

Wis. Alternative Fuel Co. Seeks \$34M Excise Tax Refund, 2018 Law360 310-246

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Summary

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Body

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The IRS ruling is inconsistent with congressional intent and the agency's own interpretation of the term "liquefied petroleum gas" and would achieve an "absurd result," fuel company U.S. Venture Inc. said. The IRS should use the term's common industry and scientific meaning, which defines liquefied petroleum gas as including butane, to provide the credit for the company.

Industry standards, congressional intent and the agency's own interpretation included butane as a liquefied petroleum gas eligible for the credit, the company said.

U.S. Venture said it paid its excise taxes in 2016 and 2017 but did not receive a credit of 50 cents per gallon of alternative fuel used to produce an alternative fuel mixture for sale at its business. The Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005, or SAFETEA, established the credit, which can be used against a claimant's \$0.183 tax liability under [Internal Revenue Code Section 4081](#) ([26 U.S.C. 4081](#)).

The SAFETEA legislation defined "alternative fuel" as including liquefied petroleum gas, the company said, but the statute does not define what constitutes liquefied petroleum gas. However, it is defined as including butane in other federal regulations. The energy industry and other federal agencies such as the U.S. Department of Energy rely on common definitions of "liquefied petroleum gas" that include butane, the company said.

Despite this, the IRS issued [Revenue Ruling 2018-2](#) in December 2017, ruling that a gasoline-butane mix was not eligible for the alternative fuel tax credit because it is not considered an "alternative fuel," the company said.

U.S. Venture produces alternative fuel mixtures of butane and at least 0.1 percent gasoline in its business, the company said, buying butane used in alternative fuel mixtures, and sells a gas-butane mixture to third parties for fuel.

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Legal representatives for the IRS and for U.S. Venture could not be immediately reached for comment.

U.S. Venture is represented by Jonathan Smies of Godfrey Kahn SC and Shawn R. O'Brien and Maria C Critelli of Mayer Brown LLP.

Legal representation for the IRS could not be immediately determined.

The case is U.S. Venture Inc. v. USA, case number 1:18-cv-01757, in the U.S. District Court for the Eastern District of Wisconsin

--Editing by Neil Cohen.

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