



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

SEP 13 2012

The Honorable Edward J. Markey  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Markey:

Thank you for your letter concerning the Oil Spill Liability Trust Fund and the excise tax on petroleum under section 4611 of the Internal Revenue Code. Because your letter concerns issues of tax policy, it was forwarded to me for a response.

As you note, on May 20, 2011, the Internal Revenue Service (IRS) issued a Technical Advice Memorandum<sup>1</sup> concluding that “tar sands imported into the United States are not subject to the excise tax on petroleum imposed by section 4611 of the Internal Revenue Code.” Your letter requests that Treasury review this conclusion and consider guidance to clarify that tar sands are subject to the excise tax.

Section 4611 imposes a tax on (a) crude oil received at a U.S. refinery, and (b) 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) provides that the term “petroleum product” includes crude oil. Sections 4611 and 4612 were added to the Code by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).<sup>2</sup> The House Ways and Means Committee Report, which was issued contemporaneously with CERCLA, explained that “the term crude oil does not include synthetic petroleum, e.g., shale oil, liquids from coal, tar sands, or biomass, or refined oil.”<sup>3</sup> This language leads us to conclude that Congress intended to exclude tar sands from the definition of crude oil or petroleum.

The Administration, however, shares your policy concerns about the tax base for the petroleum excise tax imposed by section 4611. In light of the legislative history quoted above, we believe that an expansion of the tax base should be made legislatively. Accordingly, the Administration’s FY 2013 Budget proposed to extend the tax under section 4611 to crude oils such as those produced from tar sands.<sup>4</sup>

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<sup>1</sup> TAM-142671-10.

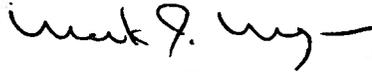
<sup>2</sup> Pub. L. 96-510, 94 Stat. 2767.

<sup>3</sup> 1980 U.S.C.C.A.N. 6151, 6154.

<sup>4</sup> General Explanations of the Administration’s Fiscal Year 2013 Revenue Proposals, p. 125.

Thank you again for your letter. If you have further questions, please contact me. If you would like technical assistance in drafting a legislative proposal to implement this change, please have your staff contact Sandra Salstrom in Treasury's Office of Legislative Affairs at 202-622-1900.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark J. Mazur", with a horizontal line extending to the right.

Mark J. Mazur  
Assistant Secretary (Tax Policy)