



INDIRECT TAX

Executive order defers federal tax on dyed diesel fuel

Tax Alert

Overview

On October 5, 2026, President Trump signed an [executive order](#) titled “Emergency Tax Relief on Diesel Fuel,” allowing dyed diesel to be used on highways through December 31, 2026, waiving certain related penalties, and deferring the federal excise tax on that fuel. It follows dyed diesel relief already issued by at least 12 states. Federal excise tax on clear diesel fuel remains unchanged.

Dyed diesel is the same fuel as on-road diesel but dyed red to mark it as untaxed fuel for off-road uses like farming and construction. On-road diesel is normally taxed at 24.4¢ per gallon¹ federally and on average 35.8¢ per gallon among the states.² However, dyed diesel is generally sold without these taxes, and therefore federal and state laws normally bar its use on public roads. This Tax Alert summarizes the executive order and recent state actions on dyed diesel fuel to date.

What the executive order does

In general, dyed diesel is sold tax-free for off-road use. If the diesel is instead sold for or used in a highway vehicle, a federal backup tax under Internal Revenue Code (IRC) § 4041 applies at the regular on-road rate. The seller owes such tax when it sells the fuel for highway use, and the user owes it when it puts the fuel in a highway vehicle itself. Penalties under IRC § 6715 also apply, generally the greater of \$1,000 per violation or \$10 per gallon. However, under the recent executive order, the federal backup tax is deferred, and certain related penalties are waived. Specifically, the executive order:

- Defers the IRC § 4041 backup tax on dyed diesel sold for or used in highway vehicles from October 5 through December 31, 2026, without penalties or interest; and
- Waives the IRC § 6715 penalties for selling or using dyed diesel for highway use during the same period and directs the IRS to address relief from semimonthly deposit penalties.

The Secretary of the Treasury is expected to provide guidance on whether sellers, buyers, or both will be responsible for remitting the deferred tax once the deferral period ends.³

¹ The 24.4¢ per gallon federal on-road rate consists of the 24.3¢ diesel fuel excise tax and the 0.1¢ Leaking Underground Storage Tank (LUST) Trust Fund tax. Because the LUST tax is generally paid when dyed diesel is removed from the terminal, the IRC § 4041 backup tax may apply subject to forthcoming Treasury or IRS guidance.

² Tax Foundation, “Gas Taxes by State,” accessed October 7, 2026, <https://taxfoundation.org/data/all/state/gas-taxes-state/>.

³ The relief is conditional. The executive order directs the Secretary of the Treasury to determine, within five days, whether relief is authorized under IRC § 7508A, including whether a “qualifying event” has occurred and which taxpayers are affected. The precise scope and coverage of the relief will depend on Treasury’s determination and forthcoming guidance.

Recent state actions

While federally, the excise tax on dyed diesel has been deferred and certain related penalties have been waived, most states continue to impose tax assessments, civil penalties, and in some cases criminal penalties for using dyed diesel on the road. Recently, several states have relaxed their enforcement of tax and/or penalties against untaxed diesel use in the agricultural industry, including Alabama, Arkansas, Indiana, Louisiana, Missouri, Nebraska, North Carolina, North Dakota, and Oklahoma.

Texas, Georgia, and Kentucky have also lifted restrictions and penalties on the use of dyed diesel in on-road vehicles, extending relief to non-agricultural users. To date, they are the only states to provide such relief beyond the agricultural industry. The Texas and Kentucky motor fuel taxes continue to apply, while Georgia separately suspended its motor fuel tax on both dyed and undyed fuels from October 6 through November 5, 2026.

Observations and Considerations

- **This relief is narrow and developing.** Additional guidance from the IRS and Treasury is anticipated, and other states may issue their own. Buyers and sellers should monitor developments closely and be prepared to adjust their plans accordingly, particularly with respect to which party is responsible for remitting the tax and which states and uses are covered.
 - **Federal relief does not override state law.** No state has waived its state fuel taxes for dyed diesel used in all on-road vehicles, and Texas, Georgia, and Kentucky are so far the only states to provide penalty relief for dyed diesel use in all on-road vehicles. Taxpayers should therefore confirm eligibility and available relief on a state-by-state basis. Interstate carriers licensed under the International Fuel Tax Agreement (IFTA) should be particularly careful. For example, a carrier that permissibly purchases dyed diesel in Texas and then travels into another state could face tax, penalty, and enforcement exposure there, because Texas penalty relief does not carry across state lines.
 - **Size the deferral: what the relief is worth in cash flow.** The executive order is drafted as a tax deferral, not forgiveness, so the benefit is timing and cash flow. At the federal rate of 24.3 cents per gallon, every 100,000 gallons of dyed diesel used on highways defers roughly \$24,300 of tax.
 - **Confirm systems and records are ready for future tax remittance.** Buyers and sellers should confirm that their systems can capture transaction-level detail, so they are positioned to remit the deferred tax once the deferral period ends, if required. For many sellers and end-users, this could be a first-time federal fuel excise tax filing.
 - **Plan for the possibility that sellers must remit the tax, and how they would be reimbursed.** If Treasury or IRS guidance places the IRC § 4041 remittance obligation on sellers, they could owe tax on gallons sold before collecting it from end-users, creating potential cash exposure. Sellers should review contracts, invoice terms, and billing systems now to analyze how and when the tax could be recovered from customers.
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