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Butane Alternative Fuel Mixture Credit Cases; Appeals Court Upholds District Court Determination that Butane is a Taxable Fuel

The United States Court of Appeals for the Seventh Circuit has upheld the decision of the District Court for the Eastern District of Wisconsin in *U.S. Venture, Inc. v. United States of America* (Nos. 18-C-1757 & 19-C-595) that **butane is not an alternative fuel, but rather is a taxable fuel.** This upholds the decision, that blends of butane and gasoline would not be eligible for the alternative fuel mixture credit. This is the third decision regarding the status of butane in any of the pending cases.

In the original case, Plaintiff U.S. Venture, Inc. filed a Motion for Partial Summary Judgment seeking a ruling on whether the term “liquefied petroleum gas” in 26 U.S.C. § 6426 includes butane. The plaintiff argued that the term “liquefied petroleum gas” included butane; in support of this the plaintiff relied on dictionary definitions and various state regulations that reached such a conclusion. The plaintiff further argued that a fuel could be both an alternative fuel and a taxable fuel. The United States filed its own Motion for Summary Judgment countering that butane is clearly a taxable fuel; the Court granted this motion.

In denying U.S. Ventures’ motion, the District Court concluded that butane is not both a taxable fuel and an alternative fuel and given the entire statutory scheme is could not be concluded that Congress intended for a mixture of butane and gasoline to receive the alternative fuel mixture credit. Using the same statutory construction reasoning, and looking at the language of the tax credit in the broader context of the whole statute, the Appeals Court affirmed this decision. The Court determined that butane is a taxable fuel for purposes of excise tax and is therefore a taxable fuel for purposes of the alternative fuel mixture credit. To conclude that butane is also an alternative fuel, said the Court, “strains credulity.” The Court went on to say that “[A]dding one taxable fuel to another taxable fuel does not result in a mixture of a taxable fuel and an alternative fuel.” The Court further stated that as butane has been a standard component of motor fuel for over 30 years, there would be little reason for Congress to seek to incentivize its use though a tax credit. It is worth noting that the Court determined that the intent of Congress was clear from the language of the statute and it was therefore not necessary to look at secondary or tertiary sources such as Congressional reports, IRS Notices or dictionary definitions.

The plaintiff may now consider whether it wishes to appeal the decision to the Supreme Court.

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