INTERNAL REVENUE SERVICE
Index Number: 4081.00-00

Number: **199933018**
Release Date: 8/20/1999

CC:DOM:P&SI:8/PLR-106840-99

05-14-1999

Legend:

X =

Dear

This responds to your March 29, 1999, letter on behalf of your client, X, in which you request a ruling whether X is liable for the tax imposed by § 4081 of the Internal Revenue Code on the sale or removal of Racing Fuels #1, #2, or #3 from X's blending facility.

X operates a facility where it produces fuel that is used in race vehicles at race tracks throughout the world. The facility is not within the bulk transfer/terminal system. Ingredients in X's fuels include finished gasoline, gasoline blendstocks, and other liquids that are not taxable fuel.

Racing Fuels #1 are fuels that have an octane rating of 100 or higher and that contain between 1.0 gram of lead per gallon to 6.0 grams of lead per gallon. These fuels do not have detergent additives that the Environmental Protection Agency (EPA) requires for gasoline. Also, these fuels do not meet the ASTM specification (D 4814) for gasoline. The vehicles in which these fuels are used generally are not eligible to be registered for highway use in any state. These fuels are not diesel fuel, kerosene, or a gasoline blendstock.

Racing Fuels #2 are fuels that are unleaded and meet the ASTM specification (D 4814) for gasoline as well EPA requirements for gasoline. Although most of Racing Fuels #2 are sold for use in race vehicles that are not registered for highway use, the fuels are available for consumer use in registered highway vehicles.

Racing Fuels #3 contain greater than 99 percent methanol. This methanol is produced from natural gas. These fuels do not meet the ASTM specification (D 4814) for gasoline.

Section 4081 imposes a tax on certain removals, entries, and sales of taxable fuel. Under § 48.4081-3(g) of the Manufacturers and Retailers Excise Tax Regulations, tax is imposed on the removal or sale of blended taxable fuel by the blender thereof. The blender is liable for this tax. Section 48.4081-1(c)(1)(i) provides that blended taxable fuel generally means any taxable fuel that is produced outside the bulk transfer/terminal system by mixing taxable fuel with respect to which tax has been imposed under section 4081 and any other liquid on which tax has not been imposed under section 4081.

Section 4083 provides that taxable fuel means gasoline, diesel fuel, and kerosene.

Section 48.4081-1(b) provides that gasoline means finished gasoline and gasoline blendstocks.

Section 48.4081-1(b) provides that finished gasoline means all products that are commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel, other than products that have an ASTM octane number of less than 75 as determined by the motor method.

Section 48.4081-1(c)(3) lists the products that are considered gasoline blendstocks.

Section 4041(a)(2) imposes a tax on any liquid (other than gas oil, fuel oil, or any product taxable under section 4081) that is sold for use or used as a fuel in a motor vehicle or motorboat.

Section 4041(m) provides a special rate of tax under section 4041(a)(2) for partially exempt methanol or ethanol fuels. These fuels are liquids at least 85 percent of which consists of methanol, ethanol, or other alcohol produced from natural gas.

Under § 48.4041-5, the seller is liable for the tax imposed by section 4041(a)(2) if the seller (1) delivers the fuel into the fuel supply tank of a motor vehicle or motorboat or (2) delivers the fuel into a bulk supply tank and the buyer furnishes the seller, by the time of sale, a written statement that the entire quantity of fuel will be used for a taxable purpose.

42 U.S.C. 7545 prohibits the sale of gasoline for use as fuel in a motor vehicle if the gasoline does not contain additives to prevent the accumulation of deposits in engines or if the gasoline contains lead (subsection (l)) or contains lead or lead additives (subsection (n)). For this purpose, motor vehicle means any self-propelled vehicle designed for transporting persons or property on a street or highway.

In
911 F.2d 1036 (5th Cir. 1990), the court held that particular petroleum products were "commonly or commercially known or sold as gasoline" for purposes of a regulation of the Environmental Protection Agency. The court based its holding on the fact that the products met the ASTM specification for gasoline. However, the court also noted that, as the specification itself admits, the specification does not necessarily include all types of gasoline that are satisfactory for automotive engines nor does it necessarily exclude gasolines that may perform unsatisfactorily.

Racing Fuels #1 do not meet the ASTM specification for gasoline. In addition, these fuels contain lead and do not meet other prescribed standards for gasoline that is commercially sold for use in registered highway vehicles. Thus, Racing Fuels #1 are not gasoline.

Racing Fuels #2 meet the ASTM specification for gasoline. In addition, they are used as a fuel in registered highway vehicles. Thus, Racing Fuels #2 are gasoline.

Racing Fuels #3 do not meet the ASTM specification for gasoline. Also, they are described as a special motor fuel in § 4041(m). Thus, Racing Fuels #3 are not gasoline.

Accordingly, X is not liable for the tax imposed by section 4081 on the sale or removal of Racing Fuels #1 or #3 because the products are not gasoline, diesel fuel, or kerosene. X would be liable for the tax imposed by section 4041(a)(2) on its sale of the fuels only if it delivered the fuels into the fuel supply tank of a motor vehicle or motorboat or if it delivered the fuels into its buyer's bulk tanks and its buyer furnishes X, by the time of sale, a written statement that the entire quantity of fuel will be used for a taxable purpose.

Because Racing Fuels #2 are gasoline, X is liable for the tax imposed by section 4081 on its sale or removal of the fuel.

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

Sincerely,

Assistant Chief Counsel
(Passthroughs and Special Industries)

By: _____
Richard A. Kocak
Chief, Branch 8

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