

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:7
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Date:
October 26, 2009

In Re:

Legend

Taxpayer =

Dear :

This responds to a letter ruling request submitted by Taxpayer's authorized representative regarding the availability of the biodiesel mixture credit under § 40A of the Internal Revenue Code (Code) in connection with a proposed transaction.

The facts submitted and representations made are as follows: Taxpayer produces biodiesel. Taxpayer is registered with the Internal Revenue Service as a producer and importer of agri-biodiesel, a producer and importer of biodiesel, and as blender of diesel fuel.

Taxpayer plans to purchase alkyl fatty acid methyl ester material (FAME) from foreign sources. The FAME will not meet the American Society for Testing and Materials (ASTM) D6751 specification. Taxpayer will then domestically process the imported FAME by applying a cold soak process. The resulting FAME will meet all of the requirements of ASTM D6751. Taxpayer will then mix the processed FAME with diesel fuel to create a biodiesel mixture that Taxpayer will sell to domestic and foreign customers.

Taxpayer requests a ruling that, effective October 1, 2009, it will be eligible to claim the biodiesel mixture credit under § 40A(b)(1) for the activities described above. Specifically, Taxpayer requests a ruling that the product Taxpayer will produce by converting imported FAME into ASTM D6751 compliant biodiesel will be "produced" in the United States for purposes of § 40A(d)(5).

Section 40A(b)(1)(A) provides for a tax credit of \$1.00 per gallon of biodiesel used by a taxpayer in the production of a qualified biodiesel mixture.

Section 40A(b)(1)(B) provides that the term “qualified biodiesel mixture” means a mixture of biodiesel and any diesel fuel (as defined in § 4083(a)(3)), determined without regard to any use of kerosene, which- (i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or (ii) is used as a fuel by the taxpayer producing such mixture.

Section 40A(d)(1) defines the term “biodiesel” as the monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet- (A) 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 (B) the requirements of ASTM D6751.

Section 40A(d)(5) provides, in part, that no credit shall be determined with respect to any biodiesel which is produced outside the United States for use as a fuel outside the United States.

In this case, Taxpayer will purchase FAME from foreign sources for the production and sale of a qualified biodiesel mixture to customers both inside and outside the United States. The FAME that Taxpayer will purchase does not meet the standards of ASTM D6751. The subsequent processing of FAME by Taxpayer will result in modified FAME that meets the requirements of ASTM D6751. Accordingly, Taxpayer’s domestically-processed FAME will be biodiesel that is produced in the United States for purposes of § 40A(d)(5).

After Taxpayer processes the FAME to convert it into biodiesel, Taxpayer will blend the biodiesel with diesel fuel. Taxpayer will then sell the biodiesel mixture to foreign and domestic customers. Provided the diesel fuel Taxpayer blends with the biodiesel meets the requirements set forth in § 4083(a)(3), Taxpayer will be the producer of a “qualified biodiesel mixture” as defined in § 40A(b)(1)(B). Accordingly, Taxpayer will be eligible to claim the biodiesel mixture credit under § 40A(b)(1) for any qualified biodiesel mixture it produces on or after October 1, 2009.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This letter is directed only to Taxpayer. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

This private letter ruling is base upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, the supporting material is subject to verification on examination.

Sincerely,

Stephanie Bland
Senior Technician Reviewer, Branch 7
(Passthroughs & Special Industries)