



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

OFFICE OF
CHIEF COUNSEL

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November 8, 2001

[REDACTED]

Attention: [REDACTED]

Dear [REDACTED]:

I apologize for the delay in responding to your September 14, 2001, inquiry on behalf of your constituent, [REDACTED]. His inquiry involves two separate tax issues:

- The tax rules relating to fuel used by nonprofit organizations that provide public transportation.
- The allowable personal automobile mileage rates.

I will address the fuel tax issue. Another IRS office will respond to you about the mileage rate issue.

The Internal Revenue Code (Code) generally taxes gasoline before the gasoline is bought by the consumer. However, the Code allows a refund of the gasoline tax if gasoline is used in several specified uses [Sections 6416(b)(2) and 6421 of the Code]. These include:

- Use in a bus while furnishing for hire passenger land transportation available to the general public. The bus must be engaged in either (1) scheduled transportation along regular routes, or (2) nonscheduled (charter) operations if the seating capacity of the bus is at least 20 adults, not including the driver.
- The exclusive use of a state or local government.
- The exclusive use of a nonprofit educational organization.

Our response to [REDACTED] inquiry is governed by the statutory provision that specifically allows for a refund of the gasoline tax if the gasoline is sold to a nonprofit

educational organization for its exclusive use. For purposes of this refund, the term “nonprofit educational organization” means an educational organization described in section 170(b)(1)(A)(ii) of the Code which is exempt from income tax under section 501(a). An educational organization is one that normally maintains a regular faculty and curriculum and has a regularly enrolled body of students at the place where its educational activities are carried on [Section 170(b)(1)(A)(ii) of the Code]. A nonprofit educational organization must have as its primary function the presentation of formal instruction [Section 1.170A-9(b)(1) of the Income tax Regulations]. The IRS does not have the statutory authority to allow refunds of tax for gasoline sold to other nonprofit organizations.

I hope this information is helpful. If you have any questions, please contact me at (202) 622-3000 or Ruth Hoffman of my staff at (202) 622-3130.

Sincerely,

Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)