



September 10, 2010

Chris Wagner
Commissioner, Small Business and Self Employed Division
U.S. Department of the Treasury
Internal Revenue Service
SB/SE Headquarters
5000 Ellin Road
Lanham, MD 20706

Re: Fuel exemptions and farm equipment

Dear Mr. Wagner:

On behalf of farmers and ranchers across Washington state, we are writing to express concerns about a recent IRS inspection and citation. We request that you dismiss the citation issued to Engle Family Farms LLC on August 2 of this year (copy attached) and reconsider agency enforcement actions regarding on-farm and non-highway vehicles. The agricultural community in Washington state understands the need for laws governing dyed diesel, but we feel the agency has misapplied those laws in Engle's case – leading to potential ramifications for the broader ag community.

On July 26, 2010, IRS inspector Jeffrey Thompson inspected Engle Farms and found what he thought was a violation of federal law regarding the use of dyed, off-road diesel. At issue was Engle's use of a self-propelled New Holland brand diesel bale wagon, or harrow bed. The equipment in question clearly belongs to a classification of farm use vehicles, as it is used to transport bales of hay from the field to a farmer's haystack. The front of the vehicle includes specialized equipment affixed to the vehicle itself for the lifting of hay bales. The manufacturer, New Holland, considers the vehicle to be a non-highway vehicle, and the vehicle is registered with the state of Washington as a farm use vehicle.

We understand that, generally speaking, dyed fuel cannot be used in vehicles travelling on public roadways. However, IRS guidelines define a couple nontaxable uses that we feel apply in this circumstance.

1. *On a farm for farming purposes:* The Engle's business operation clearly meets the definition of a farm engaging in farming practices. According to IRS guidelines, fuel is nontaxable if a farmer "use[s] fuel on a farm for farming purposes ... to cultivate the soil or to raise or harvest any agricultural or horticultural commodity." A bale wagon is indisputably used in the process of harvesting hay for normal farming operations and is not involved in the commercial transport and delivery of the final product to the consumer. The purpose of bale wagons is to move hay bales from a farmer's field to haystack. Any use of public roadways is incidental to the harvest operation.

If the IRS contends that the incidental use of public roadways by this vehicle triggers the use of regular diesel fuel, we submit that use of this vehicle fulfills the same purpose as a tractor, using dyed fuel, pulling an implement-style bale wagon behind it. The growers who have been in contact with Inspector Thompson understand from him that agricultural implements, trailers, and wagons pulled by tractors on public roadways are exempt, and the tractors in question may use dyed fuel when doing so. The self-propelled bale wagons are simply a combined version of the tractor and trailer, and should be viewed as the same type of farm vehicle.

2. *Vehicles not considered highway vehicles:* IRS guidelines allow for several categories of nontaxable vehicles, including those that are specially designed for nontransportation functions and those that are specially designed for off-highway transportation. In the case of a self-propelled diesel bale wagon, the vehicle is designed specifically for the purpose of harvesting hay. Specialized harvesting equipment is mounted to the chassis, ensuring that this type of vehicle is used only for non-highway purposes. The vehicle is not manufactured – and it cannot be licensed – as a vehicle for on-highway uses. Even the tires on the bale wagon specifically state that they are not for highway use.

We are extremely concerned with the way IRS enforcement agents are determining what is a qualified farm vehicle. The precedent set by this citation is stirring up fear across the state as farmers feel at risk to arbitrary determinations of when dyed diesel use is appropriate. Bale wagons are clearly on-farm agricultural vehicles, and a decision otherwise raises questions about how the IRS will view other agricultural machinery. This action needs to be viewed in light of the greater implications as well as the specific circumstances of this case.

The citation states that Mr. Engle violated Section 6715 of the IRS code, which in several places includes language indicating that the violations must be with a person's knowledge and willful action to use dyed fuel in an illegal and/or non-exempt manner. We have already established the fact that a bale wagon is a piece of farm machinery used in the harvest of hay. Any reasonable person would conclude that dyed diesel, which is commonly used in other on-farm machinery, could also be used in a bale wagon. Inspector Thompson has not shown any intention by Mr. Engle to knowingly violate the law. As such, we feel the violation and corresponding monetary penalty should be dismissed.

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Moreover, we contend that the majority of the \$9,000 penalty should never have been levied in the first place. \$8,000 of the penalty was assessed because of storage of dyed fuel on Mr. Engle's property. Mr. Engle runs an agricultural operation with other undoubtedly exempt farm vehicles, including tractors. The dyed diesel in storage on Mr. Engle's property is used to fuel all farm-use vehicles. Assessing a penalty on 800 gallons of fuel that are otherwise stored and used in a completely legal manner is outrageous. This portion of the penalty should never have been assessed in the first place. Accordingly, we ask for this to be summarily dismissed.

The use of dyed fuel in farm vehicles used in the practices of animal husbandry is a long-established, time-honored practice. The citation of Mr. Engle for using dyed fuel in a vehicle that meets the qualifications for a farm-exempt, non-highway vehicle is an affront to the entire agricultural community in Washington state.

We ask you to immediately dismiss this citation in full. In addition, before IRS engages in any further enforcement actions, we ask that you provide clear explanations of fuel tax law to affected industry groups and apprise all stakeholders of changes in agency goals, policy interpretation, and intended enforcement. We look forward to working with you in any consultation and outreach you provide.

Sincerely,



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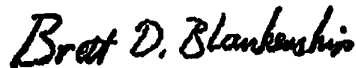
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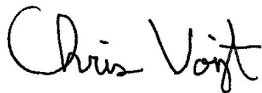
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Enclosures

Cc: Bob Engle
Jeffrey Thompson, Inspector, Internal Revenue Service
Nina E. Olson, National Taxpayer Advocate, Internal Revenue Service
The Honorable Patty Murray, U.S. Senate
The Honorable Maria Cantwell, U.S. Senate
The Honorable Jay Inslee, U.S. House of Representatives, Wash. 1st District

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The Honorable Rick Larsen, U.S. House of Representatives, Wash. 2nd District
The Honorable Brian Baird, U.S. House of Representatives, Wash. 3rd District
The Honorable Doc Hastings, U.S. House of Representatives, Wash. 4th District
The Honorable Cathy McMorris Rodgers, U.S. House of Representatives, Wash. 5th
District
The Honorable Norm Dicks, U.S. House of Representatives, Wash. 6th District
The Honorable Jim McDermott, U.S. House of Representatives, Wash. 7th District
The Honorable Dave Reichert, U.S. House of Representatives, Wash. 8th District
The Honorable Adam Smith, U.S. House of Representatives, Wash. 9th District
The Honorable Chris Gregoire, Governor, Washington State
The Honorable Dan Newhouse, Director, Washington State Dept. of Agriculture
The Honorable Mary Margaret Haugen, Washington State Senate, 10th District
The Honorable Barbara Bailey, Washington State House, 10th District
The Honorable Norma Smith, Washington State House, 10th District