

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

10-07-1999

Number: **200002013**
Release Date: 1/14/2000
Index Number: 6427.02-00
Control Number: TAM-113531-99/CC:DOM:P&SI:B8

District Director

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification No.:

Period's Involved:

No Conference Held

ISSUE:

Is the taxpayer furnishing transportation to the general public in an automobile bus that is either scheduled and along regular routes or has a passenger seating capacity of at least 20 adults (not including the driver) and, therefore, eligible to claim a credit for amounts payable under § 6427 of the Internal Revenue Code for diesel fuel used in its vehicles?

CONCLUSION:

The taxpayer is furnishing transportation to the general public in an automobile bus that is neither scheduled and along regular routes nor has a passenger seating capacity of at least 20 adults (not including the driver) and, therefore, is not eligible to claim a credit for amounts payable under § 6427.

FACTS:

The taxpayer provides community transportation services in automobile buses to members of the general public. The taxpayer picks up and drops off passengers at specific locations and at certain times in accordance with the requests of passengers (on-demand travel services). A manifest is prepared each day that shows the passengers, the routes, and the schedule for that day. Passengers interested in the service must telephone their request within the required time in order to be placed on a

manifest. The taxpayer furnishes the transportation at a full fare or, for some pre-certified passengers, at fare that is reduced because of Medicare or Medicaid subsidies. The taxpayer's buses, during the tax periods at issue, had a passenger seating capacity of up to 18 adults.

The taxpayer purchased taxed diesel fuel for use in these buses to provide the on-demand service. For 1994, 1995, and 1996 the taxpayer claimed a credit for the federal excise tax on the fuel so used on its annual income tax return.

APPLICABLE LAW:

Section 4081(a)(1)(A) imposes a tax on the removal of diesel fuel from any refinery or terminal, the entry of diesel fuel into the United States for consumption, use, or warehousing, and the sale of diesel fuel to an unregistered person where there has not been a prior taxable removal or entry.

Section 6427(b)(1)(A) provides that if any diesel fuel on which tax was imposed by § 4081 is used in an automobile bus while engaged in furnishing (for compensation) passenger land transportation available to the general public, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the product of the number of gallons of such fuel so used multiplied by the rate at which tax was imposed on such fuel by § 4081.

Section 6427(b)(3) provides that § 6427(b)(1)(A) shall not apply with respect to fuel used in any automobile bus while engaged in furnishing transportation available to the general public if the transportation is not scheduled and not along regular routes unless the seating capacity of such bus is at least 20 adults (not including the driver).

Section 34(a)(3) allows a credit against income tax for amounts payable under § 6427 with respect to fuels used for a nontaxable purpose.

RATIONALE:

The taxpayer is the ultimate purchaser of the taxed diesel fuel used in the buses. The taxpayer's services are available to the general public. Any person can telephone X, request service, and pay a subsidized or unsubsidized fare. As such, the taxpayer would be eligible to claim a credit for amounts payable under § 6427(b)(1)(A) if either: (1) the transportation is scheduled and along regular routes, or (2) the seating capacity of the bus is at least 20 adults (not including the driver).

The taxpayer does not satisfy the first alternative portion of the definition. The taxpayer's service is not transportation that is scheduled and along regular routes. The taxpayer's buses provide transportation according to a daily manifest that contains the schedule and routes that respond to requests for service for that particular day. A daily manifest may or may not include a stop that has been included on a previous manifest.

Traditional service by a local transit system, unlike the taxpayer's, requires passengers to take the bus to and from designated stops in accordance with a timetable. The taxpayer's service is not to and from fixed locations at regular intervals. The taxpayer provides on-demand service that is similar to the type of service provided by a taxi or limousine service.

Further, the taxpayer does not satisfy the second alternative portion of the definition. The taxpayer's buses, as modified for operation during the tax periods, did not seat at least 20 adults.

CAVEAT:

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) provides that it may not be used or cited as precedent. Under § 6110(c), names, addresses, and identifying numbers have been deleted.