

INTERNAL REVENUE SERVICE  
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

January 12, 2011

Number: **201120019**  
Release Date: 5/20/2011

Third Party Communication: None  
Date of Communication: Not Applicable

Index (UIL) No.: 4611.00-00  
CASE-MIS No.: TAM-142671-10

Chief Excise Tax Operations  
SBSE Excise

Taxpayer's Name:  
Taxpayer's Address:

Taxpayer's Identification No  
Year(s) Involved:  
Date of Conference:

LEGEND:

Company =

State =

State2 =

Parent =

Refinery =

Country =

## ISSUE:

Whether tar sands imported into the United States are subject to the excise tax on petroleum imposed by § 4611 of the Internal Revenue Code (Code).

## CONCLUSION:

Tar sands imported into the United States are not subject to the excise tax on petroleum imposed by § 4611 of the Internal Revenue Code (Code).

## FACTS:

Company is a State limited partnership that is owned by Parent. Company is an independent refining and chemicals company that operates several refineries in the United States, including Refinery. Refinery is located in State2. Company imports crude oil and tar sands from Country, which Refinery receives by pipeline.

Tar sands, also called oil sands, are described by Company as a combination of clay, sand, water, and bitumen. Bitumen is a heavy black viscous oil substance contained within the tar sands. Company also uses the term tar sands to refer to two liquids derived from tar sands. The first liquid is a heavy blended oil stream which consists of bitumen extracted from tar sands and blended with a diluent or other liquid that enables the bitumen to be transported through a pipeline. The second liquid is an upgraded oil stream which is a synthetic crude oil derived from tar sands. Company also imports natural crude oil, which may be commingled with and transported in the same pipeline with tar sands. Company states that the quantity of each substance in commingled crude oil and tar sands is separately traced and accounted for by Company's software inventory accounting package. Tar sands are refined using the same processes as those used in the refining of crude oil. No distinction exists between finished products refined from crude oil or refined from tar sands.

## LAW AND ANALYSIS:

Section 4611(a) imposes a tax on crude oil received at a United States refinery, and petroleum products entered into the United States for consumption, use, or warehousing.

Section 4612(a)(1) provides that the term "crude oil" includes crude oil condensates and natural gasoline. Section 4612(a)(3) further provides that the term "petroleum product" includes crude oil.

The plain language of sections 4611 and 4612 do not clearly include or exclude tar sands from the definitions of the terms crude oil and petroleum product. The Internal Revenue Service has not issued final regulations under 4611 and 4612. In the absence of clear statutory definitions and regulatory guidance, the legislative history to §§ 4611

and 4612 is instructive. Sections 4611 and 4612 were added to the Code by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (Pub. L. 96-510, 94 Stat. 2767). In House Report 96-1016(II) to CERCLA (H.R. Rep. 96-1016(II), 1980 U.S.C.C.A.N. 6151, 6154), the House Ways and Means Committee explains that the term “crude oil,” as used in §§ 4611 and 4612, does not include synthetic petroleum. Thus, the Committee explains, “crude oil” does not include shale oil, liquids from coal, tar sands, or biomass, or refined oil. The Committee further explains that crude oil does not include oil used for extraction purposes on the premises where it was produced, such as for reinjection as part of a tertiary recovery process. In the same report, the Committee explains that the term “petroleum product” includes crude oil, crude oil condensate, natural and refined gasoline, refined and residual oil, and any other hydrocarbon product derived from crude oil or natural gasoline which enters the United States in liquid form.

The House Report clearly indicates Congress’s intent to exclude tar sands from the definitions of crude oil and petroleum product for purposes of §§ 4611 and 4612. Accordingly, tar sands imported into the United States from Country by Company are not subject to the excise tax on petroleum imposed by § 4611. However, crude oil and/or petroleum products that are comingled with tar sands are subject to the excise tax on petroleum imposed by § 4611.

**CAVEAT:**

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.