

## INTERNAL REVENUE SERVICE

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CC:PSI:8/PLR-118219-00

In re:

01-17-2001

Legend:

PH =

Dear

This responds to your September 21, 2000, request for a ruling whether PH is eligible for a credit or refund under § 6416 of the Internal Revenue Code of the excise tax it pays on gasoline under the circumstances described below.

The following facts and representations have been submitted in the request:

PH is a position holder with respect to gasoline in a terminal. PH proposes to enter into an agreement (Agreement) with a wholesale distributor of gasoline (Wholesaler) and a credit card issuer (Issuer) under which certain state and local governments and nonprofit educational organizations (State) would use Issuer's card to buy gasoline for its exclusive use from Wholesaler. As a condition to receiving a card from Issuer, State would provide Issuer a statement that contains the substance of the certificate of ultimate purchaser described in § 48.6416(b)(2)-3(b)(1) of the Manufacturers and Retailers Excise Tax Regulations. State also would provide Issuer a statement that it will not claim a refund under § 6421(c) relating to the gasoline.

Under the Agreement, PH would sell gasoline to Wholesaler at a tax-included price when the gasoline is removed from the terminal at the terminal rack. PH would pay the tax to the government on this removal. Wholesaler would sell the gasoline to State. State would buy the gasoline using Issuer's card.

State would pay Issuer the pump price for the gasoline less the amount of the federal excise tax. Issuer would pay PH the pump price for the gasoline less the amount of the federal excise tax. PH would pay Wholesaler the pump price for the gasoline, which includes the amount of the federal excise tax. PH would claim a credit or refund and include with its claim the evidence required by § 48.6416(a)-3(b)(2) and a

statement, supported by sufficient available evidence, that satisfies the requirements of § 48.6416(b)(2)-3(a).

Section 4081 imposes a tax on certain removals, entries, and sales of gasoline.

Section 6402 provides the authority of the IRS to credit any overpayment against any liability in respect of an internal revenue tax on the part of the person that made the overpayment and to refund the balance to that person.

Section 6416(b)(2) provides that the tax paid under § 4081 on gasoline is deemed to be an overpayment if the gasoline was sold to a state or local government or nonprofit educational organization for its exclusive use.

Section 6416(a)(4) provides that a wholesale distributor that buys gasoline on which the § 4081 tax has been paid and that sells the gasoline to its ultimate purchaser is treated as the person (and the only person) that paid the tax to the government.

Section 6416(a)(4) was added to the Code by the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647) (the 1988 Act). The conference report to this legislation notes that the “provision is limited to cases where the gasoline is purchased tax-paid by a wholesale distributor who sells the fuel directly” to a state or other exempt purchaser. H.R. Conf. Rep. No. 100-1104, at 177 (1988), 1988-3 C.B. 473, at 667.

Notice 89-29, 1989-1 C.B. 669, provides guidance with respect to the application of § 6416(a)(4). The sixth paragraph of Notice 89-29 provides that if

a wholesale distributor (1) purchases gasoline at a price that includes the tax, (2) sells such gasoline...directly to the ultimate purchaser for an exempt purpose ... , and (3) meets the other requirements of section 6416 of the Code and this Notice, then the wholesale distributor is treated as the person who paid the tax to the government and is the only person eligible to claim a credit or refund under section 6416. In such a case the person that actually paid the tax on the gasoline is not eligible to claim the credit or refund. However, if the tax is not included in the price of the gasoline purchased by the wholesale distributor, or the gasoline is not sold directly to the ultimate purchaser by the wholesale distributor, then only the person who actually paid the tax to the government may file a claim under section 6416.

The ninth paragraph of the notice provides that

[i]n order for the wholesale distributor to obtain a credit or refund under section 6416 of the Code for gasoline sold to an ultimate purchaser... the wholesale distributor must (1) submit a statement that it sold the gasoline at a price that did not include the tax, and did not otherwise collect the amount of the tax from a purchaser, and (2) obtain a certificate of ultimate purchaser as described in

section 48.6416-(b)(2)-3(b) of the Regulations.

The gasoline in question would be sold to State for its exclusive use. Thus, under § 6416(b)(2), the tax paid on the gasoline would be deemed to be an overpayment. Under § 6402, a credit or refund is to be allowed to the person that made the overpayment (that is, the person that paid the tax to the government). Under § 6416(a)(4), however, the wholesale distributor that buys gasoline on which the tax has been paid is treated as the person that paid the tax to the government if the wholesale distributor sells the gasoline to the ultimate purchaser.

PH argues that under Notice 89-29 Wholesaler should not be treated as the person that paid the tax and that it, PH, would be the proper person to claim a credit or refund of the tax on gasoline sold to State. PH notes that the ninth paragraph of Notice 89-29 provides that for a wholesale distributor to obtain a credit or refund, the wholesale distributor must submit a statement that it sold the gasoline at a price that did not include the tax and did not otherwise collect the amount of the tax from the buyer. In this case, Wholesaler would not be able to submit that statement because Wholesaler would have sold gasoline to State at a price that included the amount of the tax (that is, the pump price) and Wholesaler eventually would receive the actual pump price from PH. Because Wholesaler would not meet these requirements of Notice 89-29, PH concludes that Wholesaler would not be eligible to claim a credit or refund and thus PH would be eligible.

PH is incorrect. The ninth paragraph in Notice 89-29 describes the procedural requirements that a wholesale distributor must follow to obtain a credit or refund if the wholesale distributor is treated as the person that paid the tax to the government. However, it must first be determined whether a wholesale distributor is to be so treated. The first sentence of the sixth paragraph in Notice 89-29 provides that a wholesale distributor is treated as the person that paid the tax to the government and is the only person eligible to claim a credit or refund under § 6416 if the wholesale distributor (1) buys gasoline at a price that includes the tax, (2) sells the gasoline directly to the ultimate purchaser for an exempt purpose, and (3) meets the other requirements of § 6416 and the notice.

The first two requirements, which reflect the provisions of § 6416(a)(4) and the conference report to the 1988 Act, state the substantive requirements for treating a wholesale distributor as the person that paid the tax to the government. The third requirement simply states the procedural requirements that a wholesale distributor that meets the first two must satisfy in order to obtain a credit or refund. This analysis is supported by the last sentence of the sixth paragraph, which provides that the person that actually paid the tax to the government (such as a position holder) may file a claim under § 6416 if the tax is not included in the price of the gasoline purchased by the wholesale distributor or the gasoline is not sold directly to the ultimate purchaser by the wholesale distributor.

In this case, Wholesaler would buy gasoline at a price that includes the tax and sell the gasoline directly to the ultimate purchaser for an exempt purpose. Thus, Wholesaler would be treated as the person (and the only person) that paid the tax to the government. This conclusion is not changed by the fact that Wholesaler might not meet the procedural requirements for obtaining a credit or refund.

Accordingly, we conclude that, based on the facts and representations that have been submitted with the request, PH would not be eligible to claim a credit or refund under § 6416 of the excise tax it pays on gasoline under the circumstances described above because Wholesaler, and not PH, would be treated as the person that paid the tax to the government.

This ruling is directed only to the taxpayer who requested 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 ruling have not yet been adopted. Therefore, this 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. See § 12.04 of Rev. Proc. 2000-1, 2000-1 I.R.B. 4, at 46. However, when the criteria in § 12.05 of Rev. Proc. 2000-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

Sincerely,  
Associate Chief Counsel  
(Passthroughs and Special Industries)  
By: Ruth Hoffman  
Senior Technician Reviewer, Branch 8

Enclosures (2):  
Copy of this letter  
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