

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

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Third Party Communication: None  
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date: July 18, 2014

to: Alfredo Valdespino  
Acting Chief, Excise Tax Program

from: Stephanie N. Bland  
Branch Chief, Branch 7  
(Passthroughs & Special Industries)

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subject: Oil Spill Liability Trust Fund (OSLTF) tax and Ethanol Mixture Imports

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

Whether OSLTF tax imposed by § 4611 of the Internal Revenue Code (Code) applies to both the ethanol portion and the gasoline portion of the mixtures described in the facts below.

CONCLUSIONS

The OSLTF tax does not apply to the ethanol portion of the mixtures described in the facts below. The OSLTF tax does, however, apply to the gasoline portion of the mixtures described in the facts below.

FACTS

Mixtures of ethanol and gasoline (ethanol mixtures) are imported (entered) into the United States for consumption, use, or warehousing. The ethanol mixtures at issue here consist of 90% ethanol and 10% gasoline (commonly referred to as E90). E90 is not commonly used in the United States as a motor fuel.<sup>1</sup> The ethanol in these ethanol mixtures is produced from plant matter feed stocks, and is not produced from crude oil, natural gas, or coal.

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<sup>1</sup> In the United States, E85 is currently the standard high ethanol content motor fuel. Therefore, E90 must be further diluted with gasoline to be used as a motor fuel.

Some enterers pay OSLTF tax only on the gasoline portion of the ethanol mixture, but do not pay OSLTF tax on the ethanol portion of the ethanol mixture.

### LAW AND ANALYSIS

Section 4611(a) imposes a tax on crude oil received at a United States refinery, and petroleum products entered into the United States for consumption, use, or warehousing.

Section 4612(a)(1) provides that the term “crude oil” includes crude oil condensates and natural gasoline. Section 4612(a)(3) provides that the term “petroleum product” includes crude oil.

In general, ethanol mixtures are composed of two distinct substances that can be readily separated and returned to its component parts.<sup>2</sup> As a result, for purposes of OSLTF tax only, we do not view ethanol mixtures as a “unified” petroleum product that is subject to OSLTF tax. Rather, we view ethanol mixtures as two distinct substances, ethanol and gasoline, that should be analyzed separately for purposes of OSLTF tax.

You asked whether enterers are required to pay the OSLTF tax on both the ethanol portion and the gasoline portion of the ethanol mixtures. The answer to your question turns on whether the ethanol portion of the ethanol mixture is a “petroleum product” for purposes of §§ 4611(a)(2) and 4612(a)(3). If we determine that the ethanol is a petroleum product, then the entire volume of the ethanol mixture is subject to the OSLTF tax. If we determine that the ethanol is not a petroleum product, then only the gasoline portion of an ethanol mixture is subject to the OSLTF tax.

The words of statutes should be interpreted where possible in their ordinary, everyday sense. Crane v. Comm’r, 331 U.S. 1, 6 (1947). The common, everyday meaning of the term “petroleum product” includes hydrocarbon-based substances like crude oil, gasoline, diesel fuel, and other similar substances.<sup>3</sup> The term is not commonly used to refer to ethanol, which in this case is derived from fermented sugars found in plant matter. Thus, the plain language of §§ 4611 and 4612 appears to exclude ethanol from the definition of the term “petroleum product.”

Our reading of the plain language of §§ 4611 and 4612 is supported by the legislative history to these sections. Sections 4611 and 4612 were added to the Code by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (Pub. L. 96-510, 94 Stat. 2767). In House Report 96-1016(II) to CERCLA

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<sup>2</sup> Over time, ethanol will separate from gasoline naturally through a process known as “phase separation” when it is exposed to moisture.

<sup>3</sup> Definition of “Petroleum.” Merriam-Webster.com. Accessed July 3, 2014. <http://www.merriam-webster.com/dictionary/petroleum>.

(H.R. Rep. 96-1016(II), 1980 U.S.C.C.A.N. 6151, 6154), the House Ways and Means Committee explains that the term petroleum product includes crude oil, crude oil condensate, natural and refined gasoline, refined and residual oil, and any other hydrocarbon product derived from crude oil or natural gasoline which enters the United States in liquid form. As discussed above, ethanol is derived from plant matter; it is not a “hydrocarbon product derived from crude oil or natural gasoline.”

Finally, the Code must be given as great an internal symmetry and consistency as its words permit. Comm’r v. Keystone Consol. Industries, Inc., 508 U.S. 152, 159 (1993). Therefore, our reading of the plain language of §§ 4611 and 4612 is further supported by the comprehensive approach to environmental taxes implemented by Congress as evidenced by the structure of Chapter 38 of the Code. Chapter 38, Environmental Taxes, has four subchapters that each impose tax on a different category of substances. The revenue generated by the tax imposed by a particular subchapter is transferred to a trust fund that finances the cost of programs related to the taxed substance. Relevant here are subchapters A and C. Subchapter A, which contains §§ 4611 and 4612, imposes tax on petroleum to fund the OSLTF. Subchapter C, which includes §§ 4671 and 4672, imposed<sup>4</sup> tax on certain imported substances (taxable substances) to fund the Hazardous Substance Superfund. Section 4672 defines “taxable substance” to include “ethyl alcohol for non-beverage use”. Ethyl alcohol is another name for ethanol. It is clear from this discussion that when Congress added Chapter 38 to the Code, it did not consider ethanol to be a petroleum product, and did not intend to impose OSLTF tax on ethanol.

Based on the foregoing, we conclude that the ethanol portion of the ethanol mixtures described in the facts above is not a petroleum product and is therefore not subject to the OSLTF tax. Therefore, we further conclude that the OSLTF tax applies only to the gasoline portion of the ethanol mixtures described in the facts above.

### CAVEAT

The advice and views presented in this memorandum apply only to the OSLTF tax, and only as it applies to the specific ethanol mixtures described in the facts above. Further, we do not express any view regarding whether our conclusions would change if the proportion of gasoline in a particular mixture increased relative to the ethanol in that mixture.

Please call Michael Beker at (202) 317-6855 if you have any further questions.

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<sup>4</sup> Section 4671 imposes tax only when the Hazardous Substance Superfund financing rate (HSSFR) applies under § 4611. The HSSFR expired for periods beginning after December 31, 1996. Thus, § 4671 currently does not apply to taxable substances.