



SC TECHNICAL ADVICE MEMORANDUM #88-5

TO: Mr. Marvin Davant, Director
Field Services Division

FROM: Jerry B. Knight, Manager
Tax Policy and Procedures Department

DATE: February 10, 1988

SUBJECT: Fuel Ethanol

REFERENCE: S.C. Code Ann. Section 12-27-430 (Supp. 1986)
S.C. Code Ann. Section 12-27-431 (Supp. 1986)

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)
SC Revenue Procedure #87-3

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Questions:

1. Is the principal feedstock used by ABC Corporation, d/b/a XYZ, Inc., made from cereal grain or its by-products, as required by S.C. Code Section 12-27-430(1)?
2. Were fuel ethanol blends being produced in South Carolina as of April 1, 1987 pursuant to Code Section 12-27-431?

Facts:

S.C. Code Section 12-27-430 reads:

1. Fuel ethanol means one hundred ninety-eight proof ethanol denatured in conformity with Bureau of Alcohol, Tobacco and Firearms regulations and distilled in a facility whose principal (over fifty percent) feed stock is wood, cereal grain, and its by-products, potatoes and their by-products, sugar beets and their by-products, or turnips and their by-products.

2. Fuel ethanol blends are ninety percent gasoline and ten percent fuel ethanol in which the gasoline portion of the blend or the finished gasoline fuel ethanol blend meets the sulfur, distillation range, Reid vapor pressure, and copper corrosion requirements contained in ASTM D-439.
3. The tax on fuel ethanol blends is seven cents a gallon until June 30, 1992, or until loss of revenues reaches twenty million dollars and at such time all tax incentives must be removed and the tax on fuel ethanol blends must be at the prevailing tax rate per gallon.
4. The tax imposed in this section must be collected as provided in Chapters 27, 29, and 31 of Title 12 of the 1976 Code. The provisions for the enforcement and penalties for the violation of such provisions must be in accordance with the requirements of the aforementioned chapters of the 1976 Code. The proceeds from the imposition of the tax on fuel ethanol blends must be distributed as follows: one-fifteenth must be added to the one cent per gallon as presently apportioned to the counties as provided in Section 12-27-380, three-fifteenths must be added to the 2.66 cents per gallon as apportioned to the counties as provided in Section 12-27-400, and eleven-fifteenths must be added to the 9.34 cents per gallon as provided in Section 12-27-380. The proceeds from the imposition of the tax on fuel ethanol blends must be expended for the purposes as provided by law.
5. In the event that the federal motor fuel tax exemption for alcohol blend is increased prior to June 30, 1992, the gasoline tax imposed on fuel ethanol blends in South Carolina must be increased by a corresponding amount.
6. The fuel ethanol blends otherwise eligible for the tax incentive provided in this subsection may not contain fuel ethanol produced outside South Carolina unless the South Carolina Tax Commission determines that the fuel ethanol blends claimed to be eligible for the tax incentive contain fuel ethanol produced in a state that also grants an incentive, exemption, credit, or refund at least equal to South Carolina's tax incentives from that state's motor vehicle fuel excise tax or sales tax for similar fuel ethanol blends containing fuel ethanol produced in South Carolina.
7. The South Carolina Tax Commission shall promulgate regulations for the procedures necessary to claim the tax incentives.

Further, Code Section 12-35-431 reads:

"The tax incentive provided in Section 12-27-430 is not effective after April 1, 1987, if no fuel ethanol blends are produced in South Carolina by that date. The Budget and Control Board shall determine if fuel ethanol blends are produced in South Carolina by April 1, 1987."

To summarize, Code Section 12-27-430 (effective January 1, 1986) imposes a reduced tax rate of seven cents per gallon on fuel ethanol blends to encourage the distillation of fuel ethanol in this state. At this time the standard tax rate for gasoline is fifteen cents per gallon. "Fuel ethanol" is

defined as 198 proof ethanol and "fuel ethanol blend" is defined as 10% fuel ethanol and 90% gasoline. Such incentive is to be taken at the retail level and is to end June 30, 1992, or when the revenue loss reaches twenty million dollars.

To meet the requirements of Section 12-27-430, the fuel ethanol must be "distilled in a facility whose principal (over fifty percent) feedstock is wood, cereal grain and its by-products, potatoes and their by-products, sugar beets and their by-products, or turnips and their by-products." The American Heritage Dictionary (Second College Edition) defines "feed-stock" as, "raw materials required for an industrial process."

Also, Code Section 12-27-431 provides that the incentive is in effect only if fuel ethanol blends were being produced in South Carolina as of April 1, 1987. This is to be determined by the Budget and Control Board.

History of XYZ, Inc. (CCP), located in South Carolina:

January 1, 1986 - May 31, 1986. During this period, CCP processed 190 proof ethanol, owned by The Ethanol Corporation, for a per-gallon fee. The ethanol was converted to fuel ethanol (198 proof) by combining it with a starch solution made from corn.

June 1, 1986 - Present. Beginning in June, 1986, CCP began purchasing 190 proof ethanol, combining it with a slurry made from corn and then selling the resultant fuel ethanol to The Ethanol Corporation.

With the exception of 687,046 gallons of 190 proof ethanol made from sugar cane, all feedstock used at CCP's facility has been made from cereal grain, or its by-products. Through September, 1987, such feedstock represented approximately 99% of the total used.

Conclusions:

1. ABC Corporation, d/b/a XYZ, Inc., is in compliance with Code Section 12-27-430(1), as more than fifty percent of its feedstock is made from cereal grain, or its by-products.
2. The Budget and Control Board has determined that fuel ethanol blends were being produced in South Carolina as of April 1, 1987 (Code Section 12-27-43).

It should be noted that fuel ethanol distilled at other facilities, both within and without South Carolina, may or may not be in compliance with Code Section 12-27-430. Such determinations should be made on a case-by- case basis.