Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

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Date:
April 08, 2011

LEGEND

Y =

X =

Z =

Country =

Dear :

This is in response to your authorized representative's letter dated November 1, 2010, requesting rulings under §§ 6426 and 6427 of the Internal Revenue Code ("Code").

According to the facts submitted, Y is a domestic corporation engaged in oil refining and marketing, both directly and through its subsidiaries. X, a subsidiary of Y, is a Country company engaged in oil refining and marketing. Z, a subsidiary of Y and a sister corporation of X, is a domestic corporation that is also engaged in oil refining and marketing.

X produces petroleum-based products that are used both in the United States (U.S.) and in Country. X engages in direct sales to U.S. customers. X also engages in indirect sales to U.S. customers as described below.

X is registered under § 4101 including an Activity Letter M registration, has § 4081 excise tax liabilities, and files Form 720, Quarterly Federal Excise Tax Return. As part of its business, X produces E-10, which is a mixture of 90% gasoline and 10%

ethanol that is used as fuel in motor vehicles. X purchases the 190 proof (excluding denaturants) ethanol used to make the E-10 from suppliers located in both the U.S. and Country. X receives the ethanol at terminals located in Country. X uses an in-line blending process to mix the ethanol with gasoline to produce E-10. This is done at the rack, with separate meters measuring the gasoline and ethanol components of the E-10.

With respect to sales to Z, X removes the E-10 from the racks at the terminals described above and transports it to the U.S. border where title passes to X's sister corporation, Z. Z imports the E-10 into the U.S. and is the importer of record. X represents that 100% of this E-10 is used as fuel in motor vehicles in the U.S.

X requests a ruling that each gallon of ethanol, including the volume of denaturants, used by X in producing the E-10 mixture and sold to Z for use as a fuel qualifies for the alcohol fuel mixture credit under § 6426(b). X further requests a ruling that such credit must first be offset against X's § 4081 tax liability pursuant to § 426(a)(1) and that any excess credits may be claimed as a payment under § 6427(e)(1).

Section 6426(a) provides that the alcohol fuel mixture credit described in § 6426(b) is allowed against the tax imposed by §§ 4081 and 4041.

Section 6426(b)(1) generally provides that the alcohol fuel mixture credit is the product of the applicable amount in § 6426(b)(2) and the number of gallons of alcohol used by the taxpayer in producing any alcohol fuel mixture for sale or use in a trade or business of the taxpayer.

Section 6426(b)(3)(A) provides that the term "alcohol fuel mixture" means a mixture of alcohol and a taxable fuel which is sold by the taxpayer producing such mixture to any person for use as a fuel.

Section 6426(b)(4)(A) provides that the term "alcohol" includes methanol and ethanol but does not include (i) alcohol produced from petroleum, natural gas, or coal (including peat), or (ii) alcohol with a proof of less than 190 (determined without regard to any added denaturants). Such term also includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

Section 6426(b)(4)(B) provides that the term "taxable fuel" has the meaning given such term by § 4083(a)(1). Section 4083(a)(1)(A) provides that "taxable fuel" means gasoline.

Section 6426(b)(5) provides that for purposes of determining under § 6426(a) the number of gallons of alcohol with respect to which a credit is allowable under § 6426(a), the volume of alcohol shall include the volume of any denaturant (including gasoline)

which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 2 percent of the volume of such alcohol (including denaturants).

Section 6426(i)(1) provides that no credit shall be determined under § 6426 with respect to any alcohol that is produced outside the United States for use as a fuel outside the United States.

Section 6427(e)(1) provides that, except as provided in § 6427(k), if any person produces a mixture described in § 6426 in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the alcohol fuel mixture credit or the biodiesel mixture credit or the alternative fuel mixture credit with respect to such mixture. Section 6427(e)(3) prohibits such a payment for any amount that is allowed under § 6426. Section 6427(e)(5) prohibits any payment for a mixture if a credit is not allowed by reason of § 6426(i).

As noted above, § 6426(i)(1) prohibits a credit under § 6426 and a payment under § 6427 in the case of any alcohol that is produced outside the U.S. for use as a fuel outside the U.S. Here, although the E-10 is produced outside the U.S., it is ultimately used as a fuel in the U.S. Therefore, § 6426(i)(1) does not prohibit a credit or a payment.

In addition, X, a Form 720 filer and an M registrant with § 4081 tax liabilities, is producing a mixture of alcohol and a taxable fuel that is sold for use as a fuel in the United States. Therefore, X is eligible to claim the alcohol fuel mixture credit described in § 6426(b)(3)(A) for the number of gallons of alcohol used to produce the mixture in accordance with § 6426(b), including the volume of denaturants described in § 6426(b)(5). Accordingly, under § 6426(a), X must apply such credit against its § 4081 and § 4041 excise tax liabilities. To the extent the credit exceeds such liabilities, X may make a claim for a payment under § 6427(e)(1).

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.

The rulings contained in this letter are based upon information and representations submitted by the 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, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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 representative.

Sincerely,

Stephanie N. Bland
Senior Technician Reviewer, Branch 7
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes