Internal Revenue Service

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Person To Contact:
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Telephone Number:

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Date:
May 18, 2010

LEGEND:

Taxpayer =

Dear :

This letter responds to your letter dated , requesting a ruling that a hydrogen refueling station that is used to refuel fork lift trucks is "qualified alternative fuel vehicle refueling property" for purposes of § 30C of the Internal Revenue Code.

Facts

The facts are represented by Taxpayer to be as follows.

Taxpayer uses a accounting period, and method of accounting for maintaining its accounting books and records, and filing its federal income tax return.

Law and Analysis

Section 30C(a) provides a credit against tax in an amount equal to 30 percent of the cost of any qualified alternative fuel vehicle refueling property placed in service by the taxpayer during the taxable year. Section 30C(b) limits the maximum credit allowable with respect to all qualified alternative fuel vehicle refueling property placed in service by the taxpayer during the taxable year at a location to $30,000 in the case of property of a character subject to an allowance for depreciation, and $1,000 in any other case.

Section 30C(c) provides that the term "qualified alternative fuel vehicle refueling property" has the same meaning as the term "qualified clean-fuel vehicle refueling property" would have under § 179A if—

(1) § 179A(d)(1) did not apply to property installed on property that is used as the principal residence (within the meaning of § 121) of the taxpayer, and

(2) only the following were treated as clean-burning fuels for purposes of § 179A(d):

(A) Any fuel at least 85 percent of the volume of which consists of one or more of the following: ethanol, natural gas, compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen.

(B) Any mixture—

(i) that consists of two or more of the following: biodiesel (as defined in § 40A(d)(1)), diesel fuel (as defined in § 4083(a)(3)), or kerosene, and

(ii) at least 20 percent of the volume of which consists of biodiesel (as so defined) determined without regard to any kerosene in such mixture.

(C) Electricity.

Section 30C(e)(6) provides a special rule for qualified alternative fuel vehicle refueling property placed in service in taxable years beginning after December 31, 2008, and before January 1, 2011. Under § 30C(e)(6)(A), the credit for property that does not relate to hydrogen is equal to 50 percent of the cost of property placed in the service during the taxable year. The maximum credit allowable is $50,000 in the case

of property of a character subject to an allowance for depreciation, and $2,000 in any other case. Under § 30C(e)(6)(B), the credit for qualified alternative fuel vehicle refueling property that relates to hydrogen is 30 percent of the cost of the property, with a maximum allowable credit of $200,000 for property of a character subject to an allowance for depreciation.

Section 30C(g) provides that the credit does not apply to any property placed in service after December 31, 2010 (December 31, 2014, in the case of property that relates to hydrogen).

Notice 2007-43, 2007-1 C.B. 1318, 2007-22 I.R.B. 1318, sets forth interim guidance, pending the issuance of regulations, relating to the qualified alternative fuel vehicle refueling property credit. Notice 2007-43 states that qualified alternative fuel vehicle refueling property has the same meaning as under § 179(A)(d).

Section 179A(d) provides that the term "qualified clean-fuel vehicle refueling property" means any property (not including a building and its structural components) if

(1) the property is of a character subject to an allowance for depreciation,

(2) the original use of the property begins with the taxpayer; and

(3) the property is

(A) used for the storage or dispensing of a clean-burning fuel into the fuel tank of a motor vehicle propelled by the fuel, but only if the storage or dispensing of the fuel is at the point where the fuel is delivered into the fuel tank of the motor vehicle, or

(B) used for the recharging of motor vehicles propelled by electricity, but only if the property is located at the point where the motor vehicles are recharged.

Section 179A(e)(2) provides that the term "motor vehicle" means any vehicle that is manufactured primarily for use on public streets, roads and highways (not including a vehicle operated exclusively on a rail or rails) and that has at least 4 wheels."

Taxpayer requests a ruling that a hydrogen refueling station that is used to refuel fork lift trucks is "qualified alternative fuel vehicle refueling property" for purposes of § 30C. One of the requirements that the hydrogen refueling station must meet in order to be treated as qualified alternative fuel vehicle property for purposes of § 30C is that the property must be used to store or dispense alternative fuel at the point where the fuel is dispensed into the fuel tank of a motor vehicle. For purposes of § 30C, a motor vehicle is a vehicle that has at least four wheels and is manufactured primarily for use on public streets, roads and highways. Although a fork lift truck occasionally may be operated on public roads, it is manufactured primarily for hauling loads in factories,

warehouses and other similar settings, and not for use on public streets, roads, and highways. Therefore, a fork lift truck is not a “motor vehicle” for purposes of § 30C.

Accordingly, a hydrogen refueling station that dispenses hydrogen into a fork lift truck does not dispense the fuel “into the fuel tank of a motor vehicle.” Therefore, it is not qualified alternative fuel vehicle refueling property within the meaning of § 30C(c).

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion whether the refueling property in this case otherwise meets the requirements of § 30C.

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.

Sincerely,

Brenda M. Stewart
Senior Counsel, Branch 6
(Passthroughs & Special Industries)
Office of Associate Chief Counsel