

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

CC:PSI:B07:MHBeker
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from: Amanda Dunlap
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subject: Non-Taxpayer Specific Advice - Taxability of Diesel Fuel Used In Diesel Particulate Filters

This Chief Counsel Advice responds to your request for assistance dated August 18, 2017, and supplements the advice we previously issued on October 31, 2013 (POSTN-132054-13, released as CCA 201421017). This advice may not be used or cited as precedent.

ISSUE

Whether diesel fuel used in a diesel particulate filter (DPF) is used as a fuel in a diesel-powered highway vehicle for purposes of § 6427(l) of the Internal Revenue Code (Code).

FACTS

Diesel-powered highway vehicles, including trucks and tractors, are equipped with DPFs. A DPF is a device designed to remove particulate matter, including soot, from the exhaust gas of the diesel engine propulsion motor (propulsion motor) to which it is attached. A DPF works by physically trapping and removing particulate matter from the propulsion motor's exhaust. As a result of this process, the trapped particulate matter accumulates in the DPF. Accumulated particulate matter is cleaned from the DPF through a process called "regeneration". Regeneration occurs when the filter element within the DPF reaches the temperature required to combust the accumulated particulate matter, converting it primarily to ash, gaseous carbon dioxide, and water.¹

¹ This description is based, in part, on information provided in Environmental Protection Agency Technical Bulletin EPA-420-F-10-027 (May 2010).

Generally, there are two methods of regeneration: passive and active.

Passive regeneration occurs during normal operation of the propulsion motor, when the engine reaches the required operating temperature. Specifically, passive regeneration occurs when the propulsion motor's exhaust gas temperatures are high enough to initiate combustion of the particulate matter without added fuel, heat, or driver action.

Active regeneration may occur either during normal vehicle operation or while the vehicle is stationary. Active regeneration generally uses a small amount of diesel fuel to raise the DPF temperature through a chemical reaction between the diesel fuel and a catalyst to combust accumulated particulate matter. The diesel fuel is typically injected directly from the vehicle's diesel fuel supply tank via a separate fuel supply line into the vehicle's exhaust system; diesel fuel does not enter the combustion chamber of the vehicle's engine during this process.

LAW

Section 4081(a) imposes a tax on certain removals, entries, and sales of taxable fuel, including diesel fuel.

Section 4041(a)(1)(A) imposes a tax on any liquid other than gasoline sold for use or used as a fuel in a diesel-powered highway vehicle or a diesel-powered train. An exception to the tax imposed by § 4041(a)(1) exists for any liquid taxed under § 4081 (other than at the Leaking Underground Storage Tank trust fund rate) that is not credited or refunded.

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 tax imposed on such fuel under §§ 4041 or 4081, as the case may be, reduced by any payment made to the ultimate vendor under § 6427(l)(4)(C)(i).

Section 6427(l)(2) defines "nontaxable use" as any use which is exempt from the tax imposed by § 4041(a)(1) other than by reason of a prior imposition of tax.

Section 48.6427-8(b)(1) of the Manufacturers and Retailers Excise Tax Regulations provides that a credit or payment is available if diesel fuel is, among other things, used other than as a fuel in a propulsion engine of a diesel-powered highway vehicle.

ANALYSIS AND CONCLUSION

When diesel fuel used in a DPF does not enter the combustion chamber of the vehicle's propulsion engine, the diesel fuel is used other than as fuel in the propulsion engine of a diesel-powered highway vehicle. Accordingly, when the diesel fuel used in a DPF does not enter the combustion chamber of the propulsion engine, the use of diesel fuel in the DPF is a nontaxable use of such fuel within the meaning of § 6427(l).

When diesel fuel used in a DPF enters the combustion chamber of the propulsion engine, then the fuel is not used other than as fuel in the propulsion engine of a diesel-powered highway vehicle, and the use of the fuel does not qualify as a nontaxable use of such fuel within the meaning of § 6427(l).

This advice, as well as the advice we previously issued on October 31, 2013, applies only to the issue of whether the fuel used in DPFs is a nontaxable use of such fuel within the meaning of § 6427(l). This advice does not address the separate issue of whether DPFs are subject to the § 4051 tax on heavy trucks and trailers.²

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

² Section 3.01 of Notice 2017-5, 2017-6 I.R.B. 779, provides that for purposes of § 4051(a)(1)(A) and (E), a DPF is a component that is attached to – and therefore part of – a chassis. See also Thompson Truck & Trailer, Inc. v. United States, No. 16-CV-192-LRR, slip op. (N.D. Iowa, Cedar Rapids Division, August 7, 2017) (order granting motion to dismiss and holding that DPFs are “parts or accessories” for purposes of the § 4051 tax). As a result, DPFs are taxable under § 4051.