



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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Dear _____ :

This letter is in response to your request for a letter ruling pre-submission conference regarding dyeing diesel fuel. You explained that you intend to seek a ruling that the corporation for which you are the Director of Finance, _____, is in compliance with certain Treasury Regulations when it dyes undyed diesel fuel

After reading your request, together with subsequent communications, we determined that we cannot issue a letter ruling because the determination you requested is primarily one of fact. See Rev. Proc. 2019-1, 2019-1 I.R.B. 1, § 6.02; Rev. Proc. 2019-3, 2019-1 I.R.B. 130, § 4.02(1). A letter ruling interprets the tax laws and applies them to the taxpayer's specific set of facts, but does not determine the accuracy of those facts. See Rev. Proc. 2019-1, § 2.01. Instead, we are providing you with this information letter, which calls attention to well-established interpretations or principles of tax law without applying it to a specific set of facts. See *id.* § 2.04. We hope this general information is helpful to you.

Section 4081(a)(1) of the Internal Revenue Code imposes a federal excise tax on certain removals, entries, and sales of taxable fuel. Section 4083(a)(1)(B) provides that diesel fuel is a taxable fuel. Under section 4082(a) and section 48.4082-1 of the Manufacturers and Retailers Excise Tax Regulations, tax is not imposed if, among other conditions, the diesel fuel is dyed "by mechanical injection" in accordance with regulations that the Secretary shall prescribe.

This requirement for mechanical injection is effective on the 180th day after the date on which these regulations are issued. Temporary regulations implementing this requirement were issued on April 26, 2005. T.D. 9199, 2005-19 I.R.B. 1003. Thus, the effective date of the temporary regulations is October 24, 2005.

However, Treasury and the Service issued transition rules in Notice 2005-80, 2005-46 I.R.B. 953, due to a concern that many taxpayers would be unable to comply with the temporary regulations by October 24, 2005. Notice 2005-80, § 6(b). The transition rules apply between October 24, 2005, and the date that is 180 days after the date of publication of final regulations in the Federal Register. *Id.* Final regulations have not been published in the Federal Register.

The transition rules provide that:

(1)(i) Any means of dyeing by mechanical injection will be deemed to meet the “mechanical injection” requirements of § 4082(a) if the dyeing system includes measures to resist tampering that are consistent with customary business security practices. Thus, mechanical injection systems at a terminal are not required to meet the specific requirements of § 48.4082-1T(d) and no penalty will be imposed under § 6715A(a)(2) for a failure to meet those specific requirements.

(ii) In the case of a malfunction of a system described in section (b)(1)(i) of this section, fuel dyed by manual dyeing will be deemed to meet the requirements of § 4082(a) if the interval between the first occurrence of manual dyeing and the last does not exceed 72 hours (excluding any Saturday, Sunday, or legal holiday that is within the interval) and the facility operator keeps adequate records describing the circumstances surrounding the malfunction. The Service may withdraw an operator's right to dye by manual dyeing if the Service cannot verify the accuracy of such dyeing.

Id.

Alternatively, you inquired about the possibility of a ruling that your corporation generally has IRS permission to dye diesel fuel. We cannot provide a ruling on this request either. Neither section 4101(a) nor the related regulations impose a registration requirement related to dyeing diesel fuel. Notice 2005-80 provides the requirements to dye diesel fuel. As previously stated, a determination that rules that a corporation meets these requirements is factual in nature. A ruling that hypothesizes that if a corporation met these requirements then it has permission to dye diesel fuel would be a comfort ruling. A comfort ruling is a ruling on an issue that is clearly and adequately addressed by various authorities including published guidance. See Rev. Proc. 2019-1, § 6.11. The transition rules set forth in Notice 2005-80 clearly and adequately establishes the requirements to dye diesel fuel.

In conclusion, we cannot provide your corporation with a letter ruling regarding either your dye injection system or your corporation's right to use such a system because of the factual nature of your request and because published guidance

adequately addresses the issues. Therefore, we consider the matter closed. However, if you have any questions concerning this letter, please contact at .

Sincerely,

Charles J. Langley, Jr.
Senior Technician Reviewer, Branch 7
(Passthroughs & Special Industries)