



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

AMENDED¹
June 10, 2020



Re: Expedited Private Letter Ruling
North Carolina Motor Fuel Excise Tax

This letter is in response to your letter dated December 11, 2019, where you requested the North Carolina Department of Revenue (“Department”) provide an expedited private letter ruling on behalf of [Taxpayer].

According to your letter, [Taxpayer] was recently established and is taking over certain business activities of [the person who received a private letter ruling from the Department in 2015 (“Other Taxpayer”)]. The Department previously issued a private letter ruling and an amended private letter ruling to [Other Taxpayer] (collectively referred to as the “Previous Ruling”).² To be afforded protection under North Carolina General Statute section 105-264(b), [Taxpayer] requests that the advice provided in the [Previous Ruling] be applied to [Taxpayer].³

After reviewing the [Previous Ruling], and finding no intervening events that would alter the Department’s previous ruling, the Department extends the [Previous Ruling] to [Taxpayer].

Summary

[Taxpayer] submits that the facts provided to the Department in the [Previous Ruling] are identical to the facts in [Taxpayer]’s current request. The Department, finding no intervening event that would affect its previous ruling,⁴ and determining that its response would be identical to the previous private letter ruling:

¹ The Department originally provided a response to [Taxpayer] on March 19, 2020. This private letter ruling was amended to clarify the Department’s advice by directly including the statement of facts and the Department’s response in a related ruling that was incorporated by reference. No substantive changes were made from the original guidance given to [Taxpayer] on March 19, 2020.

² Letter from [REDACTED], Expedited Private Letter Ruling North Carolina Motor Fuel Excise Tax (Sept. 21, 2015; Jan. 16, 2016) (copy included with [Taxpayer]’s request for a private letter ruling) [published on the Department’s website under MFPLR 2015-0001].

³ N.C. Gen. Stat. § 105-264(b) (2019) (advice issued in accordance with statute has no binding effect on the Department with regard to any person other than the taxpayer who requested and received the ruling. Where [Taxpayer] has requested its own private letter ruling, it may rely on this private letter ruling from its original date of issuance).

⁴ The 2017 legislative session made changes to N.C. Gen. Stat. § 105-449.81(3b)b. in S.L. 2017-39, s. 15 and S.L. 2017-204, s. 6.3(a). These were clarifying, non-substantive changes and do not affect the Department’s response in either the Previous Ruling or the ruling here. The changes enumerated methods of transportation outside the terminal transfer system. The facts provided to the Department by [Other Taxpayer] and [Taxpayer] proffered that the terminal transfer system would not be used for importing biodiesel.

(1) restates the statement of facts, including the addendum from the [Previous Ruling]; and (2) restates the Department's response from the [Previous Ruling].⁵

Statement of Facts

[Taxpayer] intends to [redacted] [redacted] [redacted] will invest several million dollars in 2015 to [redacted]. The [redacted] will be within the bulk transfer terminal system as defined in both North Carolina law at N.C. Gen. Stat. § 105-449.60 and federal law at 26 C.F.R. 48.4081-1.

Biodiesel Fuel Blendstock is classified by the American Society of Testing Materials (ASTM) as those certain biodiesels (a generic term for long chain fatty acid methyl esters normally produced by the transesterification of vegetable oils, animal fats and waste greases with methanol) which meet the specification D6751. D6751 controls for impurities unique to biodiesel such as phosphorous, calcium and monoglycerides, which ensures its suitability for [redacted]. Despite certain similarities to *Diesel Fuel Oil*, *Biodiesel Fuel Blendstock* is not recognized by engine manufacturers as an acceptable *Diesel Fuel Oil* motor fuel in the U.S., without further processing.

Diesel Fuel Oil is a middle distillate product of petroleum refining, suitable for use as motor fuel or for home heating. The ASTM specification for *Diesel Fuel Oil* is D975, which controls for properties required by modern diesel engines and furnaces in the U.S. including lubricity and conductivity.

[Taxpayer] will purchase *Biodiesel Fuel Blendstock* from EPA-registered producers both within and outside of the State. With respect to *Biodiesel Fuel Blendstock* purchased from producers outside North Carolina, [Taxpayer] will be the importer of record and will be the entity responsible for remitting the North Carolina motor fuel tax.

[Taxpayer] will perform a series of [redacted]. Those steps may include, depending on the specific type of *Biodiesel Fuel Blendstock*:

- A. Removal of *Biodiesel Fuel Blendstock* sediments which may result from post production dropout of certain impurities such as sterol glucoside precipitates.
- B. Heat treating a slip stream of the *Biodiesel Fuel Blendstock* to resolubilize certain other impurities such as the beta polymorph of saturated monoglycerides formed by phase change in storage.
- C. Control of the temperature of the *Biodiesel Fuel Blendstock* throughout the facility per National Renewable Energy Laboratory guidelines in TP_540-43672, [redacted].
- D. [redacted].

⁵ The [Previous Ruling] is incorporated in full with *non-substantive* alterations. These alterations include: (1) restating the facts to reflect [Taxpayer] is the person seeking the private letter ruling; (2) updating the statutory language to N.C. Gen. Stat. § 105-449.81(3b)b., which provides for taxation on the importation of biodiesel; (3) removing the paragraph stricken on pages 5-6 (noting changes between the original [Previous Ruling] and the amended [Previous Ruling]); and (4) making grammatical and typographical changes.

- E. [REDACTED].
- F. At line or online analysis of the incoming and/or finished [REDACTED], in conjunction with feedforward and/or feedback controls.

The processing steps required in North Carolina will be in addition to normal industry practices such as moisture and oxygen control, stratification prevention, pipeline trailback management, etc. Shrinkage on the *Biodiesel Fuel Blendstock* is minimal at 0.1% - 0.2%. The resulting [REDACTED] for delivery within and outside the State.

This process [REDACTED].

Since an [REDACTED] outside the State.

A two-party exchange is defined by N.C. Gen. Stat. § 105-449.60(57) as “A transaction in which motor fuel is transferred from one licensed supplier to another licensed supplier pursuant to an exchange agreement under which the supplier that is the position holder agrees to deliver motor fuel to the other supplier or the other supplier’s customer at the rack of the terminal at which the delivering supplier is the position holder.” For the purpose of these two-party exchanges [Taxpayer] will be the exporter of the fuel from North Carolina with the export occurring at the time the exchange takes place. As [Taxpayer] was the importer of record responsible for remitting the tax or paid tax to its supplier, the producer of the *Biodiesel Fuel Blendstock*, [Taxpayer] will claim the export as a credit on its North Carolina Motor Fuel Tax Return for the amount of tax on the gallons of *Biodiesel Fuel Feedstock* [sic] used [REDACTED].

Additionally, [Taxpayer] may engage in two-party exchanges of *Biodiesel Fuel Blendstock* with *Diesel Fuel Oil* with another terminal location within North Carolina and either sell the *Diesel Fuel Oil* to a third party within the bulk terminal transfer system in North Carolina or ship it further down the pipeline and out of North Carolina. With respect to the volumes of *Diesel Fuel Oil* sold to third parties in North Carolina, [Taxpayer] would pass tax paid on *Biodiesel Fuel Blendstock* onto the third party who could then claim a credit for receiving tax paid fuel within the bulk terminal system. If that third party later removes the fuel across the terminal rack, the motor fuel tax on Diesel Fuel Oil would be imposed. With respect to volumes exported from the State, [Taxpayer], having paid tax on the *Biodiesel Fuel Blendstock* (either directly to North Carolina or to its supplier, the producer of the *Biodiesel Fuel Blendstock*) would claim a credit on its North Carolina Motor Fuel Tax Return for the amount of tax on the gallons of *Biodiesel Fuel Feedstock* [sic] [REDACTED].

Private Letter Ruling Addendum

The following are excerpts from [Taxpayer]’s original statement of facts. The Department seeks clarification on certain facts presented by [Taxpayer] in its Private Letter Ruling request. Portions of the excerpt relevant to the clarifying questions posed by the Department have been underlined for reference purposes only. Please provide your written response to each question, which will be included with the original Private Letter Ruling request as an addendum thereto.

[REDACTED]

[Taxpayer]’s Statement of Facts:

The processing steps required in North Carolina will be in addition to normal industry practices such as moisture and oxygen control, stratification prevention, pipeline trailback management, etc. Shrinkage on the *Biodiesel Fuel Blendstock* is minimal at 0.1% - 0.2%. [REDACTED]

[REDACTED] for delivery within and outside the State.

Department’s Clarifying Question(s):

1. [REDACTED] ?
a. **Response:** [REDACTED].
2. [REDACTED] ?
a. **Response:** [REDACTED].
3. [REDACTED] ?
a. [REDACTED].

[Taxpayer]’s Statement of Facts:

[REDACTED]

A two-party exchange is defined by N.C. Gen. Stat. § 105-449.60(57) as “A transaction in which motor fuel is transferred from one licensed supplier to another licensed supplier pursuant to an exchange agreement under which the supplier that is the position holder agrees to deliver motor fuel to the other supplier or the other supplier’s customer at the rack of the terminal at which the delivering supplier is the position holder.” For the purpose of these two-party exchanges [Taxpayer] will be the exporter of the fuel from North Carolina with the export occurring at the time the exchange takes place. As [Taxpayer] was the importer of record responsible for remitting the tax or paid tax to its supplier, the producer of the *Biodiesel Fuel Blendstock*, [Taxpayer] will claim the export as a credit on its North Carolina Motor Fuel Tax Return for the amount of tax on the gallons of *Biodiesel Fuel Feedstock* [sic] [REDACTED].

Department’s Clarifying Question(s):

4. [REDACTED] ?
a. **Response:** [REDACTED].
5. [REDACTED] ?
a. **Response:** [REDACTED].

[Redacted]

[Redacted]

[Taxpayer]’s Statement of Facts:

Additionally, [Taxpayer] may engage in two-party exchanges of *Biodiesel Fuel Blendstock* with *Diesel Fuel Oil* with another terminal location within North Carolina and either sell the *Diesel Fuel Oil* to a third party within the bulk terminal transfer system in North Carolina or ship it further down the pipeline and out of North Carolina. With respect to the volumes of *Diesel Fuel Oil* sold to third parties in North Carolina, [Taxpayer] would pass tax paid on *Biodiesel Fuel Blendstock* onto the third party who could then claim a credit for receiving tax paid fuel within the bulk terminal system. If that third party later removes the fuel across the terminal rack, the motor fuel tax on *Diesel Fuel Oil* would be imposed. With respect to volumes exported from the State, [Taxpayer], having paid tax on the *Biodiesel Fuel Blendstock* (either directly to North Carolina or to his supplier, the producer of the *Biodiesel Fuel Blendstock*) would claim a credit on its North Carolina Motor Fuel Tax Return for the amount of tax on the gallons of *Biodiesel Fuel Feedstock* [sic] [Redacted].

Department’s Clarifying Question(s):

6. [Redacted] ?
 - a. **Response:** [Redacted].

Issues

1. Whether [Taxpayer] may import biodiesel tax free for direct delivery into a bulk storage facility; and
2. Whether [Taxpayer], or its customers, may claim a credit for motor fuel tax paid on biodiesel that is [Redacted] and either exported from North Carolina without removal from the bulk transfer terminal system; or sold in North Carolina [Redacted].

Department’s Response

1. [Taxpayer] may not import biodiesel tax free for direct delivery into a bulk storage facility.

Pursuant to N.C. Gen. Stat. § 105-449.60(3), biodiesel is defined as “[a]ny fuel or mixture of fuels derived in whole or in part from agricultural products or animal fats or wastes from these products or fats.” Under this same statute in subsection (12), diesel fuel is defined to include biodiesel. And under subsection (31) motor fuel is defined as “[g]asoline, diesel fuel, and blended fuel.” Thus, biodiesel, including the *Biodiesel Fuel Blendstock* that [Taxpayer] seeks to acquire, is a motor fuel subject to the motor fuel excise tax under North Carolina law.

In the statement of facts, [Taxpayer] indicates it will “purchase *Biodiesel Fuel Blendstock* from EPA-registered producers within and outside of the State.” (PLR request, p.2, ¶3). Any *Biodiesel Fuel Blendstock* [Taxpayer] acquires from producers outside of North Carolina is subject to the excise tax,

with [Taxpayer] being the importer of record and thus responsible for remitting the tax. Conversely, any *Biodiesel Fuel Blendstock* [Taxpayer] acquires from producers within North Carolina, pursuant to N.C. Gen. Stat. § 105-449.83A, the tax is payable by the refiner or biodiesel provider.

In its analysis, [Taxpayer] proffers that "...North Carolina's tax reporting forms enable a taxpayer who is importing biodiesel directly into bulk storage to do so tax free." (PLR request, p.4, ¶5). However, pursuant to N.C. Gen. Stat. § 105-449.81(3b)b, the excise tax is imposed on biodiesel if the fuel "[i]s imported to this State by means of a transport truck, a railroad tank car, a tank wagon, or a marine vessel where ethanol or biodiesel from the vessel is not delivered to a terminal that has been assigned a terminal control number by the Internal Revenue Service." and under N.C. Gen. Stat. § 105-449.83(c), is "payable by the person that imports the fuel."

[Taxpayer] indicates it will "[redacted]" (PLR request, p.2, ¶4). As such, [Taxpayer] is considered to be a refiner, as defined in N.C. Gen. Stat. §105-449.60(41), and the manufacturing facility used in [redacted] is a refinery, as defined in the same statute at subsection (42).

Based on the activities set out in [Taxpayer]'s statement of facts, [Taxpayer] may not engage in business in North Carolina for motor fuel excise tax purposes prior to obtaining licensure as a refiner or as a refiner and a supplier, if [Taxpayer] plans to engage in two-party exchanges and/or become a position holder (as required in N.C. Gen. Stat. § 105-449.65), posting a bond or irrevocable letter of credit (as required in N.C. Gen. Stat. § 105-449.72) (Note: only one bond is required for both the refiner and supplier activities), acquiring a federal Certificate of Registry issued under § 4101 of the IRS Code (as required in N.C. Gen. Stat. § 105-449.69), and if applicable under Internal Revenue Service statutes and/or regulations obtaining an appropriate federal Facility Control Number.

Upon obtaining licensure in North Carolina as a refiner and supplier, it is the Department's intent that [Taxpayer] only be required to file one return, utilizing Form Gas-1207 Refiner Return, and [redacted] for tax and reporting transactions.

It should be noted, that [Taxpayer]'s fact scenario is a matter of first impression, and therefore modifications to the Department's Refiner Return and Schedules may be necessary prior to [Taxpayer]'s initial filing. The Department may add other schedules to accommodate all tax and reporting transactions.

2. [Taxpayer] may claim a credit for motor fuel tax paid on *Biodiesel Fuel Blendstock* that is [redacted]. However, [Taxpayer] may not claim a credit for motor fuel paid on *Biodiesel Fuel Blendstock* [redacted].

In the statement of facts, [Taxpayer] indicates the processing steps [redacted]. (PLR request, p. 2, ¶6). [Taxpayer] further states, [redacted] "...". (PLR request, p.3, ¶1). [Taxpayer] further indicates that the Terminal Operator will engage in two-party exchanges within the bulk transfer system outside of North Carolina, and for

purposes of the two-party exchanges, [Taxpayer] will be the exporter. (PLR request, p.3, ¶1). [Taxpayer] clarified that any sales to the terminal operator and instances where [Taxpayer] will be the exporter of record for two-party exchanges are distinct transactions. (Addendum, response to question #5). Additionally, [Taxpayer] indicates other transactions may include “two-party exchanges of *Biodiesel Fuel Blendstock* with *Diesel Fuel Oil* with another terminal location within North Carolina and either sell the *Diesel Fuel Oil* to a third party within the bulk terminal transfer system in North Carolina or ship it further down the pipeline and out of North Carolina.” (PLR request, p. 3, ¶2). [Taxpayer] clarified that the product associated with two-party exchanges with other locations in North Carolina will be [Taxpayer]’s converted Diesel Fuel Oil for other petroleum diesel products. (Addendum, response to question #6). Each of these scenarios is addressed below.

Once [Taxpayer]’s [REDACTED], as taxable motor fuel suitable for highway use. [Taxpayer] clarified that its [REDACTED]. (Addendum, response to question #1). Because [Taxpayer]’s [REDACTED] to avoid double taxation on the same motor fuel (see N.C. Gen. Stat. § 105-449.61(b)). Yet it must be noted that any loss due to shrinkage, however minimal, is assumed by the taxpayer, with no credit extended on product lost due to shrinkage. Thus, any credit claimed for tax paid product transactions is based on actual gallons transferred. Moreover, all transactions must be conducted with appropriately licensed parties.

- If, as indicated in the statement of facts and addendum response, the [REDACTED] [REDACTED] “will be sold to the terminal operator,” [Taxpayer] would conduct this transaction as any other sale to a third-party by including the tax paid amount on the original Biodiesel Fuel Blendstock within the sale price of the [REDACTED], which would then be paid by the purchaser of the product (here the terminal operator), and subsequently passed on through the distribution chain to the ultimate consumer of the motor fuel.
- If [Taxpayer] engages in two-party exchanges, as defined in N.C. Gen. Stat. § 105-449.60(57), where [Taxpayer]’s [REDACTED] is transferred within the bulk transfer system to another terminal location outside of North Carolina, the following requirements must be met before the transaction can occur: [Taxpayer] must own and hold the inventory of the [REDACTED] according to the records of the terminal operator (so as to be considered the delivering party), [Taxpayer] must be a position holder at the terminal location where the inventory is held, and the exchange is transacted pursuant to an exchange agreement between appropriately licensed and/or registered suppliers. If these requirements are met, [Taxpayer] would be entitled to claim a tax credit on the actual gallons of tax paid [REDACTED] exchanged with the receiving party.
- Alternatively, if [Taxpayer] engages in two-party exchanges where [Taxpayer]’s [REDACTED] is transferred to another terminal location within North Carolina in exchange for a quantity of petroleum diesel (see Addendum response to question #6), the following requirements must be met before the transaction can occur: [Taxpayer] must own and hold the inventory of the

██████████ according to the records of the terminal operator (so as to be considered the delivering party), [Taxpayer] must be a position holder at the terminal location where the inventory is held, and the exchange is transacted pursuant to an exchange agreement between appropriately licensed and/or registered suppliers. If these requirements are met, [Taxpayer] would be entitled to claim a tax credit on the actual gallons of tax paid ██████████ exchanged with the receiving party.

- [Taxpayer] states that “[w]ith respect to the volumes of ██████████ sold to third parties in North Carolina, [Taxpayer] would pass tax paid on ██████████ onto the third party who could then claim a credit for receiving tax paid fuel within the bulk terminal system.” [Taxpayer] correctly indicates that for third party sales within North Carolina, the tax previously paid by [Taxpayer] on the original ██████████, will be recovered by [Taxpayer] by passing the tax amount along to the ██████████ customer in the sales transaction. (PLR request, p.2, ¶2). With regard to whether a third party customer can claim a credit for receiving tax paid fuel within the bulk terminal system, the Department will not issue a Private Letter Ruling addressing issues relating to unidentified taxpayers, and will only address issues affecting the requesting taxpayer. However, it is generally accepted that diesel fuel becomes taxable in North Carolina when it passes the rack. It is also generally accepted that when tax paid motor fuel is transferred to a new owner, it is the owner of the product who is entitled to claim any appropriate tax credit on the fuel.
- For transactions where [Taxpayer] ships the ██████████ “further down the pipeline and out of North Carolina.” [Taxpayer] would be exporting tax paid ██████████. As the receiving destination State is entitled to collect the tax on the ██████████ sold by [Taxpayer] for export, [Taxpayer] would be entitled to claim a tax credit on the actual gallons of tax paid ██████████ that [Taxpayer] exports for sale outside North Carolina.

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[REDACTED]
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This ruling is based solely on the facts described in the statement of facts submitted to the Department for consideration of the transactions described. If the facts and circumstances described are not accurate or if there are other facts not previously disclosed that may result in the Department reaching a different conclusion, this ruling may not be relied upon. If a taxpayer relies on this letter ruling and the Department discovers, upon examination, that the facts situation of the taxpayer is different in any material aspect from the facts and circumstances given in this ruling, the letter ruling will not afford the taxpayer any protection from adverse tax consequences. A letter ruling is not equivalent to a Technical Advice Directive that generally affects a large number of taxpayers. A letter ruling has no binding effect on the Department with regard to any person other than the taxpayer who requested and received the ruling. It should be noted this document shall not be cited or relied upon as precedent and that a change in statute, regulation, or case law could void this ruling.

Respectfully submitted,

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