

***FTD 2016/1 - Fuel tax: fuel tax credits - fuel used for idling and cabin air-conditioning of a vehicle on a public road***

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# Fuel Tax Determination

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## Fuel tax: fuel tax credits – fuel used for idling and cabin air-conditioning of a vehicle on a public road

### **❶ This publication provides you with the following level of protection:**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided that the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

### **Ruling**

1. The amount of fuel tax credit<sup>1</sup> for taxable fuel used in a vehicle on a public road, to power the engine of the vehicle whilst idling, is reduced by the amount of road user charge under subsection 43-10(3) of the *Fuel Tax Act 2006* (FTA).<sup>2</sup>
2. The amount of fuel tax credit for taxable fuel used in a vehicle on a public road, to power the air-conditioning unit in the vehicle's cabin, is reduced by the amount of the road user charge under subsection 43-10(3).

### **Date of effect**

3. This Determination applies from 1 July 2006.
4. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10).

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### **Commissioner of Taxation**

7 September 2016

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<sup>1</sup> For the purposes of this Determination, it is assumed that there is an entitlement to claim a fuel tax credit pursuant to Division 41 of the *Fuel Tax Act 2006*.

<sup>2</sup> All legislative references in this Determination are to the FTA.

## Appendix 1 – Explanation

**❶** *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

5. Under subsection 43-10(3), the amount of the fuel tax credit entitlement may be reduced by the 'road user charge'. Subsection 43-10(3) provides:

To the extent that you acquire, manufacture or import *taxable fuel to use, in a vehicle, for travelling on a public road*, the amount of your fuel tax credit for the fuel is reduced by the amount of the road user charge for the fuel.

**Note:** Only certain motor vehicles whose gross vehicle mass is more than 4.5 tonnes are entitled to any credit (see sections 41-20 and 41-25).

6. The Administrative Appeals Tribunal in *Linfox Australia Pty Ltd v. FCT* (2012) 89 ATR 931 considered whether the road user charge reduced the fuel tax credit entitlement in respect of fuel used to power refrigerated trailers. The Tribunal found at paragraph 31 that:

... it is clear that two conditions must be satisfied before s43-10(3) is triggered: first, the fuel must be acquired for use in a vehicle; and the second, the fuel must be acquired to use for travelling on a public road.

7. The Tribunal then concluded at paragraph 37 as follows:

Diesel fuel which is acquired for use in a Linfox refrigerated trailer, and which is stored in and extracted from a separate fuel tank dedicated specifically to that purpose does not satisfy the second condition in s43-10(3), and so does not lead to any reduction in the fuel tax credit.

8. The Commissioner in his Decision Impact Statement has set out his view of the Tribunal's decision in the following terms:

The Commissioner considers that the AAT's reasoning leads to the conclusion that the phrase 'fuel to use, in a vehicle, for travelling on a public road' in subsection 43-10(3) covers fuel that is used in a vehicle:

- for the purpose of propelling that vehicle on a public road; and
- all aspects of the vehicle function and operation that are for the purpose of travelling on a public road. Fuel for travelling would include fuel used for stopping and idling while stationary in the course of a journey as well as the use of lights, brakes, power-steering and windscreen wipers.

### Fuel used in vehicles idling on a public road

9. As discussed above, idling whilst stationary in the course of travelling on a public road is part and parcel of that travelling. Therefore the fuel tax credit in respect of fuel used in a vehicle, while idling on a public road will be reduced by the road user charge.

***Example: travel – waste management vehicle***

10. A local council rubbish truck<sup>3</sup> collects waste from bins positioned along public roads. The vehicle moves along the road to each bin, momentarily stops to empty the contents of the bin into its enclosed rubbish container using a hydraulic lift arm and then moves to the next bin. The truck is travelling on public roads to collect and transport rubbish. The truck dumps the collected waste at a council landfill site.

11. The truck's travel begins when it leaves the council depot and ends when it returns to the depot. Stopping and idling along the truck's route are the ordinary incidents of the truck's travel.

12. Fuel used to power the truck while idling is used for travelling. It follows that the fuel tax credit in respect of fuel used by the truck whilst idling on a public road will be reduced by the road user charge.

13. This should not be confused with the fuel used to power the hydraulic lifting arm of the truck which the Commissioner accepts is not used for travelling. This portion of the fuel used by the vehicle is not reduced by the road user charge.

**Fuel used to power the air-conditioning unit in the cabin of a vehicle**

14. Air-conditioning in a driver's cabin is a feature common to a large number of vehicles in Australia. Whilst not determinative, cabin air-conditioning is generally not powered by a separate, dedicated unit as was the case in the Linfox decision (discussed above). Air-conditioning is commonly used in the ordinary course of making a journey, from one place to another; that is, for travelling. The fact that air conditioning may be perceived as optional or may make travelling more comfortable, does not alter this conclusion.

15. Similar to idling and with fuel used in other aspects of the vehicle, such as the lights, brakes, power-steering and windscreen wipers, the fuel used to power the air-conditioning unit of the driver's cabin is for the purpose of travelling on a public road. It follows that the fuel tax credit in respect of fuel used for the air-conditioning of a driver's cabin, while on a public road, will be reduced by the road user charge.

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<sup>3</sup> With a vehicle mass in excess of 4.5 tonnes.

## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*Legislative references:*

- FTA 2006
- FTA 2006 Div 41
- FTA 2006 41-20
- FTA 2006 41-25
- FTA 2006 43-10(3)

- TAA 1953

*Cases relied on:*

- Linfox Australia v. FCT [2012] AATA 517; (2012) 89 ATR 931

*Other references:*

- Decision Impact Statement Linfox Australia v. FCT [2012] AATA 517; (2012) 89 ATR 931

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ATO references

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