

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

January 10, 2001

Number: **200120005**
Release Date: 5/18/2001
Third Party Contact: None
Index (UIL) No.: 4081-00.00
CASE MIS No.: TAM-117654-00/CC:PSI:B8

Director,

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No:
Periods Involved:
Date of Conference:

LEGEND: Taxpayer =

ISSUE: Is Taxpayer liable for the excise tax imposed under § 48.4081-4(b)(3) of the Manufacturers and Retailers Excise Tax Regulations on its sale of butane under the circumstances described below?

CONCLUSION: Taxpayer is not liable for the excise tax imposed under § 48.4081-4(b)(3) on its sale of butane under the circumstances described below.

FACTS: Taxpayer is a petroleum marketer. Taxpayer buys butane, a gasoline blendstock as defined in § 48.4081-1(c)(3), from Refiner A. Refiner A is not a taxable fuel registrant. The sale occurs in connection with the removal of the butane at the refinery rack. At the time of the sale, Refiner A does not have a certificate described in § 48.4081-4(e) (relating to the use of gasoline blendstocks other than in the production of finished gasoline) from Taxpayer. A truck transports Taxpayer's butane to a storage facility that is not within the bulk transfer/terminal system. Taxpayer then sells the butane to Refiner B, a taxable fuel registrant. A truck delivers the butane to Refiner B's approved refinery where it is used in the production of finished gasoline. Refiner B did not provide Taxpayer with a certificate described in § 48.4081-4(e) in connection with this sale.

LAW AND ANALYSIS: Section 4081(a)(1)(A) of the Internal Revenue Code imposes a tax on certain removals, entries, and sales of taxable fuel, including gasoline. Section 48.4081-1(b) provides that gasoline means finished gasoline and gasoline blendstocks. Section 48.4081-1(c)(3) provides that gasoline blendstocks includes butane. However, butane is not a gasoline blendstock if the butane cannot, without further processing, be used in the production of finished gasoline.

Section 48.4081-3(b)(1)(ii) imposes a tax on the removal of taxable fuel from a

TAM-117654-00

refinery at the rack. Section 48.4081-3(b)(3) provides that the refiner is liable for this tax.

Section 48.4081-4(b)(2) provides that tax is not imposed under § 48.4081-3(b)(1)(ii) on the removal of gasoline blendstocks in connection with a sale if —

(i) The person otherwise liable for tax under § 48.4081-3(b)(3) is a taxable fuel registrant; and

(ii) At the time of the sale, such person has an unexpired certificate described in § 48.4081-4(e) from the buyer and has no reason to believe any information in the certificate is false.

Section 48.4081-4(b)(3)(i) provides that if § 48.4081-4(b)(2) applies to the removal of gasoline blendstocks, tax is imposed on any sale of such blendstocks unless, at the time of the sale, the seller —

(A) Has an unexpired certificate described in § 48.4081-4(e) from the buyer; and

(B) Has no reason to believe any information in the certificate is false.

The Internal Revenue Service office that submitted the request for technical advice suggests that Taxpayer is liable for the tax imposed under § 48.4081-4(b)(3) on its sale of butane to Refiner B because Taxpayer did not receive a certificate described in § 48.4081-4(e) from Refiner B.

Taxpayer's sale of butane to Refiner B is subject to the tax imposed under § 48.4081-4(b)(3) only if, among other requirements, the butane was exempt from tax upon removal from Refiner A's refinery under § 48.4081-4(b)(2). Section 48.4081-4(b)(2) does not apply to the removal of butane in connection with a sale from Refiner A to Taxpayer because Refiner A, from whom Taxpayer purchased its butane, is not a taxable fuel registrant. Therefore, Taxpayer is not liable for the excise tax imposed under § 48.4081-4(b)(3).

CAVEATS: A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.