

INTERNAL REVENUE SERVICE

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JUNE 27, 2001

In re:

Legend:

Dear

This is in response to a letter ruling request you submitted on behalf of Taxpayer. Your request concerns Taxpayer's eligibility to claim refunds under § 6421(c) of the Internal Revenue Code of the excise tax on gasoline, Taxpayer's eligibility to use dyed diesel fuel without tax being imposed by § 4041 or penalty being imposed by § 6715, and Taxpayer's eligibility to provide a Certificate of State Use to an ultimate vendor of undyed diesel fuel (relating to claims for refund under § 6427).

You have requested the following seven rulings: (1) dyed diesel fuel purchased under Fuel Program A for use in Taxpayer's paratransit vehicles is for the exclusive use of a state or its political subdivision; (2) gasoline purchased under Fuel Program A for use in Taxpayer's paratransit vehicles is for the exclusive use of a state or its political subdivision and Taxpayer is eligible to claim a refund of the gasoline tax under § 6421; (3) dyed diesel fuel purchased under Fuel Program B for use in Taxpayer's paratransit vehicles is for the exclusive use of a state or its political subdivision; (4) gasoline purchased under Fuel Program B for use in Taxpayer's paratransit vehicles is for the exclusive use of a state or its political subdivision and Taxpayer is eligible to claim a refund of the gasoline tax under § 6421; (5) dyed diesel fuel purchased under Fuel Program C for use in Taxpayer's paratransit vehicles is for the exclusive use of a state or its political subdivision; (6) diesel fuel purchased under Fuel Program D from registered ultimate vendors for use in Taxpayer's paratransit vehicles is for the exclusive use of a state or its political subdivision and is refundable under § 6427(e)(5); and (7) gasoline purchased under Fuel Program D for use in Taxpayer's paratransit vehicles is for the exclusive use of a state or its political subdivision and Taxpayer is eligible to claim a refund of the gasoline tax under § 6421.

Taxpayer represents the following:

A state legislature created Taxpayer as a state public benefit corporation and a public authority. Taxpayer's purpose is to acquire, operate, and maintain public transportation within a city. Among the general powers granted by the state to Taxpayer are the powers: (1) to acquire by purchase or condemnation real property or rights, or easements therein; (2) to make, amend and repeal rules governing the conduct and safety of the public as Taxpayer may deem necessary, convenient, or desirable for the use and operation of the transit facilities; and (3) to provide and maintain a transit police department and a uniformed transit police force.

Taxpayer's public transportation includes a paratransit system that provides transportation to individuals with disabilities. The paratransit system is an origin-to-destination, demand-responsive, advance-scheduled transportation service for people whose disabilities prevent them from using fixed route transportation. Taxpayer has the legal authority to contract with private companies to handle the paratransit system's day-to-day operations. Pursuant to this legal authority, Taxpayer contracts with private transportation companies (paratransit contractors) for services, including vehicle drivers, light vehicle maintenance, and vehicle dispatch. Taxpayer is entitled to all fare revenues generated by the paratransit system and bears its operating losses. The state and the city subsidize Taxpayer's paratransit system.

The paratransit system's vehicles include gasoline-powered sedans and diesel-powered vans that are used exclusively for paratransit purposes. These vehicles are either owned by Taxpayer and leased to paratransit contractors for a nominal amount or purchased or leased by the paratransit contractors from third party leasing companies with Taxpayer's approval. Taxpayer reimburses the paratransit contractors for all purchase or lease costs. Taxpayer bears the risk of loss associated with any vehicle purchased by a paratransit contractor. Taxpayer is entitled to the residual value associated with any purchased vehicle. Taxpayer also has the right to require that purchased vehicles be assigned to Taxpayer or Taxpayer's designees without additional consideration. Taxpayer is the third party beneficiary of vehicle leases and has the right under the leases to have the leased vehicles reassigned to Taxpayer or another paratransit contractor designated by Taxpayer.

Taxpayer owns a computerized scheduling system (operated by a contractor other than a paratransit contractor) that sets the daily schedule of trips provided by each paratransit contractor. Taxpayer determines fares, user eligibility, service hours, service area, routes, and fleet size. Taxpayer also receives, investigates, and responds to all complaints and questions concerning service. Taxpayer monitors paratransit contractor performance and may terminate a paratransit contractor for failure to deliver satisfactory service.

Currently, Taxpayer and paratransit contractors are negotiating contracts. Taxpayer proposes to offer one or more of the following programs to purchase fuel for use in paratransit vehicles.

Under Fuel Program A, Taxpayer would contract with a fuel distributor to supply gasoline and dyed diesel fuel. Paratransit contractors would receive fuel credit cards

from the distributor that could be used by specified persons at specified pumps at specified service stations. The fuel distributor would bill Taxpayer for the gasoline and dyed diesel fuel that paratransit contractors charged to the fuel credit cards. The amount billed to Taxpayer would include the excise tax on gasoline. Taxpayer would pay the fuel distributor for these fuels and an administrative fee. Taxpayer would apply for refunds of the gasoline excise tax. Paratransit contractors would not receive any compensation for fuel costs.

Under Fuel Program B, Taxpayer would require paratransit contractors to choose a fuel card program offered by fuel distributors and approved by Taxpayer. Paratransit contractors would contract with fuel distributors to supply gasoline and dyed diesel fuel. The fuel distributor would bill Taxpayer for the gasoline and dyed diesel fuel that paratransit contractors charged to the fuel credit cards. The amount billed to Taxpayer would include the excise tax on gasoline. Taxpayer would pay the fuel distributor for these fuels. Taxpayer would apply for refunds of the gasoline excise tax. Paratransit contractors would not receive any compensation for fuel costs.

Under Fuel Program C, paratransit contractors that have dyed diesel fuel pumps would supply dyed diesel fuel for the paratransit vehicles they operate and bill Taxpayer for the cost of the dyed diesel fuel they supply. Taxpayer would pay paratransit contractors for the dyed diesel fuel supplied by the paratransit contractors.

Under Fuel Program D, paratransit contractors would buy undyed diesel fuel and gasoline at service stations. Paratransit contractors would either bill Taxpayer for the cost of diesel fuel minus the federal excise tax and apply for a refund or bill Taxpayer for the cost of the diesel fuel plus the tax, apply for a refund, and repay the amount of the tax to Taxpayer. Paratransit contractors would bill Taxpayer for the cost of gasoline plus the federal excise tax. Taxpayer would apply for refunds of the gasoline excise tax. Taxpayer would pay paratransit contractors for the fuel supplied.

Sections 4081(a)(1)(i) and (ii) impose a federal excise tax on certain removals, entries, and sales of taxable fuel from any refinery or any terminal. Sections 4083(a)(1)(A) and (B) provide that gasoline and diesel fuel are taxable fuels. Under § 4082 and § 48.4082-1 of the Manufacturers and Retailers Excise Tax Regulations, tax is not imposed if, among other conditions, the diesel fuel is dyed as required.

Section 4041(a)(1) imposes a tax on diesel fuel sold or used as a fuel in a diesel-powered highway vehicle if no tax has been imposed under § 4081. Under § 4041(g), no tax is imposed with respect to fuel that is for the exclusive use of a state. Under § 48.4082-4, the operator of the vehicle is liable for the § 4041 tax.

Section 6421(c) provides that if gasoline on which tax has been imposed by § 4081 is sold to any person for the exempt purpose described in § 4221(a)(4) then the ultimate purchaser of the fuel is eligible for a refund with respect to the tax. Section 4221(a)(4) describes an exempt purpose as a sale to a state or local government for the exclusive use of a state or local government.

Section 6427(l)(5) provides that if diesel fuel on which tax was imposed by § 4081 is used by a state or local government for its exclusive use, then the ultimate vendor of the fuel is eligible for a refund with respect to the tax if the ultimate vendor is registered under § 4101 and meets the requirements of § 6416(a)(1)(A), (B), or (D).

Section 48.6427-9(e) prescribes the information that an ultimate vendor must include in its claim. Section 48.6427-9(e)(1)(vi) requires a certificate that is described in § 48.6427-9(e)(2). This certificate is signed under penalties of perjury by the buyer and includes among other things a statement by the buyer that the fuel will be used for the exclusive use of a state or local government.

Section 6715 imposes a penalty, under specified conditions, on the use of dyed diesel fuel other than in a nontaxable use.

Rev. Rul. 79-95, 1979-1 C.B. 331, provides that for purposes of § 4041(g)(2) and § 4221(a)(4) the term “political subdivision” has been consistently defined for all federal tax purposes as denoting either a division of a state or local government that is a municipal corporation or a division of such state or local government that has been delegated the right to exercise sovereign powers. The sovereign powers are the power of taxation, the power of eminent domain, and police or regulatory power. In order to qualify as a political subdivision, an entity need not possess all three powers, but what powers it does possess must be substantial in their effect.

Rev. Rul. 79-306, 1979-2 C.B. 361, sets forth a control test to determine whether a sale is “for the exclusive use of” a governmental entity within the context of a transit system. This revenue ruling provides four factors that are indicative of who has control of a transit system: (1) who owns the articles (buses, fuel, tires, capital assets, etc.) used in the operation of the system; (2) who is responsible for the day-to-day operation of the system (including furnishing, supervising, and paying all the labor to operate the system), and who exercises overall supervisory authority (including authority to negotiate contracts for services, materials, supplies, and labor); (3) who initiates payments for maintenance of the system (including payments for supplies, materials, and wages), and are any or all of these payments reimbursed; and (4) who makes any profits or bears any losses resulting from the operation of the system, and are the amounts of the profits or losses limited.

In order for Taxpayer to be eligible to claim refunds under § 6421(c) of the gasoline tax, use dyed diesel fuel without tax or penalty, and provide a certificate to an ultimate vendor of undyed diesel fuel, Taxpayer must meet three criteria. First, Taxpayer must establish that it is a political subdivision of a state. Second, Taxpayer must establish that the fuel was sold for the exclusive use of a state. Third, Taxpayer must be the ultimate purchaser of the fuel.

The state legislature created Taxpayer as a state public benefit corporation and a public authority. Taxpayer’s public purpose is to acquire, operate and maintain public transportation within the city. Taxpayer’s sovereign powers include the powers to: (1)

condemn property; (2) provide for public safety; and (3) provide and maintain a transit police department and a uniformed transit police force. Therefore, Taxpayer is a political subdivision of the state. See Rev. Rul. 79-95.

Taxpayer maintains overall control of the paratransit system because Taxpayer owns approximately one-half of the fleet employed in its paratransit service. The balance of the fleet is owned or leased by paratransit contractors, but paid for by Taxpayer. Taxpayer bears the risk of loss and is entitled to the residual value of all paratransit vehicles purchased by paratransit contractors. This entire fleet is exclusively used in the paratransit service. Taxpayer also maintains control over the paratransit system because it directs and promulgates all policies and rules relating to the service. Taxpayer determines hours of service, service area, number of routes, and number of vehicles. Taxpayer, through a computerized scheduling system owned by Taxpayer, but operated by a contractor, sets the daily schedule of trips that each paratransit contractor is required to perform. Taxpayer receives, investigates, and responds to all complaints and queries concerning service. Taxpayer also determines the eligibility of potential passengers and the fares to be charged. Taxpayer sets the paratransit service budget. The fares collected by paratransit contractors belong to Taxpayer. Taxpayer exercises its authority to negotiate and pay for contracts for services, material, supplies, and labor. Taxpayer bears the operating losses of the paratransit system. All these facts establish that Taxpayer has overall control of the paratransit system. See Rev. Rul. 79-306.

Under Fuel Programs A and B, Taxpayer would be buying diesel fuel and gasoline from the fuel distributors because the fuel obtained by paratransit contractors would be billed to and paid for by Taxpayer. Under Fuel Program C, Taxpayer would be buying dyed diesel fuel from the paratransit contractors because the fuel would be billed to and paid for by Taxpayer. Under Fuel Program D, Taxpayer would be buying diesel fuel and gasoline from the paratransit contractors because the fuel obtained by paratransit contractors would be billed to and paid for by Taxpayer.

Accordingly, based on Taxpayer's representations, we conclude as follows:

1. Dyed diesel fuel purchased under Fuel Program A for use in Taxpayer's paratransit vehicles is for the exclusive use of a state or its political subdivision and Taxpayer may use that fuel without tax under § 4041 or penalty under § 6715.

2. Gasoline purchased under Fuel Program A for use in Taxpayer's paratransit vehicles is for the exclusive use of a state or its political subdivision and Taxpayer is eligible to claim a refund of the gasoline tax under § 6421(c), provided Taxpayer meets all other requirements for a refund.

3. Dyed diesel fuel purchased under Fuel Program B for use in Taxpayer's paratransit vehicles is for the exclusive use of a state or its political subdivision and Taxpayer may use that fuel without tax under § 4041 or penalty under § 6715.

4. Gasoline purchased under Fuel Program B for use in Taxpayer's paratransit vehicles is for the exclusive use of a state or its political subdivision and Taxpayer is eligible to claim a refund of the gasoline tax under § 6421(c), provided Taxpayer meets all other requirements for a refund.

5. Dyed diesel fuel purchased under Fuel Program C for use in Taxpayer's paratransit vehicles is for the exclusive use of a state or its political subdivision and Taxpayer may use that fuel without tax under § 4041 or penalty under § 6715.

6. Diesel fuel purchased under Fuel Program D for use in Taxpayer's paratransit vehicles is for the exclusive use of a state or its political subdivision and Taxpayer is eligible to so certify to its ultimate vendor as described in § 48.6427-9(e).

7. Gasoline purchased under Fuel Program D for use in Taxpayer's paratransit vehicles is for the exclusive use by a state or its political subdivision and Taxpayer is eligible to claim a refund of the gasoline tax under § 6421(c), provided Taxpayer meets all other requirements for a refund.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it shall not be used or cited as precedent.

Sincerely,
Associate Chief Counsel
(Passthroughs and Special Industries)
By: Ruth Hoffman
Senior Technician Reviewer, Branch 8

Enclosures(2):
Copy of this letter
Copy for § 6110 purposes