

U.S. Senate Committee on Finance

For Immediate Release

Tuesday, March 1, 2005

Grassley, Baucus Get Clarification on Refund Claims for Fuel Taxes

WASHINGTON – In a February 25 letter, Sen. Chuck Grassley, chairman of the Committee on Finance, and Sen. Max Baucus, ranking member, sought to clarify the tax treatment of gasoline purchased by exempt entities such as states and colleges that purchase fuel using credit cards. An earlier notice by the Treasury Department, 2005-4, questioned whether the existing credit card rule had continuing applicability in light of a new provision enacted as part of the *American Jobs Creation Act*. That provision allows the ultimate vendor of gasoline to request a refund from the IRS. The Treasury notice extended the credit card rule, which allowed the person who paid the tax to claim a refund, through February 28, 2005. Grassley and Baucus said in the letter that their intent was to retain the existing treatment with respect to sales on an oil company credit card. House Ways and Means Committee Chairman Bill Thomas also signed the letter. In response to the letter, Treasury issued Notice 2005-24, which maintains indefinitely the existing rule for oil company credit card purchases.

The text of their Feb. 25, 2005, letter to the Treasury Department follows.

February 25, 2005

Mr. Eric Solomon
Acting Assistant Secretary
Office of Tax Policy
Room 3120 Main Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Mr. Solomon:

This letter responds to Notice 2005-4 as it relates to the treatment of credit card purchases of gasoline by exempt entities. In Notice 2005-4, Treasury stated:

(ii) Sales on oil company credit cards.-Under the rules in effect prior to 2005, a sale charged on an oil company credit card issued to an exempt person is not considered a direct sale by the person actually selling the gasoline to the ultimate purchaser (i.e., the person selling the gasoline is not the ultimate vendor) if the person actually

selling the gasoline receives a reimbursement from the oil company based on a price that excludes the tax. Treasury and the Service are considering whether this rule has continuing applicability under new § 6416(a)(4) but, while considering the issue, will continue generally to apply the rule with respect to sales before March 1, 2005. Therefore, in the case of a sale of gasoline before March 1, 2005, on an oil company credit card issued to a state or nonprofit educational organization, the person that actually paid the tax is treated as the only person eligible to make the claim under §§ 6402 and 6416. ... Congress may wish to address this issue prior to March 1, 2005, and Treasury and the Service will assist Congress in designing an administrable alternative.

We hope this letter provides sufficient clarification of Congressional intent so that the Treasury Department can continue to administer these rules as in effect prior to 2005. The conferees to the American Jobs Creation Act ("JOBS Act") removed language from section 865 of the bill that would have changed the administration of refund claims for gasoline sales charged on a credit card. By removing this language, the intent was to retain the pre-JOBS Act treatment of these claims and not to effect any changes with respect to sales on oil company credit cards. Our committees are continuing to investigate this area.

To the extent you conclude that a technical correction is needed to preserve the rules in effect prior to 2005 and currently in effect, we stand ready to work with you in crafting such language. We will facilitate the enactment of such technical legislation at the earliest opportunity.

We continue to review whether changes need to be made in this area to prevent erroneous claims, including changes in the proper party to administer these claims on behalf of an exempt entity. In this regard, section 871 of the JOBS Act required that the Treasury report to our committees regarding Internal Revenue Service findings with respect to erroneous claims of tax exempt status for sales of taxable fuel and recommendations to address such erroneous claims. We would like to address this area in connection with the Highway Trust Fund reauthorization and urge you to provide us with the statutorily required report as soon as possible. If you cannot provide a complete response, we request that you provide responsive information as it becomes available.

Sincerely,

Charles E. Grassley, Chairman
Committee on Finance

Max Baucus, Ranking Member
Committee on Finance

William M. Thomas, Chairman
Committee on Ways and Means