

Office of Chief Counsel
Internal Revenue Service
Memorandum

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to: W. Ricky Stiff
(Chief, Excise Tax Program)

from: Stephanie N. Bland
(Senior Technician Reviewer, CC:PSI:7)

subject: Qualification of Renewable Diesel; Testing Requirements

ISSUES

You requested advice on the following issues:

1. Whether renewable diesel is limited to higher grade fuels, such as fuel oil grades No. 1 or No. 2 under ASTM D396 or diesel fuel oil grades No. 1-D or No. 2-D under ASTM D975; or whether renewable diesel also includes lower grades of fuel such as ASTM D396 fuel oil grade No. 6.
2. Whether the determination of whether a liquid fuel meets the appropriate ASTM standard should be done on the neat liquid or on the liquid after it has been blended with petroleum-based diesel fuel.

LAW

Section 40A of the Internal Revenue Code (Code) provides tax incentives for the sale and use of biodiesel and biodiesel mixtures. Sections 6426 and 6427(e) provide incentives for the sale and use of biodiesel mixtures.

Under § 40A(f)(1), renewable diesel is treated the same as biodiesel for purposes of the entire Code, except that the small agribiodiesel producer credit does not apply to renewable diesel. Section 40A(f)(2).

Section 40A(f)(3), defines “renewable diesel” as a liquid fuel derived from biomass which meets (i) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and (ii) the requirements of ASTM D975 or ASTM D396. However, renewable diesel does not include any fuel derived from coprocessing biomass with a feedstock that is not biomass (as defined in § 45K(c)(3)).

ASTM D975 provides the specifications for the classification of “hydrocarbon based oils” into 7 different grades of diesel fuel oils, including No. 1-D and No. 2-D each at three sulfur grades (S15, S500 and S5,000), and No. 4-D. All of the diesel grades are suitable for various types of diesel engines.

ASTM D396 provides for the classification of “homogenous hydrocarbon based oils” into 9 different grades of fuel oils, including No. 1 and No. 2 at two sulfur grades each (S500 and S5,000), No. 4 (light), No. 4 (heavy), No. 5 (light), No. 5 (heavy) and No. 6. No. 1 and No. 2 fuel oils are middle distillate fuels, No. 4 fuel oils are heavy distillate fuel oils, and Nos. 5 and 6 fuel oils are residual distillate fuel oils. The specifications for fuel oil beyond grade No. 2 are gradually less demanding as No. 6 is approached, with No. 6 being the least demanding of the ASTM D396 specifications. No. 1 and No. 2 fuel oils are suitable for vehicle use, while the heavier grades of fuel are not.

42 U.S.C. § 7545 provides the EPA registration requirements for fuel and fuel additives. The EPA requires the manufacturer of fuel or fuel additives to perform various health, safety, and performance tests on the fuel or fuel additives and provide the results to the EPA.

Section 4101(a)(1) requires producers and importers of renewable diesel to be registered with the IRS.

ANALYSIS

In order for a product to be “renewable diesel” it must be a liquid fuel derived from biomass which meets (i) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and (ii) the requirements of ASTM D975 or D396. The language of § 40A(f)(3) does not limit the definition of renewable diesel to any particular fuel grades within ASTM D975 or D396. Furthermore, nothing in the legislative history suggests that Congress intended to limit the definition of renewable diesel to certain grades within the prescribed ASTM specifications. Thus, a fuel meets the definition of renewable diesel if it: (i) is a liquid fuel derived from biomass; (ii) meets the

registration requirements for fuels and fuel additives established by the EPA under § 211 of the Clean Air Act¹; and (iii) meets the requirements of any fuel grade within ASTM D975 or ASTM D396 (including, but not limited to, grade No. 6 fuel oil under ASTM D396). With regard to the ASTM requirements, the liquid fuel must meet the specifications of ASTM D975 or ASTM D396 before it is blended with petroleum-based diesel fuel.

We note that the issue of whether a particular fuel meets the requirements of ASTM D975 or ASTM D396 is factual in nature. Thus, we believe the IRS's Excise Tax Program is in the best position to determine whether a particular product satisfies the requirements of ASTM D975 or ASTM D396.

CONCLUSIONS

1. A liquid meets the definition of renewable diesel if it: (i) is a liquid fuel derived from biomass; (ii) meets the registration requirements for fuels and fuel additives established by the EPA under § 211 of the Clean Air Act; and (iii) qualifies as any fuel grade specified in ASTM D975 or ASTM D396, including grade No. 6 fuel oil under ASTM D396.
2. The determination of whether a liquid fuel meets the requirements of ASTM D975 or ASTM D396 must be made before the liquid is blended with petroleum-based diesel fuel.

This document may not be used or cited as precedent.

If you have any questions concerning this memorandum, please contact Charles J. Langley, Jr. at (202) 622-3130

¹ A fuel meets the EPA's registration requirements for purposes of § 40A(f)(3)(A) if the EPA does not require the fuel to be registered.