

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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to: Chief, Excise Tax Program
()

from: Chief, Branch 7
Office of Associate Chief Counsel
(Passthroughs and Special Industries)
()

subject:

This responds to your request for Non-Taxpayer Specific Legal Advice that asks whether a blend of glycerin, diesel fuel, and water that is sprayed on coal as a freeze control agent qualifies for the alternative fuel mixture credit. This advice may not be used or cited as precedent.

Facts

A domestic blender (Producer) mixes glycerin, diesel fuel (a taxable fuel), and water to produce a mixture (Mixture). The glycerin is a liquid fuel derived from biomass. The glycerin is not ethanol, methanol, biodiesel, or any fuel derived from the production of paper or pulp. Depending on the specific result intended, the proportion of these three components in the Mixture varies between 50 percent and 70 percent for glycerin; .25 percent to 1 percent for diesel fuel; and 29.5 percent to 49.5 percent for water. Producer sells the Mixture to domestic coal producers and transporters (Purchasers) as a freeze control agent for coal that is burned in the United States.

Purchaser sprays the Mixture on coal to prevent the formation of a solid coal block too large to easily unload from railcars or trucks. Purchaser may also apply the Mixture to the floors and sides of the railcars and trucks to prevent the coal from sticking to their sides and bottoms. These applications facilitate the efficient and complete unloading of coal from railcars and trucks.

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Although Producer sells the Mixture as a freeze control agent, Producer claims the alternative fuel mixture credit because some of the Producer's Mixture will be consumed along with the coal when the coal is burned to produce heat.

Law

Section 6426(e)(1) allows an alternative fuel mixture credit that is the product of \$0.50 cents and the number of gallons of alternative fuel the taxpayer uses in producing any alternative fuel mixture for sale or use in the taxpayer's trade or business. Section 6426(e)(2) defines "alternative fuel mixture" as a mixture of alternative fuel and taxable fuel that is sold by the taxpayer producing the mixture to any person for use as fuel or is used as a fuel by the taxpayer producing the mixture. Section 6426(d)(2)(G) defines "alternative fuel" as including certain liquid fuels derived from biomass (as defined in section 45K(c)(3)).

Alternative fuel mixture is a mixture of alternative fuel and taxable fuel that contains at least 0.1 percent (by volume) of taxable fuel. See section 2(b) of Notice 2006-92, 2006-2 C.B. 774.

Section 2(f) of Notice 2006-92 defines "use of a fuel" in the context of alternative fuel mixtures. A mixture is "used as a fuel" when it is consumed in the production of energy. Thus, for example, a mixture is used as a fuel when it is consumed in a furnace to produce heat. A mixture producer sells a mixture "for use as a fuel" if the producer has reason to believe that the mixture will be used as a fuel either by the person buying the mixture from the producer or by any later buyer of the mixture.

Rev. Rul. 69-150, 1969-1 C.B. 286, determined that gasoline delivered into the fuel tank of a vehicle to serve as fuel for the vehicle's operation is not carried by the vehicle for the purpose of transporting the fuel from one place to another place; rather the fuel is part of the vehicle. Therefore, for purposes of the export exemption from the manufacturers excise tax in § 4221(a)(2), the fuel in the tank of an exported vehicle is considered to be part of the vehicle, and not a separate commodity that is exported.

Analysis

To qualify for the alternative fuel mixture credit a mixture producer must either sell a mixture "for use as a fuel" or use the mixture as a fuel. A producer sells a mixture for use as a fuel if the producer has reason to believe that the mixture will be used as a fuel either by the person buying the mixture from the producer or by any later buyer of the mixture. A mixture is "used as a fuel" when it is consumed in the production of energy.

Producer sells its Mixture as a freeze control agent that prevents its customers' coal from freezing into blocks that are unmanageable and to facilitate the coal's safe and efficient transportation rather than as a fuel to be consumed in the production of energy.

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Comparable to the analysis in Rev. Rul. 69-150, the Mixture, after being applied to the coal as a freeze control agent, is absorbed by the coal and loses its identity as a separate and identifiable product that can be burned as a fuel. Therefore, Producer does not have reason to believe that its Purchasers will use the Mixture as a fuel rather than a freeze control agent.

Conclusion

Consequently, the Mixture that is sprayed on coal as a freeze control agent does not qualify for the alternative fuel mixture credit.

If you have any further questions, please call _____ at () _____ .