

**SUPPORTING STATEMENT**  
**(Notice 2005-04)**

**1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Section 40A provides that no biodiesel credit is allowed unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer or importer of the biodiesel which identifies the product produced and the percentage of biodiesel and agribiodiesel in the product.

Section 4041(a)(1) imposes a tax on diesel fuel and kerosene.

Section 4041(c)(1) provides that tax is imposed on aviation-grade kerosene (A) sold by any person to the operator of an aircraft for use in the aircraft, or (B) used by any person in an aircraft unless there was a taxable sale of such fuel under subparagraph (A).

Section 4041(c)(2) provides an exemption from tax for previously taxed fuel.

Section 4041(g) provides an exemption from tax for any liquid used on a farm for farming purposes, exported, in foreign trade, in certain helicopter and fixed wing air ambulance uses, for the exclusive use by a nonprofit educational organization, for the exclusive use by a state, in an aircraft owned by an aircraft museum, or in military aircraft.

Section 4081(a)(1) imposes a tax on certain removals, entries, and sales of taxable fuel. Section 4083(a) provides that taxable fuel means gasoline, diesel fuel, and kerosene.

Section 4081(a)(2)(C) provides that in the case of aviation-grade kerosene which is removed from a refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation, the rate of tax under subparagraph (A)(iv) shall be 4.3 cents per gallon.

Section 4081(a)(4) provides that for purposes of the tax imposed by § 4081(a)(2)(C) the person who uses the fuel for commercial aviation shall pay the tax imposed under such paragraph.

Section 4101(a)(1) provides that every person required by the Secretary to register under this section with respect to the tax imposed by §4041(a)(1) or 4081 and every person producing or importing biodiesel (as defined in § 40A(d)(1)) shall register with the Secretary at such time, in such form and manner, and subject to such terms and conditions, as the Secretary may by regulations prescribe.

Section 48.4101-1(c)(1) requires a person to be registered under §4101 with respect to the tax on taxable fuel if the person is (i) a blender; (ii) an enterer; (iii) a pipeline operator; (iv) a position holder; (v) a refiner; (vi) a terminal operator; or (vii) a vessel operator.

Section 48.4101-1(d) provides that a person may be registered under §4101 with respect to the tax on taxable fuel if the person is (1) a feedstock user; (2) a gasohol blender; (3) an industrial user; (4) a throughputter that is not a position holder; (5) an ultimate vendor; and (6) an ultimate vendor (blocked pump).

Section 48.4101-1(e) provides that the application for registration is made in accordance with the instructions for Form 637, Application for Registration.

Section 48.4101-1(f)(1)(ii) provides the IRS will register an ultimate vendor only if IRS (A) determines that the applicant meets the activity test of paragraph (f)(2) of this section and (B) is satisfied with the filing, deposit, payment, and claim history for all federal taxes of the applicant and any related person.

Section 48.4101-1(f)(2) provides that an applicant meets the activity test of this paragraph (f)(2) only if the district director determines that the applicant (i) Is, in the course of its trade or business, regularly engaged in the characteristic activity of a person described in paragraph (c)(1) or (d) of this section; or (ii) Is likely to be, in the course of its trade or business, regularly engaged in the characteristic activity of a person described in paragraph (c)(1) or (d) of this section within a reasonable time after becoming registered under §4101.

Section 6416(a)(1) provides that no credit or refund of an overpayment of tax imposed by chapter 32 (manufacturers taxes) shall be allowed or made unless the person who paid the tax establishes, under regulations prescribed by the Secretary, that he (A) has not include the tax in the price of the article with respect to which it was imposed and has not collected the amount of the tax from the person who purchased the article; (B) has repaid the amount of the tax to the ultimate purchaser of the article; (C) in the case of an overpayment under §6416(b)(2), (i) has repaid or agreed to repay the amount of the tax to the ultimate vendor of the article, or (ii) has obtained the written consent of such ultimate vendor to allowance of the credit or the making of the refund; or (D) has filed with the Secretary the written consent of the person referred to in subparagraph (B) to the allowance of the credit or the making of the refund.

Section 6416(b)(2) provides that the tax paid under chapter 32 (or (a) or (d) of §4041) in respect of any article shall be deemed to be an overpayment if the article was by any person sold to a state or local government for its exclusive use (§6416(b)(2)(C)) or sold to a nonprofit educational organization for its exclusive use (§6416(b)(2)(D)).

Section 48.6416(a)-(3)(B) provides that no credit or refund of an overpayment to which this paragraph applies shall be allowed unless the person who paid the tax submits with the claim a statement, supported by sufficient evidence that (i) the person has neither included the tax in the price of the article with respect to which it was imposed nor collected the amount of the tax from a vendee, and identifying the nature of the evidence available to establish these facts, or (ii) the person repaid, or agreed to repay, the amount of the tax to the ultimate vendor of the article, or (iii) the person has secured, and will submit upon request of the Service, the written consent of the ultimate vendor to allowance of the credit or refund.

Section 48.6416(b)(2)-3(a)(5) provides that a claim for a credit or refund under §6416(b)(2) shall be allowed if a statement is made that the person claiming the overpayment has the information required under §48.6416(b)(2)-3(b).

Section 48.6416(b)(2)-3(b) requires a certificate from the ultimate purchaser of the article that describes the nature and quantity of the article, the address of the ultimate purchaser of the article, the name and address of the ultimate vendor of the article, the use actually made of the article in sufficient detail (and a statement that the ultimate purchaser will notify the claimant if the article is not so used). A certificate of ultimate vendor is also provided in this section.

Section 6426 allows a credit against the tax imposed by § 4101 in the amount that includes the biodiesel mixture credit and provides that no credit shall be allowed unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer or importer of the biodiesel which identifies the product produced and the percentage of biodiesel and agribiodiesel in the product.

Section 6427(e) provides that if any person produces a mixture described in § 6426, the Secretary shall pay to such person an amount equal to the biodiesel mixture credit.

Section 6427(b)(1) provides that if any fuel other than gasoline (as defined in § 4083(a)) on the sale of which tax was imposed by § 4041(a) or 4081 is used in an automobile bus while engaged in furnishing certain bus transportation, a credit or payment is allowed to an ultimate purchaser of taxed diesel fuel or kerosene used in intercity buses.

Section 6427(b)(4) provides that if the ultimate purchaser of such fuel waives the right to a payment under paragraph (b)(1) and assigns that right to the ultimate vendor, then the Secretary shall pay the amount to the ultimate vendor but only if the ultimate vendor is registered under section 4101 and meets the requirements of subparagraph (A), (B), or (D) of §6416(a)(1).

Section 6427(l)(1) provides that if diesel fuel or kerosene on which tax was imposed by § 4041 or 4081 is used by any person in a nontaxable use, the Secretary shall pay to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under § 4041 or 4081, reduced by any payment to the ultimate vendor under paragraph (4)(B).

Section 6427(l)(2)(B) provides that in the case of aviation-grade kerosene a nontaxable use means (i) any use which is exempt from the tax imposed by §4041(c) other than by reason of prior imposition of tax or (ii) any use in commercial aviation.

Section 6427(l)(4)(B) provides that in the case of aviation-grade kerosene, if the ultimate purchaser of such kerosene waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor but only if such ultimate vendor (i) is registered under §4101, and (ii) meets the requirements of subparagraph (A), (B) or (D) of §6416(a)(1).

**2. USE OF DATA**

The information will be used by the IRS to verify that the proper amount of tax is reported, excluded, refunded, or credited.

**3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

IRS publication, regulations, notices and letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

**4. EFFORTS TO IDENTIFY DUPLICATION**

We have attempted to eliminate duplication within the agency wherever possible.

**5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES**

Not applicable.

**6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES**

Not applicable.

7. **SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)**

Not applicable.

8. **CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTION AND FORMS, AND DATA ELEMENTS**

Notice **2005-4** was published as an NPRM in the **Internal Revenue Bulletin (IRB)** on January 10, 2005 (2005-2 IRB 289). It was modified in **Notice 2005-62** in the **IRB** on August 29, 2005 (2005-35 IRB 443). **Notice 2006-92** was published in the **IRB** on October 23, 2006 (2006-43 IRB 774) to provide guidance on the credit and payment provisions for alternative fuel and alternative fuel mixtures under §§ 34, 6426(d), 6426(e), and 6427(e) of the Internal Revenue Code.

In response to the **Federal Register Notice** dated **November 19, 2007 (72 FR 65133)**, we received no comments during the comment period regarding Notice 2005-04.

9. **EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**

Not applicable.

10. **ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. **JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

12. **ESTIMATED BURDEN OF INFORMATION COLLECTION**

Section 2(h)(2)(i) and (ii) of the notice describes the certificate that the producer or importer of biodiesel must give to the claimant of a biodiesel mixture credit or biodiesel credit. We estimate that there will be 30 biodiesel producers who will give this certificate 225 times per a year and that the certificate will take .25 hours to complete. The total burden for this requirement is 1,687 hours.

Section 4(d)(2) of the notice refers to the reporting requirement in

§4081(a)(3)(C). This notice does not prescribe any such reporting. The reporting requirements under §4081(a)(3)(C) will be prescribed in subsequent guidance. Until the issuance of this guidance, taxpayers are required to retain records containing the information described in §4081(a)(3)(C) but are not required to report such information. We estimate that there will be 200 terminal operators who will need to meet this recordkeeping requirement and that the recordkeeping will take .25 hours to complete. The total burden for this requirement is 50 hours.

Section 4(g)(1) and (2) of the notice describes the certificate that the buyer of aviation-grade kerosene must give to the seller in order to support removals of aviation-grade kerosene directly into the fuel tank of an aircraft in commercial aviation pursuant to §4081 or to support a tax rate of zero pursuant to §§ 4041 and 4082. We estimate that there will be 4,200 buyers who will give this certificate and that the certificate will take .25 hour to complete. The total burden for this requirement is 1,050 hours.

Section 4(h)(6)(i) and (ii) of the notice describes the waiver that the buyer of aviation-grade kerosene must give to the seller in order to waive its right to an income tax credit or payment and assign such rights to the registered ultimate vendor. We estimate that there will be 1,761 buyers of aviation-grade kerosene who will give this waiver and that the waiver will take .25 hours to complete. The total burden of this requirement is 440 hours.

Section (5)(f) of the notice describes the waiver that the buyer of diesel fuel or kerosene for use in an intercity bus must give to the seller in order to waive its rights to an income tax credit or payment and assign such rights to the registered ultimate vendor. We estimate that there will be 1,352 buyers of diesel fuel who will give this waiver and that the waiver will take .25 hours to complete. The total burden of this requirement is 338 hours.

Section 7(f) of the notice describes the waiver that the buyer of gasoline for the exclusive use of the state or the exclusive use of a nonprofit educational organization must give to the registered ultimate vendor in order for the registered ultimate vendor to be treated as the taxpayer. We estimate that there will be 88,000 buyers for the state's exclusive use and 35,000 buyers for the nonprofit educational organization's exclusive use who will give this waiver and that the waiver will take .25 hours to complete. The total burden of this requirement is 30,750 hours.

Section 8 of the notice describes the certificate that the delivering person of taxable fuel removed from a terminal at the rack must receive from the receiving person in order to treat the receiving person as a taxable fuel registrant. We estimate that there will be 300 receiving persons who give this certificate and that the certificate will take .25 hour to complete. The total burden for this requirement is 75 hours.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

**13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

As suggested by OMB, our **Federal Register Notice** dated **November 19, 2007 (72 FR 65133)**, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

**14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT**

Not applicable.

**15. REASONS FOR CHANGE IN BURDEN**

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

**16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION**

Not applicable.

**17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE**

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I**

Not applicable.

**Note:** The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the

administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.