

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
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Date:  
June 30, 2023

### LEGEND

X =

Company =

Dear :

This letter responds to a letter ruling request dated December 19, 2022, together with subsequent communications, submitted on Company's behalf by Company's authorized representative, requesting rulings under §§ 6416 and 6427 of the Internal Revenue Code ("Code").

### FACTS

According to the facts submitted, X is a corporation that conducts a fuel credit card business through its subsidiary operating company (Company). Company issues fuel credit cards to businesses, government entities, and nonprofit organizations that operate vehicle fleets. Company is registered with the Internal Revenue Service (IRS) as a credit card issuer under § 4101(a)(4). Company issues fuel credit cards to a blood collector, within the meaning of § 7701(a)(49), that is registered with the IRS as a qualified blood collector organization ("blood collector"). The blood collector uses these fuel credit cards to supply its vehicle fleets with gasoline and diesel fuel at retail fuel stations. Company states that the gasoline and diesel fuel that the blood collector purchases were previously taxed under § 4081 and Company is not the person who paid this tax. Company further states that the blood collector is the ultimate purchaser that purchases the fuel for its exclusive use.

Company requests a determination that Company is the proper claimant to claim a refund or credit of the overpayment of § 4081 tax under § 6416(a)(4)(B) on the sale of gasoline to a blood collector using Company's fuel credit cards if the amount the Company bills to the blood collector is for the cost of the gasoline minus the equivalent amount of § 4081 tax (excluding the Leaking Underground Storage Tank tax or LUST tax) previously imposed. It further requests a determination that Company is the proper claimant to claim a payment under § 6427(l)(5)(D) on the sale of diesel fuel to a blood collector using Company's fuel credit cards if the amount the Company bills to the blood collector is for the cost of the diesel fuel minus the equivalent amount of § 4081 tax (excluding the LUST tax) previously imposed. Therefore, under these circumstances, Company would not collect the amount of the § 4081 tax from the blood collector who purchased the gasoline and diesel fuel.

### LAW

Section 4081(a)(1)(A) generally imposes a tax on certain removals, entries, and sales of taxable fuel.

Section 6402 generally allows a credit or refund of an overpayment to the person who made the overpayment (that is, the person who paid the tax to the government).

Section 6416(a)(1) provides that claims for overpayments of tax imposed by § 4081 shall not be allowed or made unless the person who paid the tax establishes that he: (A) has not included the tax in the price of the article with respect to which it was imposed and has not collected the amount of the tax from the person who purchased such article; (B) has repaid the amount of the tax to the ultimate purchaser of the article; (C) has repaid or agreed to repay the amount of tax to the ultimate vendor of the article or has obtained the written consent of such ultimate vendor to the allowance of the credit or making of the refund; or (D) has filed with the Secretary the written consent of the ultimate purchaser of the article to the allowance of the credit or the making of the refund.

Section 6416(a)(4)(A) provides that, except as provided in § 6416(a)(4)(B), if an ultimate vendor purchases any gasoline on which tax imposed by § 4081 has been paid and sells such gasoline to an ultimate purchaser described in § 6416(b)(2)(C) (state or local government) or § 6416(b)(2)(D) (nonprofit educational organization) for a use described in § 6416(b)(2)(C) or (D), the ultimate vendor is treated as the person (and only person) who paid the tax if the ultimate vendor is registered.

Section 6416(a)(4)(B) provides that if the purchase described in § 6416(a)(4)(A) is made by means of a credit card, then § 6416(a)(1) shall not apply and the person extending the credit to the ultimate purchaser shall be treated as the person (and the only person) who paid the tax, but only if such person (i) is registered under § 4101, (ii) has established that such person has not collected the amount of the tax from the purchaser, or has obtained the written consent from the ultimate purchaser to the allowance of the credit or refund, and (iii) has established that such person has repaid

or agreed to repay the amount of the tax to the ultimate vendor, has obtained the written consent of the ultimate vendor to the allowance of the credit or refund, or has otherwise made arrangements to reimburse the ultimate vendor the amount of the tax.

Section 6416(b)(2) provides the tax paid under chapter 32 (or under § 4041(a) or (d) in respect of sales) in respect of any article shall be deemed to be an overpayment if such article was, by any person, sold for use for certain exempt purposes. These exempt purposes include sale to a state or local government for the exclusive use of a state or local government, sale to a nonprofit educational organization for its exclusive use, or sale to a qualified blood collector organization (as defined in § 7701(a)(49)) for such organization's exclusive use in the collection, storage, or transportation of blood. See § 6416(b)(2)(C), (D), and (E). Section 6416(b)(2) does not apply to tax under § 4041(a)(1) or § 4081 on diesel fuel or kerosene.

Section 6427(l)(1) generally provides that if any diesel fuel on which tax has been imposed by § 4041 or § 4081 is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of the tax imposed under § 4041 or § 4081.

Section 6427(l)(5)(A) provides that § 6427(l)(1) does not apply to diesel fuel used by a state or local government. Section 6427(l)(5)(C) generally provides that, except as provided in § 6427(l)(5)(D), the amount which would have been paid under § 6427(l)(1), but for § 6427(l)(5)(A), with respect to any fuel shall be paid to the ultimate vendor of such fuel, if such vendor is registered under § 4101 and meets the requirements of § 6416(a)(1)(A), (B), or (D).

Section 6427(l)(5)(D) allows the credit card issuer to claim the payment in place of the ultimate purchaser, but for the application of § 6427(l)(5)(A), for sales of diesel fuel to state or local governments, but only if the credit card issuer meets the same requirements listed in § 6416(a)(4)(B)(i), (ii), and (iii).

Section 7701(a)(49) defines a qualified blood collector organization as an organization which is (A) described in § 501(c)(3) and exempt from tax under § 501(a), (B) primarily engaged in the activity of the collection of human blood, (C) registered with the Secretary for purposes of excise tax exemptions, and (D) registered by the Food and Drug Administration to collect blood.

Sections 48.4081-2 and 48.4081-3 of the Manufacturers and Retailers Excise Tax Regulations generally describe the persons liable for the tax under § 4081.

Notice 2005-80, 2005-2 C.B. 953, provides general guidance on the requirements for a credit card issuer to make a claim for nontaxable use purchases of taxable fuel, issued pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109-59, § 11163, which allowed credit card issuers to make certain refund, credit, and payment claims.

Notice 2006-92, 2006-2 C.B. 774, provides guidance related to nontaxable fuel use claims for qualified blood collector organizations, issued pursuant to the Pension

Protection Act of 2006, Pub. L. 109-280, § 1207, which exempted qualified blood collector organizations from certain excise taxes.

### ANALYSIS & CONCLUSIONS

Section 4081(a) imposes tax on certain removals, entries, and sales of gasoline and diesel fuel. The tax is imposed on the persons described in §§ 48.4081-2 and 48.4081-3 before the fuel is sold at a retail fueling station. When gasoline or diesel fuel is purchased at a retail fueling station, then subsequently used for a nontaxable use, the Code allows various types of claims regarding the amount of tax imposed under § 4081.

Generally, the buyer or ultimate purchaser is the appropriate claimant for most nontaxable use claims regarding the previously imposed § 4081 tax, including exclusive use by a blood collector organization. See Notice 2006-92 for specific claims regarding blood collectors. However, under certain circumstances, the Code allows other claimants, such as credit card issuers, to make a claim instead. Company requests rulings that it meets the requirements to make a claim as a credit card issuer for a blood collector's nontaxable use of gasoline and diesel fuel.

For gasoline claims, § 6416(b)(2)(E) generally treats gasoline sold to a blood collector for its exclusive use as an overpayment and § 6402(a) generally allows a refund or credit of an overpayment of tax to the person who made the overpayment (that is, the person who paid the tax to the government). Section 6416(a)(1) does not allow a refund or credit of an overpayment unless the person who paid the tax meets certain prescribed conditions to make a claim.

Section 6416(a)(4)(A) treats a registered ultimate vendor who sells gasoline to a state or local government or a nonprofit educational organization, for a nontaxable use described in § 6416(b)(2)(C) or (D), as the person (and the only person) who paid the tax and, thus, as the person who may make the claim for overpayment of tax, if the ultimate vendor meets the requirements of § 6416(a)(1).

However, under § 6416(a)(4)(B), if such a sale is made by means of a credit card issued to a state or local government or a nonprofit educational organization ultimate purchaser, then § 6416(a)(1) does not apply and the credit card issuer is treated as the person (and the only person) who paid the tax if the credit card issuer meets the conditions prescribed in § 6416(a)(4)(B)(i), (ii), and (iii).

Here, even though Company is a registered credit card issuer and proposes not to collect the amount of tax from the ultimate purchaser blood collector, the sales are not to a state or local government or nonprofit educational organization. Therefore, Company does not qualify to make a refund or credit claim regardless of whether it otherwise meets the requirements set forth in § 6416(a)(4)(B). See Notice 2005-80.

Similarly, for diesel fuel claims, § 6427(l)(1) provides for a payment to the ultimate purchaser, in the amount of the tax imposed on diesel fuel under § 4081, when tax-paid diesel fuel is used by any person in a nontaxable use. If the diesel fuel is used by a state or local government, § 6427(l)(5)(C) allows the ultimate vendor to make a claim for a non-credit card purchase of diesel fuel if certain conditions are met. In the

case of a credit card purchase, § 6427(l)(5)(D) provides that the credit card issuer (rather than the ultimate vendor) may make the claim if the credit card issuer meets the requirements set forth in § 6416(a)(4)(B). However, this only applies to diesel fuel sales to a state or local government. Here, the sales are to a blood collector, not to a state or local government. Company does not qualify to make a claim for payment for the sale of diesel fuel for a blood collector's nontaxable use regardless of whether it otherwise meets the requirements set forth in § 6427(l)(5)(D). See Notice 2005-80.

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.

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

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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.

Sincerely,

Charles J. Langley, Jr.  
Senior Technician Reviewer, Branch 7  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: