# Flash Sales Points to Consider Relative to Fuel Tax Administration (2015)

INTRODUCTION

While buy/sell agreements are defined in this document, the purpose of this whitepaper is to address concerns with flash sales where simultaneous sales occur at the terminal rack.

Buy/Sell Agreements – An agreement in which a Supplier or Distributor purchases fuel at the terminal from a position holder and sells to a third party customer. Buy/Sell agreements may be any combination of bulk (pipeline or barge), truck, or rail transactions and Purchaser(s) may carry inventory.

- **Bulk Buy/Sell Agreement (occurring above the rack)** – An agreement in which a position holder (Supplier A) sells fuel to Supplier B (position holder) who in turn sells to Supplier C (position holder in terminal). Terminalling agreement should be in place.

Supplier A (Position Holder (PH)) → Supplier B (Position Holder (PH)) → Supplier C (Position Holder (PH)) →
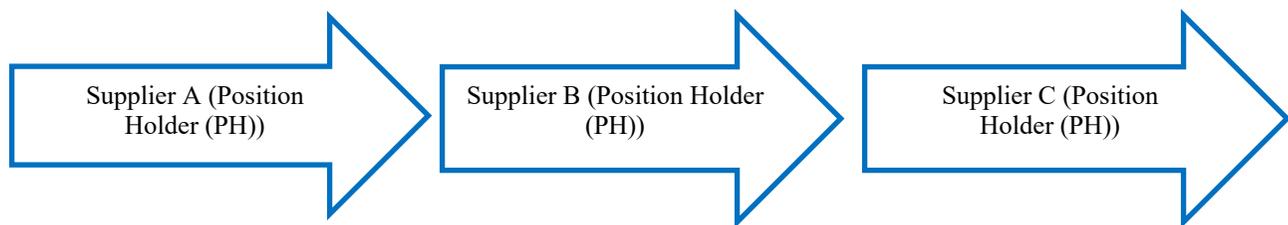
- **Flash Sale (may also be referred to as rack purchase)** – Transactions between parties in which title transfers simultaneously at the terminal rack from position holder to purchaser to purchaser's customer as fuel is loaded into truck or rail car.

Supplier A (Position Holder (PH)) → Supplier B or Distributor A → Supplier C or Distributor B or Exporter →
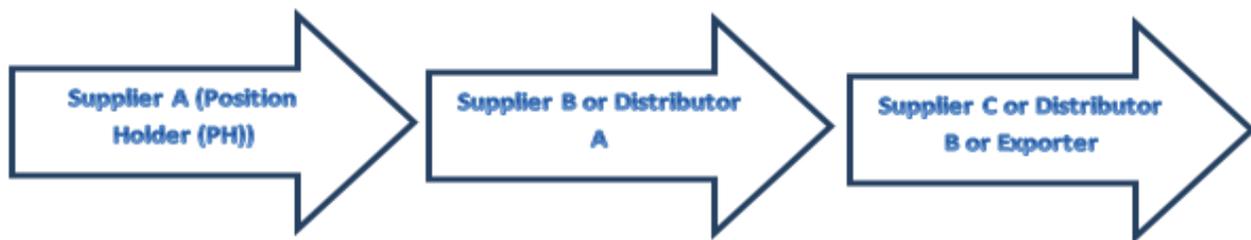
ITEMS FOR CONSIDERATION

Your state's taxation point

Note: This is generally for the flash title with an exporter scenario.

1. Tax at the terminal rack – If your state has destination state rules for collecting taxes, what taxes would you expect the position holder to collect if the product was ultimately exported or imported to your state? The BOL will typically show the out-of-state destination; however, the exporter of record may not always be the first purchaser in the export stream below the terminal rack.

2. Tax below the rack – How many exempt pass-through transactions does your state allow among properly licensed parties once the fuel has crossed the terminal loading rack? It must be considered that there could be multiple flash title holders of a single load of fuel and that the legally responsible party may not know their place in the title chain.

3. Deferral/Indemnification – Generally in states that allow deferral of tax, the transaction between the taxpayer and their properly licensed customer would be the only transaction that can be deferred, and the position holder would be indemnified if the licensee defaults. The licensees below this initial transaction may have to file additional bonds/line of credits with their vendor in addition to the bond posted with the state. This causes financial hardship for these licensees. What happens when all parties are "properly licensed" and the 3rd party defaults on their deferred tax payment? Can the second party file for recourse?

4. Collection Allowance – Generally the taxpayer that remits the tax is the party entitled to a collection allowance. Various states have different requirements as to whether a portion of the collection allowance needs to be passed on and to whom. This could be an issue for instate transactions as well.

Tracking and cross matching

1. Depending on what taxes you will require the position holder to collect and remit, will you have issues with your ability to track and cross match your reporting with other states' information assuming this is part of your verification process? Does your state share exporting/importing data with your border states for verification purposes?

2. Are there other issues with the validation of terminal operator reports to supplier and distributor reports?

3. Will the BOL generated at the terminal reflect the correct parties and information in this type of transaction?

4. Do all parties to the transaction understand the state's requirements and report them correctly? Are all parties required to report the transaction so the State can follow the BOL from the first sale through the flash title sale to the licensed exporter?

Other concerns

1. In general, fuel suppliers would prefer to charge only one state's taxes and not have dual taxation.

2. There is still not agreement among states on handling of origin vs destination taxes.

3. If there are different methods of handling these transactions by the states, there will be an increased amount of administrative burden to the states as well as the suppliers and distributors in the form of amended returns, refund requests, revised reporting, etc.

4. In a rack purchase or flash sale transaction, a position holder could take the stance that the transaction between them and their customer occurs at the origin terminal. The generated BOL would not show the ultimate destination but the terminal address. This position would cause the exporter to be responsible to obtain a diversion number for each transaction, file for a refund or origin tax, and pay the destination state tax.

5. Licensing or lack of licensing in a state may determine whether origin or destination taxes are charged.

6. SCENARIO:

1. State A imposes tax on all ethanol entering the state or received at a terminal in that state.

2. State A exempts the supplier for exports from the state either by the supplier or a by registered exporter (the supplier's customer).

3. Customer A comes to the terminal and orders a 10% blend of ethanol.

4. Supplier B removes gasoline from its inventory to supply the gasoline portion of the blend.

5. Supplier B purchases ethanol from Supplier A to supply the ethanol portion of the blend.

6. Customer A is billed for 10% gasohol by Supplier B and then exports it to state B.

These transactions exist in Supplier B's records.
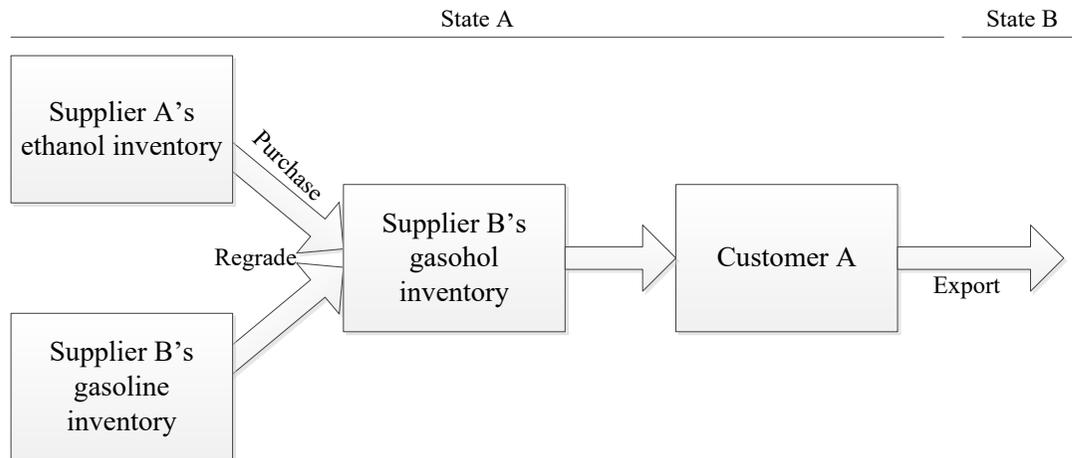
- Terminal operator's data to Supplier A shows ethanol destination out of state. Since State A exempt's exports, Supplier exempt ethanol sales to Supplier B.
- Supplier B's data shows ethanol destination as gasohol inventory at the terminal (origin). So, it does not expect to be exempted and is out of balance with Supplier A.
- Supplier B exempts the gasohol sale to Customer A from State A's tax, due to the export exemption.
- *Terminal operator should not report destination state to the ethanol supplier since the transaction takes place within the terminal at the origin.*
- *Supplier A should charge State A's tax to Supplier B.*

  The above scenario could also apply to biodiesel.