Department of the Treasury | **Internal Revenue Service** | **Office of Chief Counsel**

Notice

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UILs 6427.00-00
6420.00-00
6421.00-00

March 25, 2004

Subject: Change in Litigation Position **Cancel Date**: Upon Incorporation into CCDM

This Notice advises field attorneys of a change in Counsel's litigating position concerning the one claim rule of IRC §§ 6420(b), 6421(d)(1), and 6427(i)(1). The one claim rule generally provides that, under certain conditions, not more than one claim may be filed with respect to taxed fuel used in a nontaxable use during the claimant's taxable year.

In Western Company of North America v. United States, 323 F.3d 1024 (Fed. Cir. 2003), the court concluded that although the one claim rule in § 6427(i) applies to income tax credits under § 34(a), "the one-claim rule only operates to prevent a taxpayer from claiming refund or credit of diesel fuel taxes paid in a time period less than the entire tax year, [it] does not bar a timely and otherwise proper amendment to an annual claim, even if that initial claim has been paid or disallowed by the IRS." Id. at 1033. See also Schlumberger Tech. Corp. v. United States, 47 Fed. Cl. 298 (2000), and FPL Group, Inc. and Subs. v. Commissioner, 116 T.C. 73 (2001) (holding that that the one claim rule was not a bar to certain additional claims, reaching that conclusion on different grounds than Western).

After careful consideration of the options and to ensure that similarly situated taxpayers are treated consistently, the Service will no longer argue the one claim rule as a defense against considering the merits of additional fuel tax claims.

If you have any questions concerning this Notice, please contact Cynthia McGreevy of the Office of the Associate Chief Counsel (Passthroughs and Special Industries), at (202) 622-3130.

/s/
Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

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