

OIL SPILL LIABILITY TAX & DOWNSTREAM IMPACT

BACKGROUND

PMAA has continued to receive numerous inquiries on how the expiration of the Oil Spill Liability Tax (OSLT) on December 31, 2017 will impact wholesale petroleum marketers.

The OSLT was created in the aftermath of the Exxon Valdez spill in Prince William Sound Alaska. The 9 cents per barrel OSLT tax is imposed on *crude oil* at the refinery gate. Proceeds from the OSLT go into a trust fund used by the Coast Guard to pay for clean-up after accidents like the Deepwater Horizon oil spill. Currently, there is 5.8 billion in the OSLT trust fund. The OSLT has no relation to the federal \$.001 per gallon Leaking Underground Storage Tank (LUST) trust fund. The LUST tax has not expired and is collected at the terminal rack on all motor fuel and heating oil.

Liability for the OSLT

Refiners are the only party liable for the OSLT. The OSLT is not imposed, remitted or refunded downstream. There are no OSLT floor stock taxes or OSLT tax exempt parties downstream.

Downstream Wholesale Petroleum Marketer Impact

The OSLT has no real impact on downstream marketers other than as a cost passed through on finished product. The OSLT is paid by the refiner upstream. Unfortunately, some terminals break out the OSLT as a separate line item on bills of lading and invoices. This practice causes confusion downstream because the tax is paid by refiners on crude oil at the refinery gate. The OSLT is not imposed, remitted or refunded downstream. There are no OSLT floor stock taxes or OSLT tax exempt parties downstream. However, breaking out the OSLT as a separate line item gives it a perception of importance downstream. The impact of the OSLT on wholesale petroleum marketers below the terminal rack is a miniscule increase in the rack cost of finished motor fuel and heating oil. Terminal operators break out the OSLT on invoices, not because wholesale petroleum marketers need to know, but for their own accounting purposes and no other reason. There is no OSLT notice requirement for downstream parties. Some downstream wholesale petroleum marketers who break out the OSLT on invoices to their end user customers may need to adjust their accounting practices, but there is no need to account for the OSLT downstream of the terminal rack in the first place.

Expiration of the OSLT

The OSLT expired on December 31, 2017. This means that refiners are no longer required to pay 9 cents per barrel OSLT on crude oil at the refinery gate. This results in a miniscule price adjustment in the cost of the fuel or not, depending on whether the cost savings is passed downstream. Many terminals are notifying customers that they are making no cost adjustment because they expect the OSLT will be reauthorized retroactively by Congress in early 2018. Some terminals are passing the cost savings down while others don't break out the OSLT to begin with and have nothing to report.

Some wholesale petroleum marketers have indicated to PMAA that they are caught between a rock and a hard place if they buy fuel from suppliers who continue to charge this tax because dealers at the retail level are aware of the expiration of the tax and are refusing to pay the tax. Therefore, some wholesalers are forced to eat this tax for now to satisfy the customers' demand. If the tax were to be reinstated retroactively, wholesale petroleum marketers are unlikely to recoup the losses.

For example, one wholesale petroleum marketing company stated that his company spent a day removing the oil spill tax calculation from their systems after having a two-hour meeting which included five people to plan their strategy. He added that if the Oil Spill Liability tax is reinstated it will take four hours or more because programming the tax back in takes longer than deleting the programming. Also, he was concerned that if the tax is retroactive, he is unsure how to get the money back on sales they have already made without the tax.

Future of the OSLT

Congress just approved legislation and the President signed into law on February 9th, 2018 to reinstate the tax effective March 1, 2018 through December 31, 2018 which was requested by PMAA and other groups. In PMAA's view, this means that the suppliers who have included the tax as a separate line item on their invoices to wholesale petroleum marketers will need to refund the line item taxes collected from marketers.

Other refiners who have included the tax in the price of product (without showing it as a separate line item) have made no implicit statement concerning reimbursement, and whether or not they will reimburse the tax is an open question. PMAA does not believe that they would be under a legal requirement to do so but it is our hope that they would do so anyway. Since the tax is imposed on crude oil paid by refiners, PMAA has no interest in the tax question other than with respect to the reimbursement issue.

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