



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

OFFICE OF  
CHIEF COUNSEL

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The Honorable Daniel K. Inouye  
United States Senator  
300 Ala Moana Blvd., Suite 7-212  
Honolulu, HI 96850

Attn: Aaron Leong

Dear Senator Inouye:

I am responding to the August 3, 2005 inquiry from Aaron Leong, a member of your staff. He asked for information on a regulatory solution or suggestions for a legislative amendment to permit the refueling of the Honolulu Fire Department's aviation-grade kerosene storage facility without jeopardizing the secured airport terminal status of the Honolulu International Airport (HNL). On August 17, 2005, we provided a one-time exemption from the rule in section 4081(a)(3)(A)(iv) of the Internal Revenue Code (the Code) against loading highway tanker trucks with aviation-grade kerosene at HNL to the fire department to fight the Nanakuli brush fire in Honolulu County.

As amended by the American Jobs Creation Act of 2004 (AJCA), section 4081 of the Code imposes a tax on each removal of aviation-grade kerosene from a terminal at a rate of \$.219 per gallon. However, for kerosene removed from a terminal directly into the fuel tank for use in commercial aviation, the rate of tax is \$.044 per gallon. For kerosene removed directly into the fuel tank of an aircraft for a nontaxable use, such as for the exclusive use by a state, the law imposes no tax.

Under the AJCA, certain refueler trucks are part of a terminal for this purpose if the site meets the conditions described in section 4081(a)(3) of the Code. One of the conditions is that the supplier cannot load any vehicle registered for highway use with aviation-grade kerosene at the terminal, except in the case of exigent circumstances identified by the Secretary in regulations. Another condition is that the terminal must be located within a secured area of the airport. The terminal at HNL is a secured airport terminal. See Notice 2005-4, 2005-2 I.R.B. 289, 293, and H.R. Conf. Rept. No. 755, 108th Cong. 2d Sess. 692 n.718 (2004).

We have received similar comments from the public on this issue. While we are too early in the process to know how much flexibility the law will permit on this issue, we will keep your concerns in mind as we work on published guidance to address changes to the taxation of kerosene made by the AJCA and the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005. The Treasury Department's Office of Tax Policy assists in developing and implementing the administration's tax policies and programs. \_\_\_\_\_, Deputy Tax Legislative Counsel is familiar with excise tax issues. You can reach him at \_\_\_\_\_.

I hope this information is helpful. If you have questions, please contact me or \_\_\_\_\_ at \_\_\_\_\_.

Sincerely,

Associate Chief Counsel  
(Passthroughs and Special Industries)

By:

Barbara Franklin  
Senior Technician Reviewer  
Branch 8