

North Carolina Department of Revenue

Pat McCrory
Governor
Lyons Gray
Secretary

September 21, 2015



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

This letter is in response to your letter dated July 30, 2015, wherein you requested the North Carolina Department of Revenue ("Department") provide an expedited private letter ruling as to whether [Taxpayer] may import biodiesel tax free for direct delivery into a bulk storage facility; and whether [Taxpayer] or its customers may claim a credit for motor fuel tax paid on biodiesel that is used in the in North Carolina within the bulk transfer terminal system and either exported from North Carolina without removal from the bulk transfer terminal system; or sold in North Carolina within the bulk transfer terminal system prior to the point at which motor fuel tax on diesel is imposed.

The statement of facts submitted for the Department's consideration and an addendum seeking clarification and the taxpayer's responses thereto is as follows:

[Taxpayer] intends to		
	. [Taxpayer] and	will invest
several million dollars in 2015 to	. The	facility will be within the
oulk transfer terminal system as defin	ed in both North Carolina law	at N.C. Gen. Stat. § 105-
449.60 and federal law at 26 C.F.R. 48.	.4081-1.	

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 . 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,
- E. .
- F. At line or online analysis of the incoming and/or finished , ir 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

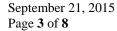
for delivery within and outside the State.

This process

D.

Since an

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



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]

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 their 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.

[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%.

for delivery within and outside the State.

Department's Clarifying Question(s):

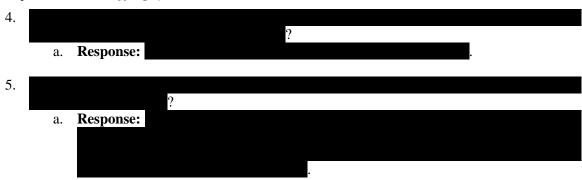
1		₩ 6 ~	, ,		
1.				?	
	a.	Response:			
2.			o		
	a.	Response:	?		
3.		?			
	a.	Response: [

[Taxpayer]'s Statement of Facts:

September 21, 2015 Page **4** of **8**

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]

Department's Clarifying Question(s):



[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]

Department's Clarifying Question(s):

a. Response:

September 21, 2015 Page **5** of **8**

Issue(s):

- 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

 and either exported from North Carolina without removal from the bulk transfer terminal system; or sold in North Carolina

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 outside the terminal transfer system," and under N.C. Gen. Stat. § 105-449.83(c), is "payable by the person that imports the fuel."

[Taxpayer] indicates it will "
." (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 statute at subsection (42).

[Taxpayer] may not engage in business in North Carolina prior to obtaining licensure as a refiner and supplier (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

September 21, 2015 Page **6** of **8**

the IRS Code (as required in N.C. Gen. Stat. § 105-449.69), and providing the Department [Taxpayer]'s assigned federal Refinery Control Number within [Taxpayer]'s North Carolina application for licensure.

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

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

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

In the statement of facts, [Taxpayer] indicates the processing steps

. (PLR request, p. 2, \P 6).

[Taxpayer] further states, "[

...." (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

(Addendum, response to question #6). Each of these scenarios is addressed below.

Once [Taxpayer]'s

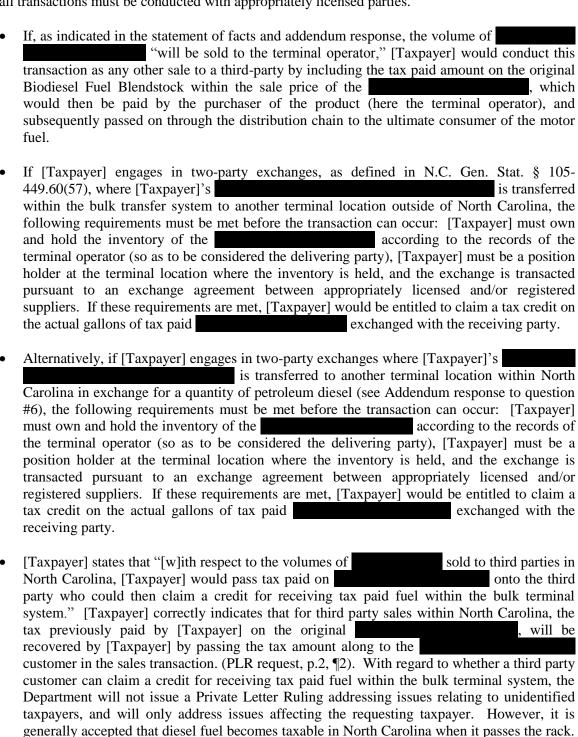
as taxable

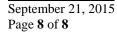
motor fuel suitable for highway use. [Taxpayer] clarified that their

. (Addendum, response to question #1). Because [Taxpayer]'s

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.





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 pipeline and out of North Carolina." [Taxpayer] would be exporting tax paid sold by [Taxpayer] for export, [Taxpayer] would be 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.

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,

Agency Legal Specialist II North Carolina Department of Revenue Excise Tax Division 1429 Rock Quarry Road, Suite 105 Raleigh, NC 27610

Phone: (919) 707-7555 Fax: (919) 715-1826

cc: Director, Excise Tax Division