INTERNAL REVEUNE SERVICE

Number: **200118012**
Release Date: 5/4/2001
Index Number: 4081.00-00

CC:PSI:8/PLR-123150-00 and PLR-105260-01

JAN 30, 2001

In re:

Legend: X =
Y =

Dear

This responds to your October 25, 2000, letter on behalf of your clients, X and Y, in which you request a ruling whether X and Y are liable for the gasoline tax imposed by § 4081 of the Internal Revenue Code on the removal of racing fuel from their refinery racks. X and Y have represented the following.

X and Y operate refineries where they produce fuel that is used exclusively in race vehicles and boats (the racing fuel). The racing fuel has an octane level of 110, contains lead in excess of that permitted by the Environmental Protection Agency (EPA), and does not have detergent additives that the EPA requires for gasoline. Also, the racing fuel does not meet the ASTM specification (D 4814) for gasoline. The racing fuel is not a gasoline blendstock. The vehicles in which the racing fuel is used generally are not eligible to be registered for highway use in any state.

Section 4081 imposes a tax on certain removals, entries, and sales of gasoline. Section 48.4081-3 of the Manufacturers and Retailers Excise Tax Regulations provides that the refiner of gasoline is liable for tax when the gasoline is removed from a refinery at the refinery rack. Section 48.4081-1(b) provides that gasoline means finished gasoline and gasoline blendstocks. Section 48.4081-1(b) provides that finished gasoline means all products that are commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel, other than products that have an ASTM octane number of less than 75 as determined by the motor method.

42 U.S.C. 7545 prohibits the sale of gasoline for use as fuel in a motor vehicle if the gasoline does not contain additives to prevent the accumulation of deposits in engines or if the gasoline contains lead (subsection (l)) or contains lead or lead

additives (subsection (n)). For this purpose, motor vehicle means any self-propelled vehicle designed for transporting persons or property on a street or highway.

In United States v. Coastal Refining and Marketing, Inc., 911 F.2d 1036 (5th Cir. 1990), the court held that particular petroleum products were "commonly or commercially known or sold as gasoline" for purposes of a regulation of the EPA. The court based its holding on the fact that the products met the ASTM specification for gasoline. However, the court also noted that the specification does not necessarily include all types of gasoline that are satisfactory for automotive engines nor does it necessarily exclude gasolines that may perform unsatisfactorily.

The racing fuel does not meet the ASTM specification for gasoline. In addition, it contains lead and does not meet other prescribed standards for gasoline that is commercially sold for use in registered highway vehicles. Thus, the racing fuel is not gasoline.

Accordingly, based on the representations made, X and Y are not liable for the gasoline tax imposed by § 4081 on the removal of racing fuel from their refinery racks because the racing fuel is not gasoline.

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it shall not be used or cited as precedent.

Sincerely yours,
Associate Chief Counsel
(Passthroughs and Special Industries)
By: Richard A. Kocak
Chief, Branch 8

Enclosures (2):
Copy of this letter
Copy for § 6110 purposes