

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:7  
PLR-130430-08

Date:  
December 05, 2008

In Re:

EIN

Legend: Authority =  
Corp X =

Dear :

This responds to a letter ruling request submitted by Authority asking whether, for purposes of sections 6426 and 6427 of the Internal Revenue Code, Authority is characterized as the alternative fueler (unmixed fuel) of compressed natural gas (CNG) that Authority delivers into the fuel supply tanks of its vehicles. The characterization of Authority as the alternative fueler (unmixed fuel) is a prerequisite to claiming a payment under section 6427.

Authority represents that it is a public transportation authority organized under a state code as a political subdivision of the state.

Authority operates public buses that use CNG as fuel. Authority fuels its buses at two locations, each of which has a gas compressing station (stations). Both stations are on property owned by Authority. Authority owns one station and all its equipment. The second station is subject to a lease/purchase agreement with Corp. X. Authority has additional agreements with Corp. X to have Corp. X maintain and operate both stations.

Corp X buys natural gas from a natural gas supplier. Corp X then sells the natural gas to Authority but retains possession of the gas. While Authority's natural gas is in Corp X's possession, Corp X compresses the natural gas into CNG. Authority retains title to its CNG from the time Corp X compresses Authority's natural gas to the time Authority's CNG is delivered into the fuel supply tanks of Authority's buses.

Authority does contract, however, with a third party, unrelated to Corp X, to deliver at its stations' sites Authority's CNG into the fuel supply tanks of Authority's buses.

Section 4041(a)(3)(A), in general, imposes a tax on CNG that is sold for use or used as a fuel in a motor vehicle or motorboat. Section 4041(a)(3)(C) provides that references to any liquid subject to the tax imposed by § 4041 shall be treated as including references to CNG.

Section 4041(g)(2) provides, in part, that the tax imposed by § 4041 does not apply to any liquid used as a fuel by a political subdivision of a state.

Section 48.4041-21(a)(1) of the Manufacturers and Retailers Excise Tax Regulations provides that tax is imposed on the delivery of CNG into the fuel supply tank of the propulsion engine of a motor vehicle unless tax was imposed on the CNG under § 48.4041-21(b). Section 48.4041-21(a)(2) provides that if the delivery of the CNG is in connection with a sale, the seller of the CNG is liable for the tax imposed under paragraph (a)(1). If the delivery of the CNG is not in connection with a sale, the operator of the motor vehicle is liable for the tax.

Section 48.4041-8(c) provides, in part, that the term "motor vehicle" includes all types of vehicles propelled by motor that are designed for carrying or towing loads from one place to another, regardless of the type of load or material carries or towed and whether or not the vehicle is registered or required to be registered for highway use.

Section 6426(a)(2) provides that a credit is allowed against the tax imposed by section 4041 in the amount described in section 6426(d) provided the taxpayer is registered under § 4101.

Section 6426(d)(1) provides that the alternative fuel credit described in § 6426(a)(2) is allowed for alternative fuel sold by the taxpayer for use as a fuel in a motor vehicle, or so used by a taxpayer.

Section 6426(d)(2)(C) provides that alternative fuel includes compressed or liquefied natural gas.

Section 6427(e)(2) provides that if any person sells or uses an alternative fuel (as defined in section 6426(d)(2)) for a purpose described in section 6426(d)(1) in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the alternative fuel credit with respect to such fuel. Section 6427(e)(3) provides that no amount shall be paid for which an amount is allowed as a credit under section 6426.

Notice 2006-92, 2006-2 C.B.774, provides guidance on the credit and payment provisions for alternative fuel, including CNG, under §§ 34, 6426(d), 6426(e), and 6427(e). Section 3(b)(3) provides the criteria for a payment claim allowance.

Section 3(b)(3)(ii) requires that the claimant is the alternative fueler (unmixed fuel) with respect to the fuel and is registered under § 4101 as an alternative fueler. Section 2(d) provides that the alternative fueler (unmixed fuel) is: (1) the person that is liable for tax on the alternative fuel imposed by § 4041(a)(2) or (3) (determined in the case of CNG after the application of § 48.4041-21) or (2) the person that would be so liable but for the applicable exemptions provided in § 4041.

Section 4041(a)(3)(A) imposes a tax on the sale or use of CNG. The regulations under § 4041 provide that this tax is imposed upon the delivery of the CNG into the fuel supply tank of a propulsion engine of a motor vehicle. In the absence of a sale of CNG in connection with the delivery, the person liable for this tax is the operator of the motor vehicle. The CNG described in this transaction is not sold to Authority. Authority owns the natural gas that Corp X, under contract, compresses for Authority. Authority operates the buses into whose fuel tanks the CNG is delivered. Authority buses meet the definition of a highway vehicle in § 48.4041-8(c). Therefore, Authority would be liable for the tax imposed on the CNG but for the exemption allowed for political subdivisions of a state. See § 4041(g)(2).

Accordingly, under the facts described above, Authority is the alternative fueler (unmixed fuel), as defined in Notice 2006-92, of the CNG Authority delivers into the fuel supply tanks of its buses.

Authority, as an alternative fueler (unmixed fuel), cannot use the § 6426 alternative fuel tax credit because Authority is exempt from tax on its CNG use as described in this letter. Section 6427(e)(2), however, provides for a payment equal to the alternative fuel tax credit. To claim this payment, Authority should use Form 8849, Claim for Refund of Excise Taxes. Any claims for payment that Authority makes must meet all the criteria for payment claims in Notice 2006-92, including registration of Authority by the IRS.

This letter is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

This private letter ruling is based upon information and representations submitted by Authority and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, the supporting material is subject to verification on examination.

Sincerely,

Frank Boland  
Chief, Branch 7  
(Passthroughs & Special Industries)