

Part III - Administrative, Procedural, and Miscellaneous

Renewable Diesel

Notice 2007-37

Section 1. PURPOSE

(a) This notice provides guidance on the credits and payments provided for renewable diesel and renewable diesel mixtures under §§ 34, 40A, 6426, and 6427 of the Internal Revenue Code. Section 1346 of the Energy Policy Act of 2005 (Pub. L. 109-58) made these credits and payments applicable to renewable diesel and renewable diesel mixtures beginning January 1, 2006. References to regulations in this notice are to the Manufacturers and Retailers Excise Tax Regulations.

(b) This notice addresses issues related to fuel produced by coprocessing biomass and petroleum feedstocks (coproduced fuel). The coprocessing of biomass and petroleum feedstocks typically involves the use of catalysts, but the Energy Policy Act and its legislative history do not specify whether a process that uses catalysts is a thermal depolymerization process for purposes of the Internal Revenue Code. In addition, it is not clear under the Energy Policy Act and its legislative history whether the

portion of coproduced fuel attributable to biomass is sufficiently similar to the remainder of the coproduced fuel to treat the portion attributable to biomass as renewable diesel if the coproduced fuel as a whole satisfies Clean Air Act registration requirements and ASTM diesel standards applicable to renewable diesel.

(c) The Department of Energy has advised and the Department of the Treasury and the Internal Revenue Service have concluded based on that advice that thermal depolymerization should be defined generically and broadly to include processes that use heat and pressure, with or without the presence of catalysts. The Department of Energy has also indicated that coproduced fuel attributable to biomass is likely to be virtually indistinguishable from the crude-oil derived products in the coproduced fuel, with only minor differences at the molecular level, and the rules in this notice relating to coproduced fuel follow from this view.

Section 2. RENEWABLE DIESEL; RENEWABLE DIESEL MIXTURE

(a) Renewable diesel--(1) In general. Renewable diesel means diesel fuel that--

(i) Is derived from biomass (as defined in § 45K(c)(3)) using a thermal depolymerization process;

(ii) Meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency (EPA) under section 211 of the Clean Air Act (42 U.S.C. 7545); and

(iii) Meets the requirements of the American Society of Testing and Materials (ASTM) D975 or D396.

(2) Thermal depolymerization is a process for the reduction of complex organic

materials through the use of pressure and heat to decompose long-chain polymers of hydrogen, oxygen, and carbon into short-chain hydrocarbons with a maximum length of around 18 carbon atoms. A process may qualify as thermal depolymerization even if catalysts are used in the process.

(3) Treatment as biodiesel. For purposes of the Code, Notice 2005-4, 2005-1 C.B. 289, and Notice 2005-62, 2005-2 C.B. 443, renewable diesel is treated as biodiesel except that--

(i) Renewable diesel is diesel fuel as defined in § 48.4081-1(c)(2);

(ii) The amount of the credit or payment allowable for renewable diesel is \$1.00 per gallon;

(iii) The small biodiesel producer credit of § 40A(a)(3) does not apply; and

(iv) The Certificate for Biodiesel described in section 2 of Notice 2005-4 (as modified by Notice 2005-62) must indicate at all appropriate locations that the fuel to which the certificate relates is renewable diesel and state that the renewable diesel meets the requirements of paragraph (a)(1) of this section instead of the requirements for biodiesel that are described in the certificate.

(b) Renewable diesel mixture--(1) In general. Renewable diesel mixture means a mixture of renewable diesel and diesel fuel (other than renewable diesel) that contains at least 0.1 percent (by volume) of diesel fuel (other than renewable diesel). The term also includes diesel fuel described in section 3(a) of this notice. Any volume of kerosene in a renewable diesel mixture is disregarded in determining whether the renewable diesel mixture satisfies the 0.1 percent requirement. The diesel fuel in a

renewable diesel mixture may be either dyed or undyed. However, taxpayers are reminded of the penalty in § 6715 for the willful alteration of the strength or composition of any dye in dyed fuel. Also see § 48.6715-1.

(2) Treatment as biodiesel mixture. For purposes of the Code, Notice 2005-4, and Notice 2005-62, a renewable diesel mixture is treated as a biodiesel mixture.

Section 3. COPRODUCTION

(a) In general. Fuel produced from biomass (as defined in § 45K(c)(3)) and petroleum feedstocks using a thermal depolymerization process is a renewable diesel mixture if such fuel--

(1) Has been registered by the EPA under section 211 of the Clean Air Act (42 U.S.C. 7545); and

(2) Meets the requirements of ASTM D975 or D396.

(b) Amount of renewable diesel in mixture. If fuel is treated as a renewable diesel mixture under section 3(a) of this notice, only the portion of the mixture attributable to biomass qualifies as renewable diesel used in the production of a renewable diesel mixture. A taxpayer claiming a credit or payment with respect to fuel treated as a renewable diesel mixture under section 3(a) of this notice must use generally accepted scientific practices to establish the portion of the fuel that is attributable to biomass.

Section 4. EFFECTIVE DATE

This notice is effective January 1, 2006.

Section 5. DRAFTING INFORMATION

The principal author of this notice is Frank Boland of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, please contact Frank Boland at (202) 622-3130 (not a toll-free call).