

INTERNAL REVENUE SERVICE  
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

10-29-1999

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District Director

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification No.:

Period Involved:

No Conference Held

ISSUE:

Is Taxpayer eligible for a refund under § 6427(l) of the Internal Revenue Code with respect to the tax imposed on kerosene that Taxpayer packages in one gallon containers and sells to retailers for resale to consumers for nontaxable uses?

CONCLUSION:

Taxpayer is not eligible for a refund under § 6427(l) with respect to the tax imposed on kerosene that Taxpayer packages in one gallon containers and sells to retailers for resale to consumers for nontaxable uses.

FACTS:

Taxpayer is a chemical company that buys large quantities of taxed kerosene at a tax-included price. The kerosene is delivered into storage tanks at Taxpayer's repackaging facility. Taxpayer then puts the kerosene into one gallon containers and sells it to hardware stores and other retailers at a tax-excluded price. These stores then sell the kerosene to consumers for use in paint removal, wood refinishing, home heating, and other non-highway uses.

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APPLICABLE LAW:

Section 4081(a)(1)(A) (as amended by the Taxpayer Relief Act of 1997 (Act)) imposes a tax certain removals, entries, and sales of kerosene.

Section 6427(l)(1) provides that if kerosene on which tax has been imposed by section 4081 is used by any person in a nontaxable use, then a refund is allowable to the ultimate purchaser of such fuel in an amount equal to the amount of tax imposed on the fuel under section 4081. Nontaxable use includes use for paint removal, wood refinishing, home heating, and other uses that are not use as a fuel in a diesel-powered highway vehicle.

Section 48.6427-10T(a) provides that for purposes of § 48.6427-8, diesel fuel includes kerosene.

Section 48.6427-8(b)(1)(ii) provides that a claim for a refund with respect to diesel fuel under § 6427(l)(1) is allowable if, among other conditions, the claimant produced or bought the fuel and did not resell it in the United States.

RATIONALE:

Although the kerosene in question was ultimately used in a nontaxable use, Taxpayer cannot claim a refund with respect to the kerosene because Taxpayer was not the ultimate purchaser. Taxpayer did not consume the kerosene or use it to make a different product. Rather, Taxpayer sold the kerosene in the United States for resale to consumers. Taxpayer's purchase price and selling price are not factors in determining whether Taxpayer is the ultimate purchaser of kerosene.

Taxpayer suggests that the Congress added the tax on kerosene to reduce opportunities for fuel tax evasion, but that the Congress did not intend to impose the tax on kerosene used for nonhighway purposes. It is true that Congress sought to exempt from tax kerosene that is used for nonhighway purposes. In some cases, however, this exemption is realized through a credit or refund. Here, a refund relating to the kerosene tax is available only to the ultimate purchaser of the kerosene. Because Taxpayer is not the ultimate purchaser of the kerosene in question, Taxpayer is not eligible for a refund.

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CAVEAT:

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. Under § 6110(c), names, addresses, and identifying numbers have been deleted.