

Contact

Houston

1200 Smith Street, Suite 1400
Houston, Texas 77002-4310
Tel: 713.658.1818
Fax: 713.658.2553

Atlanta

191 Peachtree Street, N.E.,
Forty-Sixth Floor
Atlanta, Georgia 30303
Tel: 404.659.1410
Fax: 404.659.1852

Philadelphia

50 South 16th Street, Suite
1700
Philadelphia, PA 19102
Tel: 610.772.2300
Fax: 610.772.2305

San Antonio

112 East Pecan Street, Suite
1450
San Antonio, Texas 78205
Tel: 210.253.8383
Fax: 210.253.8384

“Circuit Court Shuns Butane Additive in Fuel Mixture Credit Case”

Quote by Pete Lowy in “Circuit Court Shuns Butane Additive in Fuel Mixture Credit Case”

Tax Notes

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In an article published on July 1, 2021 in *Tax Notes*, Peter Lowy, Co-Chair of Chamberlain Hrdlicka’s state and local tax practice, comments on the recent Seventh Circuit’s opinion whether butane qualifies as an alternative fuel for purposes of the tax credit. He also notes the significance of the decision’s timing, given the Fifth Court is yet to make a decision in *Vitol Inc. v. United States*, addressing the question whether butane is a liquefied petroleum gas under section 6426(d)(2).

In a two-part statutory inquiry, the Seventh Circuit addressed whether butane qualifies as a taxable fuel for purposes of the alternative fuel mixture tax credit, and if so, whether it can also qualify as an alternative fuel for the same purpose. Following its analysis, the court held that U.S. Venture’s butane-gasoline mixture doesn’t qualify for the alternative fuel mixture credit.

Lowy told *Tax Notes* that the Seventh Circuit’s repeated references to that paradigm, “implying that . . . there was no reason, and Congress couldn’t have intended, to incentivize the butane additive,” along with the government’s assertion that “there’s nothing alternative” about gasoline that has butane added to it, makes one wonder “how much the practical, rather than the technical” drove the outcome.