

Butane Additive/Gasoline: Federal Appellate Court Addresses Scope of the Alternative Fuel Mixtures Credit



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07/07/2021

The United States Court of Appeals for the Seventh Circuit (“Seventh Circuit”) addressed in a June 29th Opinion the scope of the alternative fuel mixtures (“AFM”) federal tax credit. See *U.S. Venture, Inc., v. United States of America*, No. 20-1861.

The question considered was whether the AFM credit applies to gasoline with a butane additive.

Federal excise taxes are imposed on the production of motor fuel.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act enacted by Congress in 2005 introduced credits that manufacturers of motor fuels could utilize to offset fuel excise taxes. Such producers can claim a credit for using “alternative fuels” to produce AFM. The AFM credit is codified at 26 U.S.C. § 6426(e).

U.S. Venture, Inc. (“U.S. Venture”) is described as a producer and seller of motor fuels. It purchases motor fuels from suppliers and combines it with different additives prior to selling the finished product to motor fuel retailers. The company is stated to add butane to the gasoline it produces and sells.

Butane is described as gas made from both natural gas and petroleum. Further, it is characterized as a fuel additive that has been utilized since at least the 1960s. It is stated to be considered by the petroleum industry as a form of liquefied petroleum gas (“LPG”).

In 2017 U.S. Venture sought an AFM tax credit for producing and selling motor fuel that contained a mixture of gasoline and butane. The company argued that it was due AFM credits because butane is LPG (i.e., a substance explicitly identified as an “alternative fuel” for purposes of the tax credit).

The Internal Revenue Service disputed U.S. Venture’s contention. It concluded that butane did not qualify for the AFM tax credit. A federal District Court lawsuit subsequently filed by the company was rejected by the federal District Court and U.S. Venture appealed to the Seventh Circuit.

The lower court’s and the IRS position that a butane additive is not encompassed by the AFM tax credit is upheld by the Seventh Circuit. It reached this conclusion by first interpreting the text of the relevant provisions of the tax code. The statutory inquiry undertaken addressed two questions:

1. Whether butane qualifies as a taxable fuel for purposes of the AFM tax credit.
2. If so, whether butane can also qualify as an alternative fuel for purposes of the AFM tax credit.

Butane is determined to be a taxable fuel for purposes of the fuel excise tax. However, the second question is answered in the negative. It is concluded that butane is not an alternative fuel. As a result, U.S. Venture's addition of butane to the gasoline it produces and sells is stated to not qualify for the tax credit.

The Seventh Circuit further states in part:

. . . that although butane may be considered a liquefied petroleum gas in other contexts, because it is a "taxable fuel" under § 4801, it is excluded from the codified definition of "alternative fuels." This reading is consistent with the long-standing statutory and regulatory definition of "alternative fuels."

A copy of the Opinion can be downloaded [here](#).