

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
November 19, 2007

In Re:

Legend: =

Dear :

This responds to a letter ruling request submitted by Taxpayer asking whether Taxpayer is treated as the alternative fueler (unmixed fuel) for purposes of sections 6426 and 6427 of the Internal Revenue Code on propane it sells and delivers as described below.

Taxpayer sells and delivers propane to industrial users for use in forklifts. Taxpayer represents that the propane is sold either: (1) in a portable container that it describes as a "limited use liquid release cylinder;" or (2) in bulk and delivered into bulk storage tanks.

Taxpayer requests a ruling that it is the alternative fueler, eligible for the alternative fuel credits and payments under sections 6426 and 6427, with respect to propane sales delivered in limited use portable containers for forklift consumption. Taxpayer also requests a ruling that it is the alternative fueler with respect to bulk propane sales in which the purchasers provide a written statement that the propane will be consumed in powering forklifts in their business operations.

Section 6426(d)(2)(A) provides that alternative fuel includes liquefied petroleum gas, including propane.

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).

Section 6426(d)(1) provides that the alternative fuel credit is 50 cents per gallon of alternative fuel sold by the taxpayer for use as a fuel in a motor vehicle, or so used by a taxpayer.

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. No amount shall be paid for which an amount is allowed as a credit under section 6426.

Notice 2006-92, 2006-43 I.R.B. 774, provides guidance on the credit and payment provisions for alternative fuel, including liquefied petroleum gas, under §§ 34, 6426(d), 6426(e), and 6427(e). The Notice provides that, as one of the conditions to allowance of a claim for the alternative fuel credit or payment, the claimant must be the alternative fueler (unmixed fuel) with respect to the fuel. The alternative fueler (unmixed fuel) is defined as the person that is liable for tax on the alternative fuel imposed by section 4041(a)(2) or (3) or the person that would be so liable but for the applicable exemptions provided in section 4041.

Section 4041(a)(2), in general, imposes a tax on the sale of any liquid (other than fuel taxed under section 4081) to the operator of a motor vehicle for use as a fuel in such motor vehicle.

Section 48.4041-8(c) of the Manufacturers and Retailers Excise Tax Regulations provides that motor vehicle includes all types of vehicles propelled by a motor that are designed for carrying or towing loads from one place to another, including forklifts.

Section 4041(b)(1)(C) provides an exemption from tax imposed by section 4041(a) for liquids sold for use or used in an off-highway business use as defined in section 6421(e)(2). Section 6421(e)(2) provides that an "off-highway business use" means any use in a person's trade or business other than as a fuel in a highway vehicle, which is registered, or required to be registered, for highway use under the laws of any State or foreign country.

Section 48.4041-5(a)(1) of the regulations provides that the sale of special motor fuel to an operator of a motor vehicle is considered a taxable sale if the fuel is delivered by the seller into the fuel supply tank of the vehicle.

Section 48.4041-5(a)(2) of the regulations provides that the sale of special motor fuel to an operator of a motor vehicle is considered a taxable sale if the fuel is delivered by the seller into a bulk supply tank that is not the fuel supply tank of a vehicle and the purchaser furnishes a written statement that the entire quantity of the liquid fuel covered by the sale is for a taxable purpose as a fuel in such vehicle.

Rev. Rul. 65-301, 1965-2 C.B. 415, holds that sales of liquefied petroleum gas delivered by the vendor in general purpose portable containers which are attached, as needed, to forklifts do not constitute delivery into the fuel supply tank. Accordingly, the vendor is not liable for tax on these sales unless the vendor receives a statement that the entire volume of liquid sold is for a taxable purpose. If the vendor does not receive the statement, then the vendee is liable for the tax, if any, on its use of the fuel.

Under Notice 2006-92, Taxpayer is the alternative fueler with respect to its sales of propane in bulk or in portable containers, and therefore entitled to claim a credit or payment under §§ 6426 and 6427, only if it is the person that is liable for tax under section 4041 or would be so liable but for an applicable exemption.

In the case of the limited use portable containers, Taxpayer represents that delivery into the containers is delivery into the fuel supply tank of a forklift because the containers are the sole fuel delivery tanks of propane-powered forklifts. Taxpayer asserts that economic and safety considerations make the use of propane in the portable containers impractical for any other liquid release purpose.

The delivery in the portable containers would not be a taxable sale under § 48.4041-5(a)(1) of the regulations. The containers described by Taxpayer are used in the same way as the containers described in Rev. Rul. 65-301; that is, as fuel delivery tanks of propane-powered forklifts. Rev. Rul. 65-301 holds that delivery in a general purpose portable container is not delivery into the fuel supply tank of a motor vehicle. Thus, Taxpayer would not be liable for tax under section 4041.

The bulk propane sales for use in forklifts, as well as the sales in limited use portable containers, are not taxable sales under § 48.4041-5(a)(2) of the regulations. Although use of propane in a forklift is use in a motor vehicle (as defined in § 48.4041-8(c) of the regulations), it is not a taxable use because it meets the exemption for off-highway business use in section 4041(b)(1)(C). Therefore, purchaser cannot give the written statement that the entire quantity of the liquid fuel covered by the sale is for a taxable purpose, as required under the regulations. Thus, Taxpayer is not liable for tax under section 4041.

Accordingly, for purposes of sections 6426 and 6427, Taxpayer is not the alternative fueler with respect to sales of propane delivered in limited use portable containers for forklift consumption because such delivery is not delivery into the fuel supply tank of a vehicle. Further, Taxpayer is not the alternative fueler with respect to

bulk propane sales for forklift consumption because the purchaser cannot furnish the statement required under § 48.4041-5(a)(2) of the regulations.

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

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)

By:

Frank Boland
Chief, Branch 7

Enclosures(2):

Copy of this letter
Copy for section 6110 purposes