

Schedule 5 (Form 8849), Section 4081(e) Claims (Rev. January 2006)

Circulation: This is the first circulation of Schedule 5 (Form 8849), Section 4081(e) Claims. Major changes are described on page 2.

TPCC Meeting: None scheduled.

Prior Version: The February 2005 Schedule 5 (Form 8849) may be viewed by clicking on the following link:

<http://publish.no.irs.gov/FORMS/PUBLIC/PDF/27453B05.PDF>.

Other Products: Circulations of draft tax forms and instructions are posted at http://taxforms.web.irs.gov/draft_products.html .

Comments: Please call, fax, or email any comments by January 26, 2006. The short comment period is necessary so the form can go to print in January 2006.

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Major Changes, Schedule 5 (Form 8849), Rev. January 2006

Lines 5-8 incorporate new or revised fuels taxable under section 4081. If a second tax is paid on fuels taxable under section 4081, section 4081(e) provides for a refund of the second tax.

Note. Dyed diesel fuel used in trains, inland waterways fuel use, and kerosene for use in aviation (LUST tax on nontaxable uses) are taxed under sections 4041 or 4042. These fuels are not eligible for a refund under Code section 4081(e) if a second tax was paid.

1. Revised Line 5 is used for section 4081(e) claims for diesel-water fuel emulsions, effective after December 31, 2005. Section 1343 of the Energy Policy Act of 2005, adding new Code section 4081(a)(2)(D).

2. New Line 6 is used for section 4081(e) claims for the LUST tax on the following fuels: dyed diesel fuel, dyed kerosene, and other exempt removals (gasoline blendstocks, kerosene used for a feedstock, and diesel fuel or kerosene used in Alaska), effective after September 30, 2005. Section 1362 of the Energy Policy Act of 2005, amending Code section 4082(a).

3. New Lines 7 and 8 are used for Section 4081(e) claims for kerosene for use in aviation if certain conditions are met, effective after September 30, 2005. Aviation-grade kerosene has been deleted from line 5. Section 11161 of SAFETAE, amending Code section 4081(a).

Instructions

Section references are to the Internal Revenue Code.

What's New

add ", effective after September 30, 2005."

- Line 5 is used for section 4081(e) claims for diesel-water fuel emulsions, effective after December 31, 2005.
- Line 6 is used for section 4081(e) claims for the LUST tax. See Line 6 below for the fuels applicable on line 6.
- Claims relating to kerosene for use in aviation are completely revised, effective after September 30, 2005. Aviation-grade kerosene has been deleted from line 5. Lines 7 and 8 have been added for kerosene for use in aviation. For section 4081(e) claims related to aviation-grade kerosene before October 1, 2005, use the February 2005 revision of Schedule 5 (Form 8849).

Purpose of Schedule

add "See lines 7 and 8 below."

A person who paid the second tax to the government uses Schedule 5 to make a claim for refund.

Section 4081(e) Claims

add "under section 4081"

Section 4081(e) applies to the fuels listed in Part I.

If two taxes were paid on the fuel for which the claim is filed, then a claim for refund of the second tax may be made.

Example. Janet is a taxable fuel registrant that owns 10,000 gallons of gasoline that is being transported on a vessel in the United States. On June 1, 2006, Janet sells the gasoline to Hazel, a person that is not a taxable fuel registrant. Janet is liable for tax on this sale. Janet prepares a First Taxpayer's Report related to this sale and gives a copy of the report to Hazel.

On June 4, 2006, Hazel sells the same gallons of gasoline to Caroline, a taxable fuel registrant. Hazel also gives Caroline a copy of Janet's First Taxpayer's Report and a Statement of Subsequent Seller. On June 9, 2006, the gasoline is removed from a terminal at the rack. Caroline is the position holder of the gasoline at the time of the removal and thus is liable for tax on the removal. Caroline pays this tax to the government.

After Caroline has filed a return of this second tax, Caroline files Form 8849 and Schedule 5 for a refund for the second tax and includes a copy of the First Taxpayer's Report and Statement of Subsequent Seller. In Part I of Schedule 5, Caroline enters "1840.00" in column 1(a). In Part II, Caroline enters "1" in column (c); "06092005" in column (d); "10000.00" in column (e); and "1840.00" in column (f).

Claimant

change to 6

The person who paid the second tax to the government is the only person eligible to make this claim.

Claim Requirement

Generally, the claim must be filed within 3 years from the time the return for the second tax was filed or 2 years from the time the second tax was paid to the government, whichever is later.

Total Refund

Add all amounts in column (a) and enter the result in the total refund box at the top of the Schedule.

Part I

For each type of fuel, enter the total of all amounts from column (f), Part II.

Line 6. Section 4081(e) claims can be made on line 6 for the LUST tax on the following fuels: dyed diesel fuel, dyed kerosene, and other exempt removals (gasoline blendstocks, kerosene used for a feedstock, and diesel fuel or kerosene used in Alaska). ~~Effective after September 30, 2005.~~

Lines 7 and 8. Section 4081(e) claims can be made for kerosene for use in aviation if certain conditions are met.

Example. UA buys kerosene at a terminal rack. Tax is imposed on the removal of the kerosene at the terminal rack (removal A). The kerosene will be trucked to an airport and then stored in a terminal at the airport. The airport terminal is part of the bulk transfer/terminal system. Tax is imposed on the removal of the kerosene from the airport terminal for use in aviation (removal B).

The second taxpayer is generally the position holder of the kerosene at the airport terminal. However, if the kerosene is for use in commercial aviation, the aircraft operator may be the second taxpayer. The second taxpayer can file a section 4081(e) claim for the tax imposed on the removal of the kerosene from the airport terminal (removal B).

Claims for the tax imposed on the kerosene in removal A and subsequently used in aviation are made using Schedule 1 or Schedule 2 of Form 8849, as applicable. The section 4081(e) claim cannot be combined with any other claim.

Part II

add "The following is an example of when line 7 and 8 may be used for a section 4081(e) claim. X buys.."

For each payment of a second tax, complete all the information required.

Information to be Attached

1. A copy of the First Taxpayer's Report that relates to the fuel covered by each claim and

2. If the fuel covered by the claim was bought from someone other than the first taxpayer, a copy of the Statement of Subsequent Seller that the claimant received with respect to that fuel.

The First Taxpayer's Report and Statement of Subsequent Seller must contain all the information as shown in Model Certificates A and B in Appendix B of Pub. 510.

How To File

Attach Schedule 5 to Form 8849. On the envelope write "Section 4081(e) Claim" and mail to the IRS at the address under *Where To File* in the Form 8849 instructions.