



TaxNewsFlash

United States



No. 2020-092
February 27, 2020

Federal district court: No alternative tax credit under section 6426 for butane

A magistrate judge recommended denial of a taxpayer's motion for summary judgment on its claim of refund of excise taxes. In the memorandum and recommendation for the U.S. District Court for the Southern District of Texas, the magistrate explained why the taxpayer was not entitled to an alternative fuel credit under section 6426(e) for butane on summary judgment.

Vitol, Inc. v. United States, No. H-18-2275 (S.D. Tex. February 25, 2020). Read the [order](#) [PDF 106 KB]

Background

The taxpayer filed a claim for refund of federal excise taxes.

The taxpayer, a producer of a mixture of butane and gasoline, paid its quarterly excise tax for the tax quarters ending September 2013, December 2013, June 2014, and September 2014, but without reducing the excise tax by the alternative fuel mixture tax credit that is available under section 6426(e).

The taxpayer subsequently filed amended returns to claim the alternative fuel mixture credit and requested a refund of over \$8.78 million of excise tax claimed to be overpaid for the subject four tax quarters.

The IRS denied the requested refund, and the taxpayer filed this refund suit in federal district court.

District court

In the refund litigation, the taxpayer filed a motion for partial summary judgment asserting that the term "liquefied petroleum gas" (LPG), as used in section 6426, includes butane. The government countered that within the context of section 6426, LPG does not include butane.

In denying the taxpayer's motion for summary judgment, the magistrate judge examined section 6426 and specifically whether the term "alternative fuel" in section 6426(d) includes LPG as well as other types of fuel. As the court found, the common meaning of LPG includes butane. However, the magistrate continued to note that the appropriate inquiry was "whether defining butane as an LPG

within section 6426 leads to an absurd result or is contrary to the intent of Congress.” The opinion explains that butane is a taxable fuel under section 4083, and that if butane is considered an LPG under section 6426, then butane would be both an alternative fuel and a taxable fuel within the definition of an alternative fuel mixture. The opinion further notes that “Congress could not have intended for butane to be both an alternative fuel and a taxable fuel within the definition of an alternative fuel mixture. Without further explanation, this result does not make sense. The result is even more absurd when the scientific nature of butane is considered.”

The magistrate also considered Rev. Rul. 2018-2 and Notice 2007-37.

KPMG observation

The order denying the taxpayer’s claim for partial summary judgment was issued by a magistrate judge. Summary judgment is warranted when the evidence reveals that no genuine dispute exists regarding any material fact and the moving party is entitled to judgment as a matter of law. This opinion by the magistrate judge may be accepted or rejected by the referring federal district court, and the district court itself may reach a different finding when it decides the case.

For more information, contact a tax professional with KPMG’s Excise Tax Practice group:

Taylor Cortright | +1 (202) 533 6188 | tcortright@kpmg.com

The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader’s knowledge on the matters addressed therein, and is not intended to be applied to any specific reader’s particular set of facts. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG’s Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash-United States, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)