

INTERNAL REVENUE SERVICE

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Legend:

Taxpayer =

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This responds to your request for a letter ruling, on behalf of Taxpayer, on whether Taxpayer is eligible to claim a credit or refund under § 6416(a)(4) of the Internal Revenue Code as the wholesale distributor of gasoline sold to the state or local government for its exclusive use.

Taxpayer is engaged in refining and marketing gasoline and other petroleum products. Taxpayer owns and operates a crude oil refinery and buys and sells refined petroleum products throughout the United States. The marketing business is conducted through product terminals owned and operated by affiliates and third parties. In addition, Taxpayer owns and operates 23 retail motor fuel outlets that sell diesel fuel and gasoline to the general public and to state and local government agencies. All of the outlets are fully automated and purchases can be made with a credit card issued by the taxpayer, its affiliates, or, at some outlets, other credit card companies. Taxpayer sells gasoline to state and local governments through its retail motor fuel outlets and with truck deliveries to government storage facilities.

Section 6416(b)(2)(B) provides that the tax paid under § 4081 on gasoline shall be deemed an overpayment if the gasoline was, by any person, sold to a state or local government for the exclusive use of a state or local government.

Section 6416(a)(4)(A) provides that a wholesale distributor that purchases any gasoline on which tax imposed by § 4081 has been paid and that sells the

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gasoline to its ultimate purchaser shall be treated as the person (and the only person) that paid the tax.

Section 6416(a)(4)(B) provides that the term "wholesale distributor" has the meaning given such term by § 4093(b)(2) (determined by substituting "any gasoline taxable under § 4081" for "aviation fuel" therein). Such term includes any person that makes retail sales of gasoline at 10 or more retail motor fuel outlets.

Section 4093(b)(2) provides that a wholesale distributor includes any person that sells aviation fuel to producers, retailers, or to users who purchase in bulk quantities and accept delivery into bulk storage tanks. Such term does not include any person that is a producer or importer. Section 4093(b)(1) provides that a producer includes a refiner.

The legislative history to the Taxpayer Relief Act of 1997, Pub. L. 105-34, provides that those persons who make sales at 10 or more retail motor fuel outlets were added to the definition of wholesale distributor to conform the "definition of wholesale distributor to that which existed before 1987 when the point of collection of the gasoline tax was moved." H.R. Rpt. No. 220, 105th Cong., 1st Sess. 446 (1997). Section 4082(d), as in effect in 1986, provided that the term "wholesale distributor" includes any person who sells gasoline to producers, retailers, or to users who purchase in bulk quantities and deliver into bulk storage tanks, or purchases gasoline from a producer and distributes such gasoline to 10 or more retail gasoline stations under common management with such person. Section 4082(d), with flush language, provided that "such term does not include any person who (excluding the term "wholesale distributor" from subsection (a)) is a producer or importer. Section 4082(a) defined the term "producer" as including a refiner, compounder, blender, or wholesale distributor.

Taxpayer has requested a ruling that it is a wholesale distributor for purposes of § 6416(a)(4) and, as such, allowed to claim a credit or refund for gasoline sold to a state or local government for its exclusive use. Taxpayer is a refiner. The operation of 10 or more retail stations by Taxpayer does not alter the exclusion of refiners from the definition of wholesale distributor contained in § 6416(a)(4) by reference to § 4093(b)(2). Therefore, Taxpayer is not included in the definition of wholesale distributor for purposes of § 6416(a)(4).

While Taxpayer is not eligible as a wholesale distributor to claim a credit or refund for the sale of the gasoline to the state and local government for its exclusive use, the person that paid the tax on the gasoline so sold may be eligible to claim a credit or refund.

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This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. Temporary or final regulations pertaining to one or more of the issues addressed in this letter ruling have not yet been adopted. Therefore, this letter ruling will be modified or revoked by the adoption of temporary or final regulations to the extent the regulations are inconsistent with any conclusion in the letter ruling.

Sincerely,

Assistant Chief Counsel
(Passthroughs and Special Industries)

By: _____

Ruth Hoffman
Senior Technician Reviewer, Branch 8

Enclosures (2)

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