax beyond its current expiration date, taxpayers may file and pay (at the reduced rate) for the short taxable period running from July 1, 2011, to September 30, 2011. Conversely, if the Congress does extend the excise tax, taxpayers that incurred liability during the short taxable period will not be required to file and pay twice, that is, once for uses during the short period and once for uses occurring subsequent to the current expiration date.

The IRS also addresses issues related to State registration requirements associated with payment of the heavy highway vehicle use excise tax. As set forth in the guidance, taxpayers who seek to register vehicles subject to the excise tax with State authorities may satisfy the requirements in two different ways, depending on the relevant circumstances. First, for new or used vehicles purchased between July 1, 2011, and November 30, 2011, taxpayers may provide a bill of sale, or similar document, evidencing purchase within the preceding 150 days. Second, for circumstances not covered by the first case, taxpayers may submit proof of payment for the taxable period July 1, 2010, through June 30, 2011. Under either situation, the State receiving the registration application is required to accept the documentation as a substitute proof of payment of the heavy highway vehicle use excise tax.

Observations

The issuance of the guidance evidences that the IRS is taking steps to alleviate

potential issues that could arise if the heavy highway vehicle use excise tax were to expire and be subsequently reinstated by the Congress. In doing so, the IRS is relieving taxpayers from the administrative burden of being required to file Form 2290 and pay the excise tax for two separate periods. This action also relieves the burden on its own personnel and systems required to process such filings and payments.

Moreover, while the guidance provides an extension for filing and paying until November 30, 2011, it also deters taxpayers from filing their returns earlier than November 1, 2011. This is because the IRS will not issue a receipted Schedule 1, Form 2290, to a taxpayer as proof of payment of the excise tax for purposes of State vehicle

registration until after November 1, 2011, and then only if the tax has been paid as determined under the law in effect on November 1, 2011.

Finally, it should be noted that this provision of the Code has been extended several times in the past and will most likely be extended again. As the IRS News Release states, the heavy highway vehicle use excise tax generated payments totalling \$886 million last year. Given the current budget and deficit situation, it is unlikely that the Congress would allow this revenue stream to end.

For more information, please do not hesitate to contact:

Lew Fernandez (202) 312-7683 lew.fernandez@us.pwc.com

Adam Rosner (202) 312-7580 adam.rosner@us.pwc.com

Andrew Stroot (202) 312-7615 andrew.m.stroot@us.pwc.com

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