



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

OFFICE OF  
CHIEF COUNSEL

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May 3, 2001

MEMORANDUM FOR Office of Chief Counsel, LMSB, Area 4, Phoenix  
Attn: Anne Durning

FROM: Joseph W. Clark, Senior Technician Reviewer, Branch 2,  
(Collections Bankruptcy and Summonses)

SUBJECT: Interplay of Bankruptcy and Fuel Excise Tax Provisions

This memorandum responds to your February 21, 2001, request for advice.

Questions Presented

(1)

[Redacted]

(2)

[Redacted]

Brief Answers

(1)

[Redacted]

(2)

[Redacted]

## Facts

The debtor in this case was a position holder of previously taxed gasoline blendstock in a terminal. It had not, however, been registered with the Service as required by I.R.C. § 4101. It filed for Chapter 11 bankruptcy protection on [REDACTED]. The Service filed administrative expense requests for fuel excise taxes for the second and third quarters of 1998, including IRC § 6662 penalties.<sup>1</sup> Most of the debtor's assets were sold in [REDACTED] and the debtor ceased business at that time. The sale yielded [REDACTED]. Since then, debtor's counsel has filed several motions to be paid legal fees and costs from the proceeds of the sale. Each time, the Service has objected because the motions did not provide for payment of the fuel excise taxes. As of February 21, 2001, the bankruptcy court has approved approximately \$ [REDACTED] in legal fees and costs of which \$ [REDACTED] has been paid, leaving approximately \$ [REDACTED] in the estate. [REDACTED].

Your undated memorandum to Chief, Examination Division, Southwest District, contains a lucid discussion of the application of IRC § 4081 to this case. Particularly important here is the fact that section 4081(e) and its regulations create a scheme to encourage taxpayers who engage in bulk transfers of taxable fuel be registered by the Service. As you explain:

The congressional drafters of section 4081 wanted taxpayers that are involved in bulk transfers of taxable fuel to be registered by the Service. To induce registration, Congress structured section 4081 so that tax would be imposed on both the removal of taxable fuel at the terminal rack and the bulk transfer of that same fuel to an unregistered person. I.R.C. §§ 4081(a)(1)(A)(iv) and (a)(1)(B). Thus, in this case, tax could have been avoided on the taxpayer's purchase of the taxable fuel [within the

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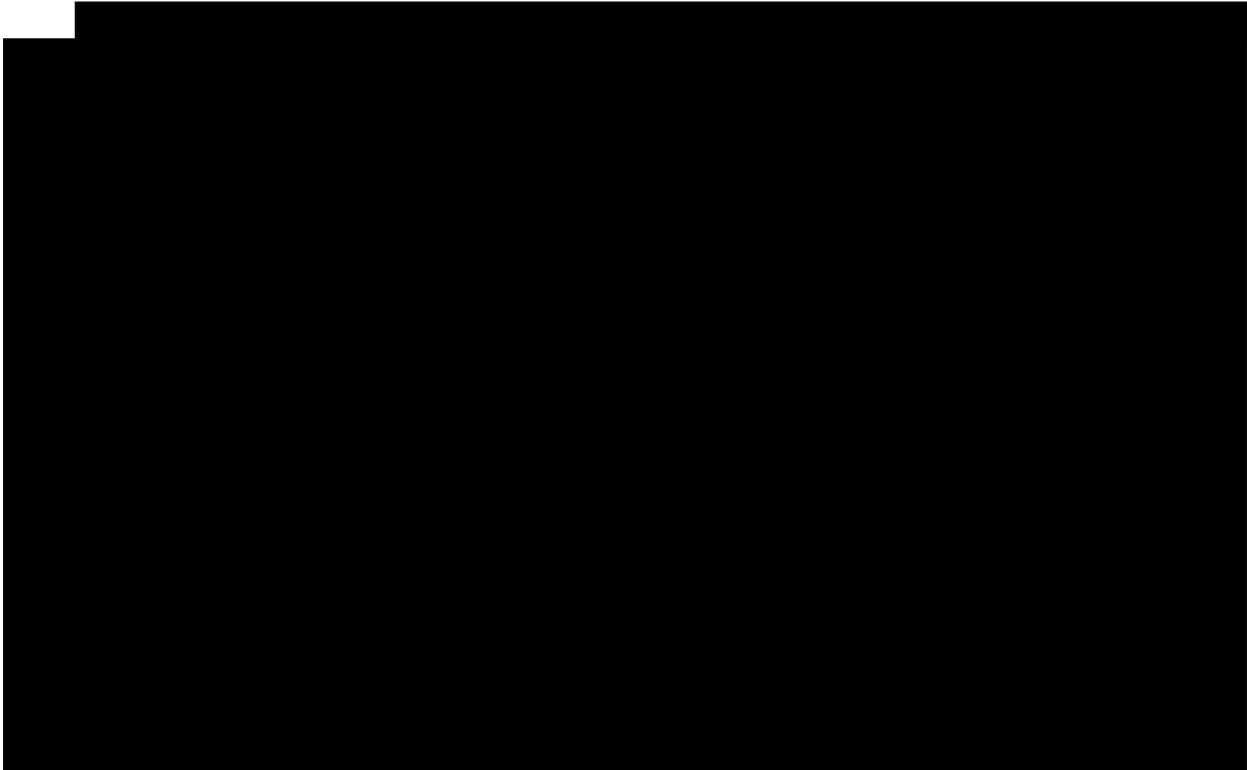
<sup>1</sup> [REDACTED]

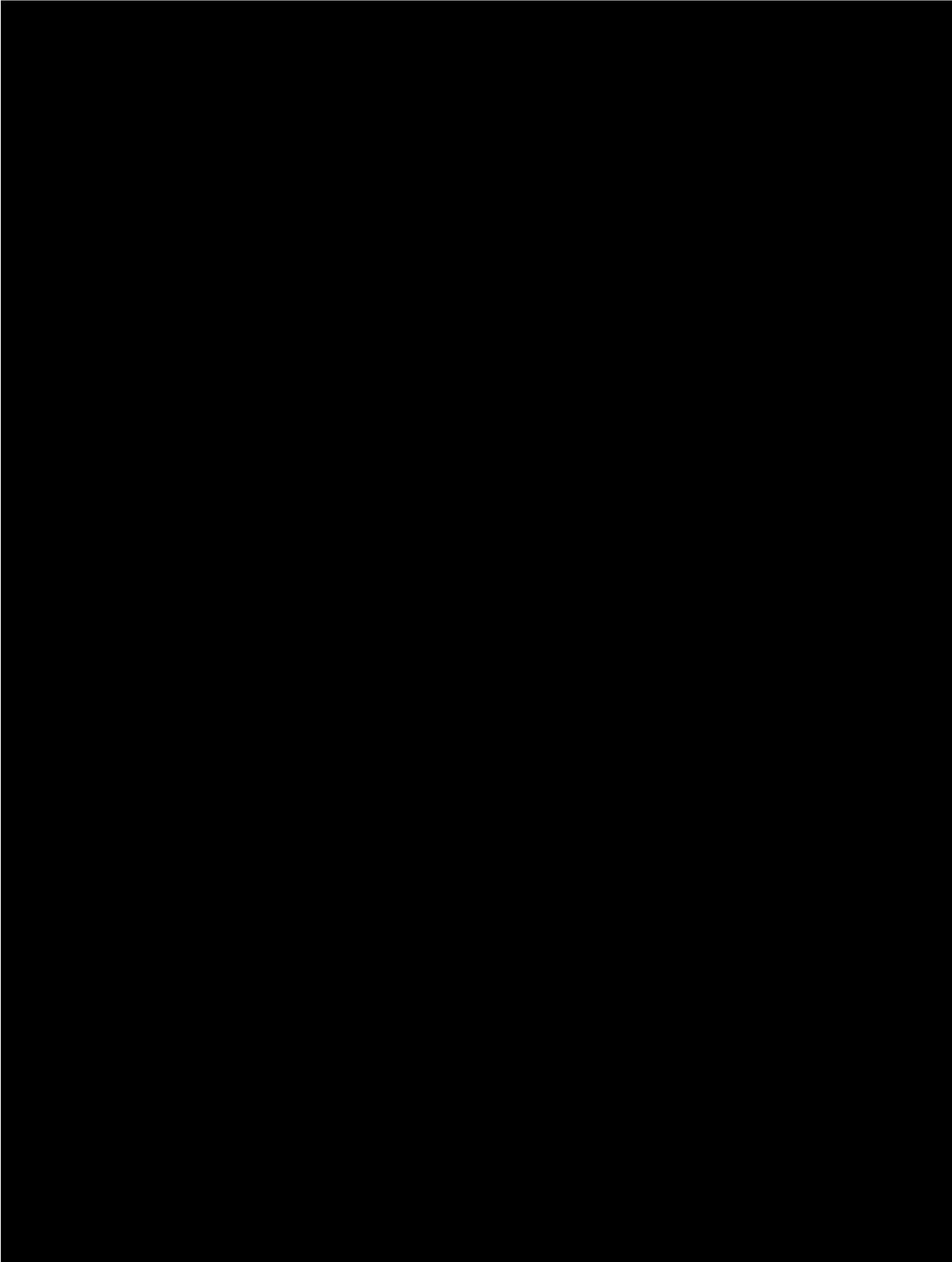
terminal] if the taxpayer had been registered at the time of the transaction.

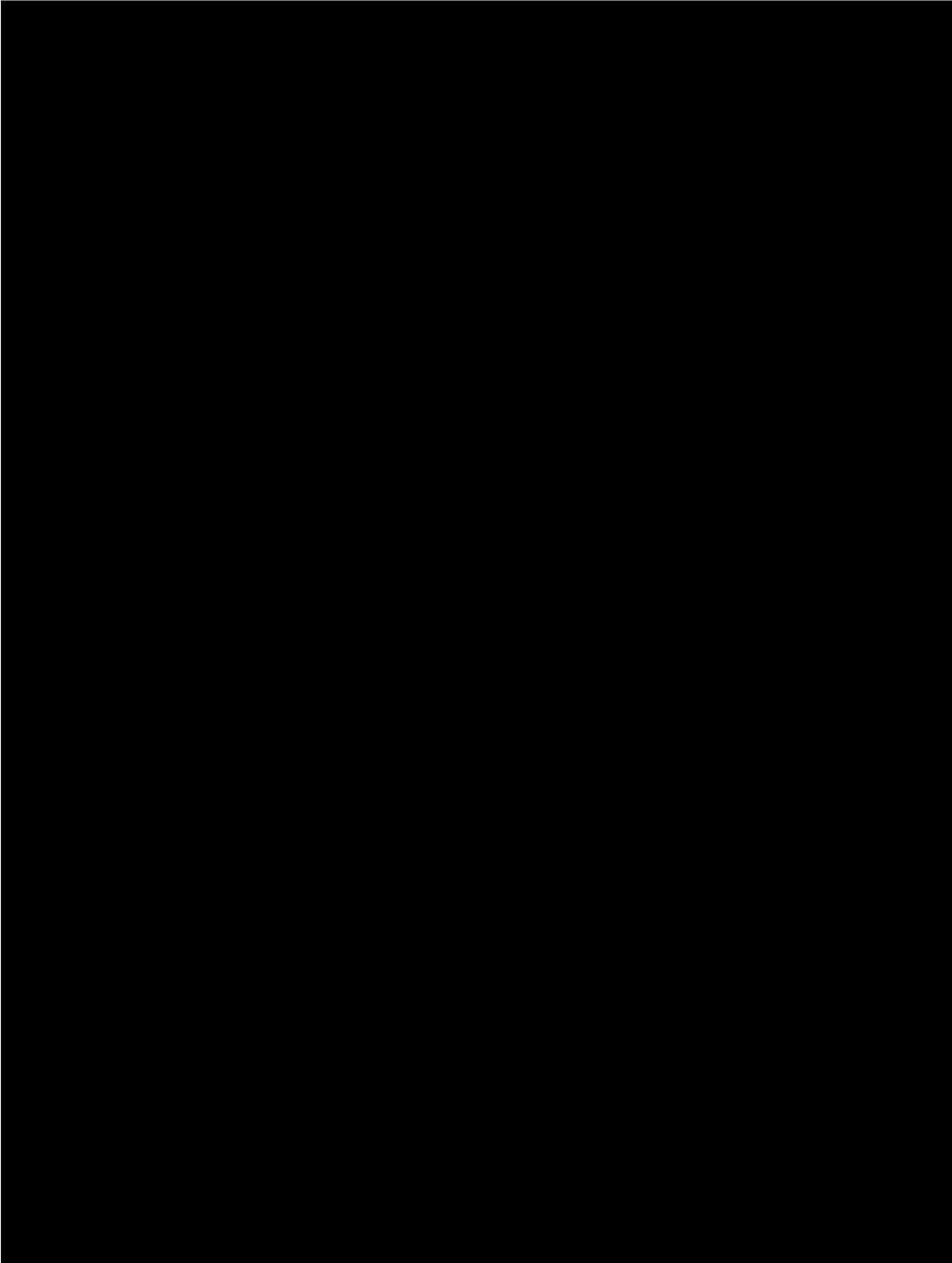
Congress anticipated that tax might be paid twice with respect to a particular volume of taxable fuel. For these cases, Congress created a mechanism in section 4081(e) to allow the person that paid the second tax to the government to obtain a refund of that tax. However, as the legislative history to section 4081(e) makes clear, a refund will be paid only if the person paying the second tax files a claim for refund. The conference agreement contemplates that the Secretary will allow a refund pursuant to this provision only to the extent that evidence is provided clearly establishing that the prior tax was in fact paid to the Treasury with respect to the same gasoline [or diesel fuel] on which the claimant has in fact paid tax. (emphasis supplied) H.R. Rep. No. 964, 101<sup>st</sup> Cong., 2d Sess. 1052-1053 (1990).



Discussion









We hope you find this memorandum helpful. Please call Bryan T. Camp of this office if you have any questions. His number is 202-622-3835.