

Based on the plain statutory language, distributors are required to include natural gasoline in returns filed with the Department. See 35 ILCS 505/5. (This is a GIL.)

December 10, 2020

NAME
ADDRESS

Dear Xxxx:

This letter is in response to your letter, in which you requested information. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Pursuant to Ill. Admin. Code 1200.120, we request guidance from the Illinois Department of Revenue (“Department”) as to the definition of “gasoline” in ILCS 505/5 and the imposition of Illinois Motor Fuel Tax thereon. Specifically the guidance requested pertains to natural gasoline and whether or not this is a product included within the definition of gasoline and taxable as such. We believe that the definition of gasoline does not include natural gasoline and request that the Department issue guidance confirming this and therefore clarifying for the industry that natural gasoline is not subject to the motor fuel tax.

Applicable Law and Definitions

35 ILCS 505/1.1 defines motor fuel as “all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles.”

35 ILCS 505/5 requires licensed distributors to file a monthly tax return showing an itemized statement of the invoiced gallons of motor fuel of the types specified in that section. The motor fuel referred to in that section include [sic] gasoline which is defined as “[A]ll products commonly or commercially known or sold as gasoline (including casing-head and absorption or natural gasoline)....” This provision of the law was first enacted in 1929.

The definition of gasoline includes gasoline that is produced from casing-head gas, produced using the absorption process method or produced from natural gasoline itself. (As there is no actual absorption gasoline product we believe that the definition is actually intending to refer to the absorption process of producing gasoline from natural gas.) The key phrase is “[All] products commonly or commercially known or sold as gasoline.” Casing-head, absorption and natural gasoline are not “commonly or commercially sold as gasoline.” Rather they are products from which motor vehicle grade gasoline may be derived and in the case of “absorption” it is a process whereby gasoline is made from natural gas using the “absorption” method to produce the gasoline. Therefore, the products and process that are used to make gasoline should not be included in the definition of gasoline and should not be taxed as gasoline.

Natural gasoline is comprised of complex chains of hydrocarbons, primarily pentanes and longer.¹ It is within the family of natural gas liquids and is a product of natural gas processing plants and crude oil refineries. It is considered to be a heavy petrochemical feedstock. Commercially, it falls within American Society of Testing and Materials (“ASTM”) D8011, Standard Specification for Natural Gasoline as a Blendstock in Ethanol Fuel Blends or as a Denaturant for Fuel Ethanol. Natural Gasoline does not fall within the ASTM specification for gasoline which is ASTM D4814. It is therefore not commercially known as gasoline. Natural gasoline is extracted from “wet” gas which is produced simultaneously with crude oil.² The wet gas is separated from the oil, collected and delivered to natural gasoline plants. The collection of natural gasoline began to gain importance in the early 1900s with the introduction of automobiles. It can be collected by either compression, oil absorption, charcoal absorption or refrigeration methods.³ Natural gasoline is also the last distillation column in a Natural Gas Liquids fractionation facility. It is very similar to casing-head gasoline.

Casing-head gas is a form of natural gas from which gasoline can be derived. It is produced along with crude oil from oil wells and is a “wet” gas. It is not itself a gasoline. Casing-head gasoline is a term for gasoline that is derived from casing-head gas. Casing-head gas contains gasoline vapor. Gasoline is extracted from casing-head gas using compression and condensation methods. This was a sizable industry as far back as the early 1900s with a report from 1917⁴ stating that in 1915 65,000,000 gallons of gasoline was produced and marketed using these methods. Casing-head gasoline is collected through a process of condensation; natural gas that is rich in heavy hydrocarbons is cooled until the heavy hydrocarbons – naphtha and gasoline – condense into a liquid. This casing-head gasoline is then typically blended with gasoline produced in the refinery.

Absorption gasoline is not actually a product in and of itself. Rather the term describes a process used to extract gasoline from natural gas. Consequently, the only product the inclusion of this term in the definition could refer to is motor vehicle gasoline produced from an absorption process. The absorption process uses heavy oil to absorb natural (or refinery) gas which contains the gasoline and then distills the gasoline from the oil.

¹ See U.S. Energy Information Administration, “Today in Energy,” April 20, 2012 at <https://www.eia.gov/todayinenergy/detail.ppt?id=5930> Retrieved July 31, 2018

² See “Production of Natural Gasoline,” Robert B. Bowman, Engineering and Science Monthly, June 1945 at page 4.

³ Bowman, supra at page 6 and 7.

⁴ See Department of the Interior, Bureau of the Mines, “Extraction of Gasoline from Natural Gas By Absorption Methods,” George A. Burrell, P.M. Biddison and G.G. Oberfell, (June 1917).

This process is effective in extracting gasoline from “dry” gas. Unlike “wet” gas which is produced with crude oil, “dry” gas is generally obtained from non-oil producing gas wells. The absorption process was first used in the early 1900’s.⁵

Analysis

Gasoline can be extracted from crude oil by distillation (this is known as “straight-run gasoline”), by thermal or catalytic cracking or condensed from the product of natural gas wells (casing-head gasoline)⁶ At the time the statute was enacted, gasoline was most commonly produced from casing-head or absorption processes. This is likely the reason why these terms are included in the definition – to ensure that gasoline, however produced, was included in the definition of motor fuel and taxed accordingly. It does not mean that casing-head gas or natural gasoline in their pure form prior to being used in the production of gasoline are to be included in the definition (as noted above there is no such product as absorption gas or absorption gasoline; this term describes a method. Given that the only three “products” listed as being included in the definition of gasoline are “casinghead, absorption and natural gasoline,” and given that at least one of these is not a product but a process, the only logical conclusion is that the definition was drafted as such to ensure that all motor vehicle grade gasoline from all sources and processes in use at the time of enactment was specifically included.

Despite have [sic] similarities to a very low octane gasoline, natural gasoline is volatile and unstable and cannot, without further processing, be used as a fuel in the engine of a motor vehicle. This is clear by it not meeting the ASTM D4814 commercial specification for gasoline. The sulfur content of natural gasoline is approximately 100 – 200 parts per million by weight; by contrast the maximum allowable sulfur content in a batch of finished gasoline is 80 parts per million. The octane rating is usually around 70 which is considerably lower than conventional gasoline which tends to have a low octane rating of 85 and therefore makes natural gasoline unfit for use by itself in the fuel tank of a motor vehicle. Natural gasoline is commonly used today as a denaturant in fuel grade ethanol and as a diluent for bitumen and tar sands crude oil. Additionally, its characteristics make it an appealing blendstock as it can be blended with other components to produce a finished gasoline but on its own is not suitable for use in a motor vehicle. As such it is not commonly or commercially known as or sold as gasoline. As it is not commonly or commercially sold as a gasoline it could not be intended that this product be included within the definition of gasoline. Moreover, as natural gasoline is not strictly produced, blended, compounded or suitable for use in a motor vehicle it does not meet the definition of motor fuel in 35 ILCS 505/1.1. It should not therefore be taxed as gasoline.

By contrast, gasoline that is derived from natural gasoline (i.e., gasoline that has been produced through blending natural gasoline with other components) is produced, blended, compounded and suitable for use in a motor vehicle engine because its chemical make-up is not entirely the pentanes and heavier hydrocarbons of “pure” natural gasoline. Gasoline that is derived from natural gasoline would meet the ASTM specification for gasoline and would be known commonly and commercially as gasoline

⁵ Burrell, Biddison and Oberfell, *supra* at Page 14.

⁶ Kansas Department of Health and Environment, Bureau of Environmental Remediation/Remedial Section, “Petroleum Refining: A 125 Year Kansas Legacy,” Aspen Junge, June 30, 2010.

and should be taxed accordingly. However, it is a different product from natural gasoline and the distinction should be acknowledged in the taxation of the different products.

We are aware of the decision by NAME, in *Illinois Department of Revenue v. ABS Business* (MF 14-01, July 18, 2014). In that case, the taxpayer had purchased natural gasoline to use as a denaturant in fuel grade ethanol. The decision states that the natural gasoline was required to be reported on the taxpayer's monthly motor fuel tax return. (The decision goes to [sic] on to note that for reasons related to the use of the denaturant the taxpayer and Department concluded that it was not taxable). While this decision appears to state as fact that natural gasoline is required to be reported on the monthly fuel tax return and is therefore taxable it bases this decision on the use of the term "natural gasoline" in the statutory definition of gasoline and delves no further into precisely which products are "commonly and commercially known as gasoline" and therefore which products should be included in the definition of gasoline and did not delve into the context of the terms within the statute. Had this decision looked into the chemical composition, and had this decision noted that natural gasoline cannot be used in a motor vehicle engine without further processing, and had this decision looked into the use of the terms within the context of the statute the conclusion that natural gasoline [sic] taxable should not have been reached.

Indeed, if we look at the decision in *Waste Management of Illinois, Inc. v. Illinois Department of Revenue* (15 TT 130, 10/03/2016) there is further support for the position that natural gasoline itself is not taxable as a motor fuel. In that case, NAME1 cites 35 ILCS 505/17 which states:

It is the purpose of Sections 2 and 13a of this Act to impose a tax upon the privilege of operating each motor vehicle as defined in this Act upon the public highways and the waters of this State, such tax to be based upon the consumption of motor fuel in such motor vehicle, so far as the same may be done, under the Constitution and statutes of the United States, and the Constitution of the State of Illinois.

NAME1 stated that it was clear from the language of the section that "*the legislature meant to tax the use of each motor vehicle on its highways and to measure the tax based on the consumption of motor fuel.*" As the legislative intent is to tax the use of motor vehicles based on the consumption of motor fuel it logically follows that only fuel products capable of being used as a fuel in the engine of a motor vehicle should be subject to tax irrespective of whether the legislature has chosen to require them to be reported. It has been shown above that while gasoline produced from and using natural gasoline is capable of being used in the engine of a motor vehicle, natural gasoline itself cannot.

For the aforementioned reasons, we request that the Department issue a General Information Letter clarifying for the industry, that natural gasoline is outside the definition of gasoline and is [sic] therefore subject to Illinois' motor fuel tax.

DEPARTMENT'S RESPONSE:

The Department is unable to agree with your conclusion that natural gasoline is outside the definition of gasoline under the Motor Fuel Tax Law. Section 5 of the Motor Fuel Tax Law provides that “. . . a person holding a valid unrevoked license to act as a distributor of motor fuel shall, between the 1st and 20th days of each calendar month, make return to the Department, showing an itemized statement of the number of invoiced gallons of motor fuel of the types specified in this Section which were purchased, acquired, received, or exported during the preceding calendar month; the amount of such motor fuel produced, refined, compounded, manufactured, blended, sold, distributed, exported, and used by the licensed distributor during the preceding calendar month; the amount of such motor fuel lost or destroyed during the preceding calendar month; the amount of such motor fuel on hand at the close of business for such month; and such other reasonable information as the Department may require. The next paragraph of Section 5 provides that “[t]he types of motor fuel referred to in the preceding paragraph are: (A) All products commonly or commercially known or sold as gasoline (including casing-head and absorption or natural gasoline). . . .” See 35 ICLS 505/5. Based on the plain statutory language, distributors are required to include natural gasoline in returns filed with the Department.

The statutory scheme of the Motor Fuel Tax Law deliberately includes robust reporting of motor fuels to assist the Department in the tracking of and collection of tax on motor fuel. That said, of course, tax is only required to be paid on reported motor fuel in cases where the sale of the motor fuel is to a person who is not licensed under the Motor Fuel Tax Law and no other exemption applies. To the extent natural gasoline is sold to another person licensed under the Motor Fuel Tax Law, although reporting is required, no Motor Fuel Tax is owed. See 35 ILCS 505/6(1). In addition, to the extent tax is paid on motor fuel that is then used for any purpose other than operating a motor vehicle upon the public highways or operating recreational-type watercraft upon the waters of this State, upon the filing of a valid claim, the Department shall reimburse the claimant for the Motor Fuel Tax paid. See 35 ICLS 505/13.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department’s Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Samuel J. Moore
Associate Counsel

SJM:bkl