

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

December 05, 2005

Third Party Communication: None
Date of Communication: Not Applicable

Number: **200613032**
Release Date: 3/31/2006
Index (UIL) No.: 40.00-00
CASE-MIS No.: TAM-131399-05/CC:PSI:B08

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No
Year Involved:
Date of Conference:

LEGEND:

Claimant =
Foreign Country 1 =
Foreign Country 2 =

ISSUE:

Whether Claimant is entitled to claim the small ethanol producer credit under § 40(a)(3) of the Internal Revenue Code with respect to the processing of hydrous ethanol into anhydrous ethanol, as described below.

CONCLUSION:

Claimant is not entitled to claim the small ethanol producer credit under § 40(a)(3) with respect to the processing of hydrous ethanol into anhydrous ethanol.

FACTS:

Claimant purchases hydrous ethanol that is produced in Foreign Country 1. Claimant arranges for delivery of the hydrous ethanol to a Facility in Foreign Country 2. Claimant is party to an Agreement for the Processing of Anhydrous Alcohol (Agreement) with the Facility. Under the Agreement, the Facility processes the hydrous ethanol into anhydrous ethanol in a series of procedures that includes dehydrating the ethanol. Claimant distributes the resulting anhydrous ethanol in the United States to be added to gasoline.

The Facility is not owned by, or otherwise related to, Claimant. Under the Agreement, the Facility provides equipment and workers to process the hydrous ethanol. Claimant notes that although the Facility has transitory legal title to the ethanol, at all times between the purchase of the ethanol in Foreign Country 1 and the sale of motor fuel grade ethanol to blenders in the United States, Claimant possesses all the benefits and burdens of ownership related to the ethanol. Thus, Claimant argues that Claimant was the producer of the ethanol, notwithstanding its use of a Facility owned and operated by a third party.

LAW AND ANALYSIS:

Section 40(a) provides that for purposes of the section 38 general business credit, the alcohol fuels credit for the taxable year includes, in the case of an eligible small ethanol producer, the small ethanol producer credit.

Section 40(b)(4)(A) provides that the small ethanol producer credit of any eligible small ethanol producer for any taxable year is 10 cents for each gallon of qualified ethanol fuel production of such producer.

Section 40(b)(4)(B) defines "qualified ethanol fuel production" as any alcohol which is ethanol which is produced by an eligible small ethanol producer, and which during the taxable year is, under prescribed conditions, sold for use or used by such producer as fuel.

Claimant did not engage in qualified ethanol fuel production because Claimant did not produce alcohol that is ethanol. Rather, Claimant purchased ethanol that was produced in Foreign Country 1 and caused it to be further processed. Hence, Claimant is not entitled to the small ethanol producer credit with regard to the ethanol at issue.

No opinion is expressed herein as to any other issues that were raised in the incoming technical advice request or that may be raised based on the facts of this case, including the ability of Claimant to base its claim on the processing performed by a third party or the amount of value added to the hydrous alcohol.

CAVEATS:

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Temporary or final regulations pertaining to one or more of the issues addressed in this memorandum have not yet been adopted. Therefore, this memorandum will be modified or revoked by the adoption of temporary or final regulations to the extent the regulations are inconsistent with any conclusion in the memorandum. See section 15.04 of Rev. Proc. 2005-2, 2005-1 I.R.B. 86, 112. However, a technical advice memorandum that modifies or revokes a letter ruling or another technical advice memorandum generally is not applied retroactively if the taxpayer can demonstrate that the criteria in section 15.06 of Rev. Proc. 2005-2 are satisfied.