

INTERNAL REVENUE SERVICE

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July 23, 2003

The Honorable [REDACTED]
U.S. House of Representatives
Washington, D.C. 20515

Attention: [REDACTED]

Dear [REDACTED]:

I am responding to your letter of June 10, 2003, forwarding the letter you received from your constituent, [REDACTED], regarding the federal excise tax on kerosene.

Section 4081(a) of the Internal Revenue Code (the Code) imposes a tax on certain removals, entries, and sales of taxable fuel. Before July 1, 1998, taxable fuel was defined as gasoline and diesel fuel. Under prior law, kerosene was not subject to tax unless it was blended with diesel fuel for highway use or sold for use as aviation fuel. The Internal Revenue Service found significant evidence of an increase in the use of kerosene blended with diesel fuel on the highway without payment of tax. In response to this finding, the Congress extended the diesel fuel tax rules to kerosene to reduce the opportunities for tax evasion. Thus, in section 1032 of the Taxpayer Relief Act of 1997 (the Act), the Congress expanded the definition of taxable fuel to include kerosene effective July 1, 1998. Tax is now imposed on the removal of kerosene from a terminal at the terminal rack unless an exemption applies.

[REDACTED] says the tax on kerosene is especially burdensome for the elderly who use kerosene for home heating and do not file federal income tax returns because their income level is below the threshold for filing. In the Act, the Congress provided an exemption from tax, similar to the exemption for dyed diesel fuel, for dyed kerosene that is removed, sold, or entered for a nontaxable purpose (such as for heating). Further, a user may purchase undyed kerosene at a tax-excluded price from outlets selling kerosene from a pump that is not suitable for use in fueling any diesel-powered highway vehicle or train (a blocked pump). The Act provides that the credit or refund of the tax on undyed kerosene sold from a blocked pump is to be claimed by the registered ultimate vendor of the kerosene. Therefore, users of vented space heaters may purchase dyed, untaxed kerosene and users of unvented space heaters may purchase undyed kerosene from a blocked pump at a tax-excluded price.

In cases involving the purchase of undyed kerosene, other than from a blocked pump, for home heating use, the Act provides that users must claim a credit or refund of the tax. Although a user may not be required to file a Form 1040, the user still may file a

Form 1040 attaching a Form 4136 to claim a refund of the kerosene tax. The amount shown on the Form 4136 is treated like any other tax payment and, if a user has no tax liability, would be fully refunded.

██████████ said he would like to expand the blocked pump rule so that a credit or refund of the tax on undyed kerosene delivered to a home for heating purposes is to be claimed by the registered ultimate vendor of the kerosene. He believes that expansion of the rule would eliminate the burdens placed on homeowners that must purchase kerosene at a tax-included price and wait for a refund. He also believes that claims by the registered ultimate vendors would be easier for the IRS to administer. Section 6427(l)(5) of the Code provides that a blocked pump is a pump not suitable for use in fueling any diesel-powered highway vehicle or train. As such, ██████████ proposal would require the Congress to change the statutory definition of a blocked pump.

I hope this information is helpful to you in responding to ██████████. If you need any additional information, please contact me or ██████████ of my staff at ██████████

Sincerely,

Heather C. Maloy
Assistant Chief Counsel
(Passthroughs and Special Industries)