

Internal Revenue Service

Number: **200536006**
Release Date: 9/9/2005
Index Number: 6427.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B08
PLR-111423-05

Date:
June 06, 2005

Legend:

X =

Dear _____ :

This responds to your request of February 23, 2005, and subsequent submissions on April 29, 2005, and May 13, 2005, for a ruling on whether X is the ultimate vendor of diesel fuel for purposes of § 6427(l)(5) of the Internal Revenue Code.

The following facts and representations have been submitted with the request:

A local government (State) has an agreement (Agreement) with X for the purchase of undyed diesel fuel from retail fueling stations. When State buys diesel fuel using a special fleet charge card issued by an affiliate of X, State acts as an agent for X and title to the diesel fuel is transferred from the retail station to X as State pumps the fuel. The diesel fuel is then sold by X to State when the fuel enters the fuel supply tank of State's vehicle. X represents that the transfers of title from retailer to X and from X to State are sales under applicable state law.

Section 6427(l)(1) generally provides that if any diesel fuel on which tax has been imposed by § 4081 is used by any person in a nontaxable use (including for the exclusive use of a state or local government), 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 by § 4081.

Section 6427(l)(5)(A) provides that § 6427(l)(1) does not apply to diesel fuel used by a state or local government. Rather, under § 6427(l)(5)(C), the payment is allowable to the ultimate vendor of the fuel under prescribed conditions.

Section 48.6427-9(b)(1) of the Manufacturers and Retailers Excise Tax Regulations defines “ultimate vendor” as including the person that sells undyed diesel fuel to a state for its exclusive use.

Section 48.0-2(a)(5) generally defines “sale” as an agreement whereby the seller transfers the property (that is, the title or the substantial incidents of ownership in goods) to the buyer for a consideration called the price, which may consist of money, services, or other things.

X is the ultimate vendor of diesel fuel if X is the person that transfers title to the diesel fuel to State for consideration. Under the Agreement, X, not the retail station, sells the diesel fuel to State when the title to the diesel fuel is transferred from X to State for consideration.

Accordingly, we conclude, based upon the representations that have been submitted with the request, that X is the ultimate vendor of the diesel fuel sold to State for its exclusive use under the Agreement for purposes of § 6427(l)(5).

No ruling is being provided on whether X meets the procedural requirements for claiming a credit or payment under § 6427(l)(5).

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

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By:

Frank Boland
Chief, Branch 8

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes

cc: