

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

September 12, 2002

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Third Party Contact: None
Index (UIL) No.: 6427.00-00
CASE MIS No.: TAM-128334-02
CC:PSI:B8

Director, Appeals

Taxpayer Name:
Taxpayer Address:

Taxpayer Identification No.:
Quarters Involved:
Date of Conference:

LEGEND: Taxpayer =

ISSUE:

Is Taxpayer the proper person to claim a credit or payment under § 6427(l)(5) of the Internal Revenue Code with respect to undyed diesel fuel sold to the state as described below?

CONCLUSION:

Taxpayer is not the proper person to claim a credit or payment under § 6427(l)(5) with respect to undyed diesel fuel sold to the state as described below.

FACTS:

Taxpayer sells undyed diesel fuel. Taxpayer is liable for the federal excise tax imposed by § 4081(a)(1)(ii) on the removal of undyed diesel fuel from its terminals. Taxpayer sold the diesel fuel to dealers. States bought undyed diesel fuel from the dealers using a credit card issued by Taxpayer.

Taxpayer filed claims with respect to the excise tax imposed by § 4081 on the diesel fuel purchased by states using Taxpayer's credit card. The IRS disallowed these claims. The Office of Appeals requested technical advice on this issue.

LAW AND ANALYSIS:

Section 4081(a)(1)(ii) imposes a federal excise tax on certain removals of taxable fuel from any terminal. Section 4083(a)(1)(B) provides that diesel fuel is a taxable fuel.

Section 6427(l)(5) provides that if diesel fuel on which tax was imposed by § 4081 is used by a state for its exclusive use, then the ultimate vendor of the diesel fuel is the person eligible to claim a credit or payment with respect to the tax if certain conditions are met.

Section 48.6427-9 of the Manufacturers and Retailers Excise Tax Regulations provides rules under which certain registered ultimate vendors of taxed diesel fuel may claim the credits or payments allowed by § 6427(l)(5). Section 48.6427-9(b) defines an ultimate vendor as a person that sells undyed diesel fuel to any state for its exclusive use. Section 48.6427-9(c) provides that a claim with respect to diesel fuel is allowed by § 6427(l)(5) only if, among other conditions, the claimant sold the diesel fuel to any state for its exclusive use.

The Appeals Office that submitted this request determined that because the dealers rather than Taxpayer sold the diesel fuel to the state, Taxpayer was not the ultimate vendor of diesel fuel. Therefore, Taxpayer was not the proper person to make a claim with respect to the diesel fuel sold to the state.

Taxpayer argues that the oil company credit card rule for gasoline provided in Notice 89-29, 1989-1 C.B. 669, applies to diesel fuel because §§ 6416(a)(4) and 6427(l)(5) are similar in that both sections identify the seller of the fuel as the entity entitled to make a claim. Therefore, Taxpayer reasons that it should be treated as the seller of the diesel fuel to the state.

We agree with the Appeals Office. Sections 6427(l)(5) and 48.6427-9(c)(2)(iii) provide that the proper person to claim a credit or payment with respect to the tax imposed on diesel fuel sold to a state for its exclusive use is the ultimate vendor that sold the diesel fuel to the state. Taxpayer did not sell the diesel fuel to the state. Accordingly, Taxpayer is not the proper person to claim a credit or payment with respect to diesel fuel sold to the state. Notice 89-29 applies only to gasoline and not to diesel fuel. Section 48.6427-9 did not create an oil company credit card rule with respect to diesel fuel ultimate vendors.

CAVEATS:

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) provides that it may not be used or cited as precedent.