Is Butane a Liquified Petroleum Gas? Federal Appellate Court Addresses Excise Tax Credit Question

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The United States Court of Appeals, Fifth Circuit ("Fifth Circuit") addressed in a March 23rd Opinion what it described as a question of first impression:

Is butane a "liquified petroleum gas" ("LPG") under 26 U.S.C. § 6426(d)(2)?

See *Vitol, Incorporated v. United States of America*, 30 F.4th 249.

The cited excise tax credit statute is found at 26 U.S.C. § 6426(e).

Vitol, Incorporated ("Vitol") pursued an action in the United States District Court against the United States seeking an $8.8 million tax refund arguing that butane was "LPG." As a result, it argued that butane qualified as an alternative fuel and could be mixed with "taxable fuel" to qualify for an excise tax credit.

The United States District Court for the Southern District of Texas denied Vitol's motion for partial summary judgment in support of its argument that butane constituted LPG for purpose of the statute. However, the United States District Court certified an order for interlocutory appeal to the Fifth Circuit.

Vitol argued on appeal that a common understanding of LPG includes butane.

The Fifth Circuit rejected this argument stating that 6426 U.S.C. (d)(2)'s definition of alternative fuel:

. . . fits within a broader statutory scheme that precludes any taxable fuel from also qualifying as an alternative fuel.

The Fifth Circuit identified butane as a taxable fuel under the relevant statutes stating:

Text cannot be divorced from context, and statutory meaning is not always common meaning. Congress's words must be read as part of a contextual whole.

As a result, the Fifth Circuit affirmed the denial of a partial summary judgment and concluded that butane is not an LPG under § 6426(d)(2).

A copy of the opinion can be downloaded here.