

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 98-30407

GULF SEAFOOD COMPANY OF EMPIRE, INC.,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(95-CV-2781)

February 9, 1999

Before WISDOM, STEWART and DENNIS, Circuit Judges.

PER CURIAM:*

Appellant Gulf Seafood Company of Empire, Inc., appeals the district court's decision that appellant's sale of diesel fuel to a nearby business was not exempt from the excise tax otherwise imposed by the Internal Revenue Code ("IRC") § 409(a). The United States counterclaimed for the balance of unpaid taxes owed by the appellant. Having reviewed the record, the applicable law, and the briefs filed by counsel, we find no error in the judgment of the district court. For the reasons excellently set forth in the district court's ORDER AND REASONS, the judgment of the district court is AFFIRMED.

*Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR R. 47.5.4.