Internal Revenue Service
MEMORANDUM

CC:DOM:P&SI:8
FKBoland TR-45-1009-95

PASSTHROUGHS AND SPECIAL INDUSTRIES

date: MAY 24 1995

to: Manager, Dyed Diesel Fuel Compliance Program
CP:EX:ST:Ex

from: Chief, Branch 8, Office of Assistant Chief Counsel
(Passthroughs & Special Industries) CC:DOM:PSI:8

subject: Dyed Diesel Fuel in Rental Highway Vehicles

Your May 11, 1995, memorandum to the Assistant Chief Counsel (General Litigation) regarding the application of the section 6714 penalty has been referred to this office for reply.

In the situation described, a person that rents a registered diesel-powered highway vehicle from a truck rental company (company) places dyed fuel into the fuel supply tank of the vehicle. The vehicle is then returned to the company. A Diesel Compliance Officer (DCO) then discovers the dyed fuel in the tank while the vehicle is parked in the company's lot. The company does not otherwise store dyed diesel fuel on company premises. You ask whether the penalty imposed by section 6714 of the Code should be assessed against the company.

Section 6714(a) provides that if--

(1) any dyed fuel is sold or held for sale by any person for any use which such person knows or has reason to know is not a nontaxable use of such fuel; or

(2) any dyed fuel is held for use or used by any person for a use other than a nontaxable use and such person knew, or had reason to know, that such fuel was so dyed,

then such person shall pay a penalty.

In order to be liable for the section 6714 penalty in this case, the company must have committed all the elements of the offense described in either section 6714(a)(1) or 6714(a)(2).

Section 6714(a)(1). The company was not holding the fuel for sale. Thus, the company has not committed the offense described in section 6714(a)(1)

Section 6714(a)(2). The company was holding the dyed fuel for use for a use other than a nontaxable use (that is, use in a registered highway vehicle). Thus, the first element described in section 6714(a)(2) has been met.

The second element is that the company "knew or had reason to know" that the fuel involved was dyed. From the information supplied to us, it appears that the company did not know or have reason to know that the fuel was dyed. If this is in fact the case, then the company has not committed the offense described in section 6714(a)(2) and thus is not liable for the penalty.

We note that the company has now been placed on notice that at least some portion of its customers have used dyed fuel in its vehicles. Thus, if a DCO discovers dyed fuel in company vehicles during a future inspection, the DCO might correctly conclude that the company "had reason to know" that the fuel was so dyed. However, we also note that the "had reason to know" standard is subjective and that each case must be judged on its own merits.

This response is advisory only and does not represent an expression of the views of the Service as to the application of law, regulations, and precedents to the facts of a specific case. Further, this response is not to be furnished or cited to taxpayers or representatives and is not to serve as the basis for closing a case. If you have a taxpayer under examination with these facts, you may request technical advice.

If you have any questions about this, please contact Frank Boland at (202) 622-3130.