

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

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to: Joseph J. Tiberio
Acting Chief, Excise Tax Program
Small Business/Self-Employed Division

from: Frank Boland
Chief, Branch 7
Office of the Associate Chief Counsel
(Passthroughs & Special Industries) CC:PSI:7

subject: Biodiesel Producer

This responds to your request for assistance in determining which entity, as described below, is a biodiesel producer. This advice may not be used or cited as precedent.

ISSUE

Whether Owner or Processor is a biodiesel producer for purposes of section 4101 of the Internal Revenue Code (Code).

CONCLUSION

Owner, and not Processor, is a biodiesel producer for purposes of section 4101 of the Code.

FACTS

Owner and Processor have entered into an agreement for the production of biodiesel. Under the agreement, Owner pays Processor to process raw materials into biodiesel. Owner has bought these raw materials from Processor. Owner retains title to the raw materials while they are in Processor's possession, and Owner holds title to the finished biodiesel that Processor creates.

LAW

Section 48.0-2(a)(4)(i) of the Manufacturers and Retailers Excise Tax Regulations defines

the term “manufacturer” to include any person who produces a taxable article from scrap, salvage, or junk material, or from new or raw material, by processing, manipulating, or changing the form of an article or by combining or assembling two or more articles. The term also includes a “producer.”

Section 48.0-2(a)(4)(ii) provides that under certain circumstances, as where a person manufactures or produces a taxable article for another person who furnishes materials under an agreement whereby the person who furnished the materials retains title thereto and to the finished article, the person for whom the taxable article is manufactured or produced, and not the person who actually manufactures or produces it, will be considered the manufacturer.

ANALYSIS

Under Owner and Processor’s agreement, Owner pays Processor to process raw materials into biodiesel. Owner holds title to the raw materials at the time that Processor processes the materials to create the biodiesel, and Owner holds title to the finished biodiesel. Thus, Processor makes the biodiesel for Owner under an agreement whereby Owner has title to the materials and to the finished product. Accordingly, Owner is a biodiesel producer.

As a consequence of Owner’s status as a biodiesel producer, Owner must be registered by the IRS as a biodiesel producer under section 4101 of the Code. Owner must apply for registration by the IRS on Form 637, Application for Registration (For Certain Excise Tax Activities), in accordance with the instructions for that form. See section 2(f)(1) of Notice 2005-4, 2005-1 C.B. 289, for further information.

Please call (202) 622-3130 if you have any further questions.