North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

May 2, 2018

[redacted]

Re: Expedited Written Determination Request
North Carolina Motor Fuel Excise Tax

Dear [redacted]

The North Carolina Department of Revenue (Department) has completed its review of your request for a written determination on behalf of your company, [redacted] (Taxpayer). In making this written determination, the Department has considered the facts presented in your initial request as no supplemental information was provided to the Department.

This written determination is issued under North Carolina General Statute (N.C.G.S.) § 105-264.2 and applies the current tax law to a specific set of existing facts furnished by you on behalf of Taxpayer. This written determination is applicable only to the Taxpayer addressed herein and as such has no precedential value except to the Taxpayer to whom the determination is issued on behalf of the Department.

Taxpayer provides the following statements of fact for the Department's consideration:

- [redacted] *imports butane via railcar for storage at a non-IRS terminal (i.e., no TCN) in NC.*
- [redacted] *is not the blender of record NC.*
- [redacted] *currently holds a NC Elective Supplier license.*
- [redacted] *currently files a monthly NC Motor Fuel Supplier Return.*

In conjunction with the Taxpayer's statements of fact, Taxpayer states "[o]nce the railcar arrives at the non-IRS terminal (i.e. STAR), any one of the following may occur:" and thereafter poses several scenarios and corresponding questions for each scenario. For clarity, each scenario, corresponding question, and the Department's response are provided together below:

*Taxpayer Scenario 1:*

- *The railcar remains on the side tracks, sometimes up to a year.*
- *This is common during blending off season.*
- *When blending is back in season, Scenario 2 or Scenario 3 below may occur.*

*Taxpayer's questions based on Scenario 1:*

a. *We consider the butane as in transit until it leaves the railcar due to interstate commerce laws. When is the movement of butane into the state considered taxable? Is there a number of days that it sits on the tracks that makes it taxable or some other benchmark such as offloading of the product from the railcar?*
b. *If it is not deemed in transit and is taxable upon import, where on the return should this be reported?*
c. *How do we take a credit when we make a sale of tax-paid inventory?*

**Department Response:**

For motor fuels excise tax, North Carolina does not consider petroleum products to be "in transit until it leaves the railcar due to interstate commerce laws." Butane is a petroleum product component of gasoline pursuant to N.C.G.S. § 105-449.60(22)b (i.e. blendstock). Further, N.C.G.S. § 105-449.60(53) defines terminal transfer system in part as "[t]he motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals." As such, butane brought into North Carolina via railcar is considered outside the terminal transfer system and is therefore taxable upon importation into the State (*See N.C.G.S. § 105-449.81(3)*).

If the Taxpayer imports butane into North Carolina, tax-not-paid, via rail to a non-IRS terminal, the Taxpayer must be licensed as a North Carolina Importer and pay tax on imported butane using the Motor Fuel Importer Return (Gas-1219). To report the importation and pay the excise tax on the Gas-1219, Taxpayer would report the butane as Product Type 122 for Blending Components using Schedule Type 3 (Gallons imported into N.C. tax unpaid) on the Motor Fuels Importer Schedule of Receipts (Gas-1219RS).

Scenario 1 also indicates the Taxpayer may make in-state sales from either the railyard or from an IRS terminal *(see Scenario 2)*; or they may sell the product for export *(see Scenario 3)*.

Once the Taxpayer has reported and paid the excise tax on butane imported to North Carolina by rail, for subsequent in-state sales from the railyard, the Taxpayer would pass the tax down to their North Carolina customer as this is the generally accepted practice for sales outside the terminal transfer system. The in-state sale from the railyard would be reported on the Taxpayers Motor Fuel Importer Return via the applicable Schedule Type on the Motor Fuels Importer Schedule of Disbursements (Gas-1219DS).

Once the Taxpayer has reported and paid the excise tax on butane imported into North Carolina by rail, for subsequent sales of the butane by the Taxpayer to a North Carolina IRS terminal, Taxpayer would report the disbursement on their Motor Fuel Importer Return (Gas-1219), to show the gallons disbursed. Taxpayer should use line 24 of the Gas-1219 and Schedule Type 5A to report the transfer to the North Carolina IRS terminal. (NOTE: The Department is aware that line 24 of the Gas-1219 specifies "Gallons sold to retailers, bulk end-users, unlicensed distributors, and company-owned/company-operated stations" and has no reference to tax-paid transfers by licensed Suppliers to North Carolina IRS terminals. The Department expects to update its form instructions to include Supplier transfers to North Carolina IRS terminals). Upon transfer of the butane to a North Carolina IRS terminal, Taxpayer would then report the receipt of the tax-paid butane on their Motor Fuel Supplier Return (Gas-1202) using the Motor Fuel Supplier Schedule of Tax-Paid Receipts (Gas-1202TR) in order to obtain a credit for the tax-paid product. Taking a credit on Taxpayer's Supplier Return for the tax-paid butane, acts to revert the product to a non-tax-paid status while the product is in the terminal, and any subsequent sale from the terminal would be reported on the Gas-1202DS at the time of sale and using the appropriate schedule type.

If the Taxpayer reported and paid the excise tax on the butane upon importation using the Motor Fuel Importer Return (Gas-1219), and thereafter sells the product in an export transaction (outside North Carolina), the Taxpayer would report the sale on their Motor Fuels Importer Return (Gas-1219) using Schedule Type 7 (Gallons sold for export – destination state taxes collected) on the Motor Fuels Importer Schedule of Disbursements (Gas-1219DS), to obtain a credit on the tax-paid product.

*Taxpayer Scenario 2:*

- *The railcar continues on to another facility that may be either an IRS or non-IRS terminal in NC.*
- [redacted] *retains title until the railcar arrives at the destination location.*
- [redacted] *sells the butane via railcar to the third-party customer at the destination location.*

*Taxpayer's questions based on Scenario 2:*

a. *If the butane is sold for blending purposes to a licensed distributor or supplier and tax is charged, how will our customer receive a credit for the tax-paid inventory? This butane will be double taxed once it is blended and sold as gasoline.*
b. *How do we take a credit for tax-paid inventory? The purchase and sale will not happen in the same period on the return.*

**Department Response:**

If the Taxpayer sells tax-paid butane to a licensed distributor or supplier from a non-IRS terminal, the Taxpayer will pass the tax to the purchaser of the butane. The Taxpayer may only take a credit for the tax-paid butane using their Motor Fuel Supplier Return (Gas-1202) if the Taxpayer introduces the butane to a North Carolina IRS terminal.

With regard to Taxpayer's question about how customers would receive credit for tax-paid inventory, the Department will not issue a Written Determination addressing issues relating to unidentified Taxpayers, and will only address issues affecting the requesting Taxpayer. However, it is generally accepted that motor fuel becomes taxable in North Carolina when it passes the rack or upon importation into the State. 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.

Finally, obtaining appropriate credits on purchases and sales that do not occur within the same reporting period are managed through reporting changes in inventory on the Motor Fuel Importer Return (Gas-1219).

*Taxpayer Scenario 3:*

- *The railcar continues on to a destination outside of NC.*
- [redacted] *is the exporter of record.*
- *No sale occurs within NC.*

*Taxpayer questions based on Scenario 3:*

a. *When does NC consider butane as an import when butane enters into the state via railcar? When the railcar is off-loaded?*
b. *When no sale occurs in NC, however if we have tax-paid inventory, do we report this export on line 29 to receive a refund of the tax previously paid?*

**Department Response:**
North Carolina considers butane imported via railcar as soon as it crosses the State line. Based on N.C.G.S. § 105-449.81(3), butane is subject to tax upon importation.

Upon importation of non-tax-paid butane, Taxpayer must report and remit tax on the butane using the Motor Fuels Importer Return (Gas-1219). Thereafter, if the butane is exported outside of North Carolina, from a non-IRS terminal location, the Taxpayer would report the sale on the Motor Fuels Importer Return (Gas-1219) using Schedule Type 7 (Gallons sold for export – destination state taxes collected) on the Motor Fuels Importer Schedule of Disbursements (Gas-1219DS), to receive credit for the exported tax-paid butane.

*Taxpayer Scenario 4:*

- *Butane is offloaded from the railcar onto a truck for sale at the non-IRS terminal in NC (that originally received the imported butane).*
- *Title transfers from [redacted] to its third-party customer at the origin.*
- *[redacted] customer can take the butane to a destination point within or outside of NC.*
- *[redacted] customer is the exporter of record if butane is exported outside of NC.*

*Taxpayer questions based on Scenario 4:*

a. *When is tax due on the butane?*
b. *What line on the return does this tax get reported?*

**Department Response:**
The motor fuel excise tax on butane brought into North Carolina via railcar is due upon importation into North Carolina. The tax is passed down to the North Carolina purchaser if the sale occurs outside of the terminal transfer system.

In order to pay the motor fuel excise tax on imported butane, the Taxpayer must be licensed with the Department's Excise Tax Division as an Importer and report and pay the tax on imported butane using the Motor Fuel Importer Return (Gas-1219) if the butane is purchased tax-not-paid.

*Taxpayer Scenario 5:*

- *[redacted] delivers butane to an IRS terminal operated by Company A.*
- *Company A owns butane/gasoline blending equipment at the terminal.*
- *[redacted] delivered butane is blended with Company A's customer's gasoline.*
- *[redacted] retains title of the butane throughout the blending process.*
- *Once the process is completed [redacted] receives gasoline in exchange for the butane.*
- *[redacted] sells the Gasoline at the rack to a third party or sells gasoline in the bulk transfer system.*

*Taxpayer questions based on Scenario 5:*

a. *When is tax due in this scenario? Where is it reported on the return?*
b. *How is a refund of tax-paid inventory (butane) received now that butane has been blended into gasoline and is in the bulk transfer system?*
c. *On what line of the return is the refund amount requested?*

**Department Response:**
If the Taxpayer imports butane into North Carolina by rail, the tax on the butane is due upon importation and reported on the Motor Fuel Importer Return (Gas-1219). If the Taxpayer, as a Supplier, delivers the butane to a North Carolina IRS terminal, whether immediately upon importation or subsequent to the

importation, upon entering the butane to the North Carolina IRS terminal, the Taxpayer reports the disbursement using line 24 on their Motor Fuel Importer Return (Gas-1219) and Schedule Type 5A on the Motor Fuels Importer Schedule of Disbursements (Gas-1219DS). This acts to report the number of gallons transferred to the North Carolina IRS terminal. The Taxpayer will then report the receipt of the tax-paid product on their Motor Fuel Supplier Return (Gas-1202) in order to obtain a credit for the tax-paid butane. Taking the credit for the tax-paid product on the Motor Fuel Supplier Return (Gas-1202) reverts the product to non-tax-paid status. Thereafter, if the butane is blended and sold at the rack, it will be taxed at the rack, if it is blended and sold/exchanged/exported within the terminal transfer system, those transactions occur without tax until the product is dispensed at the rack.

A refund is not made on the sale of gasoline blended with the original butane. A credit is taken by Taxpayer, as a Supplier, upon entering the tax-paid butane to a North Carolina IRS terminal reverting the butane to non-tax-paid product. The Taxpayer receives credit upon reporting the receipt of the tax-paid butane on their Motor Fuel Supplier Return (Gas-1202) using Schedule Type 1 on the Motor Fuel Supplier Schedule of Tax-Paid Receipts (Gas-1202TR).

In addition to the above questions posed based on specific scenarios, Taxpayer also poses the following additional questions. For clarity, the question and the Department's response are provided together below:

Taxpayer Question #6:
*How will our customers take a credit for tax-paid on butane? Will this be a credit taken once it is blended or taken to a TCN facility? What form will this credit be taken on?*

**Department Response:**
If tax-paid butane is entered into a North Carolina IRS terminal by Taxpayer as a North Carolina licensed Supplier, who is also a North Carolina licensed Importer and who paid the tax on the butane upon importation on their Motor Fuel Importer Return (Gas-1219), then Taxpayer should take a credit on their Motor Fuel Supplier Return (Gas-1202) upon entering the product to the terminal thereby reverting the butane to non-tax-paid product. When the product is thereafter sold and/or blended, it will be non-tax-paid when it is ultimately sold at the rack or otherwise transferred within the terminal transfer system.

Taxpayer Question #7:
*What type of license will we need to report the self-assessed taxes on butane? We currently hold a supplier license.*

**Department Response:**
In addition to the Taxpayer's current Supplier license, Taxpayer will also need to obtain a North Carolina Importer's license from the Department's Excise Tax Division. As a currently licensed Supplier, no additional bond will be required for obtaining the Importer license.

Taxpayer Question #8:
*What type of license will our customers need to take credit for the tax-paid on butane?"*

**Department Response:**
The Department will not issue a Written Determination addressing issues relating to unidentified Taxpayers, and will only address issues affecting the requesting Taxpayer, however generally customers purchasing product outside of the terminal transfer system will have the motor fuel excise tax passed down (included) in the sales price. Moreover, if the purchaser is a North Carolina licensed Supplier, and they

enter the product into a North Carolina IRS terminal, they can revert the product to non-tax-paid status by taking a credit on their Motor Fuel Supplier Return (Gas-1202).

This written determination is based solely on the facts provided 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 written determination may not be relied upon. If a Taxpayer relies on this written determination and the Department discovers, upon examination, that the fact situation of the Taxpayer is different in any material aspect from the facts and circumstances presented for consideration, the written determination will not afford the Taxpayer any protection from adverse tax consequences. A written determination is not equivalent to a Technical Advice Directive that generally affects a large number of Taxpayers. A written determination has no binding effect on the Department with regard to any person other than the Taxpayer who requested and received the determination. 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 determination.

If we may be of additional assistance, please contact the Excise Tax Division at telephone number (919) 707-7500.

Respectfully submitted,

[redacted]
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cc: [redacted] Director, Excise Tax Division