26 CFR Parts 48, 154, and 602

[T.D. 8043]

Manufacturers Excise Taxes on Sporting Goods and Firearms and Other Administrative Provisions of Special Application to Manufacturers and Retailers Excise Taxes; Reporting and Recordkeeping Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations which revise and update the regulations on manufacturers excise taxes on sporting goods and firearms and other administrative provisions especially applicable to manufacturers and retailers excise taxes. These amendments revise and update Part 48 to achieve greater clarity and conform the regulations to numerous amendments to the Internal Revenue Code of 1954 made after 1964. These regulations provide necessary guidance to the public for compliance with the law.

DATES: Effective August 8, 1985, except as otherwise provided, the amendments made by this document are applicable to transactions made after December 31, 1954.

FOR FURTHER INFORMATION CONTACT: Ada S. Rousso of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW. Washington, D.C. 20224—(Attention: CC:LR:T: 202-566-4336, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1983, the Federal Register published proposed amendments to the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48) under sections 4181, 4181, 4182, 6011, 6071, 6081, 6091, 6101, 6109, 6151, 6161, 6206, 6302, 6412, 6416, 6420, 6421, 6424, 6427 and 6675. Subsequent to the publication of the proposed amendments, certain changes to the applicable law were made by the Highway Revenue Act of 1982 (96 Stat. 2161) and the Tax Reform Act of 1984 (98 Stat. 494). These final regulations have been revised to reflect those changes to the law. A public hearing was neither held nor requested. One comment was received which suggested that the proposed regulation provided that the customer who either reloads his own cartridges or has another person reload the cartridges for him would be liable for the excise tax on the reloaded cartridges. However, that was not the proper interpretation. The proposed regulation merely provided that the customer who has cartridges reloaded would be liable for excise tax only in the event that the customer thereafter sold the reloaded cartridge. The use by the customer is not subject to the tax because of the personal use exemption under section 4218.

The existing regulation provides that a price readjustment to the purchaser is made when the price of an article on which tax has been paid is later readjusted because the article or its covering or container is returned or repossessed, or a bona fide discount, rebate or allowance against the sales price is made. That part of the tax which is proportionate to the part of the price which is repaid or credited to the purchaser is considered to be an overpayment. Comments from within the Service indicated that the proposed regulation on the determination of a price readjustment was unclear after an example relating to a bona fide discount, rebate or allowance was deleted in the proposed regulation.

Since no change was intended with regard to a determination of price readjustment, *example (1)* of § 48.6416(b)(1)-2(e)(1) is reinserted in the final regulation.

Statutory Amendments Reflected in the Final Regulations

Many statutory changes enacted after 1964 have not previously been reflected in Part 48 of the regulations. The table set forth below enumerates the statutory changes reflected in these final regulations. The section numbers on the left margin list the sections of the Code to which the statutory changes relate.

4181: 1. Section 201 of the Act of October 25, 1972, Pub. L. 92-558, 86 Stat. 1173, relating to the imposition of tax on bows and arrows. The amendments to the regulations made under section 201 shall apply with respect to articles sold by the manufacturer, producer, or importer on or after July 2, 1974.

6206: 1. Section 207(d)(3) of the Airport and Airway Development Act of 1970, Pub. L. 91-258, 84 Stat. 219, relating to rules applicable to excessive claims. The amendments to the regulations made under section 207(d)(3) shall apply with respect to sales made on or after July 1, 1970.

Section 202(c)(2)(A) of the Excise Tax Reduction Act of 1965, Pub. L. 89-44, 79 Stat. 136, relating to special rules applicable to excessive claims. The amendments to the regulations made under section 202(c)(2)(A) shall apply only with respect to lubricating oil placed in use after December 31, 1965.

6412: 1. Section 502(c) of the Federal Aid Highway Act of 1978, Pub. L. 95-599, 92 Stat. 2689, relating to floor stock refunds.

2. Section 303(b) of the Federal Aid Highway Act of 1978, Pub. L. 94-280 90 Stat 425, relating to floor stock refunds.

6416: 1. Sections 205(b) (3) and (4) and 207(d)(4) through (d)(7) of the Airport and Airway Revenue Act of 1970, Pub. L. 91-258, 84 Stat. 219, allowing refund or credit of gasoline taxes when gasoline is used in the production of special fuels. The regulations under sections 205(b) (3) and (4) and 207(d)(4) through (d)(7) are effective after June 30, 1970.

2. Section 302 of the Excise, Estate and Gift Tax Adjustment Act of 1970, Pub. L. 91-614, 84 Stat. 1838, modifying the refund and credit provisions for the use of new tax-paid component parts in further manufacture. The regulations under section 302 are effective for claims filed after December 31, 1970, but only if the filing of the claim is not barred on January 1, 1971, by any law or rule of law.

3. Sections 401(a)(3)(C) and 401(g)(6) of the Revenue Act of 1971, Pub. L. 92-178, 85 Stat. 497, allowing a refund or credit for certain trash containers. The regulations under section 401(a)(3)(c) and 401(g)(6) are effective with respect to articles sold after December 10, 1971.

4. Sections 1904(b) (1) and (2), 1906(a)(24), 1906(b)(13)(A) and 2108 of the Tax Reform Act of 1976, Pub. L. 94-455, 90 Stat. 1520, eliminating numerous deadwood provisions and allowing refund or credit for certain truck parts and accessories. The regulations under sections 1904(b) (1) and (2), 1906(a)(24)(A) and 1906(B)(13)(A) are effective after January 31, 1977. The regulations under section 1906(a)(24)(B)(i) are effective with respect to uses or resales for use of liquids after December 31, 1976. The regulations under section 2108 are effective with respect to parts and accessories sold after October 4, 1976.

5. Section 2(b)(4) of the Black Lung Benefits Revenue Act of 1977, Pub. L. 95-227, 92 Stat. 11, modifying the refund and credit provisions for the excise tax on coal. The regulations under section 2(b)(4) are effective with respect to sales after March 31, 1978.

6420: 1. Section 809(a) the Excise Tax Reduction Act of 1965, Pub. L. 89-44, 79 Stat 136, relating to income tax credit in lieu of payment with respect to gasoline used on farms. The regulations under section 809(a) are effective with respect to gasoline used on or after July 1, 1965.

2. Section 207(b) of the Airport and Airway Development Act of 1970, Pub. L. 91-258, 84 Stat. 219, relating to the time for filing claims under section 6420. The regulations under section 207(b) are effective with respect to taxable years ending after June 30, 1970.

3. Section 3(a) of the Act of October 14, 1978, Pub. L. 95-458, 92 Stat. 1257, relating to entitlement of aerial applicators to refund of gasoline tax in certain cases. The regulations

under section 3(a) are effective for gasoline used after March 31, 1979.

6421: 1. Section 809(b) of the Excise Tax Reduction Act of 1965, Pub. L. 89-44, 79 Stat. 136, relating to income tax credit in lieu of payment with respect to gasoline used for certain nonhighway purposes or by local transit systems. The regulations under section 809(b) are effective with respect to gasoline used after June 30, 1965.

2. Section 205(b)(1) of the Airport and Airway Development Act of 1970, Pub. L. 91-258, 84 Stat. 219, relating to credit or refund of gasoline used as a fuel in an aircraft (other than aircraft in non-commercial aviation). The regulations under section 205(b)(1) are effective after June 30, 1970.

3. Section 207(b) of the Airport and Airway Development Act of 1970, Pub. L. 91-258, 84 Stat. 219 relating to the time for filing claims under section 6421. The regulations under section 207(b) are effective for taxable years ending after June 30, 1970.

4. Section 222(a)(1) of the Energy Tax Act of 1978, Pub. L. 95-618, 92 Stat. 3174, relating to refund or credit of tax on gasoline used in a qualified business use. The regulations under section 222(a)(1) are effective with respect to uses after December 31, 1978.

5. Section 233(a)(1) of the Energy Tax Act of 1978, Pub. L. 95-618, 92 Stat. 3174, relating to repayment of tax on gasoline used in intercity, local or school buses. The regulations under section 233(a)(1) are effective with respect to uses after November 30, 1978.

6. Section 108(c)(1) of the Technical Corrections Act of 1979, Pub. L. 96-222, 94 Stat. 194, relating to repayment of tax on gasoline used in vessels employed in the fisheries or the whaling business. The regulations under section 108(c)(1) are effective with respect to uses after December 31, 1978.

6424: 1. Section 202(b) of the Excise Tax Reduction Act of 1965, Pub. L. 89-44, 79 Stat. 136, relating to refund or credit of tax on lubricating oil not used in highway motor vehicles. The regulations under section 202(b) are effective with respect to lubricating oil placed in use after December 31, 1965.

2. Section 207(b) of the Airport and Airway Development Act of 1970, Pub. L. 91-258, 84 Stat. 219, relating to the time for filing claims under section 6424. The regulations under section 207(b) are effective for taxable years ending after June 30, 1970.

3. Section 233(b)(1) of the Energy Tax Act of 1978, Pub. L. 95-618, 92 Stat. 3174, relating to credit or refund of tax on lubricating oil used in a qualified business use or in a qualified bus.

6427: 1. Section 207(a) of the Airport and Airway Development Act of 1970, Pub. L. 91-258, 84 Stat. 219, relating to credit or refund of tax on gasoline and special fuels used for certain purposes. The regulations under section 207(a) are effective with respect to taxable years ending after June 30, 1970.

2. Section 3(b) of the Act of October 14, 1978, Pub. L. 95-458, 92 Stat. 1257, relating to entitlement of aerial applicators to refunds of special fuels tax in certain cases. The regulations under section 3(b) are effective for gasoline used after March 31, 1979.

6675: 1. Section 202(c)(3)(A) of the Excise Tax Reduction Act of 1965, Pub. L. 89-44, 79 Stat. 136, relating to civil penalty for excessive claims under section 6424 with respect to lubricating oil. The regulations under section 202(c)(3)(A) are effective with respect to oil used after December 31, 1965.

2. Section 207(d)(8) of the Airport and Airway Development Act of 1970, Pub. L. 91-258, 84 Stat. 219, relating to civil penalty for excessive claims under section 6427 with respect to fuels not used for taxable purposes. The regulations under section 207(d)(8) are effective after June 30, 1970.

Statutory Amendments Not Reflected in the Final Regulations

The table set forth below enumerates the post-1954 statutory changes relating to manufacturers and retailers excise taxes which are not reflected in these final regulations.

4161: 1. Sections 1015 and 1017 of the Tax Reform Act of 1984 relating to taxes on the sale of sport fishing equipment and certain arrows. These amendments are expected to be the subject of another regulation project.

4162: 1. Section 1015(b) of the Tax Reform Act of 1984 relating to definitions of sport fishing equipment and the treatment of certain resales. This amendment will be the subject of another regulation project.

6302: 1. Section 1015(c) of the Tax Reform Act of 1984 relating to the time for payment of manufacturers excise tax on sport fishing equipment. The amendment will be the subject of another regulation project.

6416: 1. Sections 201(c)(3), 232(b) and 233(c)(3) of the Energy Tax Act of 1978 relating to the refund and credit provisions for tread rubber, tires, inner tubes, and certain parts and accessories of automobile buses and light-duty trucks. These amendments are the subject of another regulation project.

2. Section 108(c)(2)(A)-(2)(B) and (c)(3)-(c)(4) of the Technical Corrections Act of 1979 relating to the refund and credit provisions for lubricating oil, tires, and inner tubes. This amendment is the subject of another regulation project.

3. Sections 1(a)-(b)(2)(D) and 4(c) of the Act of December 24, 1980, Pub. L. 96-598, 94 Stat. 3485, relating to the refund and credit provisions for tax paid on tread rubber used in recapping or retreading a tire. These amendments are the subject of another regulation project.

6427: 1. Section (1)(b) of the Act of October 17, 1978, Pub. L. 94-530, 90 Stat. 2487, relating to credit or refund of tax on gasoline and special fuels used by certain aircraft museums. This Act expired on October 1, 1982. The tax was reinstituted by the Tax Equity and Fiscal Responsibility Act of 1982. This amendment is the subject of another regulation project.

2. Section 505(a) of the Highway Revenue Act of 1978, relating to credit or refund for certain taxicabs of excise taxes on gasoline and other motor fuels. [The provisions of section 505(a) are not expected to be the subject of another regulation project.]

3. Section 232(d)(1) of the Crude Oil Windfall Profit Tax Act of 1980, relating to refund of tax on gasoline used to produce certain alcohol fuels. This statutory change is expected to be the subject of another regulation project.

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget for review in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although a notice of a proposed rulemaking which solicited public comments was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirement of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of this regulation is Ada S. Rousso of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR Part 48

Agriculture, Arms and munitions, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting goods, Tires.

26 CFR Part 154

Aircraft, Airports, Excise taxes, Airway Revenue Act of 1970.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 48, 154, and 602 are amended as follows:

PART 48—[AMENDED]

Paragraph 1. The authority citation for Part 48 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 48.0-1 is revised to read as follows. Sections 48.0-3 and

48.0–4 are removed. Section 48.0–5 is redesignated as § 48.0–3.

§ 48.0–1 Introduction.

The regulations in this part (Part 48, Subchapter D, Chapter I, Title 26, Code of Federal Regulations) are designated "Manufacturers and Retailers Excise Tax Regulations." The regulations relate to the taxes imposed by sections 4041, 4042 and 4051 or by chapter 32 of the Internal Revenue Code of 1954, as amended, and to certain related administrative provisions of subtitle F of the Code. Section 4041 imposes taxes on certain sales or uses of the special fuels described in that section, and on certain sales or uses of gasoline as a fuel in aircraft engaged in noncommercial aviation. Section 4042 imposes taxes on liquids used as fuel in certain vessels in commercial waterway transportation. Section 4051 imposes taxes on heavy trucks, trailers and certain tractors sold at retail. Chapter 32 of the Code imposes taxes on the sale or use by the manufacturer, producer, or importer of articles specified in that chapter. References in the regulations in this part to the "Internal Revenue Code" or the "Code" are references to the Internal Revenue Code of 1954, as amended, unless otherwise indicated. References to a section or other provision of law are references to a section or other provision of the Internal Revenue Code, as amended, unless otherwise indicated.

Par. 3. Section 48.4161(a)–1 is amended by revising paragraph (c) to read as follows.

§ 48.4161(a)–1 Imposition and rate of tax; fishing equipment.

* * * * *

(c) *Liability for tax.* The tax imposed by section 4161(a) is payable by the manufacturer, producer, or importer making the sale. For determining who is the manufacturer, producer, or importer, see § 48.0–2(a)(4).

Par. 4. Section 48.4161(a)–2 is amended by revising paragraph (d) to read as follows.

§ 48.4161(a)–2 Meaning of terms.

* * * * *

(d) *Artificial lures, baits, and flies.* The term "artificial lures, baits, and flies" includes all artifacts, of whatever materials made, that simulate an article considered edible by fish and are designed to be attached to a line or hook to attract fish so that they may be captured. Thus, the term includes such artifacts as imitation flies, blades, spoons, and spinners, and edible materials that have been processed so as to resemble a different edible article considered more attractive to fish, such as bread crumbs treated so as to simulate salmon eggs, and pork rind cut and dyed to resemble frogs, eels, or tadpoles.

Par. 5. Section 48.4161(a)–3 is amended by revising paragraph (b) to read as follows.

§ 48.4161(a)–3 Parts and accessories.

* * * * *

(b) *Essential equipment.* If taxable articles are sold by the manufacturer, producer, or importer thereof, without parts or accessories that are essential for their operation, or are designed directly to improve the performance or appearance of the articles, the separate sale of the parts or accessories to the same vendee will be considered, in the absence of evidence to the contrary, to have been made in connection with the sale of the basic article, even though the parts or accessories are shipped separately at the same time or on a different date.

Par. 6. Section 48.4161(b)–1 is amended by revising paragraph (c) to read as follows.

§ 48.4161(b)–1 Imposition and rates of tax; bows and arrows.

* * * * *

(c) *Liability for tax.* The tax imposed by section 4161(b) is payable by the manufacturer, producer, or importer making the sale. For determining who is the manufacturer, producer, or importer, see § 48.0–2(a)(4).

Par. 7. Section 48.4181–2 is amended by revising paragraph (d) to read as follows.

§ 48.4181–2 Meaning of terms.

* * * * *

(d) *Shells and cartridges.* (1) The terms "shells" and "cartridges" include any article consisting of a projectile, explosive, and container that is designed, assembled, and ready for use without further manufacture in firearms, pistols or revolvers.

(2) A person who reloads used shells or cartridges is a manufacturer of shells or cartridges within the meaning of section 4181 if such reloaded shells or cartridges are sold by the reloader. However, the reloader is not a manufacturer of shells or cartridges if, in return for a fee and expenses, he reloads shells or cartridges submitted by a customer and returns the identical shells or cartridges to that customer. Under such circumstances, the customer would be the manufacturer of the shells or cartridges and may be liable for tax on the sale of the articles. See section 4218 and § 48.4218–2.

Par. 8. Section 48.4182–1 is amended by revising paragraph (b) to read as follows.

§ 48.4182–1 Exempt sales.

* * * * *

(b) *Sales to Defense Department or to U.S. Coast Guard*—(1) *Military department.* Section 4182(b) provides that the tax imposed by section 4181 shall not attach to the sale of firearms, pistols, revolvers, shells, or cartridges that are purchased with funds appropriated for a military department of the United States. For this purpose, the term "military department" means the Department of the Army, the Department of the Navy, and the Department of the Air Force. Included in the Department of the Navy are naval aviation and the Marine Corps and, when operating as a service in the Navy pursuant to the provisions of 14 U.S.C. 3, the Coast Guard.

(2) *Coast Guard.* (i) 14 U.S.C. 655, as added by sec. 5 of the Act of July 10, 1982, (Pub. L. 97–258, 76 Stat. 142), provides as follows:

Sec. 655. *Arms and ammunition; immunity from taxation.* No tax on the sale or transfer of firearms, pistols, revolvers, shells, or cartridges may be imposed on such articles when bought with funds appropriated for the United States Coast Guard.

(ii) In view of the provisions of 14 U.S.C. 655, the tax imposed by section 4181 shall not attach to the sale of firearms, pistols, revolvers, shells, or cartridges that are purchased with funds appropriated for the U.S. Coast Guard whether or not the Coast Guard is operating as a service in the Navy pursuant to 14 U.S.C. 3.

(3) *Supporting evidence.* (i) Any manufacturer, producer, or importer claiming an exemption from the tax imposed by section 4181 by reason of section 4182(b) must maintain such records and be prepared to produce such evidence as will establish the right to the exemption. Generally, clearly identified orders or contracts of a military department or the Coast Guard signed by an authorized officer of the military department or the Coast Guard will be sufficient to establish the right to the exemption. In the absence of such orders or contracts, a statement, signed by an authorized officer of a military department or the Coast Guard, that the prescribed articles were purchased with funds apropriated for that military department or the Coast Guard will constitute satisfactory evidence of the right to the exemption.

(ii)(A) *In general.* Under 18 U.S.C. 922(b)(5), a manufacturer, dealer, or importer licensed under 18 U.S.C. 923 is

required to record the name, age, and place of residence of an individual person, or the identity and principal and local places of business of a corporation or other business entity, to whom the licensee sells or delivers any firearm or ammunition. 18 U.S.C. 923(g) requires the licensee to maintain such records and to make them available for inspection.

(B) *Exception.* However, under section 4182(c) of the Internal Revenue Code, no person holding a license under 18 U.S.C. 933 shall be required to record the name, address, or other information about the purchaser of shotgun ammunition, ammunition suitable for use only in rifles generally available in commerce, or component parts for such ammunition.

Par. 9. Sections 48.6011(a)–1 and 48.6011(a)–2 are revised to read as follows.

§ 48.6011(a)–1 Returns.

(a) *In general.* (1) Liability for tax imposed under section 4041, 4042 or 4051 or chapter 32 of the Code shall be reported on Form 720. Except as provided in paragraph (b) of this section, a return on Form 720 shall be filed for a period of one calendar quarter.

(2) Every person required to make a return on Form 720 for the return period ended June 30, 1965, shall make a return for each subsequent calendar quarter, month, or semimonthly period (whether or not liability was incurred for any tax reportable on the return for the return period) until the person has filed a final return in accordance with § 48.6011(a)–2.

(3) Every person not required to make a return on Form 720 for the return period ended June 30, 1965, shall make a return for the first calendar quarter thereafter in which he incurs liability for tax imposed under section 4041, 4042 or 4051 or chapter 32, and shall make a return for each subsequent calendar quarter, month, or semimonthly period until the person has filed a final return in accordance with § 48.6011(a)–2.

(4) Each return required under the regulations in this part, together with any prescribed copies, records, or supporting data, shall be completed in accordance with the applicable forms, instructions, and regulations.

(b) *Monthly and semimonthly returns*—(1) *Requirement.* If the district director determines that any taxpayer who is required to deposit taxes under the provisions of § 48.6302(c)–1 has failed to make deposits of those taxes, the taxpayer shall be required, if so notified in writing by the district director, to file a monthly or semimonthly return on Form 720. Every person so notified by the district director shall file a return for the calendar month or semimonthly period (as defined in § 48.6302 (c)–1 (b)) in which the notice is received and for each calendar month or semimonthly period thereafter until the person has filed a final return in accordance with § 48.6011(a)–2 or is required to file returns on the basis of a different return period pursuant to notification as provided in paragraph (b)(2) of this section.

(2) *Change of requirement.* The district director may require the taxpayer, by notice in writing, to file a quarterly or monthly return, if the taxpayer has been filing returns for a semimonthly period, or may require the taxpayer to file a quarterly or semimonthly return, if the taxpayer has been filing monthly returns.

(3) *Return for period change takes effect.* (i) If a taxpayer who has been filing quarterly returns receives notice to file a monthly or semimonthly return, or a taxpayer who has been filing monthly returns receives notice to file a semimonthly return, the first return required pursuant to the notice shall be filed for the month or semimonthly period in which the notice is received and all months or semimonthly periods which are not includible in an earlier period for which the taxpayer is required to file a return.

(ii) If a taxpayer who has been filing monthly or semimonthly returns receives notice to file a quarterly return, the last month or semimonthly period for which a return shall be filed is the last month or semimonthly period of the calendar quarter in which the notice is received.

(iii) If a taxpayer who has been filing semimonthly returns receives notice to file a monthly return, the last semimonthly period for which a return shall be made is the last semimonthly period of the month in which the notice is received.

§ 48.6011(a)–2 Final returns.

(a) *In general.* Any person who is required to make a return on Form 720 pursuant to § 48.6011(a)–1, and who in any return period ceases operations in respect of which the person is required to make a return on the form, shall make the return for that period as a final return. Each return made as a final return shall be marked "Final Return" by the person filing the return. A person who has only temporarily ceased to incur liability for tax required to be reported on Form 720 because of temporary or seasonal suspension of business or for other reasons, shall not make a final return but shall continue to file returns.

(b) *Statement to accompany final return.* Each final return shall have attached a statement showing the address at which the records required by the regulations in this part will be kept, the name of the person keeping the records, and, if the business of the taxpayer has been sold or otherwise transferred to another person, the name and address of that person and the date on which the sale or transfer took place. If no sale or transfer occurred or if the taxpayer does not know the name of the person to whom the business was sold or transferred, that fact should be included in the statement.

(c) An individual's signature on a return, statement, or other document made by or for a corporation or a partnership shall be prima facie evidence that the individual is authorized to sign the return, statement, or other document.

Par. 10. Section 48.6071(a)–1 is revised to read as follows:

§ 48.6071(a)–1 Time for filing returns.

(a) *Quarterly returns.* Each return required to be made under § 48.6011(a)–1(a) for a return period of not less than one calendar quarter shall be filed on or before the last day of the first calendar month following the close of the period for which it is made. However, a return may be filed on or before the 10th day of the second calendar month following the close of the period if timely deposits under section 6302(c) of the Code and the regulations thereunder have been made in full payment of the taxes due for the period. For the purposes of the preceding sentence, a deposit which is not required by regulations in respect of the return period may be made on or before the last day of the first calendar month following the close of the period, and the timeliness of any deposit made otherwise than by mail will be determined by the earliest date stamped on the Federal Tax Deposit form by an authorized financial institution or by a Federal Reserve bank. For determining the timeliness of a deposit made by mail, see section 7502(e) and § 301.7502–1 of this chapter (Regulations on Procedure and Administration).

(b) *Monthly and semimonthly returns*—(1) *Monthly returns.* Each return required to be made under § 48.6011(a)–1(b) for a monthly period shall be filed not later than the 15th day of the month following the close of the period for which it is made.

(2) *Semimonthly returns.* Each return required to be made under § 48.6011(a)–1(b) for a semimonthly period shall be filed not later than the 10th day of the

semimonthly period following the close of the period for which it is made.

(c) *Last day for filing.* For provisions relating to the time for filing a return when the prescribed due date falls on a Saturday, Sunday, or legal holiday, see § 301.7503-1 of this chapter (Regulations on Procedure and Administration).

(d) *Late filing.* For additions to the tax in case of failure to file a return within the prescribed time, see § 301.6651-1 of this chapter (Regulations on Procedure and Administration).

Par. 11. The following new § 48.6081(a)-1 is added immediately after § 48.6071(a)-1.

§ 48.6081(a)-1 Extension of time for filing returns.

(a) *In general.* Ordinarily, no extension of time will be granted for filing any return statement or other document required with respect to the taxes imposed by section 4041, 4042 or 4051 or chapter 32 because the information required for the filing of those documents is under normal circumstances readily available. However, if because of temporary conditions beyond the taxpayer's control, a taxpayer believes an extension of time for filing is justified, the taxpayer may apply to the district director, or to the director of the service center, for an extension. An extension of time for filing a return does not operate to extend the time for payment of the tax or any part of the tax unless so specified in the extension. For extensions of time for payment of the tax, see § 48.6161(a)-1.

(b) *Application for extension of time.* The application for an extension of time for filing the return shall be addressed to the district director, or director of the service center, with whom the return is to be filed and must contain a full recital of the causes for the delay. It should be made on or before the due date of the return, and failure to do so may indicate negligence and constitute sufficient cause for denial. It should, where possible, be made sufficiently early to permit consideration of the matter and reply before what otherwise would be the due date of the return.

(c) *Filing the return.* If an extension of time for filing the return is granted, a return shall be filed before the expiration of the period of extension.

Par. 12. Section 48.6091-1 is revised to read as follows.

§ 48.6091-1 Place for filing returns.

(a) *Persons other than corporations.* The return of a person other than a corporation shall be filed with the district director for the internal revenue district in which is located the principal place of business or legal residence of the person. If the person has no principal place of business or legal residence in any internal revenue district, the return shall be filed with the District Director, Internal Revenue Service, Baltimore, MD 21202, except as provided in paragraph (c) of this section.

(b) *Corporations.* The return of a corporation shall be filed with the district director for the district in which is located the principal place of business or principal office or agency of the corporation, except as provided in paragraph (c) of this section.

(c) *Returns of taxpayers outside the United States.* The return of a person (including a United States citizen), other than a corporation, outside the United States having no legal residence or principal place of business in any internal revenue district, or the return of a corporation having no principal place of business or principal office or agency in any internal revenue district, shall be filed with the Director, Foreign Operations District, Internal Revenue Service, Washington, D.C. 20225. If, however, the principal place of business or legal residence of the person, or the principal place of business or principal office or agency of the corporation, is located in the Virgin Islands or Puerto Rico, the return shall be filed with the Director of International Operations, U.S. Internal Revenue Service, Hato Rey, Puerto Rico 00917.

(d) *Returns filed with service centers.* Notwithstanding paragraphs (a), (b), and (c) of this section, whenever instructions applicable to any returns provide that the returns shall be filed with a service center, the returns shall be so filed in accordance with the instructions.

(e) *Hand-carried returns.* Except as provided in paragraph (e)(3) of this section, and notwithstanding paragraphs (1) and (2) of section 6091(b) and paragraph (d) of this section, the following rules apply.

(1) *Persons other than corporations.* Returns of persons other than corporations which are filed by hand carrying shall be filed with the district director as provided in paragraph (a) of this section.

(2) *Corporations.* Returns of corporations which are filed by hand carrying shall be filed with the district director as provided in paragraph (b) of this section.

(3) *Exceptions.* This paragraph (e) shall not apply to returns of—

(i) Persons who have no legal residence, no principal place of business, or no principal office or agency in any internal revenue district.

(ii) Citizens of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States,

(iii) Persons who claim the benefits of section 911 (relating to income earned by individuals from sources without the United States), section 913 (relating to deduction for certain expenses of living abroad), section 931 (relating to income from sources within possessions of the United States), section 933 (relating to income from sources within Puerto Rico), or section 936 (relating to Puerto Rico and possession tax credit), and

(iv) Nonresident alien persons and foreign corporations.

(f) *Permission to file in district other than required district.* The Commissioner may permit the filing of any return required to be made under the regulations in this part in any internal revenue district, notwithstanding the provisions of paragraphs (1), (2), and (4) of section 6091(b) and paragraphs (a), (b), (c), (d), and (e) of this section.

(g) *Cross reference.* For definition of the term "hand carried", see § 301.6091-1(c) of this chapter (Regulations on Procedure and Administration).

Par. 13. The following new § 48.6101-1 is added immediately after § 48.6091-1.

§ 48.6101-1 Period covered by returns or other documents.

The normal period for which returns are ordinarily required under this subpart is a calendar quarter. Under certain circumstances, however, the district director may require returns to be filed for monthly or semimonthly periods. For provisions relating to quarterly returns, see § 48.6011(a)-1(a). For provisions relating to monthly and semimonthly returns, see § 48.6011(a)-1(b).

Par. 14. Section 48.6109-1 is revised to read as follows:

§ 48.6109-1 Employer identification numbers.

(a) *Requirement of application*—(1) *In general.* An application on Form SS-4 for an employer identification number shall be made by every person who makes a sale or use of an article with respect to which a tax is imposed by section 4041, 4042 or 4051 or chapter 32 of the Code, but who has not earlier been assigned an employer identification number or has not applied for one. The application and any supplementary statement accompanying it shall be prepared in accordance with the applicable form, instructions, and regulations and shall set forth fully and clearly the data therein called for. Form SS-4 may be obtained from any district director or director of a service center.

The application shall be filed with the internal revenue officer designated in the instructions applicable to Form SS–4. The application shall be signed by (i) the individual if the person is an individual; (ii) the president, vice-president, or other principal officer, if the person is a corporation; (iii) a responsible and duly authorized member or officer having knowledge of its affairs, if the person is a partnership or other unincorporated organization; or (iv) the fiduciary, if the person is a trust or estate. An employer identification number will be assigned to the person in due course upon the basis of information reported on the application required under this section.

(2) *Time for filing Form SS–4.* The application for an employer identification number shall be filed on or before the seventh day after the date of the first sale or use of an article with respect to which a tax is imposed by section 4041, 4042, or 4051 or chapter 32 of the Code.

(b) *Use of employer identification number.* The employer identification number assigned to a person liable for a tax imposed by section 4041, 4042, or 4051 or chapter 32 of the Code shall be shown in any return, statement, or other document submitted to the Internal Revenue Service by the person.

(c) *Cross references.* For the definition of the term "employer identification number", see § 301.7701–12 of this chapter (Regulations on Procedure and Administration). For provisions relating to the penalty for failure to include the employer identification number in a return, statement, or other document, see § 301.6676–1 of this chapter (Regulations on Procedure and Administration).

Par. 15. Section 48.6151–1 is revised to read as follows:

§ 48.6151–1 Time and place for paying tax shown on return.

The tax required to be reported on each tax return under this subpart is due and payable to the internal revenue officer with whom the return is filed at the time prescribed in § 48.6071(a)–1 for filing such return. See the applicable sections in Part 301 of this chapter (Regulations on Procedure and Administration) for provisions relating to interest on underpayments, additions to tax, and penalties. For provisions relating to the use of Federal Reserve banks and authorized financial institutions in depositing the taxes, see § 48.6302(c)–1.

Par. 16. The following new § 48.6161(a)–1 is added immediately after § 48.6151–1.

§ 48.6161(a)–1 Extension of time for paying tax shown on return.

(a) *In General.* (1) Ordinarily, no extensions of time will be granted for payment of any tax imposed by section 4041, 4042 or 4051 or chapter 32 of the Code, and shown or required to be shown on any return. However, if because of temporary conditions beyond the taxpayer's control a taxpayer believes an extension of time for payment is justified, the taxpayer may apply to the district director, or to the director of the service center, for an extension. The period of any extension shall not be in excess of 6 months from the date fixed for payment of the tax, except that if the taxpayer is abroad the period of the extension may be in excess of 6 months.

(2) The granting of an extension of time for filing a return does not operate to extend the time for the payment of the tax or any part of the tax unless so specified in the extension. See § 48.6081(a)–1.

(b) *Undue hardship required for extension.* An extension of the time for payment shall be granted only upon a satisfactory showing that payment on the due date of the amount with respect to which the extension is desired will result in an undue hardship. The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the taxpayer. It must appear that substantial financial loss, for example, loss due to the sale of property at a sacrifice price, will result to the taxpayer from making payment on the due date of the amount with respect to which the extension is desired. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in an undue hardship.

(c) *Application for extension.* An application for an extension of time for payment of the tax shown or required to be shown on any return shall be made on Form 1127 and shall be accompanied by evidence showing the undue hardship that would result to the taxpayer if the extension were refused. The application shall also be accompanied by a statement of the assets and liabilities of the taxpayer and an itemized statement showing all receipts and disbursements for each of the 3 months immediately preceding the due date of the amount to which the application relates. The application, with supporting documents, must be filed, on or before the date prescribed for payment of the amount with respect to which the extension is desired, with the internal revenue officer to whom the tax is to be paid. The application will be examined, and within 30 days, if possible, will be denied, granted, or tentatively granted subject to certain conditions of which the taxpayer will be notified. If an additional extension is desired, the request for it must be made on or before the expiration of the period for which the prior extension is granted.

(d) *Payment pursuant to extension.* If an extension of time for payment is granted, the payment shall be made on or before the expiration of the period of the extension without the necessity of notice and demand. The granting of an extension of time for payment of the tax does not relieve the taxpayer from liability for the payment of interest on the tax during the period of the extension. See section 6601 and § 301.6601–1 of this chapter (Regulations on Procedure and Administration).

Par. 17. Section 48.6206–1 is revised to read as follows.

§ 48.6206–1 Assessment and collection of excessive payment and penalty.

(a) *Treatment of excessive amount as tax.* If any portion of a payment made under section 6420 (relating to gasoline used on farms), section 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), section 6424 (relating to lubricating oil sold prior to January 7, 1983 and not used in highway motor vehicles), or section 6427 (relating to special fuels not used for taxable purposes) constitutes an excessive amount as defined in section 6675(b) and § 48.6675–1(b), the excessive amount and any civil penalty provided by section 6675 may be assessed and collected by the district director—

(1) As if the excessive amount and civil penalty were a tax imposed by section 4081 (relating to tax on the sale of gasoline), section 4091 (relating to tax on sale of lubricating oil prior to January 7, 1983), or section 4041 (relating to tax on sale of special fuels), as the case may be, and

(2) As if the person who made the claim for payment were liable for tax imposed by section 4081, 4091, or 4041, in that amount.

(b) *Assessment period.* The period within which the portion of a payment constituting an excessive amount and any civil penalty may be assessed shall be 3 years from the last date prescribed by section 6420, 6421, 6424, or 6427, as the case may be, for the filing of the claim in respect of which the excessive amount is attributable.

Par. 18. Section 48.6302(c)–1 is revised to read as follows:

§ 48.6302(c)-1 Use of Government depositaries.

(a) *Monthly deposits.* Except as provided in paragraph (b) of this section, if for any calendar month (other than the last month of a calendar quarter) any person required to file a quarterly excise tax return on Form 720 has a total liability under this part of more than $100 for all excise taxes reportable on that form, the amount of liability for taxes shall be deposited by the person with a Federal Reserve Bank or authorized financial institution on or before the last day of the month following the calendar month.

(b) *Semimonthly deposits.* (1) If any person required to file an excise tax return on Form 720 for any calendar quarter has a total liability under this part of more than $2,000 for all excise taxes reportable on that form for any calendar month in the preceding calendar quarter, the amount of that liability for taxes under this part for any semimonthly period (as defined in paragraph (d)(1) of this section) in the succeeding calendar quarter shall be deposited by the person with a Federal Reserve Bank or authorized financial institution on or before the depositary date (as defined in paragraph (d)(2) of this section) applicable to the semimonthly period.

(2) A person will be considered to have complied with the requirements of paragraph (b)(1) of this section for a semimonthly period if—

(i)(A) The person's deposit for the semimonthly period is not less than 90 percent of the total amount of the excise taxes reportable by the person on Form 720 for the period, and

(B) If the semimonthly period occurs in a calendar month other than the last month in a calendar quarter, the person deposits any underpayment for the month by the 9th day of the second month following the calendar month; or

(ii)(A) The person's deposit for each semimonthly period in the calendar month is not less than 45 percent of the total amount of the excise taxes reportable by the person on Form 720 for the month, and

(B) If such month is other than the last month in a calendar quarter, the person deposits any underpayment for such month by the 9th day of the second month following the calendar month; or

(iii)(A) The person's deposit for each semimonthly period in the calendar month is not less than 50 percent of the total amount of the excise taxes reportable by the person on Form 720 for the second preceding calendar month, and

(B) If such month is other than the last month in a calendar quarter, the person deposits any underpayment for such month by the 9th day of the second month following the calendar month; or

(iv)(A) The requirements of paragraph (b)(2) (i)(A), (ii)(A), or (iii)(A) of this section are satisfied for the first semimonthly period of a calendar month after January 1971,

(B) If the person's deposit for the second semimonthly period of the calendar month is, when added to the deposit for the first semimonthly period, not less than 90 percent of the total amount of the excise taxes reportable by the person on Form 720 for the calendar month, and

(C) If the semimonthly periods occur in a calendar month other than the last month in a calendar quarter, the person deposits any underpayment for the month by the 9th day of the second month following the calendar month.

(3)(i) Paragraph (b)(2) (ii) and (iii) of this section shall not apply to any person who normally incurs in the first semimonthly period in each calendar month more than 75 percent of the person's total excise tax liability under this part for the month.

(ii) Persons who make their deposits in accordance with paragraph (b)(2) (ii), (iii), or (iv) of this section will find it unnecessary to keep their books and records on a semimonthly basis.

(c) *Deposit of certain excess undeposited amounts.* Notwithstanding paragraphs (a) and (b) of this section, if any person required to file an excise tax return on Form 720 for any calendar quarter beginning after March 31, 1968, has a total liability under this part for all excise taxes reportable on the form for the calendar quarter which exceeds by more than $100 the total amount of taxes deposited by the person pursuant to paragraph (a) or (b) of this section for the calendar quarter, the person shall, on or before the last day of the calendar month following the calendar quarter for which the return is required to be filed, deposit with a Federal Reserve Bank or authorized financial institution the full amount by which the person's liability for all excise taxes reportable on the form for that calendar quarter exceeds the amount of excise taxes previously deposited by the person for that calendar quarter.

(d) *Definitions.* For purposes of this part—

(1) *Semimonthly period.* The term "semimonthly period" means the first 15 days of a calendar month or the portion of a calendar month following the 15th day of that month.

(2) *Depositary date.* (i) The term "depositary date" means, in the case of deposits for semimonthly periods beginning after January 31, 1971, the 9th day of the semimonthly period following the semimonthly period for which the taxes are reportable.

(ii) The term "depositary date" means, in the case of deposits for semimonthly periods ending before February 1, 1971, the last day of the semimonthly period following the semimonthly period for which the taxes are reportable.

(iii) The term "depositary date" means, in the case of deposits by qualified persons whose liability for tax under section 4081 arises after March 31, 1983, and is payable with respect to semimonthly periods, 14 days after the close of the semimonthly period if payment is made either by wire transfer to any government depositary authorized under section 6302 or by transfer between accounts in the same government depositary. See § 145.3-1 (relating to extension of payment due date for certain fuel taxes) and section 518 of the Highway Revenue Act of 1982 (96 Stat. 2184).

(e) *Depositary forms and procedures*—(1) *In general.* A person required by this section to make deposits may make one or more remittances with respect to the amount required to be deposited. An amount of tax which is not otherwise required by this section to be deposited may, nevertheless, be deposited if the person liable for the tax so desires.

(2) *Deposits for 1968 and subsequent years.* Each remittance of amounts required to be deposited for periods subsequent to 1967 shall be accompanied by a Federal Tax Deposit form which shall be prepared in accordance with the applicable instructions. The remittance, together with the Federal Tax Deposit form shall be forwarded to a financial institution authorized as a depositary for Federal taxes in accordance with 31 CFR Part 214 or, at the election of the person making the remittance, to a Federal Reserve Bank. For procedures governing the deposit of Federal taxes at a Federal Reserve Bank, see 31 CFR Part 214.7. The timeliness of the deposit will be determined by the date it is received (or is deemed received under section 7502(e) and § 301.7502-1 of this chapter (Regulations on Procedure and Administration)) by the Federal Reserve Bank or by the authorized financial institution. Amounts deposited pursuant to this paragraph (e)(2) shall be considered to be paid on the last day prescribed for filing the return in respect of the tax (determined without regard to any extension of time for filing the returns), or at the time deposited, whichever is later.

(3) *Information required.* Each person making deposits pursuant to this section shall report on the return for the period with respect to which the deposits are made information regarding the deposits in accordance with the instructions applicable to the return and pay (or deposit by the due date of the return) the balance, if any, of the taxes due for the period.

(4) *Procurement of prescribed forms.* Copies of the Federal Tax Deposit form will be furnished, so far as possible, to persons required to make deposits under this section. Such a person will not be excused from making a deposit, however, by the fact that no form has been furnished. A person not supplied with the form is required to apply for it in ample time to make the required deposits within the time prescribed, supplying with the application the person's name, identification number, address, and the taxable period to which the deposits will relate. Copies of the Federal Tax Deposit form may be obtained by applying for them with the district director or the director of a service center.

(f) *Nonapplication to certain taxes.* This section does not apply to taxes for (1) any month or semimonthly period in which the taxpayer receives notice from the district director pursuant to § 48.6011(a)–1(b) to file Form 720 or (2) any subsequent month or semiannually period for which a return on Form 720 is required.

Par. 19. The following new § 48.6302(c)–2 is added immediately after § 48.6302(c)(1).

§ 48.6302(c)–2 Cross reference.

(a) *Failure to deposit.* For provisions relating to failure to make a deposit within the time prescribed, see § 301.6656–1 of this chapter (Regulations on Procedures and Administration).

(b) *Saturday, Sunday, or legal holiday.* For regulations relating to the time for performance of acts when the last day for the performance falls on a Saturday, Sunday, or a legal holiday, see § 301.7503–1 of this chapter (Regulations on Procedure and Administration). See § 145.3–1 (d) and section 516 of the Highway Revenue Act of 1982 (96 Stat. 2184) relating to the depositary date for persons required to make semimonthly deposits under section 4081 when the last day for performance falls on a Saturday, Sunday or legal holiday in the District of Columbia.

Par. 20. The following new §§ 48.6402(a)–1, 48.6404(a)–1, 48.6412–1, 48.6412–2, and 48.6412–3 are added immediately after § 48.6302(c)–2.

§ 48.6402(a)–1 Authority to make credits or refunds.

For provisions relating to credits and refunds of certain taxes on sales and services see section 6416 and the regulations thereunder. For regulations under section 6402 of general application in respect of credits or refunds, see §§ 301.6402–1, 301.6402–2, and 301.6402–4 of this chapter (Regulations on Procedure and Administration).

§ 48.6404(a)–(1) Abatements.

For regulations under section 6404 of general application in respect of abatements of assessments to tax, see § 301.6404–1 of this chapter (Regulations on Procedure and Administration).

§ 48.6412–1 Floor stocks credit or refund.

(a) *In general.* This section sets forth the procedures to be followed in claiming the credit or refund authorized by section 6412 for manufacturers excise taxes paid in respect of certain articles held by dealers as floor stocks on October 1, 1984. See § 48.6412–2 for definitions of the following terms when used in this section: "floor stocks", "inventory date", "dealer", "held by a dealer", "old rate", "new rate", "dealer request limitation date", "claim limitation date", and "tax paid". See § 48.6412–3 for determining the amount of tax paid on articles that are held as floor stocks. The manufacturers excise taxes for which credit or refund may be claimed under this section are those imposed by section 4071, relating to tires of the type used on highway vehicles; and section 4081, relating to gasoline. For definition of the term "highway vehicle", see § 48.4061(a)–1(d).

(b) *Computation of the amount of floor stocks credit or refund.* The amount of floor stocks credit or refund which may be claimed by the manufacturer under section 6412(a)(1) may not exceed an amount equal to the difference between the tax paid by the manufacturer on the sale of the article and the amount of tax made applicable to the article on the inventory date. No interest is allowable with respect to any amount of tax credited or refunded under section 6412 and this section. In applying the floor stocks credit or refund provisions, the date on which the manufacturer paid the tax with respect to the article held as floor stocks is not relevant. Thus, the period of limitations provided in section 6511 with respect to claims for credit or refund does not apply; however, see paragraph (f) of this section. For definition of the term "manufacturer", see § 48.0–2(a)(4).

(c) *Limitation.* Except as provided in § 48.6412–3, no credit or refund is allowable under this section for an amount paid as tax which may be credited or refunded under any provisions of law other than section 6412(a)(1), or which was allowable as a credit or refund under section 6412 with respect to an earlier inventory date.

(d) *Relationship between credits or refunds for floor stocks and credits or refunds for price readjustments.* The amount which may be credited or refunded for floor stocks and for price readjustments on an article may not in the aggregate exceed the tax paid in respect of the article. A credit or refund computed on the basis of the old tax rate will be allowed with respect to a price readjustment of an article on which a floor stock credit or refund was allowed, but only if the amount of the floor stock credit or refund otherwise allowable was reduced by taking into account such price readjustment, as determined under § 48.6412–3(e). The manufacturer must keep readily available for inspection sufficient records to enable examining officers of the Internal Revenue Service to ascertain the correctness of any claim for credit or refund for a price readjustment of an article on which a floor stock refund was claimed.

(e) *Participation of dealers—(1) Request by dealer.* On or before the dealer request limitation date, a dealer may submit to a manufacturer a request with respect to a credit or refund allowable under this section for tax paid by the manufacturer with respect to articles held by the dealer as floor stocks. This request may be submitted directly to the manufacturer, or it may be submitted to him indirectly through another dealer in the distribution chain if the request is received by the manufacturer or an authorized agent of the manufacturer on or before the dealer request limitation date.

(2) *Requirements for claim by manufacturer.* No amount of credit or refund under this section may be claimed by a manufacturer with respect to articles held by a dealer as floor stocks unless—

(i) The claim for the amount is based upon a request submitted by the dealer to the claimant on or before the dealer request limitation date;

(ii) The amount is paid by the claimant to the dealer, or the dealer's written consent to allowance of the credit or refund has been received by the claimant, on or before the claim limitation date; and

(iii) The request by the dealer is supported by an inventory statement, made under the penalties of perjury and signed by the dealer or by the dealer's

authorized representative, setting forth the following information:

(A) The name and address of the dealer and of the applicable manufacturer. (If the name and address of the applicable manufacturer is unknown to the dealer, these items may be added by any person in the chain of distribution);

(B) The identification number, if any, of the article, such as a serial, stock, model, type, or class number, or some other suitable means of identification;

(C) A brief description of the article, such as its common name or designation; and

(D) The quantity of articles held by the dealer as floor stocks on the inventory date.

(3) *Actual manufacturer unknown.* If a dealer addresses a request to the person, who from markings on the article the dealer presumes to be the manufacturer, the request may be treated as made to the actual manufacturer if the actual manufacturer accepts the dealer's request.

(4) *Payment to dealer by claimant.* Payment may be made directly to the dealer or to the dealer's authorized agent or representative by the claimant or by the claimant's authorized agent or representative. If a claimant pays a dealer through the claimant's agent or representative, the evidence must show that the dealer actually received the payment. If a dealer authorizes the claimant to pay the dealer through the dealer's agent or representative, evidence showing receipt of the payment by the agent or representative will be accepted as proof of actual payment to the dealer. Payment shall be made, at the manufacturer's option, in cash, by check, or by credit to the dealer's account as maintained by the claimant. The amount of the payment which may be made by crediting the dealer's account may not exceed the undisputed debit balance due at the time the credit is made. However, payment may be made in merchandise at the dealer's option with the concurrence of the manufacturer.

(5) *Date of performance.* The date on which any act described in this paragraph (e) is performed by an agent or representative on behalf of a claimant or dealer is deemed to be the date on which the act is performed by the principal.

(6) *Record of inventories.* For provisions relating to the record of a dealer's inventories to be kept by the claimant, see paragraph (g) of this section.

(7) *Sample written consent.* No particular form is prescribed or required for the written consent of the dealer described in paragraph (e)(2)(ii) of this section. However, the following is an example of an acceptable consent statement by a dealer:

Consent Statement of Dealer

(For use by dealer in requesting manufacturer, producer, or importer to obtain credit under section 6412 of the Internal Revenue Code of 1954 with respect to floor stocks.)

I hereby consent to the allowance to the manufacturer, producer, or importer of the floor stocks credit or refund of the excise tax imposed by the Internal Revenue Code of 1954 with respect to the articles in my inventory on _____.

_____
(Name)

By _____
(Signature of Officer)

_____
(Title)

_____
(Date)

(f) *Procedure for claiming credit or refund*—(1) *In general.* Each claim for credit or refund under this section shall be filed on or before the applicable claim limitation date, in the manner and subject to the conditions stated in this section and in § 301.6402-2 of this chapter (Regulations on Procedure and Administration). Either credit or refund, or a combination thereof, may be claimed, but the amount which may be claimed as a credit on a return shall not exceed the total tax liability shown on the return, reduced by the amount of any deposits made under § 46.6302(c)-1 with respect to the return and by any amount of credit claimed on the return pursuant to any provision of law other than section 6412. If the total amount which may be claimed exceeds the amount that may be claimed as credit on a return, the excess amount may be claimed on or before the applicable claim limitation date either as a refund or as a credit on a subsequent return. If credit is claimed the amount of the credit shall be entered as a credit on a timely-filed return of tax. The statement described in paragraph (f)(2) of this section must show the amount and date of each previous and concurrent claim for credit or refund under this section and indicate whether any future claims are expected to be filed.

(2) *Supporting evidence to be submitted by the manufacturer.* No credit or refund shall be allowed under this section unless there is submitted, in support of the claim for credit or refund, a statement signed by the person making the claim, that describes in general terms the articles covered by the claim, sets forth the method of computing the amount claimed (including a description of any procedures used pursuant to § 46.6412-3), and states that—

(i) The claimant paid to the district director or the director of the internal revenue service center the tax for which credit or refund is claimed;

(ii) The total amount claimed represents payments requested by dealers before the dealer request limitation date;

(iii) The total amount claimed either was paid by the claimant to the dealers, or the claimant received the written consent of the dealers to the allowance of the amount claimed;

(iv) The claimant has in his possession, and available for inspection by internal revenue officers, the evidence with respect to inventories required by paragraph (g)(2) of this section, and any written consents referred to in paragraph (f)(2)(iii) of this section; and

(v) No other claim for credit or refund under this section has been or will be made by the claimant with respect to any amount covered by the claim.

(g) *Evidence to be retained in the manufacturer's records.* Every person filing a claim for credit or refund pursuant to this section shall support the claim by keeping as part of the claimant's records—

(1) The dealer's inventory statements required by paragraph (e)(2)(iii) of this section, to the extent that the articles are covered by the claim;

(2) Records, in respect of the articles held by each dealer, showing—

(i) The name and address of the dealer,

(ii) The quantities of each article held by the dealer as floor stocks by taxable category, for example, by model or type number,

(iii) The amount of tax considered to be paid by the manufacturer with respect to each article held by the dealer, as determined under § 46.6412-3,

(iv) The amount of tax, if any, which the claimant would pay on the sale of each article held by the dealer if the tax were computed at the new rate,

(v) The total amount of reimbursement due the dealer,

(vi) The date on which the claimant received from the dealer the request described in paragraph (e)(1) of this section, but only if payment was not made to the dealer before the dealer request limitation date, and

(vii) The date and amount of each payment to a dealer, or the date of receipt by the claimant from the dealer of a written consent, as set forth in paragraph (e)(2)(ii) of this section; and

(3) Any such written consent received from a dealer.

(h) *Special rules where the presumed manufacturer is the agent of the actual manufacturer.* For purposes of this section, if a manufacturer sells articles tax-paid to a second manufacturer for resale by the second manufacturer under its own brand name, the second manufacturer may perform any acts and keep any records which are a prerequisite to the first manufacturer's filing a claim for floor stocks credit or refund with respect to the articles. If such a procedure is followed, the claim filed by the first manufacturer shall include a statement indicating the name and address of the second manufacturer and the amount of its claim which relates to articles sold to the second manufacturer.

(i) *Effect on other claims for credit or refund.* If a claim for credit or refund is made pursuant to section 6416 and the regulations thereunder, relating in part to returned sales, sales for export or for exempt use, sales to States, etc., with respect to a tax imposed by section 4071 or section 4081, and if the claim is made with respect to articles sold by the claimant before the date on which the tax is reduced in rate or terminated, the claim shall be based on the new rate of tax unless the claimant can establish that the tax was imposed at the old rate and that no refund or credit under this section was allowed with respect to the articles. See, however, paragraph (d) of this section.

(j) *Other applicable provisions.* All provisions of law, including penalties, applicable in respect of the taxes imposed by sections 4071 and 4081 shall, insofar as applicable and not inconsistent with section 6412, apply in respect to the credits and refunds provided for in section 6412 to the same extent as if the credits or refunds constituted overpayments of the taxes. For provisions under which timely mailing is treated as timely filing, and for provisions applicable to the time for performance of acts when the last day falls on Saturday, Sunday, or a legal holiday, see §§ 301.7502-1 and 301.7503-1, respectively, of this chapter (Regulations on Procedure and Administration).

§ 48.6412-2 Definitions for purposes of floor stocks credit or refund.

For purposes of section 6412 and the regulations thereunder—

(a) *Floor stocks.* The term "floor stocks" means any article subject to the tax imposed by section 4071 or section 4081 which—

(1) Is sold by the manufacturer (otherwise than in a tax-free sale) before October 1, 1988,

(2) Is held by a dealer at the first moment on October 1, 1988, and has not been used, and

(3) Is intended for sale.

However, the term "floor stocks" does not include gasoline in retail stocks held at the place where intended to be sold at retail, nor with respect to gasoline held for sale by a producer or importer of gasoline.

(b) *Inventory date.* The term "inventory date" means the first moment on the date on which an article is treated as floor stocks within the meaning of paragraph (a) of this section.

(c) *Dealer.* The term "dealer" includes a wholesaler, jobber, distributor, or retailer.

(d) *Held by a dealer*—(1) *In general.* (i) An article is considered as "held by a dealer" if title to the article has passed to the dealer (whether or not delivery to the dealer has been made), and if, for purposes of consumption, title to or possession of the article has not at any time been transferred to any person other than a dealer.

(ii) Floor samples, demonstrators, and articles undergoing repair (whether or not on the dealer's premises) that are carried in stock to be sold as new articles, and articles purchased tax-paid by a manufacturer or a sales subsidiary and held by the person on the inventory date for resale as such, will be considered as unused and held by a dealer, if title to or possession of the article has not at any time been transferred to any person for purposes of consumption.

(iii) Articles sold by a dealer to a consumer before the inventory date and thereafter repossessed by the dealer, and articles purchased tax-paid by a manufacturer for use in further manufacture within the meaning of section 4221(d)(6), will not be considered as held by a dealer.

(iv) The determination as to the time title or possession passes for purposes of consumption shall be made under applicable local law.

(2) *Examples.* The application of this paragraph (d) may be illustrated by the following examples:

Example (1). If, under local law, title to an article sold by a dealer under a conditional sales contract is in the dealer on the inventory date, but the consumer has physical possession of the article on that date, the article is not considered as held by the dealer.

Example (2). If, under local law, title to an article is in the consumer on the inventory date because the article is specifically identified with a contract, but on that date the dealer still has physical possession of the article, for example, in his will-call department, the article is not considered as held by the dealer on that date because title to the article has passed to the consumer for purposes of consumption.

Example (3). If, under local law, title to an article is in the consumer on the inventory date because the dealer transferred the article to a common carrier for delivery to the consumer, the article in transit is not considered as held by the dealer on that date because title has passed to the consumer for purposes of consumption, even though neither the dealer nor the consumer has physical possession of the article.

Example (4). If, under local law, title to an article is in the dealer on the inventory date and does not pass to the consumer until delivery by a common carrier, the article in transit shall be considered as held by the dealer on that date because neither the title nor possession has passed to the consumer for purposes of consumption.

Example (5). If an article has been mortgaged or otherwise hypothecated by a dealer as security for a loan and, under local law, title to the article is in the creditor on the inventory date, and physical possession is in the dealer, the article shall be considered as held by the dealer on that date because neither title nor possession has passed to the consumer for purposes of consumption.

(e) *Old rate.* The term "old rate" means the rate of tax in effect with respect to the sale of an article before the date designated in paragraph (a) or (b) of this section on which the tax is reduced in rate or is terminated.

(f) *New rate.* The term "new rate" means the rate of tax, if any, in effect with respect to the sale of an article on the date designated in paragraph (a) or (b) of this section on which the tax is reduced in rate or is terminated.

(g) *Dealer request limitation date.* The term "dealer request limitation date" is the date prescribed by section 6412(a)(1) before which the request on which the manufacturer's claim is based must be submitted to the manufacturer by the dealer who held the floor stocks on the inventory date. In the case of an article held by a dealer on October 1, 1988, the dealer request limitation date is January 1, 1989.

(h) *Claim limitation date.* The term "claim limitation date" means the last date prescribed by section 6412(a)(1) on which refund or credit with respect to floor stocks may be claimed by a manufacturer. In the case of an article

held by a dealer on October 1, 1988, the claim limitation date is March 31, 1989.

(i) *Tax paid.* A tax is considered paid if it was paid or was offset by an allowable credit on the return on which it was reported.

§ 48.6412-3 Amount of tax paid on each article.

(a) *General rule.* For purposes of making the claim for credit or refund under § 48.6412-1 in respect of floor stocks held by a dealer, the tax paid on each article must be separately computed. If desired, the procedures set forth in paragraphs (b) through (g) of this section may be used in making the computation. The procedure used in determining the tax paid on an article must also be used in determining the amount of tax, if any, made applicable to the article on the effective date of reduction or repeal of the tax involved. Prior approval of the Internal Revenue Service for the method of computation need not be obtained and should not be requested.

(b) *Selling price.* In determining the price of an article on which the tax paid is to be computed, the average of the gross selling prices of identical articles sold during a representative period may be used. For example, truck chassis of the same model that are sold by the manufacturer with the same equipment and accessories are identical articles whose selling prices may be computed on the basis of an average.

(c) *Transportation charges.* In determining the price of an article on which the tax paid is to be computed, the average of the exclusions authorized by section 4216(a) for transportation, delivery, insurance, installation, etc., for a reasonable category of articles during a representative period may be used.

(d) *Credits for tax paid on inner tubes.* The average of the credits authorized by section 6416(c) for tax paid on tires or inner tubes may be averaged for a reasonable category of articles during a representative period. The credits shall be subtracted from the gross excise tax to arrive at the net excise tax paid.

(e) *Price readjustments.* (1) In determining the price on which the tax paid is to be computed, there must be taken into account any price readjustments with respect to which the manufacturer has filed a claim for credit or refund under section 6416(b). Other price readjustments which have been, or are reasonably expected to be, made with respect to the article may, at the option of the manufacturer, be taken into account in computing the price of the article.

(2) Price readjustments which cannot be attributed to specific articles as of the inventory date (as, for example, a price readjustment of a flat dollar amount which is made to dealers who meet a sales quota) may be taken into account on the basis of an average of the adjustments which is computed for a reasonable category of articles over a representative period.

(3) Price readjustments related to specific items (as, for example, an automatic rebate of a specific percentage of the price of each unit sold to a dealer) may not be averaged, and in such a case only the actual price readjustment attributable to a particular article may be taken into account in computing the tax on that article.

(4) If, because of the facts in a case, a price readjustment can be attributed to specific articles for purposes of consumer refunds but cannot be attributed to specific articles for purposes of floor stocks credits or refunds, the price adjustment may be averaged for purposes of both consumer refunds and floor stocks credits and refunds.

(f) *Representative period.* A period will be considered a representative period if—

(1) It covers (i) at least four consecutive calendar quarters, the last of which ends with a period of six calendar months immediately preceding the effective date of the tax reduction or repeal involved or (ii) any other period of time which the taxpayer can demonstrate constitutes a representative period for the particular category, and

(2) The number of articles in the category involved sold by the manufacturer during the period either (i) equals or exceeds the number of articles in the category to which the average amount is to be applied or (ii) can be demonstrated by the taxpayer to be a representative quantity.

(g) *Reasonable category.* Examples of a reasonable category of articles are articles that are identified by a common stock or class number or which are of the same model, class, or line. For the purpose of averaging exclusions, another example of a reasonable category of articles is a grouping of articles that are shipped in the same container. If a manufacturer sells articles bearing his own trademark and also sells articles as private brands, separate computations of the two brands must be made under this section.

Par. 21. Section 48.6416(a)-1 is revised to read as follows:

§ 48.6416(a)-1 Claims for credit or refund of overpayments of taxes on special fuels and manufacturers taxes.

Any claims for credit or refund of an overpayment of a tax imposed by chapter 31 or chapter 32 shall be made in accordance with the applicable provisions of this subpart and the applicable provisions of § 301.6402-2 of this chapter (Regulations on Procedure and Administration). A claim on Form 843 is not required in the case of a claim for credit, but the amount of the credit shall be claimed by entering that amount as a credit on a return of tax under this subpart filed by the person making the claim. In this regard, see § 48.6416(f)-1.

Par. 22. *The following new* §§ 48.6416(a)-2 and 48.6416(a)-3 are added immediately after § 48.6416(a)-1 to read as follows.

§ 48.6416(a)-2 Credit or refund of tax on special fuels.

(a) *Overpayments not described in section 6416(b)(2).*—(1) *Claims included.* This paragraph applies only to claims for credit or refund of an overpayment of tax imposed by section 4041(a)(1)(A) (relating to tax on the sale of diesel fuel), section 4041(a)(2)(A) (relating to tax on the sale of special motor fuels), section 4041(c)(1)(A) (relating to tax on the sale of fuel for use in noncommercial aviation), or section 4041(c)(2)(A) (relating to the tax on sale of gasoline for use in noncommercial aviation). It does not apply, however, to a claim for credit or refund of any overpayment described in paragraph (b) of this section which arises by reason of the application of section 6416(b)(2).

(2) *Supporting evidence required.* No credit or refund of any overpayment to which this paragraph (a) applies shall be allowed unless the person who paid the tax submits with the claim a written consent of the ultimate purchaser to the allowance of the credit or refund, or submits with the claim a statement, supported by sufficient available evidence, asserting that—

(i) The person has neither included the tax in the price of the fuel 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 has repaid the amount of the tax to the ultimate purchaser of the fuel.

(3) *Ultimate purchaser.* The term "ultimate purchaser", as used in paragraph (a)(2) of this section, means the vendee to whom the fuel was sold tax-paid by the person claiming credit or refund.

(b) *Overpayments determined under section 6416(b)(2).*—(1) *Claims included.* This paragraph applies only to claims for credit or refund of amounts paid as

tax under section 4041(a)(1)(A) (relating to tax on the sale of diesel fuel) or section 4041(a)(2)(A) (relating to tax on the sale of special motor fuels) that are determined to be overpayments by reason of section 6416(b)(2) (relating to tax payments in respect of certain uses, sales, or resales of a taxable article).

(2) *Supporting evidence required.* No credit or refund of an overpayment to which this paragraph (b) applies shall be allowed unless the person who paid the tax submits with the claim a statement, supported by sufficient available evidence, asserting that—

(i) The person has neither included the tax in the price of the fuel 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 has repaid, or agreed to repay, the amount of the tax to the ultimate vendor of the fuel, or

(iii) The person has secured, and will submit upon request of the Service, the written consent of the ultimate vendor to the allowance of the credit or refund.

(3) *Ultimate vendor.* The term "ultimate vendor", as used in paragraph (b)(2) of this section, means the seller making the sale which gives rise to the overpayment or which last precedes the exportation or use which gives rise to the overpayment.

(c) *Nonapplication to tax on use of special fuels.* This section shall not have any effect on overpayments of tax under section 4041(a)(1)(B) (relating to tax on the use of diesel fuel), section 4041(a)(2)(B) (relating to tax on the use of special motor fuels), section 4041(c)(1)(B) (relating to tax on the use of fuel other than gasoline in noncommercial aviation), section 4041(c)(2)(B) (relating to tax on the use of gasoline in noncommercial aviation), or section 4042 (relating to tax on fuel used in commercial transportation on inland waterways).

§ 48.6416(a)-3 Credit or refund of manufacturers tax under chapter 32.

(a) *Overpayment not described in section 6416(b)(3)(C) or (4) (prior to April 1, 1983) and section 6416(b)(2)*—(1) *Claims included.* This paragraph applies only to claims for credit or refund of an overpayment of manufacturers tax imposed by chapter 32. It does not apply, however, to a claim for credit or refund on any overpayment described in paragraph (b) of this section which arises by reason of the application of section 6416(b)(2), (3)(C), or (4).

(2) *Supporting evidence required.* No credit or refund of any overpayment to which this paragraph (a) applies shall be allowed unless the person who paid the tax submits with the claim a written consent of the ultimate purchaser to the allowance of the credit or refund, or submits with the claim a statement, supported by sufficient availabe evidence, asserting 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 has repaid the amount of the tax to the ultimate purchaser of the article.

(3) *Ultimate purchaser*—(i) *General rule.* The term "ultimate purchaser", as used in paragraph (a)(2) of this section, means the person who purchased the article for consumption, or for use in the manufacture of other articles and not for resale in the form in which purchased.

(ii) *Special rule under section 6416(a)(3).* (A) *Conditions to be met.*—If tax under chapter 32 is paid in respect of an article and the Commissioner determines that the article is not subject to tax under chapter 32, the term "ultimate purchaser", as used in paragraph (a)(2) of this section, includes any wholesaler, jobber, distributor, or retailer who, on the 15th day after the date of the determination, holds for sale any such article with respect to which tax has been paid, if the claim for credit or refund of the overpayment in respect of the articles held for sale by the wholesaler, jobber, distributor, or retailer is filed on or before the date on which the person who paid the tax is required to file a return for the period ending with the first calendar quarter which begins more than 60 days after the date of the determination by the Commissioner.

(B) *Supporting statement.*—A claim for credit or refund of an overpayment of tax in respect of an article as to which a wholesaler, jobber, distributor, or retailer is the ultimate purchaser, as provided in this paragraph (a)(3)(ii), must be supported by a statement that the person filing the claim has a statement, by each wholesaler, jobber, distributor, or retailer whose articles are covered by the claim, showing total inventory, by model number and quantity, of all such articles purchased tax-paid and held for sale as of 12:01 a.m. of the 15th day after the date of the determination by the Commissioner that the article is not subject to tax under chapter 32.

(C) *Inventory requirement.*—The inventory shall not include any such article, title to which, or possession of which, has previously been transferred to any person for purposes of consumption unless the entire purchase price was repaid to the person or credited to the person's account and the sale was rescinded or any such article purchased by the wholesaler, jobber, distributor, or retailer as a component part of, or on or in connection with, another article. An article in transit at the first moment of the 15th day after the date of the determination is regarded as being held by the person to whom it was shipped, except that if title to the article does not pass until delivered to the person the article is deemed to be held by the shipper.

(b) *Overpayments described in section 6416(b)(3)(C) or (4) (prior to April 1, 1983) and section 6416(b)(2)*—(1) *Claims included.*—This paragraph applies only to claims for credit or refund of amounts paid as tax under chapter 32 that are determined to be overpayments by reason of section 6416(b)(2) (relating to tax payments in respect of certain uses, sales, or resales of a taxable article), section 6416(b)(3)(C) (relating to tax-paid tires or inner tubes used for further manufacture), or section 6416(b)(4) (relating to tires or inner tubes used by the manufacturer on another manufactured article).

(2) *Supporting evidence required.*—No credit or refund of an overpayment to which this paragraph (b) applies shall be allowed unless the person who paid the tax submits with the claim a statement, supported by sufficient available evidence, asserting that—

(i) The person 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 the allowance of the credit or refund.

(3) *Ultimate vendor.*—(i) *General rule.*—The term "ultimate vendor", as used in paragraph (b)(2) of this section, means the seller making the sale which gives rise to the overpayment or which last precedes the exportation or use which has given rise to the overpayment.

(ii) *Special rule under section 6416(a)(3)(B) prior to revision by the Highway Revenue Act of 1982.*—In the case of an overpayment determined under section 6416(b)(2)(F), (3)(C), or (4) in respect of tires or inner tubes, where the taxable article is used as a

component part of, or sold on or in connection with or with the sale of, a second article which is exported, sold to a nonprofit educational organization for its exclusive use, sold to a State or local government for the exclusive use of a State or local government or used or sold for use as supplies for vessels or aircraft, the term "ultimate vendor", as used in paragraph (b)(2) of this section, means the ultimate vendor of the second article. See §§ 48.6415(b)(2)–2(g), 48.6416(b)(3)–2(d), and 48.6416(b)(4)–1(b), respectively.

(c) *Overpayments not included.* This section does not apply to any overpayment determined under section 6416(b)(1) (relating to price readjustments), section 6416(b)(3)(A) (relating to certain cases in which refund or credit is allowable to the manufacturer who uses, in the further manufacture of a second article, a taxable article purchased by the manufacturer tax-paid), section 6416(b)(3)(B) prior to April 1, 1983 (relating to parts or accessories taxable under section 4061(b) and used by a subsequent manufacturer or producer as material or a component part of any other article manufactured or produced by him), section 6416(b)(4) after March 31, 1983 (relating to tires), section 6416(b)(5) (relating to the return to the seller of certain installment accounts which the seller had previously sold) or section 6416(b)(6) (relating to truck chassis, bodies, and semi-trailers used for further manufacture). In this regard, see §§ 48.6416(b)(1)–1, 48.6416(b)(3)–1, and 48.6416(b)(5)–1.

Par. 23. Section 48.6416(b)–1 is removed, and the following new §§ 48.6416(b)(1)–1, 48.6416(b)(1)–2, 48.6416(b)(1)–3, and 48.6416(b)(1)–4 are added immediately after § 48.6416(a)–3.

§ 48.6416(b)(1)–1 Price readjustments causing overpayments of manufacturers tax.

In the case of any payment of tax under chapter 32 that is determined to be an overpayment by reason of a price readjustment within the meaning of section 6416(b)(1) and § 48.6416(b)(1)–2 or § 48.6416(b)(1)–3, the person who paid the tax may file a claim for refund of the overpayment or may claim credit for the overpayment on any return of tax under this subpart which the person subsequently files. Price readjustments may not be anticipated. However, if the readjustment has actually been made before the return is filed for the period in which the sale was made, the tax to be reported in respect of the sale may, at the election of the taxpayer, be based either (a) on the price as so readjusted or (b) on the original sale price and a credit or refund claimed in respect of the price readjustment. A price readjustment will be deemed to have been made at the time when the amount of the readjustment has been refunded to the vendor or the vendor has been informed that the vendor's account has been credited with the amount. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund, see § 301.6402–2 of this chapter (Regulations on Procedure and Administration), § 48.6416(a)–3(a)(2), and § 48.6416(b)(1)–4. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(d) and § 48.6416(f)–1.

§ 48.6416(b)(1)–2 Determination of price readjustments.

(a) *In general.*—(1) *Rules of usual application*—(i) *Amount treated as overpayment.*—If the tax imposed by chapter 32 has been paid and thereafter the price of the article on which the tax was based is readjusted, that part of the tax which is proportionate to the part of the price which is repaid or credited to the purchaser is considered to be an overpayment. A readjustment of price to the purchaser may occur by reason of—

(A) The return of the article,

(B) The repossession of the article,

(C) The return or repossession of the covering or container of the article, or

(D) A bona fide discount, rebate, or allowance against the price at which the article was sold.

(ii) *Requirements of price readjustment.* A price readjustment will not be deemed to have been made unless the person who paid the tax either—

(A) Repays part or all of the purchase price in cash to the vendee,

(B) Credits the vendee's account for part or all of the purchase price, or

(C) Directly or indirectly reimburses a third party for part or all of the purchase price for the direct benefit of the vendee.

In addition, to be deemed a price readjustment, the payment or credit must be contractually or economically related to the taxable sale that the payment or credit purports to adjust. Thus, commissions or bonuses paid to a manufacturer's own agents or salesperson for selling the manufacturer's taxable products are not price readjustments for purposes of this section, since those commissions or bonuses are not paid or credited either to the manufacturer's vendee or to a third party for the vendee's benefit. On the other hand, a bonus paid by the manufacturer to a dealer's salesperson for negotiating the sale of a taxable article previously sold to the dealer by the manufacturer is considered to be a readjustment of the price on the original sale of the taxable article, regardless of whether the payment to the salesperson is made directly by the manufacturer or to the salesperson through the dealer. In such a case, the payment is related to the sale of a taxable article and is made for the benefit of the dealer because it is made to the dealer's salesperson to encourage the sale of a product owned by the dealer. Similarly, payments or credits made by a manufacturer to a vendee as reimbursement of interest expense incurred by the vendee in connection with a so-called "free flooring" arrangement for the purchase of taxable articles is a price readjustment, regardless of whether the payment or credit is made directly to the vendee or to the vendee's creditor on behalf of the vendee.

(iii) *Limitation on credit or refund.* The credit or refund allowable by reason of a price readjustment in respect of the sale of a taxable article may not exceed an amount which bears the same ratio to the total tax originally due and payable on the article as the amount of the tax-included readjustment bears to the original tax-included sale price of the article.

Example. A manufacturer sells a taxable article for $100 plus $10 excise tax, and reports and pays tax liability accordingly. Thereafter, the manufacturer credits the customer's account for $11 (tax included) in readjustment of the original sale price. The overpayment of tax is $1, determined as follows:

$$\frac{\text{Tax-included readjustment}}{\text{Tax-included sale price}} \times \text{Original tax due} = \text{Tax overpayment.}$$

$$\frac{\$11}{\$110} \times \$10 = \$1 \text{ tax overpaid.}$$

(2) *Rules of special application.*—(i) *Constructive sale price.*—If, in the case of a taxable sale, the tax imposed by chapter 32 is based on a constructive sale price determined under any paragraph of section 4216(b) and the regulations thereunder, as determined without reference to section 4218, then any price readjustment made with respect to the sale may be taken into account under this section only to the extent that the price readjustment reduces the actual sale price of the article below the constructive sale price.

Example. (A) A manufacturer sells a taxable article at retail for $110 tax included. Under section 4216(b)(1) the constructive sale price (tax included) of the article is determined to be $93. Thereafter, the

manufacturer grants an allowance of $10 to the purchaser, which reduces the actual selling price (tax included) to $100. Since the readjustment price still exceeds the amounts of the constructive sale price, this readjustment is not recognized as a price readjustment under this section.

(B) Subsequently, the manufacturer extends to the purchaser an additional price allowance of $10, thereby reducing the actual sale price to $90. Since the actual sale price is now $3 less than the constructive sale price of $93, the manufacturer has overpaid by the amount of tax attributable to the $3. Assuming the tax rate involved is 10 percent, and the prices involved are tax-included, the overpayment of tax would be $0.27, determined as follows:

$$\frac{\text{percentage tax rate}}{\text{100 plus percentage tax rate}} \times \text{tax-included readjustment} = \text{tax overpayment}$$

$$\left(\frac{10}{100} \times \$3 = \$0.27\right).$$

(ii) *Price determined under section 4223(b)(2).*—If a manufacturer (within the meaning of section 4223(a)) to whom an article is sold or resold free of tax in accordance with the provisions of section 4221(a)(1) for use in further manufacture diverts the article to a taxable use or sells it in a taxable sale, and pursuant to the provisions of section 4223(b)(2) computes the tax liability in respect of the use or sale on the price for which the article was sold to the manufacturer or on the price at which the article was sold by the actual manufacturer, a reduction of the price on which the tax was based does not result in an overpayment within the meaning of section 6416(b)(1) of this section. Moreover, if a manufacturer purchases an article tax free and computes the tax in respect of a subsequent sale of the article pursuant to the provisions of section 4223(b)(2), an overpayment does not arise by reason of readjustment of the price for which the article was sold by the manufacturer except where the readjustment results from the return or repossession of the article by the manufacturer, and all of the purchase price is refunded by the manufacturer. See, however, paragraph (b)(4) of this section as to repurchased articles.

(b) *Return of an article*—(1) *Price readjustment.*—If a taxable article is returned to the manufacturer who paid the tax imposed by chapter 32 on the sale of the article, a price readjustment giving rise to an overpayment results—

(i) If the article is returned before use, and all of the purchase price is repaid to the vendee or credited to the vendee's account, or

(ii) If the article is returned under an express or implied warranty as to quality or service, and all or a part of the purchase price is repaid to the vendee or credited to the vendee's account, or

(iii) If title is still in the seller, as, for example, in the case of certain installment sales contracts, and all or a part of the purchase price is repaid to the vendee or credited to the vendee's account.

(2) *Return of purchase price.*—For purposes of paragraph (b)(1) of this section, if all of the purchase price of an article has been returned to the vendee, except for an amount retained by the manufacturer pursuant to contract as reimbursement of expense incurred in connection with the sale (such as a handling or restocking charge), all of the purchase price is considered to have been returned to the vendee.

(3) *Taxability of subsequent sale or use.*—If, under any of the conditions described in paragraph (b)(1) of this section, an article is returned to the manufacturer who paid the tax and all of the purchase price is returned to the vendee, the sale is considered to have been rescinded. Any subsequent sale or use of the article by the manufacturer will be considered to be an original sale or use of the article by the manufacturer which is subject to tax under chapter 32 unless otherwise exempt. If under any such condition an article is returned to the manufacturer who paid the tax and only part of the purchase price is returned to the vendee, a subsequent sale of the article by the manufacturer will be subject to tax to the extent that the sale price exceeds the adjusted sale price of the first taxable sale.

(4) *Treatment of other transactions as repurchases.*—Except as provided in paragraph (b)(1) of this section, a price readjustment will not result when a taxable article is returned to the manufacturer who paid the tax on the sale of the article, even though all or a part of the purchase price is repaid to the vendee or credited to the vendee's account, since such a transaction will be considered to be a repurchase of the article by the manufacturer.

(c) *Repossession of an article.* If a taxable article is repossessed by the manufacturer who paid the tax imposed by chapter 32 on the sale of the article, and all or a part of the purchase price is repaid to the vendee or credited to the vendee's account, a price readjustment giving rise to an overpayment will result. However, if the manufacturer later resells the repossessed article for a price in excess of the original adjusted sale price, the manufacturer will be liable for tax under chapter 32 to the extent that the resale price exceeds the original adjusted sale price.

(d) *Return or repossession of covering or container.* If the covering or container of a taxable article is returned to, or repossessed by the manufacturer who paid the tax imposed by chapter 32 on the sale of the article, and all or a portion of the purchase price is repaid to the vendee or credited to the vendee's account by reason of the return or repossession of the covering or container, a price adjustment giving rise to an overpayment will result. If a taxable article is considered to have been repurchased, as provided in paragraph (b)(4) of this section, and the covering or container accompanies the taxable article as part of the transaction, the covering or container will also be considered to have been repurchased.

(e) *Bona fide discounts, rebates, or allowances*—(1) *In general.* Except as provided in § 48.6416(b)(1)-3 (relating to readjustments in respect of local advertising), the basic consideration in determining, for purposes of this section, whether a bona fide discount, rebate, or allowance has been made is whether the price actually paid by, or charged against, the purchaser has in fact been reduced by subsequent transactions between the parties. Generally, the price will be considered to have been readjusted by reason of a bona fide discount, rebate, or allowance, only if the manufacturer who made the taxable sale repays a part of the purchase price in cash to the vendee, or credits the vendee's account, or directly or indirectly reimburses a third party for part or all of the purchase price for the direct benefit of the vendee, in consideration of factors which, if taken into account at the time of the original transaction, would have resulted at that time in a lower sale price. For example, a price readjustment will be considered to have been made when a bona fide discount, rebate, or allowance is given in consideration of such factors as prompt payment, quantity buying over a specified period, the vendee's inventory

of an article when new models are introduced, or a general price reduction affecting articles held in stock by the vendee as of a certain date. On the other hand, repayments made to the vendee do not effectuate price readjustments if given in consideration of circumstances under which the vendee has incurred, or is required to incur, an expense which, if treated as a separate item in the original transaction, would have been includible in the price of the article for purposes of computing the tax.

Examples. The provisions of paragraph (e)(1) of this section may be illustrated by the following examples:

Example (1). B, a manufacturer of fishing rods, bills its distributors in a specified amount per fishing rod purchased by them. Thereafter, B issues to each distributor a credit memorandum in the amount of X dollars for each demonstration by the distributor of the fishing rods at a sporting goods exhibition. The credit which B allows the distributor for demonstration of B's product does not effect a readjustment of price.

Example (2). C, a manufacturer of automobiles, bills its dealers in a specified amount per automobile purchased by them. Thereafter, C remits to the dealer X dollars of the original sale price for each automobile sold by the dealer in the last month of the model year. An additional amount of Y dollars is paid to the dealer upon a showing by the dealer that the dealer has paid Y dollars to the salesperson who made the sale. In this case, the X dollars paid to the dealer by C constitutes a bona fide discount, rebate, or allowance since payment of such amount is in the nature of a price reduction by reason of the dealer's inventory when new models are introduced. In addition, the Y dollars paid to the dealer in reimbursement for the amount paid by the dealer to the salesperson who made the sale, also constitutes a bona fide discount, rebate, or allowance.

(2) *Inability to collect price.* A charge-off of an amount outstanding in an open account, due to inability to collect, is not a bona fide discount, rebate, or allowance and does not, in and of itself, give rise to a price readjustment within the meaning of this section.

(3) *Loss or damage in transit.* If title to an article has passed to the vendee, the subsequent loss, damage, or destruction of the article while in the possession of a carrier for delivery to the vendee does not, in and of itself, affect the price at which the article was sold. However, if the article was sold under a contract providing that, if the article was lost, damaged, or destroyed in transit, title would revert to the vendor and the vendor would reimburse the vendee in full for the sale price, then the original sale is considered to have been rescinded. The vendor is entitled to credit or refund of the tax paid upon reimbursement of the full tax-included sale price to the vendee.

§ 48.6416(b)(1)–3 Readjustment for local advertising charges.

(a) *In general.* If a manufacturer has paid the tax imposed by chapter 32 on the price of any article sold by the manufacturer and thereafter has repaid a portion of the price to the purchaser or any subsequent vendee in reimbursement of expenses for local advertising of the article or any other article sold by the manufacturer which is taxable at the same rate under the same section of chapter 32, the reimbursement will be considered a price readjustment constituting an overpayment which the manufacturer may claim as a credit or refund. The amount of the reimbursement may not, however, exceed the limitation provided by section 4216(e)(2) and § 48.4216(e)–2, determined as of the close of the calendar quarter in which the reimbursement is made or as of the close of any subsequent calendar quarter of the same calendar year in which it is made. The term "local advertising", as used in this section, has the same meaning as prescribed by section 4216(e)(4) and includes generally, advertising which is broadcast over a radio station or television station, or appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster.

(b) *Local advertising charges excluded from taxable price in one year but repaid in following year*—(1) *Determination of price readjustments for year in which charge is repaid.* If the tax imposed by chapter 32 was paid with respect to local advertising charges that were excluded in computing the taxable price of an article sold in any calendar year but are not repaid to the manufacturer's purchaser or any subsequent vendee before May 1 of the following calendar year, the subsequent repayment of those charges by the manufacturer in reimbursement of expenses for local advertising will be considered a price readjustment constituting an overpayment which the manufacturer may claim as a credit or refund. The amount of the reimbursement may not, however, exceed the limitation provided by section 4216(e)(2) and § 48.4216(e)–(2), determined as of the close of the calendar quarter in which the reimbursement is made or as of the close of any subsequent calendar quarter of the same calendar year in which it is made.

(2) *Redetermination of price readjustments for year in which charge was made.* If the tax imposed by chapter 32 was paid with respect to local advertising charges that were excluded in computing the taxable price of an article sold in any calendar year but are not repaid to the manufacturer's purchaser or any subsequent vendor before May 1 of the following calendar year, the manufacturer may make a redetermination, in respect of the calendar year in which the charge was made, of the price readjustments constituting an overpayment which the manufacturer may claim as a credit or refund. This redetermination may be made by excluding the local advertising charges made in the calendar year that became taxable as of May 1 of the following calendar year.

§ 48.6416(b)(1)–4 Supporting evidence required in case of price readjustments.

No credit or refund of an overpayment arising by reason of a price readjustment described in § 48.6416(b)(1)–2 or § 48.6416(b)(1)–3 shall be allowed unless the manufacturer who paid the tax submits a statement, supported by sufficient available evidence—

(a) Describing the circumstances which gave rise to the price readjustment,

(b) Identifying the article in respect of which the price readjustment was allowed,

(c) Showing the price at which the article was sold, the amount of tax paid in respect of the article, and the date on which the tax was paid,

(d) Giving the name and address of the purchaser to whom the article was sold, and

(e) Showing the amount repaid to the purchaser or credited to the purchaser's account.

Par. 24. Section 48.6416(b)–2 is removed and the following new §§ 48.6416(b)(2)–1, 48.6416(b)(2)–2, 48.6416(b)(2)–3 and 48.6416(b)(2)–4 are added immediately after § 48.6416(b)(1)–4.

§ 48.6416(b)(2)–1 Certain exportations, uses, sales, or resales causing overpayments of tax.

In the case of any payment of tax under section 4041 (a)(1) or (a)(2) (diesel fuel and special fuels tax) or under chapter 32 (manufacturers tax) that is determined to be an overpayment by reason of certain exportations, uses, sales, or resales described in section 6416(b)(2) and § 48.6416(b)(2)–2, the person who paid the tax may file a claim for refund of the overpayment or, in the case of overpayments under chapter 32, may claim credit for the overpayment on

any return of tax under this subpart which the person subsequently files. However, under the circumstances described in section 6416(c) and § 48.6416(e)–1, the overpayments under chapter 32 may be refunded to an exporter or shipper. In the case of overpayments of tax under section 4041 resulting from certain nontaxable uses of tax-paid fuel after June 30, 1970, see also section 6427 and the regulations thereunder. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund under this section, see § 301.6402–2 of this chapter (Regulations on Procedure and Administration) and §§ 48.6416(b)(2)–3 and 48.6416(b)(2)–4. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(d) and § 48.6416(f)–1.

§ 48.6416(b)(2)–2 Exportations, uses, sales, and resales included.

(a) *In general.* The payment of tax imposed by section 4041 (a)(1) or (a)(2), or by chapter 32, as the case may be, on the sale of any article, other than coal taxable under section 4121, will be considered to be an overpayment by reason of any exportation, use, sale, or resale described in any one of paragraphs (b) to (o), inclusive, of this section. This section applies only in those cases where the exportation, use, sale, or resale (or any combination thereof) referred to in any one or more of these paragraphs occurs before any other use. If any article is sold or resold for a use described in any one of these paragraphs and is not in fact so used, the paragraph is treated in all respects as inapplicable.

(b) *Exportation of tax-paid articles.* Subject to the limitation in section 6416(g) and § 48.6416(g)–1 (applying to articles subject to the tax imposed by section 4061(a) prior to April 1, 1983), a payment of tax under chapter 32 on the sale of any article, or under section 4041 (a)(1) or (a)(2) on the sale of diesel fuel or special motor fuel, will be considered to be an overpayment under section 6416(b)(2)(A) if the article or fuel is by any person exported to a foreign country or shipped to a possession of the United States. Except in the case of articles subject to the tax imposed by section 4061(a), prior to April 1, 1983, it is immaterial for purposes of this paragraph (b), whether the person who made the taxable sale had knowledge at the time of the sale that the article or fuel was being purchased for export to a foreign country or shipment to a possession of the United States. See § 48.6416(c)–1 for the circumstances under which a claim for refund by reason of the exportation of an article may be claimed by the exporter or shipper, rather than by the person who paid the tax. For definition of the term "possession of the United States", see § 48.0–2(a)(11).

(c) *Supplies for vessels or aircraft.* A payment of tax under chapter 32 on the sale of any article, or under section 4041 (a)(1) or (a)(2) on the sale of diesel fuel or special motor fuel, will be considered to be an overpayment under section 6416(b)(2)(B) if the article or fuel is used by any person, or is sold by any person for use by the purchaser, as supplies for vessels or aircraft.

The term "supplies for vessels or aircraft", as used in this paragraph, has the same meaning as when used in sections 4041(g), 4221(a)(3), 4221(d)(3), and 4221(e)(1), and the regulations thereunder.

(d) *Use by State or local government.* A payment of tax under chapter 32 on the sale of any article, or under section 4041 (a)(1) or (a)(2) on the sale of diesel fuel or special motor fuel, will be considered to be an overpayment under section 6416(b)(2)(C) if the article of fuel is sold by any person to a State, any political subdivision thereof, or the District of Columbia for the exclusive use of a State, any political subdivision thereof, or the District of Columbia. For provisions relating to tax-free sales to a State, any political subdivision thereof, or the District of Columbia, see section 4221(a)(4) and the regulations thereunder.

(e) *Use by nonprofit educational organization.* A payment of tax under chapter 32 on the sale of any article, or under section 4041 (a)(1) or (a)(2) on the sale of diesel fuel or special motor fuel, will be considered to be an overpayment under section 6416(b)(2)(D) if the article or fuel is sold by any person to a nonprofit educational organization for its exclusive use. The term "nonprofit educational organization", as used in this paragraph (e), has the same meaning as when used in section 4221 (a)(5) or (d)(5), whichever applies, and the regulations thereunder.

(f) *Tax-paid tires or inner tubes resold for use in further manufacture.* A payment of tax under section 4071 on the sale of a tire or, prior to January 1, 1984, on the sale of an inner tube will be considered to be an overpayment under section 6416(b)(2)(E) if—

(1) The tire or inner tube is, after the original sale of the article by the manufacturer, resold by any person to another manufacturer;

(2) The other manufacturer sells the tire or inner tube on or in connection with, or with the sale of, any other article manufactured or produced by the other manufacturer; and

(3) That other article is by any person either—

(i) Exported to a foreign country or to a possession of the United States,

(ii) Sold to a State, any political subdivision thereof, or the District of Columbia for the exclusive use of a State, any political subdivision thereof, or the District of Columbia,

(iii) Sold to a nonprofit educational organization for its exclusive use, or

(iv) Used or sold for use as supplies for vessels or aircraft.

The overpayment described in this paragraph (f) is to be distinguished from the overpayment described in section 6416(b)(3)(C) prior to amendment by the Highway Revenue Act of 1982 and section 6416(b)(3) as amended by the Highway Revenue Act of 1982, and § 48.6416(b)(3)–2 (d) in that the overpayment here described arises from a "resale" for the use described in this paragraph, while the section 6416(b)(3)(C) overpayment arises from the "use" of tires or inner tubes in the manufacture of other articles by a subsequent manufacturer who purchases tax-paid tires or tubes and disposes of finished articles on the basis of one of the exemptions set forth in section 6416(B)(3)(C). A manufacturer claiming a credit or refund under this paragraph (f) must have substantially the same information available in support of the claim as is required under § 48.4221–7(c)(2) in support of exempt sales of tires or inner tubes under the provisions of section 4221(e)(2), except that none of the parties involved need be registered under section 4222.

(g) *Parts or accessories used on farm equipment.* A payment of tax under section 4061(b) prior to January 7, 1983 on the sale of parts or accessories (other than spark plugs and storage batteries) will be considered to be an overpayment under section 6416(b)(2)(F) if the parts or accessories are used by any person, or are sold by any person for use by the purchaser, as repair parts, replacement parts or accessories for farm equipment. The term "farm equipment," as used in this paragraph (g), does not include any article taxable under section 4061(a)(1) (relating to trucks, buses, tractors, etc.). The term "parts or accessories," as used in this paragraph (g), has the same meaning as in section 4061(b) and the regulations thereunder. This paragraph (g) does not apply to an overpayment of tax arising by reason of section 6416(b)(3) and § 48.6416(b)(3)–1, relating to articles purchased tax paid from a manufacturer by a subsequent

manufacturer and used by the subsequent manufacturer in further manufacture of a taxable or nontaxable article.

(h) *Tread rubber used for certain purposes.* All references in this paragraph to sections 4071(a)(4), 6416(b)(2)(G) and 4072 and the regulations thereunder, are to the Internal Revenue Code prior to its revision by the Highway Revenue Act of 1982. A payment of tax under section 4071(a)(4) prior to January 1, 1984, on the sale of tread rubber which is used by any person, or which is sold by any person for use by the purchaser, otherwise than in the recapping or retreading or tires of the type used on highway vehicles, will be considered to be an overpayment under section 6416(b)(2)(G). If the tread rubber is used in the recapping or retreading of tires, the type of vehicle on which the recapped or retreaded tire is be used and the actual or intended use of the recapped or retreaded tire are immaterial in determining whether an overpayment arises under this paragraph (h). The controlling factor is whether the tire resulting from the recapping or retreading is of a type which is not used on a highway vehicle. The term "tread rubber," "tires of the type used on highway vehicles", and "tires", as used in this paragraph (h) have the same meaning as in section 4072 and the regulations thereunder. This paragraph (h) does not apply to an overpayment arising by reason of section 6416(b)(3) and § 48.6416(b)(3)-1, relating to articles purchased tax paid from a manufacturer by a subsequent manufacturer and used by the subsequent manufacturer in further manufacture of another article taxable under chapter 32.

(i) *Gasoline used in production of special fuels.* A payment of tax under section 4081 on the sale of gasoline will be considered to be an overpayment under section 6416(b)(2)(H) (section 6416(b)(2)(F) after March 31, 1983), if the gasoline is used by any person, or sold by any person for use by the purchaser, in the production of a special fuel. The term "special fuel", as used in this paragraph (i), has the same meaning as in section 4041 and the regulations thereunder.

(j) *Articles sold for use as trash containers.* All references in this paragraph are to the Internal Revenue Code of 1954 prior to its revision by the Highway Revenue Act of 1954. See section 4053 (6) of the Internal Revenue Code of 1954 as amended by the Highway Revenue Act of 1982 for provisions relating to articles designed to be used as trash containers. A payment of tax under section 4061 (a) on a sale prior to April 1, 1983, of any box, container, receptacle, bin, or other similar article will be considered to be an overpayment under section 6416(b)(2)(J) if the article is—

(1) Sold by any person to any purchaser for use by the purchaser as a trash container,

(2) Not designed for the transportation of freight other than trash, and

(3) Not designed to be permanently mounted on, or permanently affixed to, a chassis or body of an automobile, truck, truck trailer, or truck semitrailer.

In addition, a payment of tax under section 4061(b) on parts or accessories for any such box, container, receptacle, etc., will be considered to be an overpayment under section 6416(b)(2)(J) if the part or accessory is designed primarily for use on, in connection with, or as a component part of, the box, container, receptacle, etc., and is installed on the box, container, receptacle, etc. at the time of sale or is sold with the article as an integral part of the container system. This paragraph (j) does not apply to parts or accessories sold for use as replacement parts or accessories, even if those parts or accessories are sold in connection with the sale of a box, container, receptacle, etc. Any term used in this paragraph (j) that is also used in section 4063(a)(7) or the regulations thereunder has the same meaning as in that section and the regulations thereunder.

(k) *Parts or accessories sold in connection with light-duty trucks.* All references in this paragraph are to the Internal Revenue Code of 1954 prior to its revision by the Highway Revenue Act of 1982. A payment of tax under section 4061(b) on the sale of parts or accessories will be considered to be an overpayment under section 6416(b)(2)(K) if—

(1) The parts or accessories are sold on or in connection with the first retail sale of a light-duty truck as described in section 4061(a)(2) and the regulations thereunder, and

(2) The credit or refund of tax is not available under any other provisions of law.

The term "parts or accessories," as used in this paragraph (k), has the same meaning as in section 4061(b) and the regulations thereunder. This paragraph (k) does not apply to an overpayment of tax arising by reason of section 6416(b)(2) and § 48.6416(b)(3)-1, relating to articles purchased tax-paid from a manufacturer by a subsequent manufacturer and used by the subsequent manufacturer in further manufacture of a taxable or nontaxable article.

§ 48.6416(b)(2)-3 Supporting evidence required in case of manufacturers tax involving exportations, uses, sales, or resales.

(a) *Evidence to be submitted by claimant.* No claim for credit or refund of an overpayment, within the meaning of section 6416(b)(2) and § 48.6416(b)(2)-2, of tax under chapter 32 shall be allowed unless the person who paid the tax submits with the claim the evidence required by paragraph (b)(2) of § 48.6416(a)-3 and a statement, supported by sufficient available evidence—

(1) Showing the amount claimed in respect of each category of exportations, uses, sales, or resales on which the claim is based and which give rise to a right of credit or refund under section 6416(b)(2) and § 48.6416(b)(2)-1,

(2) Identifying the article, both as to nature and quantity, in respect of which credit or refund is claimed,

(3) Showing the amount of tax paid in respect of the article or articles and the dates of payment, and

(4) In the case of an overpayment determined under section 6416(b)(2)(A) and paragraph (b) of § 48.6416(b)(2)-2 in respect of an article which was taxable prior to April 1, 1983 under section 4061(a), indicating that, pursuant to section 6416(g), the person claiming a credit or refund possessed at the time that person shipped the article or at the time title to the article passed to the vendee, whichever is earlier, evidence that the article was to be exported to a foreign country or shipped to a possession of the United States, or

(5) In the case of any overpayment other than an overpayment determined under section 6416(b)(2)(E) and paragraph (f) of § 48.6416(b)(2)-2, indicating that the person claiming a credit or refund possesses evidence (as set forth in paragraph (b)(1) of this section) that the article has been exported, or has been used, sold, or resold in a manner or for a purpose which gives rise to an overpayment within the meaning of section 6416(b)(2) and § 48.6416(b)(2)-2, or

(6) In the case of an overpayment determined under section 6416(b)(2)(E) and paragraph (f) of § 48.6416(b)(2)-2, relating to a tax-paid tire or inner tube sold on or in connection with, or with the sale of, a second article that has been manufactured, indicating that the person claiming credit or refund possesses (i) evidence (as set forth in paragraph (b)(2) of this section) that the second article has been exported, or has

been used or sold as provided in § 48.6416(b)(2)-2(f), and (ii) a statement, executed and signed by the ultimate purchaser of the tire or inner tube, that the ultimate purchaser purchased the tire or inner tube from a person other than the person who paid the tax on the sale of the tire or inner tube.

(b) *Evidence required to be in possession of claimant.*—(1) *Evidence required under paragraph (a)(5).*—(i) *In general.* The evidence required to be retained by the person who paid the tax, as provided in paragraph (a)(5) of this section, must, in the case of an article exported, consist of proof of exportation in the form prescribed in the regulations under section 4221 or must, in the case of other articles sold tax-paid by that person, consist of a certificate, executed and signed by the ultimate purchaser of the article, in the form prescribed in paragraph (b)(1)(ii) of this section. However if the article to which the claim relates has passed through a chain of sales from the person who paid the tax to the ultimate purchaser, the evidence required to be retained by the person who paid the tax may consist of a certificate, executed and signed by the ultimate vendor of the article, in the form provided in paragraph (b)(1)(iii) of this section, rather than the proof of exportation itself or the certificate of the ultimate purchaser.

(ii) *Certificate of ultimate purchaser.*

(A) The certificate executed and signed by the ultimate purchaser of the article to which the claim relates must identify the article, both as to nature and quantity; show the address of the ultimate purchaser of the article, and the name and address of the ultimate vendor of the article; and describe the use actually made of the article in sufficient detail to establish that credit or refund is due, except that the use to be made of the article must be described in lieu of actual use if the claim is made by reason of the sale or resale of an article for a specified use which gives rise to the overpayment.

(B) If the certificate sets forth the use to be made of any article, rather than its actual use, it must show that the ultimate purchaser has agreed to notify the claimant if the article is not in fact used as specified in the certificate.

(C) The certificate must also contain a statement that the ultimate purchaser understands that the ultimate purchaser and any other party may, for fraudulent use of the certificate, be subject under section 7201 to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both, together with the costs of prosecution.

(D) A purchase order will be acceptable in lieu of a separate certificate of the ultimate purchaser if it contains all the information required by this paragraph (b)(1)(ii).

(iii) *Certificate of ultimate vendor.* Any certificate executed and signed by an ultimate vendor as evidence to be retained by the person who paid the tax, as provided in paragraph (a)(5) of this section, may be executed with respect to any one or more overpayments by the person which arose under section 6416(b)(2) and §§ 48.6416(b)(2)-2 by reason of exportations, uses, sales or resales, occurring within any period of not more than 12 consecutive calendar quarters, the beginning and ending dates of which are specified in the certificate.

The certificate must be in substantially the following form:

Statement of Ultimate Vendor

(For use in claiming credit or refund of overpayment determined under section 6416(b)(2) (other than section 6416(b)(2)(E)) of the Internal Revenue Code.)

The undersigned or the

(Name of ultimate vendor if other than undersigned) of which the undersigned is (Title), is the ultimate vendor of the article specified below or on the reverse side hereof.

The article was purchased by the ultimate vendor tax-paid and was thereafter exported, used, sold, or resold (as indicated below or on the reverse side hereof).

The ultimate vendor possesses

(Proof of exportation in respect of the article, or a certificate as to use executed by the ultimate purchaser of the article)

The

(Proof of exportation or certificate)

(1) is retained by the ultimate vendor, (2) will, upon request, be forwarded to

(Name or person who paid the tax)

at any time within 3 years from the date of this statement for use by that person to establish that credit or refund is due in respect of the article, and (3) will otherwise be held by the ultimate vendor for the required 3-year period.

According to the best knowledge and belief of the undersigned, no statement in respect of the

(Proof of exportation or certificate)

has previously been executed, and the undersigned understands that the fraudulent use of this statement may, under section 7201, subject the undersigned or any other party making such fraudulent use to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both, together with the costs of prosecution.

(Signature)

(Address)

(Date)

Vendor's invoice	Articles	Date of resale	Quantity*	Exported or use made or to be made (specify)

(2) *Evidence required under paragraph (a)(6).*—(i) *In general.*—The evidence required to be retained by the person who paid the tax, as provided in paragraph (a)(6) of this section, must, in the case of an exportation of the second article, consist of proof of exportation of the second article in the form prescribed in the regulations under section 4221 or must, in other cases, consist of a certificate, executed and signed by the ultimate purchaser of the second article, in the form prescribed in paragraph (b)(2)(ii) of this section. However, the evidence required to be retained by the person who paid the tax may consist of a certificate, executed and signed by the ultimate vendor of the second article, in the form provided in paragraph (b)(2)(iii) of this section, rather than the proof of exportation itself or the certificate of the ultimate purchaser.

(ii) *Certificate of ultimate purchaser.*—The certificate of the ultimate purchaser of the second article must contain the same information as that required in paragraph (b)(1)(ii) of this section, except that the information must be furnished in respect of the second article, rather than the article to which the claims relates.

(iii) *Certificate of ultimate vendor.*—Any certificate executed and signed by an ultimate vendor as evidence to be retained by the person who paid the tax, as provided in paragraph (a)(6) of this section, may be executed with respect to any one of more overpayments by that person which arose under section 6416(b)(2)(E) and § 48.6416(b)(2)-2 (f) by reason of exportations, uses, sales, or resales of a second article occurring within any period of not more than 12 consecutive calendar quarters, the beginning and ending dates of which are specified in the certificate. The certificate must be in substantially the following form:

STATEMENT OF ULTIMATE VENDOR

(For use in claiming credit or refund of overpayment determined under section 6416 (b)(2)(E), Internal Revenue Code, involving tires or inner tubes sold on or with another article.)

The undersigned or the

(Name of ultimate vendor of second article if other than undersigned)

of which the undersigned is (Title), is the

ultimate vendor of an article, specified below or on the reverse side hereof, on which or with which a tax-paid tire or inner tube was sold.

The ultimate vendor possesses

(Proof of exportation in respect of the article on which or with which the tire or inner tube was sold, or a certificate as to use of the article executed by the ultimate purchaser of the article)

The

(Proof of exportation or certificate) (1) is retained by the ultimate vendor, (2) will, upon request, be forwarded to

(Name of person who paid the tax on the tire or inner tube)

at any time within 3 years from the date of this statement for use in establishing that credit or refund is due in respect of the tire or inner tube, and (3) will otherwise be held by the ultimate vendor for the required 3-year period.

According to the best knowledge and belief of the undersigned, no statement in respect of the

(Proof of exportation or certificate)

has previously been executed, and the undersigned understands that the fraudulent use of this statement may, under section 7201, subject the undersigned or any other party making such fraudulent use to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both, together with the costs of prosecution.

(Signature)

(Address)

(Date).

Tires or inner tubes (specify and state quantity)	Vendor's invoice on second article	Second article (specify and state quantity)	Date of sale of second article	Exported or use made of or to be made (specify in respect of second article)

(3) *Repayment or consent of ultimate vendor.* If the person claiming credit or refund of an overpayment to which this section applies has repaid, or agreed to repay, the amount of the overpayment to the ultimate vendor or if the ultimate vendor consents to the allowance of the credit or refund, a statement to that effect, signed by the ultimate vendor, must be shown on, or made a part of, the evidence required under this section to be retained by the person claiming the credit or refund. In this regard, see § 48.6416(a)–3(b)(2).

§ 48.6416(b)(2)–4 Supporting evidence required in case of special fuels tax involving exportations, uses, sales, or resales of special fuels.

(a) *Evidence to be submitted by claimant.* No claim for credit or refund of an overpayment, within the meaning of section 6416(b)(2) and § 48.6416(b)(2)–2 of tax under section 4041 (a)(1) or (b)(2) shall be allowed unless the person who paid the tax submits with the claim the evidence required by paragraph (b)(2) of § 48.6416(a)–2 and a statement, supported by sufficient available evidence—

(1) Showing the amount claimed in respect of each category of exportations, uses, sales, or resales on which the claim is based and which give rise to right of credit or refund under section 6416(b)(2) and § 48.6416(b)(2)–1,

(2) Identifying the fuel, both as to nature and quantity, in respect of which credit or refund is claimed,

(3) Showing the amount of tax paid in respect of the fuel and the dates of payment, and

(4) Indicating that the fuel has been exported, or has been used, sold, or resold in a manner or for a purpose which gives rise to an overpayment within the meaning of section 6416(b)(2) and § 48.6416(b)(2)–2.

(b) *Evidence required to be in possession of claimant.* (1) The evidence required to be retained by the person who paid the tax, as provided in paragraph (a)(4) of this section, must, in the case of fuel exported, consist of proof of exportation or must, in the case of other fuel sold tax-paid by that person, consist of a certificate, executed and signed by the person who purchased the fuel in a resale or for the use which gave rise to the overpayment.

(2) The certificate must identify the fuel, both as to nature and quantity, in respect of which credit or refund is claimed; show the address of the purchaser; show the name and address of the person from whom the fuel was purchased and the date or dates on which the fuel was purchased; and show that the fuel was resold and the date of the resale.

(3) If the claim is not based on resale of the fuel, the certificate must describe the use actually made of the fuel in sufficient detail to establish that credit or refund is due. However, the use to be made of the fuel must be described in lieu of actual use if the claim is made by reason of the sale of the fuel for a specified use which gives rise to an overpayment under § 48.6416(b)(2)–2.

(4) If the certificate sets forth the use to be made of the fuel, rather than its actual use, it must show that the purchaser has agreed to notify the claimant if the fuel is not in fact used as specified in the certificate.

(5) The certificate must also contain a statement that the purchaser has not previously executed a certificate in respect of the fuel and understands that any party may, for fraudulent use of the certificate, be subject under section 7201 to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both, together with the costs of prosecution.

Par. 25. Section 48.6416(b)–3 is removed and the following new §§ 48.6416(b)(3)–1, 48.6416(b)(3)–2, and 48.6416(b)(3)–3 are added immediately after 48.6416(b)(2)–4.

§ 48.6416(b)(3)–1 Tax-paid articles used for further manufacture and causing overpayments of tax.

In the case of any payment of tax under chapter 32 that is determined to be an overpayment under section 6416(b)(3) and § 48.6416(b)(3)–2 by reason of the sale of an article (other than coal taxable under section 4121), directly or indirectly, by the manufacturer of the article to a subsequent manufacturer who uses the article in further manufacture of a second article or who sells the article with, or as a part of, the second article manufactured or produced by the subsequent manufacturer, the subsequent manufacturer may file claim for refund of the overpayment or may claim credit for the overpayment on any return of tax under this subpart subsequently filed. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund, see § 301.6402–2 of this chapter (Regulations on Procedure and Administration) and §§ 48.6416(a)–3 and 48.6416(b)(3)–3. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(d) and § 48.6416(f)–1.

§ 48.6416(b)(3)–2 Further manufacture included.

(a) *In general.* The payment of tax imposed by chapter 32 on the sale of any article (other than coal taxable under

section 4121) by a manufacturer of the article will be considered to be an overpayment by reason of any use in further manufacture, or sale as part of a second manufactured article, described in any one of paragraphs (b) through (f) of this section. This section applies in those cases where the exportation, use, or sale (or any combination of those activities) referred to in any one or more of those paragraphs occurs before any other use. For provisions relating to overpayments arising by reason of resales of tax-paid articles for use in further manufacture as provided in this section, see section 6416(b)(2)(E) and paragraph (f) of § 48.6416(b)(2)-2.

(b) *Use of tax-paid articles in further manufacture described in section 6416(b)(3)(A).* A payment of tax under chapter 32 on the sale of any article (other than coal taxable under section 4121), directly or indirectly, by the manufacturer of the article to a subsequent manufacturer will be considered to be an overpayment under section 6416(b)(3)(A) if the article is used by the subsequent manufacturer as material in the manufacture or production of, or as a component part of, a second article manufactured or produced by the subsequent manufacturer which is—

(1) Taxable under chapter 32, or

(2) An automobile bus chassis or an automobile bus body.

For this purpose it is immaterial whether the second article is sold or otherwise disposed of, or if sold, whether the sale is a taxable sale. Any article to which this paragraph (b) applies which would have been used in the manufacture or production of a second article, except for the fact that it was broken or rendered useless in the process of manufacturing or producing the second article, will be considered to have been used as a component part of the second article. This paragraph (b) does not apply to articles sold and used as provided in any of paragraphs (c) through (f) of this section.

(c) *Use of truck, bus, etc., parts or accessories.* A payment of tax under section 4061 (b) on the sale prior to January 7, 1983, of any truck, bus, etc., part or accessory, directly or indirectly, by the manufacturer of the article to a subsequent manufacturer will be considered to be an overpayment under section 6416(b)(3)(B) if the part or accessory is used by the subsequent manufacturer as material in the manufacture or production of, or as a component part of, a second article manufactured or produced by the subsequent manufacturer. For this purpose it is immaterial whether the second article is or is not taxable under chapter 32. Any article to which this paragraph (c) applies which would have been used in the manufacture or production of a second article, except for the fact that it was broken or rendered useless in the process of manufacturing or producing the second article, will be considered to have been used as a component part of the second article.

(d) *Tax-paid tires or inner tubes used in further manufacture.* (1) A payment of tax under section 4071 on the sale prior to January 1, 1984, of a tire or inner tube, directly or indirectly, by the manufacturer of the article to a subsequent manufacturer will be considered to be an overpayment under section 6416(b)(3)(C) if the subsequent manufacturer sells the tire or inner tube on or in connection with, or with the sale of, any other article manufactured or produced by the subsequent manufacturer and if the other article is—

(i) An automobile bus chassis or automobile bus body, or

(ii) By any person (A) exported to a foreign country or to a possession of the United States, (B) sold to a State, any political subdivision thereof, or the District of Columbia for the exclusive use of a State, any political subdivision thereof, or the District of Columbia, (C) sold to a nonprofit educational organization for its exclusive use, or (D) used or sold for use as supplies to vessels or aircraft.

For tax-paid tires used in further manufacture after December 31, 1983, see section 6416(b)(3)(A) and the regulations thereunder.

(2) The overpayment in this paragraph (d) is to be distinguished from that overpayment described in section 6416(b)(2)(E) and § 48.6416(b)(2)-2(f) in that this overpayment arises from the "use" described in this paragraph, whereas the overpayment under section 6416(b)(2)(E) arises from the "resale" of tax-paid tires or inner tubes by any person to a subsequent manufacturer who disposes of the articles on or in connection with, or with the sale of, a second article manufactured or produced by the subsequent manufacturer which is disposed of on the basis of one of the exemptions set forth in section 6416(b)(3)(C).

(3) If the second article is exported or shipped as provided in this paragraph (d), it is immaterial whether the subsequent manufacturer sold the article with the knowledge that it would be exported or shipped.

(4) An overpayment arises under paragraph (d)(1) of this section only if the tire or inner tube constitutes a part of, or is associated with, the second article at the time the second article is exported, shipped, sold, used, or sold for use, as prescribed in this paragraph.

(5) For definition of certain terms used in this paragraph, see section 4221 and the regulations thereunder.

(6) For provisions relating to overpayments arising by reason of tires or inner tubes sold tax-paid by the manufacturer of the same, on or in connection with, or with the sale of, any article manufactured or produced by that manufacturer and exported, sold, or used or sold for use, as provided in this paragraph (d), see section 6416(b)(4) and § 48.6416(b)(4)-1.

(7) For provisions relating to credit allowable in respect of tires and inner tubes sold on or in connection with, or with the sale of, another article taxable under chapter 32, prior to January 1, 1984, see section 6416(c) and § 48.6416(c)-1.

(8) If a second article referred to in paragraph (d)(1) of this section is sold for a use described in that paragraph and is not so used, this paragraph (d) is in all respects inapplicable.

(e) *Use of bicycle tires or tubes in further manufacture.* A payment of tax under section 4071 on the sale, prior to January 1, 1984, of a bicycle or tricycle tire or inner tube, directly or indirectly, by the manufacturer of the same to a subsequent manufacturer will be considered to be an overpayment under section 6416(b)(3)(E) if the tire or tube is used by the subsequent manufacturer as material in the manufacture or production of, or as a component part of, a bicycle or tricycle manufactured or produced by the subsequent manufacturer which is not a rebuilt or reconditioned bicycle or tricycle. For definition of the term "bicycle tire", see section 4221(e)(4)(B) and the regulations thereunder.

(f) *Use of gasoline in further manufacture.* A payment of tax under section 4081 on the sale of gasoline, directly or indirectly, by the manufacturer of the same to a subsequent manufacturer will be considered an overpayment under section 6416(b)(3)(B) if the gasoline is used for nonfuel purposes by the subsequent manufacturer as a material in the manufacture or production of any other article manufactured or produced by the subsequent manufacturer. For this purpose it is immaterial whether the other article is or is not taxable under chapter 32. For provisions relating to the use of gasoline for nonfuel purposes, see section 4221 and the regulations thereunder.

§ 48.6416(b)(3)–3 Supporting evidence required in case of tax-paid articles used for further manufacture.

(a) *Evidence to be submitted by claimant.* No claim for credit or refund of an overpayment, within the meaning of section 6416(b)(3) and § 48.6416(b)(3)–2 shall be allowed unless the subsequent manufacturer submits with the claim the evidence required by § 48.6416(a)–3 and a statement, supported by sufficient available evidence—

(1) Showing the amount claimed in respect of each category of exportations, uses, or sales on which the claim is based and which give rise to a right of credit or refund under section 6416(b)(3) and § 48.6416(b)(3)–1,

(2) Showing the name and address of the manufacturer, producer, or importer of the article in respect of which credit or refund is claimed,

(3) Identifying the article, both as to nature and quantity, in respect of which credit or refund is claimed,

(4) Showing the amount of tax paid in respect of the article by the manufacturer or producer of the article and the date of payment,

(5) Indicating that the article was used by the claimant as material in the manufacture or production of, or as a component part of, a second article manufactured or produced by the manufacturer or was sold on or in connection with, or with the sale of, a second article manufactured or produced by the manufacturer,

(6) Identifying the second article, both as to nature and quantity, and

(7) In the case of an overpayment determined under section 6416(b)(3)(C) as it existed prior to January 1, 1984, and paragraph (d)(1) of § 48.6416(b)(3)–2 in respect of a tire or inner tube taxable under section 4071, indicating that the manufacturer has evidence available (as set forth in paragraph (b) of this section) that the second article is an automobile bus chassis or automobile bus body, or has been exported, used, or sold as provided in section 6416(b)(3)(C)(ii) and § 48.6416(b)(3)–2(d)(1)(ii).

(b) *Evidence required to be in possession of claimant.*—(1) *In general.*—The evidence required to be retained by the person claiming credit or refund, as provided in paragraph (a)(7) of this section, must, in the case of an exportation of the second article, consist of proof of exportation of the second article in the form prescribed in the regulations under section 4221, or must, in other cases (except when the second article is an automobile bus chassis or automobile bus body), consist of a certificate, executed and signed by the ultimate purchaser of the second article, in the form prescribed in paragraph (b)(2) of this section. However, if the second article has passed through a chain of sales from the manufacturer of the second article to the ultimate purchaser of the second article, the evidence may consist of a certificate, executed and signed by the ultimate vendor of the second article, in the form provided in paragraph (b)(3) of this section, rather than the proof of exportation itself of the second article or the certificate of the ultimate purchaser of the second article.

(2) *Certificate of ultimate purchaser of second article.* The certificate executed and signed by the ultimate purchaser of the second article must contain the same information as that required in paragraph (b)(1)(ii) of § 48.6416(b)(2)–3, except that the information must be furnished in respect of the second article, rather than the article to which the claim relates.

(3) *Certificate of ultimate vendor of second article.* Any certificate executed and signed by an ultimate vendor as evidence to be retained by the person claiming credit or refund must be executed in the same form and manner as that provided in paragraph (b)(2)(iii) and § 48.6416(b)(2)–3.

(4) *Repayment or consent of ultimate vendor.* If the person claiming credit or refund of an overpayment to which this section applies has repaid, or agreed to repay, the amount of the overpayment to the ultimate vendor or if the ultimate vendor consents to the allowance of the credit or refund, a statement to that effect, signed by the ultimate vendor, must be shown on, or made a part of, the evidence required to be retained by the person claiming the credit or refund. In this regard, see § 48.6416(a)–3(b)(2).

Par. 26. Section 48.6416(b)–4 is removed and the following new § 48.6416(b)(4)–1 is added immediately after § 48.6416(b)(3)–3.

§ 48.6416(b)(4)–1 Tax-paid tires or inner tubes used for further manufacture.

(a) *In general.* In the case of any payment of tax under section 4071 on the sale of tires or prior to January 1, 1984, inner tubes that is determined to be an overpayment under section 6416(b)(4) and paragraph (b) of this section by reason of any exportation, use, or sale described in paragraph (b) of this section, the person who paid the tax may file a claim for refund of the overpayment or may claim a credit for the overpayment on any return of tax under this subpart subsequently filed. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund under this section, see § 301.6402–2 of this chapter (Regulations on Procedure and Administrations) and paragraph (c) of this section. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(d) and § 48.6416(f)–1.

(b) *Conditions causing overpayment.* (1) The payment of tax under section 4071 on the sale of a tire or inner tube by the manufacturer of the article will be considered to be an overpayment under section 6416(b)(4) if the tire or inner tube is sold by that manufacturer on or in connection with, or with the sale of, any other article manufactured or produced by that manufacturer and such other article—

(i) Is an automobile bus chassis or an automobile bus body, or

(ii) Is by any person (A) exported to a foreign country or shipped to a possession of the United States, (B) sold to a State, any political subdivision thereof, or the District of Columbia for the exclusive use of a State, any political subdivision thereof, or the District of Columbia, (C) sold to a nonprofit educational organization for its exclusive use, or (D) used or sold for use as supplies for vessels or aircraft.

(2) If the second article is exported or shipped as provided in this paragraph (b), it is immaterial whether the manufacturer sold the article with the knowledge that it would be exported or shipped.

(3) An overpayment arises under paragraph (b)(1) of this section only if the tire or inner tube constitutes a part of, or is associated with, the second article at the time the second article is exported, shipped, sold, used, or sold for use, as prescribed in this paragraph.

(4) Paragraph (b)(1) of this section applies only in those cases where the exportation, use, or sale (or any combination thereof) occurs before any other use.

(5) For definition of certain terms used in this paragraph (b), see section 4221 and the regulations thereunder.

(6) For provisions relating to overpayments arising by reason of the tax-paid sale of tires or inner tubes by the manufacturer of the same and their resale by any person to another manufacturer for use as provided in this paragraph, see section 6416(b)(2)(E) and § 48.6416(b)(2)–2(f).

(7) For provisions relating to overpayments arising by reason of the tax-paid sale of tires or inner tubes, directly or indirectly, by the manufacturer of the same, to a subsequent manufacturer who uses them as provided in this paragraph (b), see section 6416(b)(3)(C) as it existed prior to January 1, 1984, and section 6416

(b)(3) as amended by the Highway Revenue Act of 1982 and § 48.6416(b)(3)–2(d).

(8) For provisions relating to the credit allowable in respect of tires or inner tubes sold on or in connection with, or with the sale of, another article taxable under chapter 32, see section 6416(c) as it existed prior to January 1, 1984, and § 48.6416(c)–1.

(9) If a second article referred to in paragraph (b)(1)(ii) of this section is sold for a use described in that paragraph and is not so used, this paragraph (b) is in all respects inapplicable.

(c) *Evidence to be submitted by claimant.* (1) No claim for credit or refund of an overpayment prior to January 1, 1984, within the meaning of section 6416(b)(4) and paragraph (b) of this section, shall be allowed unless the person who paid the tax submits with the claim the evidence required by § 48.6416(a)–3(b)(2) and a statement, supported by sufficient available evidence—

(i) Showing the amount claimed in respect of each category of exportations, uses, or sales on which the claim is based and which give rise to a right of credit or refund under section 6416(b)(4) and paragraph (a) of this section,

(ii) Indicating that the person claiming the credit or refund is the manufacturer of the articles in respect of which credit or refund is claimed,

(iii) Identifying the article, both as to nature and quantity, in respect of which credit or refund is claimed,

(iv) Showing the amount of tax paid in respect of the article and the date of payment of the tax,

(v) Indicating that the person claiming the credit or refund sold the article on or in connection with, or with the sale of, or used the article as a component part of, a second article manufactured or produced by that person,

(vi) Identifying the second article, both as to nature and quantity, and

(vii) Indicating that the person claiming the credit or refund has evidence available (as set forth in paragraph (b) of this section) that the second article is an automobile bus chassis or body, or has been exported, used, or sold as provided in section 6416(b)(4)(B)(ii) and paragraph (b)(1)(ii) of this section.

(2) No claim for credit or refund of an overpayment after December 31, 1983, within the meaning of section 6416 (b)(4) and paragraph (b) of this section shall be allowed unless the person who paid the tax submits with the claim a statement supported by the evidence listed in paragraph (c)(1)(i) through (vii) of this section.

(d) *Evidence required to be in possession of claimant.*—(1) *In general.*—The evidence required to be retained by the person claiming credit or refund, as provided in paragraph (c)(1)(vii) of this section, must, in the case of an exportation of the second article, consist of proof of exportation of the second article in the form prescribed in the regulations under section 4221 or must, in other cases (except when the second article is an automobile bus chassis or automobile body) consist of a certificate, executed and signed by the ultimate purchaser of the second article, in the form prescribed in paragraph (d)(2) of this section. However, if the second article has passed through a chain of sales from the manufacturer of the second article to the ultimate purchaser of the second article, the evidence may consist of a certificate, executed and signed by the ultimate vendor of the second article, in the form prescribed in paragraph (d)(3) of this section, rather than the proof of exportation itself of the second article or the certificate of the ultimate purchaser of the second article.

(2) *Certificate of ultimate purchaser of second article.* The certificate executed and signed by the ultimate purchaser of the second article must contain the same information as that required in paragraph (b)(1)(ii) of § 48.6416(b)(2)–3, except that the information shall be furnished in respect of the second article, rather than the article to which the claim relates.

(3) *Certificate of ultimate vendor of second article.* Any certificate executed and signed by an ultimate vendor as evidence to be retained by the person claiming credit or refund must be executed in the same form and manner as that provided in paragraph (b)(2)(iii) of § 48.6416(b)(2)–3.

(4) *Repayment or consent of ultimate vendor.* If the person claiming credit or refund of an overpayment to which this section applies, has repaid, or agreed to repay, the amount of the overpayment to the ultimate vendor or if the ultimate vendor consents to the allowance of the refund or credit, a statement to the effect, signed by the ultimate vendor, must be shown on, or made a part of, the evidence required to be retained by the person claiming refund or credit. In this regard, see § 48.6413(a)–3(b)(2).

Par. 27. Section 48.6416(b)–5 is removed and the following new § 48.6416(b)(5)–1 is added immediately after § 48.6416(b)(4)–1.

§ 48.6416(b)(5)–1 Return of installment accounts causing overpayments of tax.

(a) *In general.* In the case of any payment of tax under section 4216(d)(1) in respect of the sale of any installment account that is determined to be an overpayment under section 6416(b)(5) and paragraph (b) of this section upon return of the installment account, the person who paid the tax may file a claim for refund of the overpayment or may claim credit for the overpayment on any return of tax under this subpart which that person subsequently files. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund under this section, see § 301.6402–2 of this chapter (Regulations on Procedure and Administration) and paragraph (c) of this section. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(d) and § 48.6416(f)–1.

(b) *Overpayment of tax allocable to repaid consideration.* The payment of tax imposed by section 4216(d)(1) on the sale of an installment account by the manufacturer will be considered to be an overpayment under section 6416(b)(5) to the extent of the tax allocable to any consideration repaid or credited to the purchaser of the installment account upon the return of the account to the manufacturer pursuant to the agreement under which the account originally was sold, if the readjustment of the consideration occurs pursuant to the provisions of the agreement. The tax allocable to the repaid or credited consideration is the amount which bears the same ratio to the total tax paid under section 4216(d)(1) with respect to the installment account as the amount of consideration repaid or credited to the purchaser bears to the total consideration for which the account was sold. This paragraph (b) does not apply where an installment account is originally sold pursuant to the order of, or subject to the approval of, a court of competent jurisdiction in a bankruptcy or insolvency proceeding.

(c) *Evidence to be submitted by claimant.* No claim for credit of refund of an overpayment within the meaning of section 6416(b)(5) and paragraph (b) of this section, of tax under section 4216(d)(1) shall be allowed unless the person who paid the tax submits with the claim a statement supported by sufficient available evidence, indicating—

(1) The name and address of the person to whom the installment account was sold,

(2) The amount of tax due under section 4216(d)(1) by reason of the sale of the installment account, the amount of the tax paid under section 4216(d)(1)

with respect to the sale, and the date of payment.

(3) The amount for which the installment account was sold,

(4) The amount which was repaid or credited to the purchaser of the account by reason of the return of the account to the person claiming the credit or refund, and

(5)(i) The fact that the amount repaid or credited to the purchaser of the account was so repaid or credited pursuant to the agreement under which the account was sold, and

(ii) The fact that the account was returned to the manufacturer pursuant to that agreement.

Par. 28. Section 48.6416(c)–1 is revised to read as follows:

§ 48.6416(c)–1 Credit for tax paid on tires or, prior to January 1, 1984, inner tubes.

(a) *Allowance of credit against tax on sale of taxable article.* If tax has been paid under section 4071 on the sale, or under section 4218 on the use, of a tire or inner tube, and the manufacturer of a another article taxable under chapter 32 sells the tire or inner tube on or in connection with the sale of that other article, a credit in respect of the tire or inner tube is allowable under section 6416(c) against the tax imposed on the sale of that other article. The amount of the credit is to be determined as provided in paragraph (b) or (c) of this section.

(b) *Tires or tubes purchased by manufacturer of the other article.* If the manufacturer of the other article purchased the tire or inner tube tax-paid, the amount of the credit shall be determined by applying to the purchase price of the tire or inner tube the percentage rate of tax applicable to the sale of the other article. For this purpose, the purchase price shall be determined by including any tax passed on to the manufacturer and, in the case of a tire, by excluding any part of the price attributable to the metal rim or rim base. For example, if the selling price of an automobile truck is $24,000, tax equivalent to 10 percent of the price (*i.e.*, $2,400) is imposed under section 4061(a) on the sale (before April 1, 1983) of the automobile truck. If the tires or inner tubes sold on or in connection with the automobile truck are purchased by the manufacturer of the automobile truck for $1,500 (computed as provided in this paragraph) a credit of $150 (10 percent of $1,500) is allowable against the tax imposed on the sale of the automobile truck.

(c) *Tires or tubes manufactured by manufacturer or other articles.* If the manufacturer of the other article is also a manufacturer of the tire or inner tube and incurs tax liability under section 4218 on the use by that manufacturer of the tire or inner tube, the amount of the credit shall be determined by applying to the fair market price of the tire or inner tube, the percentage rate of tax applicable to the sale of the other article. For this purpose, the fair market price of the tire or inner tube shall be the price at which the same or similar tires or inner tubes are sold by manufacturers of tires or inner tubes in the ordinary course of trade, as determined by the Commissioner, and by excluding, in the case of a tire, any part of the price attributable to the metal rim or rim base. The determination of the Commissioner shall be made in the same manner as determinations made under section 4218.

(d) *Other applicable rules.* (1) For purposes of this section, the term "manufacturer" includes the original manufacturer of the other article and any succeeding purchaser of the article who further manufactures the article so as to become liable as a manufacturer of an article taxable under chapter 32. Therefore, the credit provided by section 6416(c) and this section is available both to the original manufacturer of the other article and also to every succeeding purchaser of that article who sells that article on or in connection with, or with the sale of, another article taxable under chapter 32.

(2) No interest shall be paid on any credit allowed under this section.

(3) If credit is not claimed under this section against the tax applicable to the sale of the other article, the manufacturer of the other article may claim refund of an amount equivalent to the credit or may claim credit on any return of tax under this subpart subsequently filed.

Par. 29. Section 48.6416(e)–1 is revised to read as follows.

§ 48.6416(e)–1 Refund to exporter or shipper.

(a) *In general.* Any payment of tax imposed by sections 4041, 4051 or chapter 32 that is determined to be an overpayment within the meaning of section 6416(b)(2) (A) or (E), section 6416(b)(3)(C) (prior to January 7, 1983), or section 6416(b)(4), and the regulations thereunder, by reason of the exportation of any article may be refunded to the exporter or shipper of the article pursuant to section 6416(c) of this section, if—

(1) The exporter or shipper files a claim for refund of the overpayment, and

(2) The person who paid the tax waives the right to claim credit or refund of the tax.

No interest shall be paid on any refund allowed under this section. For provisions relating to the evidence required in support of a claim under this paragraph (a), see § 301.6402 of this chapter (Regulations on Procedure and Administration) and paragraph (b) of this section.

(b) *Supporting evidence required.* No claim for refund of any overpayment of tax to which this section applies shall be allowed unless the exporter or shipper submits with that claim proof of exportation in the form prescribed by the regulations under section 4221, and a statement, signed by the person who paid the tax, showing—

(1) That the person who paid the tax waives the right to claim credit or refund of the tax,

(2) In the case of an overpayment determined under section 6416(b)(2)(A) and paragraph (b) of § 48.6416(b)(2)–2 in respect of a truck, bus, tractor, etc., taxable under section 4061(a), that, pursuant to section 6416(g), the person who paid the tax possessed at the time that person shipped the article or at the time title to the article passed to that perons's vendee, whichever is earlier, evidence that the article was to be exported to a foreign country or shipped to a possession of the United States,

(3) The amount of tax paid on the sale of the article and the date of payment, and

(4) The internal revenue service office to which the tax was paid.

Par. 30. Section 48.6416(f)–1 is revised to read as follows:

§ 48.6416(f)–1 Credit on returns.

Any person entitled to claim refund of any overpayment of tax imposed by section 4041, 4042, 4051 or chapter 32 may, in lieu of claiming refund of the overpayment, claim credit for the overpayment on any return of tax under this subpart subsequently filed. Any such credit claimed on a return must be supported by the evidence prescribed in the applicable regulations in this subpart and § 301.6402 of this chapter (Regulations on Procedure and Administration).

Par. 31. Section 48.6416(g)–1 is revised to read as follows:

§ 48.6416(g)–1 Intent to export trucks, buses, tractors, etc.

In the case of any payment of tax imposed by section 4061(a) in respect of the sale prior to April 1, 1983, of a truck, bus, tractor, etc., an overpayment of tax will not be considered to arise by reason of an exportation described in section 6416(b)(2)(A) and paragraph (b) of § 48.6416(b)(2)–2 unless the

manufacturer of the article possessed at the time the article was shipped or at the time title to the article passed to that manufacturer's vendee, whichever is earlier, evidence that the article was to be exported to a foreign country or shipped to a possession of the United States.

Par. 32. Section 48.6416(h)–1 is revised to read as follows:

§ 48.6416(h)–1 Accounting procedures for like articles.

(a) *Identification of manufacturer.* In applying section 6416 and the regulations thereunder, a person who has purchased like articles from various manufacturers may determine the particular manufacturer from whom that person purchased any one of those articles by a first-in-first-out (FIFO) method, by a last-in-first-out (LIFO) method, or by any other consistent method approved by the district director. For the first year for which a person makes a determination under this section, the person may adopt any one of the following methods without securing prior approval by the district director.

(1) FIFO method.

(2) LIFO method.

(3) Any method by which the actual manufacturer of the article is in fact identified.

Any other method of determining the manufacturer of a particular article must be approved by the district director before its adoption. After any method for identifying the manufacturer has been properly adopted, it may not be changed without first securing the consent of the district director.

(b) *Determining amount of tax paid.* In applying section 6416 and the regulations thereunder, if the identity of the manufacturer of any article has been determined by a person pursuant to a method prescribed in paragraph (a) of this section, that manufacturer of the article must determine the tax paid under chapter 32 with respect to that article consistently with the method used in identifying the manufacturer.

Par. 33. Sections 48.6420(a)–1, 48.6420(b)–1, 48.6420(c)–1, 48.6420(d)–1, 48.6420(e)–1, 48.6420(f)–1, 48.6420(g)–1, 48.6420(h)–1, and 140.6420–1 are removed. The following new §§ 48.6420–1, 48.6420–2, 48.6420–3, 48.6420–4, 48.6420–5, 48.6420–6, and 48.6420–7 are added immediately after § 48.6416(h)–1.

§ 48.6420–1 Credits or payments to ultimate purchaser of gasoline used on a farm.

(a) *In general.* If gasoline is used on a farm for farming purposes after June 30, 1965, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect of the gasoline shall be allowed or made to the ultimate purchaser of the gasoline in an amount determined by multiplying (1) the number of gallons of gasoline so used by (2) the rate of tax on gasoline under section 4081 that applied on the date the gasoline was purchased by the ultimate purchaser. No interest shall be paid on any payment, allowed under paragraph (c) of this section. However, interest may be paid on any overpayment (as defined by section 6401) arising from a credit allowed under paragraph (b) of this section. See section 34(a), relating to credit for certain uses of gasoline and special fuels, and lubricating oil used prior to January 7, 1983). See § 48.6420–2 for the time within which a claim for credit or payment must be made. See section 4081 and the regulations thereunder for the rates of tax on gasoline. See § 48.6420–2 for meaning of the terms "Used on a farm for farming purposes," "farm," "gasoline," "ultimate purchaser," and "taxable year."

(b) *Allowance of income tax credit in lieu of payment.* With respect to persons subject to income tax, repayment of the tax paid under section 4081 on gasoline used on a farm for farming purposes may be obtained only by claiming a credit for the amount of this tax against the income tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6420 with respect to gasoline used during the taxable year on a farm for farming purposes if section 6420(g)(1) and paragraph (c) of this section did not apply. See section 34(a)(1).

(c) *Allowance of payment.* Payments in respect of gasoline upon which tax was paid under section 4081 that is used on a farm for farming purposes shall be made only to—

(1) The United States or agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions of a State, or the District of Columbia, or

(2) An organization which is exempt from tax under section 501(a) and is not required to made a return of the income tax imposed under subtitle A for its taxable year.

(d) *Use of gasoline.* (1) The credit or payment described in paragraph (a) of this section is allowable only in respect of gasoline used on a farm in the United States for farming purposes. The credit or payment is not allowable with respect to gasoline used for nonfarming purposes, or gasoline used off a farm, regardless of the nature of the use. If a vehicle or other equipment is used both on a farm and off the farm, or if it is used on a farm both for farming and nonfarming purposes, the credit or payment is allowable only with respect to that portion of the gasoline which was "used on a farm for farming purposes" as defined in paragraph (a) of § 48.6420–4. In determining if this requirement is met, neither the type of equipment or vehicle used nor its registration for highway use is material. However, the actual use of the equipment or vehicle and the place where it is used are material. For example, if a truck used on a farm for farming purposes is also used on the highways, gasoline used in connection with operating the truck on the highways is not taken into account in computing the credit or payment.

(2) For purposes of determining the allowable credit or payment in respect of gasoline used on a farm for farming purposes, gasoline on hand shall be considered used in the order in which it was purchased. Thus, if the owner, tenant, or operator of a farm has on hand gasoline acquired in two purchases made at different times and subject to different rates of tax, in determining credit or payment for gasoline used on a farm for farming purposes, it will be assumed that the gasoline purchased first was the first gasoline used, and the rate applicable to that purchase will apply in determining the credit or payment, until all that gasoline is accounted for.

§ 48.6420–2 Time for filing claim for credit or payment.

(a) *In general.* A claim for credit or payment described in § 48.6420–1 with respect to gasoline used after June 30, 1965, on a farm for farming purposes, shall cover only gasoline used during the taxable year on a farm for farming purposes. Therefore, gasoline on hand at the end of a taxable year as, for example, in fuel supply tanks of farm machinery or in storage tanks or drums, must be excluded from a claim filed for that taxable year (but may be included in a claim filed for a later taxable year if used during that later year on a farm for farming purposes). Gasoline used during a taxable year may be covered by a claim filed for that taxable year although the gasoline was not paid for at the time the claim is filed. For purposes of applying this section, a governmental unit or exempt organization described in § 48.6420–1 (c) is considered to have as its taxable year, the calendar year or fiscal year on the basis of which it

regularly keeps its books; see paragraph (h) of this section.

(b) *Time for filing.* (1) A claim for credit with respect to gasoline used on a farm for farming purposes shall not be allowed unless it is filed no later than the time prescribed by section 6511 and the regulations thereunder for filing a claim for credit or refund of income tax for the particular taxable year.

(2) A claim for payment of a governmental unit or exempt organization described in § 48.6420–1(c) must be filed no later than 3 years following the close of its taxable year. (See paragraph (h) of this section.)

(3) See § 301.7502–1 of this chapter (Regulations on Procedure and Administration) for provisions treating timely mailing as timely filing and § 301.7502–1 of this chapter for time for performance of an act where the last day falls on Saturday, Sunday, or a legal holiday.

(c) *Limit of one claim per taxable year.* Not more than one claim may be filed under section 6420 by any person with respect to gasoline used during the same taxable year.

(d) *Form and content of claim.*—(1) *Claim for credit.* (i) The claim for credit with respect to gasoline used on a farm for farming purposes must be made by attaching a Form 4136 to the income tax return of an individual or a corporation. Form 4136 must be executed in accordance with the instructions prescribed for the preparation of the form. A partnership may not file Form 4136. When a partnership files Form 1065, U.S. Partnership Return of Income, it must include a statement showing how many gallons of gasoline are allocated to each partner and the use made of the gasoline.

(ii) If an individual dies during the taxable year, the claim for credit may be made only for that portion of the individual's taxable year ending with the date of death. If a sole proprietorship, a partnership or corporation is terminated or liquidated during the taxable year, the claim for credit may be made only for the portion of its year ending with the date of the termination or liquidation.

(2) *Claim for payment.* The claim for payment with respect to gasoline used on a farm for farming purposes by a governmental unit or exempt organization described in § 48.6420–1(c) must be made on Form 843 in accordance with the instructions prescribed for the preparation of the form. The claim by such a unit or organization must be filed with the service center for the internal revenue region in which the principal place of business or principal office of the claimant is located.

§ 48.6420–3 Exempt sales; other payments or refunds available.

(a) *Exempt sales.* Credits or payments are allowable only for gasoline that was sold by the producer or importer in a transaction that was subject to tax under section 4081. No credit or payment shall be allowed or made under § 48.6420–1 with respect to gasoline which was exempt from the tax imposed by section 4081. For example, a State or local government may not file a claim with respect to any gasoline which it purchased tax free from the producer, even though the State or local government used the gasoline on a farm for farming purposes. Similarly, payment may not be made with respect to gasoline purchased by a State tax free for its exclusive use, as provided in section 4221, which is used on a State prison farm for farming purposes.

(b) *Other payments or refunds available.* Any amount which, without regard to the second sentence of section 6420(d) and this paragraph (b), would be allowable as a credit or payable to any person under § 48.6420–1 with respect to any gasoline is reduced by any other amount which is allowable as a credit or payable under section 6420, or is refundable under any other provision of the Code, to any person with respect to the same gasoline. Thus, a person who is the ultimate purchaser of gasoline may not file a claim for credit or payment with respect to that gasoline if another person is entitled to claim a payment, credit, or refund with respect to the same gasoline. For example, a State or local government may not file a claim for payment if it has executed, or intends to execute, a written consent to enable the producer to claim a credit or refund for the tax that was paid. See, for example, §§ 48.6416(a)–3(b)(2), 48.6416(b)(2)–2(d), and 48.6416(b)(2)–3(b)(1).

§ 48.6420–4 Meaning of terms.

For purposes of the regulations under section 6420, unless otherwise expressly indicated—

(a) *Used on a farm for farming purposes.* The term "used on a farm for farming purposes" applies only to gasoline which is used (1) in carrying on a trade or business of farming, (2) on a farm in the United States, and (3) for farming purposes. Gasoline used in an aircraft will qualify if its use otherwise satisfies these requirements. For the meaning of the term "trade or business of farming," see paragraph (b) of this section. For the definition of the term "farm," see paragraph (c) of this section. For the definition of the term "farming purposes," see paragraphs (d) through (g) of this section. The term "United States" has the meaning assigned to it by section 7701(a)(9).

(b) *Trade or business of farming.* A person will be considered to be engaged in the trade or business of farming if the person cultivates, operates, or manages a farm for gain or profit, either as an owner or a tenant. A person engaged in forestry or the growing of timber is not thereby engaged in the trade or business of farming. A person who operates a garden plot, orchard, or farm for the primary purpose of growing produce for the person's own use is not considered to be engaged in the trade or business of farming. Generally, the operation of a farm does not constitute the carrying on of a trade or business if the farm is occupied by a person primarily for residential purposes or is used primarily for pleasure, such as for the entertainment of guests or as a hobby.

(c) *Farm.* The term "farm" is used in its ordinary and accepted sense, and generally means land used for the production of crops, fruits, or other agricultural products or for the sustenance of livestock or poultry. The term "livestock" includes cattle, hogs, horses, mules, donkeys, sheep, goats, and captive fur-bearing animals. The term "poultry" includes chickens, turkeys, geese, ducks, and pigeons. Thus, a farm includes livestock, dairy, poultry, fish, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, feed yards for fattening cattle, and greenhouses and other similar structures used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures that are used primarily for purposes other than the raising of agricultural or horticultural commodities do not constitute farms, as, for example, structures that are used primarily for the display, storage, fabrication, or sale of wreaths, corsages, and bouquets. A fish farm is an area where fish are grown or raised, as opposed to merely caught or harvested.

(d) *Gasoline used in cultivating, raising, or harvesting.* Gasoline is used for "farming purposes" when it is used on a farm by the owner, tenant, or operator of the farm in connection with cultivating the soil, raising or harvesting any agricultural or horticultural commodity, or raising, shearing, feeding, caring for, training, or managing livestock, poultry, bees, or wildlife. Examples of operations which are considered to be operations for "farming purposes" within the meaning of this

paragraph include plowing, seeding, fertilizing, weed killing, corn or cotton picking, threshing, combining, baling, silo filling, and chopping silage.

(e) *Gasoline used in handling, packing, or storing.* (1) Gasoline is used for "farming purposes" when it is used by the owner, tenant, or operator of the farm in handling, drying, packing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator produced more than one-half of the commodity which was so treated during the taxable year for which claim for credit or payment is filed.

(2) Gasoline used in connection with canning, freezing, packaging, or processing operations will not be considered to be used for farming purposes, even though these operations are performed on a farm. Thus, for example, although gasoline used on a farm in connection with the production or harvesting of maple sap or oleoresin from a living tree is considered to be used for farming purposes under paragraph (d) of this section, gasoline used in the processing of maple sap into maple syrup or maple sugar or used in the processing of oleoresin into gum spirits of turpentine or gum resin is not used for farming purposes, even though these processing operations are conducted on a farm.

(3) Gasoline used in connection with processing operations which change a commodity from its raw or natural state, or operations performed with respect to a commodity after its character has been changed from its raw or natural state by a processing operation, will not be considered to be used for farming purposes. For example, gasoline used for the extraction of juices from fruits or vegetables is used in a processing operation which changes the character of the fruits or vegetables from their raw or natural state and will not be considered to be used for "farming purposes."

(4) The term "commodity," as used in this paragraph (e), refers to a single agricultural or horticultural product. For example, all apples are treated as a single commodity while apples and peaches are treated as two separate commodities. Operations with respect to each commodity are to be considered separately in applying the "one-half" production test described in paragraph (e)(1) of this section.

(f) *Gasoline used in planting, cultivating, or caring for trees.* Gasoline is used "for farming purposes" when it is used by the owner, tenant, or operator of the farm in connection with the planting, cultivating, caring for, or cutting of trees that is incidental to the farming operations of the farm on which it is performed or incidental to the farming operations of the owner, tenant, or operator of the farm, or in connection with the preparation (other than milling) of trees for market that is incidental to these farming operations. These operations include the felling of trees and cutting them into logs or firewood but do not include sawing logs into lumber, chipping, or other milling operations. Operations of the prescribed character will be considered incidental to farming operations only if they are of a minor nature in comparison with the total farming operations involved. Therefore, a tree farmer or timber grower may not claim credit or payment under § 48.6420-1 with respect to gasoline used in connection with the trade or business of tree farming or timber growing.

(g) *Gasoline used in the maintenance of a farm or farm equipment.* Gasoline is used "for farming purposes" when it is used by the owner, tenant, or operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment. The activities included are those which contribute in any way to the conduct of the farm as such, as distinguished from any other enterprise in which the owner, tenant, or operator may be engaged. Examples of included operations are clearing land, repairing fences and farm buildings, building terraces or irrigation ditches, cleaning tools or farm machinery, and painting farm buildings. Since the gasoline must be used by the owner, tenant, or operator of the farm to which the operations relate, gasoline used by an organization which contracts with a farmer to renovate his farm properties is not used for farming purposes. Gasoline used in a gasoline-powered lawn mower for maintaining a lawn is not used for farming purposes.

(h) *Taxable year.* The "taxable year" of a governmental unit or tax-exempt organization described in § 48.6420-1(c) is the calendar or fiscal year on the basis of which it regularly keeps its books. The "taxable year" of persons subject to income tax shall have the meaning as it has under section 7701(a)(23).

(i) *Gasoline.* The term "gasoline" has the same meaning given to this term by section 4082(b) and the regulations thereunder.

(j) *Ultimate purchaser.* The term "ultimate purchaser" includes only a person who is an owner, tenant, or operator of a farm. A person who is an owner, tenant, or operator of a farm is an ultimate purchaser of gasoline only with respect to such gasoline as is purchased by the person and used for farming purposes on a farm of which the person is the owner, tenant, or operator. Thus the owner of a farm who purchases gasoline which is used on the farm by its owner, tenant, or operator for farming purposes is generally the ultimate purchaser of the gasoline. If, however, the cost of gasoline supplied by an owner, tenant, or operator of a farm, is by agreement or other arrangement borne by a second person who is an owner, or operator of the farm, the second person who bore the cost of the gasoline is considered to be the ultimate purchaser of the gasoline.

(k) *Certain farming use by persons other than the owner, tenant or operator.*—(1) *In general.* Except as provided in paragraph (l) of this section, the owner, tenant, or operator of a farm on which gasoline is used by any other person for the purposes described in section 6420(c)(3)(A) and paragraph (d) of this section (relating to gasoline used in cultivating, raising, or harvesting) will be treated, for the purposes of § 48.6420-1 (a), as the ultimate purchaser who used the gasoline on the farm for farming purposes.

(2) *Example.* The rule of paragraph (k)(1) of this section may be illustrated by the following example.

Example. Farmer A hired custom operator B to cultivate the soil on A's farm. B used 200 gallons of gasoline which B had purchased in performing the work on A's farm. In addition, A hired Farmer C to do some plowing on A's farm, using C's own tractor and 50 gallons of gasoline which C had purchased. A is deemed to be the ultimate purchaser and user of the gasoline used on A's farm by B and C, and A is entitled to take a credit in respect of the gasoline. Accordingly, no credit in respect to the gasoline may be taken by either B or C.

(l) *Aerial applicators treated as ultimate purchasers.*—(1) *General rule.* Section 6420(c)(3)(A) provides that only the owner, tenant, or operator of a farm is entitled to be treated as a user and ultimate purchaser. Section 6420(c)(4) provides that, under section 6420(c)(3)(A), an aerial applicator is entitled to be treated as the user and ultimate purchaser of gasoline used by it on a farm for the purposes described in section 6420(c)(3)(A), but only if the owner, tenant, or operator who is otherwise entitled to treatment as the user and ultimate purchaser waives the right to credit or payment. See paragraph (l)(2) of this section.

(2) *Form and manner of waiver.* To waive the right to be treated as user and ultimate purchaser of gasoline which is used on a farm by an aerial applicator, the owner, tenant, or operator of a farm

who is otherwise entitled to treatment as user and ultimate purchaser must execute an irrevocable written agreement (as here described) no later than the date on which the aerial applicator claiming the credit or payment files its return for the taxable year in which the gasoline is used. The agreement must identify the period for which the owner, tenant, or operator waives the right to credit or payment. The effective period of the waiver cannot extend beyond the last day of the taxable year of the owner, tenant, or operator of the farm on which the gasoline was used. If the owner, tenant, or operator's taxable year extends beyond the taxable year of the applicator, the applicator can only claim a credit or payment for periods included in the applicator's taxable year. Periods after the last day of the applicator's taxable year which are included under the agreement must be claimed on the applicator's return for the next succeeding taxable year. The waiver may be in the form shown under paragraph (l)(6) of this section or in any other form that meets the requirements of this paragraph and clearly states that the owner, tenant, or operator of the farm knowingly waives the right to receive the credit or payment.

(3) *Agreement included on aerial applicator's invoice.* The agreement waiving a right to receive a credit or payment under section 6420 may be a separate document or may appear on the invoice for aerial application services or other unrelated document from the aerial applicator to the owner, tenant, or operator of the farm. If the waiver agreement appears on an invoice or other unrelated document, however, it must be printed in a section of the invoice or other document clearly set off from all other material contained in the invoice or other document, and it must be printed in type sufficiently large to put the owner, tenant, or operator of the farm on notice that the person has waived the right to receive a credit or payment under section 6420. Additionally, if the waiver agreement appears as part of any invoice or other unrelated document, it must be executed separately from any other item included in the invoice or other document which requires the owner, tenant, or operator's signature.

(4) *Copies of agreement waiving right to credit or payment.* No copies of any agreement waiving a right to credits or payments under section 6420 are to be submitted to the Internal Revenue Service unless a request is made by the Service to the taxpayer for the waivers. Aerial applicators must, however, retain copies of all waivers, and a copy of each waiver must be supplied by the aerial applicator to the owner, tenant, or operator of the farm who waives the right to receive a credit or payment. See regulations § 48.6420–6 for general requirements for records to be kept.

(5) *Waiver on behalf of owner, tenant, or operator of farm.* An agent of the owner, tenant, or operator of a farm who is expressly authorized to act on behalf of and to bind the owner, tenant, or operator may waive that person's rights to a credit or payment under section 6420 by signing the waiver on the person's behalf.

(6) *Sample form of agreement.* While no specific form is required for an effective waiver, an acceptable form waiving the right to receive a credit or payment under section 6420 follows:

I hereby waive my right as owner/tenant/operator of a farm located at (address) to receive credit or payment from the United States for gasoline used by (aerial applicator) on the farm in connection with cultivating the soil, or the raising or harvesting of any agricultural or horticultural commodity. This waiver applies to gasoline used during the period , both dates inclusive. I understand that by signing this waiver, I give up my right to claim any credit or payment for gasoline used by the aerial applicator during the period indicated, and I acknowledge that I have not previously claimed any credit for that gasoline.

(Signature of Owner/Tenant/Operator)

§ 48.6420–5 Applicable laws.

(a) *Penalties, excessive claims, etc.* All provisions of law, including penalties, applicable in respect of the tax imposed by section 4081 shall, to the extent applicable and consistent with section 6420, apply in respect of the payments provided for in section 6420 to the same extent as if these payments were refunds of overpayments of the tax imposed on the sale of gasoline under section 4081. For special rules applicable to the assessment and collection of amounts constituting excessive payments under section 6420, see section 6206 and the regulations thereunder. For the civil penalty assessable in the case of excessive claims under section 6420, see section 6675 and the regulations thereunder. For the treatment as an overpayment of an amount allowable as an excessive credit under section 39 with respect to amounts payable under section 6420, see section 6401(b).

(b) *Examination of books and witnesses.* For the purpose of ascertaining (1) the correctness of any claim made under section 6420 or (2) the correctness of any credit or payment made in respect of the claim, the Commissioner shall have the same authority granted by paragraphs (1), (2), and (3) of section 7602, relating to examination of books and witnesses, as if the person claiming credit or payment under section 6420 were the person liable for tax.

(c) *Fractional part of a dollar.* Section 6420(e)(3) provides that section 7504, relating to fractional parts of a dollar, shall not apply with respect to the allowance of any amount as a credit or payment under section 6420. Accordingly, credits or payments authorized by section 6420 shall be made in the exact amount to which the claimant is entitled and shall not be rounded to the nearest whole dollar amount.

§ 48.6420–6 Records to be kept in substantiation of credits or payments.

(a) *In general.* Every person making a claim for credit or payment under section 6420 must keep records sufficient to enable the district director to determine whether the person is entitled to credit or payment under section 6420 and, if so, the amount of the credit or payment. No particular form is prescribed for keeping the records, but the records must include a copy of the income tax return or claim and a copy of any statement or document submitted with the return or claim. The records must also show with respect to the taxable year covered by the claim—

(1) The number of gallons of gasoline purchased and the dates of purchase,

(2) The name and address of each vendor from whom gasoline was purchased and the total number of gallons purchased from each,

(3) The number of gallons of gasoline purchased by the claimant and used during the taxable year for farming purposes on a farm of which the claimant is the owner, tenant, or operator,

(4) The number of gallons of gasoline used during the taxable year for the purposes described in section 6420(c)(3)(A) and § 48.6420–4(d) (relating to cultivating, raising, or harvesting) by a person other than the owner, tenant, or operator on a farm of which the claimant is the owner, tenant, or operator, and

(5) Other information as necessary to establish the correctness of the claim.

(b) *Acceptable records.* (1) Evidence of purchases of gasoline, and the purposes for which it was used, to substantiate claims may include paid duplicate sales invoices or tickets from the gasoline dealer or other vendor, and

detailed records of all fuel used which show the amount consumed on a farm for farming purposes and the amount used for other purposes.

(2) Records maintained for Federal or State income tax purposes, or to support claims for refund of a State tax on gasoline, may be used to the extent that they contain the information necessary to substantiate the accuracy of the claim for credit under section 6420. However, the records must show separately the number of gallons of gasoline used on a farm for farming purposes.

(3) If trucks or other vehicles are used both on and off the farm, an allocation of gasoline used in the vehicle will be required to show separately the number of gallons of gasoline used on a farm for farming purposes in respect of which the claim is made.

(4) If the owner, tenant, or operator is entitled under section 6420(c)(4)(A) to claim credit or payment in respect of gasoline used on the person's farm by another person other than an owner, tenant, or operator of the farm for a purpose described in section 6420(c)(3)(A) and § 48.6420–4(d), the claimant must have records showing (i) the name and address of the person who performed the farming operation, (ii) a description of the type of work (such as plowing, threshing, combining, etc.) and the type of equipment used, (iii) the date or dates on which the work was done, and (iv) the number of gallons of gasoline so used on the claimant's farm.

(c) *Place and period for keeping records.* (1) All records required by this section must be kept by the claimant at a convenient and safe location within the United States which is accessible to internal revenue officers and shall during normal business hours be available for inspection by internal revenue officers. If the claimant has a principal place of business in the United States, the records must be kept at that place of business.

(2) Records required to substantiate a claim under section 6420 must be maintained for a period of at least 3 years from the last date prescribed for the filing of the claim for credit or payment.

§ 48.6420–7 Cross references.

(a) *Gasoline used by local transit systems or for certain nonhighway purposes other than farming.* For provisions with respect to payments to the ultimate purchaser of gasoline used for certain nonhighway purposes (other than farming) or by local transit systems, see section 6421 and the regulations thereunder.

(b) *Diesel fuel and special motor fuels used on a farm for farming purposes.* For provisions with respect to exemption from tax in the case of diesel fuel and special motor fuels used on a farm for farming purposes, see section 4041(f) and the regulations thereunder. For credit or payment in respect of special fuels used after June 30, 1970, for farming purposes, see section 6427(c) and § 48.6427–1.

Par. 34. Sections 48.6421(a)–1, 48.6421(b)–1, 48.6421(c)–1, 48.6421(d)–1, 48.6421(e)–1, 48.6421(f)–1, and 48.6421(g)–1 are removed and the following new §§ 48.6421–0, 48.6421–1, 48.6421–2, 48.6421–3, 48.6421–4, 48.6421–5, 48.6421–6, and 48.6421–7 are added immediately after § 48.6420–7.

§ 48.6421–0 Off-highway business use.

For purposes of the regulations under section 6421, after March 31, 1983, the term "off-highway business use" is used in lieu of the term "qualified business use" and has the same meaning as "qualified business use" under § 48.6421–4(b).

§ 48.6421–1 Credits or payments to ultimate purchaser of gasoline used for certain nonhighway purposes.

(a) *In general.* (1) If gasoline is used in a qualified business use or as fuel in an aircraft (other than aircraft in noncommercial aviation), a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect of the gasoline shall be allowed or made to the ultimate purchaser of the gasoline. For gasoline used in a qualified business use prior to April 1, 1983, the credit or payment under this section shall be an amount equal to 1 cent for each gallon of gasoline so used on which the tax was paid at the rate of 3 cents a gallon, and 2 cents for each gallon of gasoline so used on which the tax was paid at the rate of 4 cents a gallon. For gasoline used in an off-highway business use after March 31, 1983, the credit or payment under this section shall be an amount equal to the amount determined by multiplying the number of gallons so used by the rate at which tax was imposed on such gasoline under section 4081. For gasoline used as a fuel in an aircraft (other than aircraft in noncommercial aviation) the credit or payment under this section shall be an amount equal to the amount determined by multiplying the number of gallons so used by the rate at which tax was imposed on the gasoline under section 4081. No interest shall be paid on any payment allowed under paragraph (c) of this section. However, interest may be paid on any overpayment (as defined by section 6401) arising from a credit allowed under paragraph (b) of this section. See section 34(a), relating to credit for certain uses of gasoline and special fuels (and lubricating oil used prior to January 7, 1983). See § 48.6421–3 for the time within which a claim for credit or payment must be made under this section. See § 48.6421–4 for the meaning of the terms "gasoline," "qualified business use," "noncommercial aviation," and "taxable year."

(2) For purposes of determining the allowable credit or payment in respect of gasoline used in a qualified business use or as fuel in an aircraft (other than aircraft in noncommercial aviation), gasoline on hand shall be considered used in the order in which it was purchased. Thus, if the ultimate purchaser has on hand gasoline acquired in two purchases made at different times and subject to different rates of tax, in determining credit or payment for the gasoline used in a qualified business use or as fuel in an aircraft (other than aircraft in noncommercial aviation), it will be assumed that the gasoline first purchased was the first gasoline used, and the rate applicable to that purchase will apply in determining the credit or payment, until all that gasoline is accounted for.

(b) *Allowance of income tax credit in lieu of payment.* Except as provided in paragraph (c) of this section, repayment under this section of the tax paid under section 4081 on gasoline used in a qualified business use or as a fuel in an aircraft (other than aircraft in noncommercial aviation) by a person subject to income tax may be obtained only by claiming a credit for the amount of this tax against the tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6421 with respect to gasoline used during the taxable year in a qualified business use or as a fuel in an aircraft (other than aircraft in noncommercial aviation) if section 6421(i) and paragraph (c) of this section did not apply. See section 34(a)(2).

(c) *Allowance of payment.* Payments in respect of gasoline upon which tax was paid under section 4081 that is used in a qualified business use or as a fuel in an aircraft (other than aircraft in noncommercial aviation) shall be made only to—

(1) The United States or any agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more State political subdivisions of a State, or the District of Columbia,

(2) An organization which is exempt from tax under section 501(a) and is not required to make a return of the income tax imposed under subtitle A for its taxable year, or

(3) A person described in section 6421(c)(2) to whom $1,000 or more is payable (without regard to paragraph (b) of this section) under this section with respect to gasoline used during any of the first three quarters of the person's taxable year.

(d) *Dual use of gasoline.* (1) No credit or payment may be claimed in respect of gasoline used in a highway vehicle used in a trade or business or for the production of income solely by reason of the fact that the propulsion motor in the vehicle is also used for a purpose other than the propulsion of the vehicle. Thus, if the propulsion motor of a highway vehicle (used in a trade or business or for the production of income) also operates special equipment, such as a mixing unit on a concrete mixer truck or a pump for discharging fuel from a tank truck, by means of a power takeoff or power transfer, no credit or payment may be claimed in respect of the gasoline used to operate the special equipment, even though the special equipment is mounted on the highway vehicle.

(2) If a highway vehicle is equipped with a separate motor to operate the special equipment used in a trade or business or for the production of income, such as a refrigeration unit, pump, generator, or mixing unit, credit or payment may be claimed in respect of the gasoline used in the separate motor.

(3) If gasoline used in a separate motor is drawn from the same tank as the one which supplies gasoline for the propulsion of the highway vehicle, the determination as to the quantity of gasoline used in the separate motor operating the special equipment must be based on operating experience and supported by records.

(4) Devices to measure the number of miles the highway vehicle has traveled, such as hubometers, may be used in making a preliminary determination of the number of gallons of gasoline used to propel the vehicle. In order to make a final determination of the number of gallons of gasoline used to propel the vehicle, there must be added to this preliminary determination the number of gallons of gasoline consumed while idling or warming up the motor preparatory to propelling the vehicle.

(e) *Gasoline lost or destroyed.* Gasoline lost or destroyed through spillage, fire, or other casualty is not considered to have been "used" in a qualified business use or as fuel in an aircraft (other than aircraft in noncommercial aviation) and, accordingly, credit or payment in respect of the gasoline may not be claimed.

(f) *Supporting evidence required.* Each claim under this section for credit or payment must include a statement showing—

(1) The total number of gallons of gasoline purchased and used during the period covered by the claim in a qualified business use multiplied by the rate of payment allowable in respect of the gasoline. (For the rate of payment allowable, see paragraph (a)(1) of this section.)

(2) The total number of gallons of gasoline purchased and used during the period covered by the claim for use as fuel in an aircraft (other than aircraft in noncommercial aviation) multiplied by the rate of payment allowable in respect of the gasoline.

(3) The purpose or purposes for which the gasoline was used, determined by reference to general categories, and the amount used for each purpose; and

(4) If a claim on Form 843 is being filed, the internal revenue district or service center with which the claimant last filed an income tax return (if any).

§ 48.6421-2 Credits or payments to ultimate purchasers of gasoline used in intercity, local, or school buses.

(a) *In general.* If gasoline is used in an intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public or in a school bus engaged in the transportation of students or employees of schools, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect to the gasoline shall be allowed or made to the ultimate purchaser of the gasoline. The credit or payment under this section shall be an amount equal to the product of the number of gallons of gasoline so used multiplied by the rate at which tax was imposed on the gasoline by section 4081. No interest shall be paid on any payment allowed under paragraph (c) of this section. However, interest may be paid on an overpayment (as defined by section 6401) arising from a credit allowed under paragraph (b) of this section. See section 34(a) relating to credit for certain uses of gasoline and special fuels, (and lubricating oil) used prior to January 7, 1983). See § 48.6421-3 for the time within which a claim for credit or payment must be made under this section. See § 48.6421-4 for the meaning of "gasoline." See section 4221(d)(7) and the regulations thereunder for the definition of "intercity bus," "local bus" and "school bus."

(b) *Allowance of income tax credit.* Except as provided in paragraph (c) of this section, repayment under this section of the tax paid under section 4081 of gasoline used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations by a person subject to income tax may be obtained only by claiming a credit for the amount of this tax against the tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6421 with respect to gasoline used during the taxable year for this passenger land transportation or school bus operations if section 6421(i) and paragraph (c) of this section did not apply. See section 34(a)(2).

(c) *Allowance of payment.* Payments in respect of gasoline upon which tax was paid under section 4081 that is used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations shall be made only to—

(1) The United States or any agency or instrumentality thereof, a State, or political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions of a State, or the District of Columbia,

(2) An organization which is exempt from tax under section 501(a) and is not required to make a return of the income tax imposed under subtitle A for its taxable year, or

(3) A person described in section 6421(c)(2) to whom $1,000 or more is payable (without regard to paragraph (b) of this section) under this section with respect to gasoline used during any of the first three quarters of the person's taxable year.

(d) *Supporting evidence required.* Each claim under this section for credit or payment must include a statement showing—

(1) The total number of gallons of gasoline purchased and used during the period covered by the claim for each intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public multiplied by the rate at which tax was imposed on the gasoline by section 4081.

(2) The total number of gallons of gasoline purchased and used in each bus while engaged in school bus transportation operations multiplied by

the rate at which tax was imposed on the gasoline by section 4081, and .

(3) If a claim on Form 843 is being filed, the internal revenue district or service center with which the claimant last filed an income tax return (if any).

§ 48.6421-3 Time for filing claim for credit or payment.

(a) *In general.* A claim for credit or payment described in § 48.6421-1 with respect to gasoline used in a qualified business use or as a fuel in an aircraft (other than aircraft in noncommercial aviation) or in § 48.6421-2 with respect to gasoline used either in an intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations, shall cover only gasoline used during the taxable year, or when paragraph (b)(2) of this section applies, gasoline used during the calendar quarter. Therefore, gasoline on hand at the end of a taxable year, or, if applicable, a calendar quarter, such as gasoline in fuel supply tanks of vehicles or in storage tanks or drums, must be excluded from a claim filed for the taxable year or calendar quarter, as the case may be. However, this gasoline may be included in a claim filed for a later taxable year or a later calendar quarter if it is used during that later year or quarter in a qualified business use, as fuel in an aircraft (other than aircraft in noncommercial aviation), or in intercity, local, or school buses. Gasoline used during the taxable year or calendar quarter may be covered by the claim for that period although the gasoline was not paid for at the time the claim is filed. For purposes of applying this section, a governmental unit or exempt organization described in § 48.6421-1(c) or § 48.6421-2(c) is considered to have as its taxable year, the calendar year or fiscal year on the basis of which it regularly keeps its books; see § 48.6421-4(g).

(b) *Time for filing*—(1) *Annual claims.* (i) A claim under this section for credit or payment with respect to gasoline shall not be allowed unless it is filed no later than the time prescribed by section 6511 and the regulations thereunder for filing a claim for credit or refund of income tax for the particular taxable year.

(ii) A claim for payment of a governmental unit or exempt organization described in § 48.6421-1(c) or § 48.6421-2(c) must be filed no later than 3 years following the close of its taxable year (see § 48.6421-4).

(2) *Quarterly claims.* A claim for payment of $1,000 or more in respect of gasoline used during any of the first three quarters of the taxable year, filed either under § 48.6421-1(c)(3) in respect of gasoline used in a qualified business use or as a fuel in an aircraft (other than aircraft used in noncommercial aviation) or under § 48.6421-2(c)(3) in respect of gasoline used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus operations, shall not be allowed unless the claim is filed on or before the last day of the first calendar quarter following the calendar quarter for which the claim is filed. No quarterly claim may be filed for the last calendar quarter of the taxable year. Amounts for which payment is disallowed under this paragraph (b)(2) merely because the claim was not filed on time may be included in an annual claim filed under paragraph (b)(1) of this section, but other amounts for which a claim for payment has been filed under this paragraph (b)(2) may not be included in an annual claim filed under paragraph (b)(1) of this section.

(3) *Other applicable rules.* See § 301.7502-1 of this chapter (Regulations on Procedure and Administration) for provisions treating timely mailing as timely filing and § 301.7503-1 of this chapter for time for performance of an act where the last day falls on Saturday, Sunday, or a legal holiday.

(c) *Limit on claims per taxable year.* Not more than one claim may be filed under § 48.6421-1 or § 48.6421-2 by any person with respect to gasoline used during any taxable year, except to the extent that quarterly claims may be filed under paragraph (b)(2) of this section with respect to any calendar quarter (other than the last calendar quarter) of the taxable year.

(d) *Form and content of claim*—(1) *Claim for credit.* The claim for credit to which this section applies must be made by attaching a Form 4136 to the income tax return of an individual or a corporation. Form 4136 must be executed in accordance with the instructions prescribed for the preparation of the form. A partnership may not file Form 4136. When a partnership files Form 1065, U.S. Partnership Return of Income, it must include a statement showing how many gallons of gasoline are allocated to each partner and the use made of the gasoline.

(2) *Claim for payment.* The claim for payment to which this section applies must be made on Form 843 in accordance with the instructions prescribed for the preparation of the form. Each form must designate the taxable year, or calendar quarter, for which it is filed. The form must be filed with the same service center where the income tax return was last filed or, in the case of a governmental unit or exempt organization described in § 48.6421-1(c) or § 48.6421-2(c), with the service center for the internal revenue region in which the principal place of business or principal office of the claimant is located.

(3) *Death or termination.* (i) If an individual dies, or if a sole proprietorship, partnership, or corporation is terminated or liquidated, during the taxable year, the claim for credit or payment may be filed in respect of gasoline used during the short taxable year in the same manner as is provided for gasoline used in a full taxable year. Those months which constitute a quarter of a full taxable year will constitute the same quarter of the short taxable year. For example, if a corporation using the calendar year is liquidated on September 30, 1982, and is entitled to $300 under § 48.6421-1 in respect of gasoline used in a qualified business use for the calendar quarters ending June 30 and September 30, it may file a claim for payment in respect of the gasoline used during the calendar quarters ending June 30, and September 30, 1981, and take a credit of $900 on its income tax return for the short taxable year in respect of the gasoline used during the calendar quarter ending March 31, 1982.

(ii) A claim for payment on behalf of a decedent may be filed by the decedent's executor, administrator, or any other person charged with responsibility for the decedent's affairs. Such a claim must be accompanied by copies of the letters testamentary, letters of administration, or, in the case of a claim filed by other than the executor or administrator, the information called for in Form 1310 (Statement of Person Claiming Refund Due a Deceased Taxpayer). The claim may cover only gasoline in respect of which the decedent would have been entitled to claim payment. For example, if an individual dies on July 15, 1982, prior to claiming payment under § 48.6421-1 or $1,000 or more applicable to gasoline purchased and used in a qualified business use during the calendar quarter ending June 30, 1982, the decedent's executor or other legal representative may file a claim for payment covering that calendar quarter, and take the credit provided by section 39(a)(2) against the decedent's income tax on the income tax return for the short taxable year in respect of gasoline purchased by the decedent and so used during the period from July 1, 1982 to July 15, 1982, the date of death.

(e) *Restrictions on claims for credit or payment.* Credits or payments are allowable only in respect of gasoline that was sold by the producer or importer in a transaction that was subject to tax under section 4081. For example, a State or local government may not file a claim with respect to any gasoline which it purchased tax free from the producer, even though the State or local government used the gasoline as a fuel for the purposes described in paragraph (a) of this section. Similarly, a governmental unit or tax-exempt organization that is the ultimate purchaser of gasoline may not file a claim for payment if it is known that another person is entitled to claim credit, payment, or refund with respect to the same gasoline. For example, a State or local government may not file a claim for payment if it has executed, or intends to execute, a written consent, or other documentation, to enable the producer to claim credit or refund for the tax that was paid. See, for example, §§ 48.6416(a)–3 and 48.6416(b)(2)–3(b)(1).

§ 48.6421–4 Meaning of terms.

For purposes of the regulations under section 6421, unless otherwise expressly indicated—

(a) *Gasoline.* The term "gasoline" has the same meaning given to such term by section 4082(b) and regulations thereunder.

(b) *Qualified business use.* (1) The term "qualified business use" means any use by a person in a trade or business of the person or in an activity of the person described in section 212 (relating to production of income) otherwise than as a fuel in a highway vehicle—

(i) That at the time of the use is registered, or is required to be registered, for highway use under the laws of any state, the District of Columbia, or a foreign country, or

(ii) That, in the case of a highway vehicles owned by the United States, is used on the highway.

The term "qualified business use" does not include any use in a motorboat, other than a vessel used in the fisheries or whaling business. See paragraph (c) of this section for the definition of "highway vehicle." See paragraph (d) of this section for the definition of "highway."

(2) Any highway vehicle operated under a dealer's tag, license, or permit will be considered to be registered. A highway vehicle is not considered to be "registered" solely because there has been issued a special permit for operation of the vehicle at particular times and under specified conditions. However, a highway vehicle that is required to be registered and that is also issued a special permit for operation of the vehicle under specified conditions, such as carrying an oversize load, is still considered to be "registered."

(3) Nonbusiness, off-highway use of gasoline by such vehicles and equipment as minibikes, snowmobiles, power lawn mowers, chain saws, and other yard equipment does not qualify as gasoline used a qualified business use.

(4) Examples of gasoline used in a qualified business use include: (i) gasoline used (in a trade or business or for the production of income) in stationary engines to operate pumps, generators, compressors, and power saws; (ii) gasoline used (in a trade or business or for the production of income) for cleaning purposes; (iii) gasoline used (in a trade or business or for the production of income) in forklift trucks, bulldozers, and earthmovers; and (iv) gasoline used by a nonhighway vehicle in connection with the trade or business of construction, mining or logging.

(5) *Illustration.* The application of this paragraph (b) may be illustrated by the following example:

Example. M Corporation, a logging company, files its income tax return on the basis of the calendar year. During 1982, the company used 20,000 gallons of gasoline in its logging business. Of this amount, 12,000 gallons were used as fuel in registered highway vehicles which were operated both on the public highways and on the company's private roads. Of the remaining 8,000 gallons, 6,000 were used in nonhighway vehicles, such as tractors and bulldozers, and 2,000 gallons were used in highway vehicles, such as heavy trucks which, at the time of use, were neither registered nor required to be registered under state law for highway use by reason of being operated entirely on the company's property. As the ultimate purchaser, M may take a credit on its income tax return for 1982 under this section in respect of the 6,000 gallons used in the nonhighway vehicles and the 2,000 gallons used in the unregistered highway vehicles. However, no credit may be allowed with respect to the 12,000 gallons used in the registered highway vehicles even though a portion of this gasoline was used in operating the vehicles on the company's own property.

(c) *Highway vehicle.* The term "highway vehicle" has the same meaning assigned to this term under § 48.4061(a)–1(d).

(d) *Highway.* The term "highway" includes any road, whether a Federal highway, State highway, city street, or otherwise, in the United States which is not a private roadway.

(e) *Noncommercial aviation.* The term "non-commercial aviation" has the same meaning given to such term by section 4041(c)(4).

(f) *Calendar quarter.* The term "calendar quarter" means a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(g) *Taxable year.* The "taxable year" of a governmental unit or tax-exempt organization described in § 48.6421–1(c) or § 48.6421–2(c) is the calendar or fiscal year on the basis of which it regularly keeps its books. The "taxable year" of persons subject to income tax shall have the meaning it has under section 7701(a)(23).

§ 48.6421–5 Exempt sales; other payments or refunds available.

(a) *Exempt sales.* No credit or payment shall be allowed or made under § 48.6421–1 or § 48.6421–2 with respect to gasoline which was exempt from the tax imposed by section 4081. For example, credit or payment may not be allowed or made with respect to gasoline purchased tax free for use as supplies for certain vessels and airplanes, or with respect to gasoline purchased by a State tax free for its exclusive use, as provided in section 4221.

(b) *Other payments or refunds available.* Any amount which, without regard to the second sentence of section 6421(e)(1) and this paragraph (b), would be allowable as a credit or payable to any person under § 48.6421–1 or § 48.6421–2 is reduced by any other amount which is allowable as a credit or payable under section 6421, or is refundable under any other provision of the Code, to any person with respect to the same gasoline.

(c) *Gasoline used on farms.* Payments with respect to gasoline used on a farm for farming purposes shall be claimed under section 6420 and § 48.6420–1, and no claim in respect of that gasoline may be made under section 6421 and the regulations thereunder.

§ 48.6421–6 Applicable laws.

(a) *Penalties, excessive claims, etc.* All provisions of law, including penalties, applicable in respect of the tax imposed by section 4081 shall, to the extent applicable and consistent with section 6421, apply in respect of the payments provided for in section 6421 to the same extent as if these payments were refunds of overpayments of the tax imposed on the sale of gasoline by section 4081. For special rules applicable to the assessment and collection of amounts constituting excessive payments under section 6421, see section 6206 and the regulations

thereunder. For the civil penalty assessable in the case of excessive claims under section 6421, see section 6675 and the regulations thereunder. For the treatment as an overpayment of an amount allowable as an excessive credit under section 34 (section 39 of the Internal Revenue Code of 1954 prior to its revision by the Tax Reform Act of 1984) with respect to amounts payable under section 6421, see section 6401(b).

(b) *Examination of books and witnesses.* For the purpose of ascertaining (1) the correctness of any claim made under section 6421 or (2) the correctness of any credit or payment made in respect of the claim, the Commissioner shall have the same authority granted by paragraphs (1), (2), and (3) of section 7602, relating to examination of books and witnesses, as if the person claiming credits or payment under section 6421 were the person liable for tax.

§ 48.6421-7 Records to be kept in substantiation of credits or payments.

(a) *In general.* Every person making a claim for credit or payment under section 6421 must keep records sufficient to enable the district director to determine whether the person is entitled to credit or payment under section 6421 and, if so, the amount of the credit or payment. No particular form is prescribed for keeping the records, but the records must include a copy of any statement or document submitted with the return or claim. The records must also show with respect to the period covered by the claim—

(1) The number of gallons of gasoline purchased and the dates of purchase,

(2) The name and address of each vendor from whom gasoline was purchased and the total number of gallons purchased from each,

(3) The number of gallons of gasoline purchased by the claimant and used during the period covered by the claim for nonhighway purposes or in intercity, local or school buses,

(4) Other information as necessary to establish the correctness of the claim.

(b) *Acceptable records.* (1) Evidence of purchases of gasoline, and the purposes for which it was used, to substantiate claims may include paid duplicate sales invoices or tickets from the gasoline dealer or other vendor, and detailed records of all fuel used which show the amount used for the prescribed purpose and the amount used for other purposes.

(2) Records maintained for Federal or State income tax purposes, or to support claims for refund of a State tax on gasoline, may be used to the extent that they contain the information necessary to substantiate the accuracy of the claim for credit under section 6421. However, the records must show separately the number of gallons of gasoline used for nonhighway purposes or in intercity, local or school buses during the period covered by the claim.

(c) *Place and period for keeping records.* (1) All records required by this section must be kept by the claimant at a convenient and safe location within the United States which is accessible to internal revenue officers and shall during normal business hours be available for inspection by internal revenue officers. If the claimant has a principal place of business in the United States, the records must be kept at that place of business.

(2) Records required to substantiate a claim under section 6421 must be maintained for a period of at least 3 years from the last date prescribed for the filing of the claim for credit or payment.

Par. 35. The following new §§ 48.6424-0, 48.6424-1, 48.6424-2, 48.6424-3, 48.6424-4, 48.6424-5, and 48.6424-6 are added immediately following § 48.6421-7.

§ 48.6424-0 Effective date.

All references in section 6424 apply to uses prior to January 7, 1983.

48.6424-1 Credits or payments to ultimate purchaser of lubricating oil used in a qualified business use or in a qualified bus.

(a) *In general.* If lubrication oil (other than cutting oils, as defined in section 4092(b) and other than previously used oil) is used prior to January 7, 1983, in a qualified business use or in a qualified bus, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect of the lubricating oil shall be allowed or made to the ultimate purchaser of the lubricating oil in an amount equal to 6 cents for each gallon of lubricating oil so used on which tax was paid under section 4091. No interest shall be paid on any payment allowed under paragraph (c) of this section. However, interest may be paid on an overpayment (as defined by section 6401) of tax arising from a credit allowed under paragraph (b) of this section. See section 39(a) (prior to its revision by the Tax Reform Act of 1984), relating to credit for certain uses of gasoline, special fuels, and lubricating oil. See § 48.6424-2 for the time within which a claim for credit or payment must be made under this section. See § 48.6424-3 for the meaning of the terms "lubricating oil," "use in a qualified business use," "qualified bus," "calendar year," and "taxable year." See § 48.6424-2 for the time within which a claim for credit or payment must be made under this section. See § 48.6424-3 for the meaning of the terms "lubricating oil," "use in a qualified business use," "qualified bus," "calendar year," and "taxable year."

(b) *Allowance of income tax credit in lieu of payment.* Except as provided in paragraph (c) of this section, repayment under this section of the tax paid under section 4091 on lubricating oil used in a qualified business use or in a qualified bus by a person subject to income tax may be obtained only by claiming a credit for the amount of this tax against the tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6424 with respect to lubricating oil used during the taxable year in a qualified business use or in a qualified bus if section 6424(f) and paragraph (c) of this section did not apply. See section 39(a)(3) (prior to its revision by the Tax Reform Act of 1984).

(c) *Allowance of payment.* Payments in respect of lubricating oil upon which tax was paid under section 4091 that is used in a qualified business use or a qualified bus shall be made only to—

(1) The United States or any agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions of a State, or the District of Columbia,

(2) An organization which is exempt from tax under section 501(a) and is not required to make a return of the income tax imposed under subtitle A for its taxable year, or

(3) A person described in section 6424(b)(2) to whom $1,000 or more is payable (without regard to paragraph (b) of this section) under this section with respect to lubricating oil used during any of the first three quarters of the person's taxable year.

(d) *Uses which qualify for credit or payment.* The use contemplated by section 6424 is a use of lubricating oil (previously unused) through which the oil is consumed or rendered unfit for further use as a lubricant or for sale as a lubricant. If previously unused lubricating oil is blended or mixed with previously used lubricating oil which has been reclaimed or rerefined, the unused oil is considered to have lost its identity and the resulting product will be treated as previously used. Thus, no credit or payment will be allowed under this section with respect to the use of such blended lubricating oil regardless of how this mixture is eventually used.

(e) *Dual use of lubricating oil.* (1) No credit or payment may be claimed in respect of lubricating oil used as a lubricant in a highway vehicle used in a trade or business or for the production of income solely by reason of the fact that the propulsion motor in the vehicle is also used for a purpose other than the propulsion of the vehicle. Thus, if the propulsion motor of a highway vehicle (used in a trade or business or for the production of income) also operates special equipment, such as a mixing unit on a concrete mixer truck, by means of a power takeoff or power transfer, no credit or payment may be claimed in respect of the lubricating oil used to operate the special equipment, even though the special equipment is mounted on the highway vehicle.

(2) If a highway vehicle is equipped with a separate motor to operate special equipment (used in a trade or business or for the production of income) such as a refrigeration unit, pump, generator, or mixing unit, the credit or payment may be claimed in respect of the lubricating oil used in the separate motor.

(f) *Lubricating oil lost or destroyed.* Lubricating oil lost or destroyed through spillage, fire, or other casualty is not considered to have been "used" in a qualified business use or in a qualified bus and, accordingly, credit or payment in respect of this lubricating oil may not be claimed.

(g) *Supporting evidence required.* Each claim under this section for credit or payment must include a statement showing—

(1) The total number of gallons of lubricating oil purchased and used in a qualified business or in a qualified bus during the period covered by the claim, multiplied by 6 cents;

(2) The purpose or purposes for which the lubricating oil was used, determined by reference to general categories, and the amount used for each purpose; and

(3) If a claim on Form 843 is being filed, the internal revenue district or service center with which the claimant last filed an income tax return, if any.

§ 48.6424–2 Time for filing claim for credit or payment.

(a) *In general.* A claim for credit or payment described in § 48.6424–1 with respect to lubricating oil used in a qualified business use or in a qualified bus shall cover only lubricating oil used during the taxable year, or when paragraph (b)(2) of this section applies, used during the calendar quarter, for these purposes. Therefore, lubricating oil on hand at the end of a taxable year, or, if applicable, a calendar quarter, such as lubricating oil in storage tanks or drums, must be excluded from a claim filed for the taxable year or calendar quarter, as the case may be. However, this lubricating oil may be included in a claim filed for a later taxable year or a later calendar quarter if it is used during that later year or quarter in a qualified business or in a qualified bus. Lubricating oil used during the taxable year or calendar quarter may be covered by the claim for that period although the lubricating oil was not paid for at the time the claim is filed. For purposes of applying this section, a governmental unit or exempt organization described in § 48.6424–1(c) is considered to have as its taxable year, the calendar year or fiscal year on the basis of which it regularly keeps its books. See § 48.6424–3(g).

(b) *Time for filing*—(1) *Annual claims.* (i) A claim under this section for credit or payment with respect to lubricating oil used during a taxable year, shall not be allowed unless it is filed no later than the time prescribed by section 6511 and the regulations thereunder for filing a claim for credit or refund of income tax for the particular taxable year.

(ii) A claim for payment of a governmental unit or exempt organization described in §48.6424–1(c) must be filed no later than 3 years following the close of its taxable year. See §48.6424–3(f).

(2) *Quarterly claims.* A claim for payment of $1,000 or more in respect of lubricating oil used during any of the first three quarters of the taxable year, filed under § 48.6424–1(c)(3) in respect of lubricating oil used in a qualified business use or in a qualified bus, shall not be allowed unless the claim is filed on or before the last day of the first calendar quarter following the calendar quarter for which the claim is filed. No quarterly claim may be filed for the last calendar quarter of the taxable year. Amounts for which payment is disallowed under this paragraph (b)(2) merely because the claim was not filed on time may be included in an annual claim filed under paragraph (b)(1) of this section but other amounts for which a claim for payment has been filed under this paragraph (b)(2) may not be included in an annual claim filed under paragraph (b)(1) of this section.

(3) *Other applicable rules.* See § 301.7502–1 of this chapter (Regulations on Procedure and Administration) for provisions treating timely mailing as timely filing and § 301.7503–1 of this chapter for time for performance of an act where the last day falls on Saturday, Sunday, or a legal holiday.

(c) *Limit on claims per taxable year.* Not more than one claim may be filed under § 48.6424–1 by any person with respect to lubricating oil used during any taxable year, except to the extent that quarterly claims may be filed under paragraph (b)(2) of this section with respect to any calendar quarter (other than the last calendar quarter) of the taxable year.

(d) *Form and content of claim*—(1) *Claim for credit.* The claim for credit to which this section applies must be made by attaching a Form 4136 to the income tax return of an individual or a corporation. Form 4136 must be executed in accordance with the instructions prescribed for the preparation of the form. A partnership may not file Form 4136. When a partnership files Form 1065, U.S. Partnership Return of Income, it must include a statement showing how many gallons of lubricating oil are allocated to each partner and the use made of the lubricating oil.

(2) *Claim for payment.* The claim for payment to which this section applies must be made on Form 843 in accordance with the instructions prescribed for the preparation of the form. Each form must designate the taxable year, or calendar quarter, for which it is filed. The form must be filed with the same service center where the income tax return was last filed or, in the case of a governmental unit or exempt organization described in § 48.6424–1(c) with the service center for the internal revenue region in which the principal place of business or principal office of the claimant is located.

(3) *Death or termination.* (i) If an individual dies, or if a sole proprietorship, partnership, or corporation is terminated or liquidated, during the taxable year, the claim for credit or payment may be filed in respect of lubricating oil used during the short taxable year in the same manner as is provided for lubricating oil used in a full taxable year. Those months which constitute a quarter of a full taxable year will constitute the same quarter of the short taxable year. For example, if a corporation using the calendar year is liquidated on September 30, 1982, and is entitled to $900 under § 48.6424–1 in respect of lubricating oil used in a qualified business use of in a qualified bus for the calendar quarter ending March 31 and is also entitled to payments of $1,500 for each of the calendar quarters ending June 30 and September 30, it may file a claim for payment in respect of the lubricating oil used during the calendar quarters ending June 30, and September 30, 1982, and take a credit of $900 on the corporation's income tax return for the short taxable year in respect of the

lubricating oil used during the calendar quarter ending March 31, 1982.

(ii) A claim for payment on behalf of a decedent may be filed by the decedent's executor, administrator, or any other person charged with responsibility for th. . decedent's affairs. Such a claim must be accompanied by copies of the letters, testamentary letters of administration, or, in the case of a claim filed by other than the executor or administrator, the information called for in Form 1310 (Statement of Person Claiming Refund Due a Deceased Taxpayer). The claim may cover only lubricating oil in respect of which the decedent would have been entitled to claim payment. For example, if an individual dies on July 15, 1982, prior to claiming payment under § 48.6424–1 of $1,000 or more applicable to lubricating oil purchased and used in a qualified business use during the calendar quarter ending June 30, 1982, the decedent's executor or other legal representative may file a claim for payment covering that calendar quarter, and take the credit provided by section 39(a)(3) (prior to its revision by the Tax Reform Act of 1984) against the decedent's income tax on the income tax return for the short taxable year in respect of lubricating oil purchased by the decedent and so used during the period from July 1, 1982, to July 15, 1982, the date of death.

(e) *Restrictions on claims for credit or payment.* Credits or payments are allowable only in respect of lubricating oil that was sold by the manufacturer in a transaction that was subject to tax under section 4091. For example, a State or local government may not file a claim with respect to any lubricating oil which it purchased tax free from the manufacturer, even though the State or local government used the lubricating oil in a qualified business use or in a qualified bus. Similarly, a governmental unit or tax-exempt organization that is the ultimate purchaser of lubricating oil may not file a claim for payment if it is known that another person is entitled to claim a credit, payment, or refund with respect to the same lubricating oil. For example, a State or local government may not file a claim for payment if it has executed, or intends to execute, a written consent, or other documentation, to enable the producer to claim a credit or refund for the tax that was paid. See, for example, §§ 48.6416(a)–3(b)(2), 48.6416(b)(2)–2(d), and 48.6416(b)(2)–3(b)(1).

§ 48.6424–3 Meaning of terms.

For purposes of the regulations under section 6424, unless otherwise expressly indicated—

(a) *Lubricating oil.* The term "lubricating oil" has the same meaning given to this term by the regulations under section 4091. It does not include cutting oil, as defined in section 4092(b) and the regulations thereunder, or any oil which has previously been used.

(b) *Qualified business use.* The term "qualified business use" means any use by a person in a trade or business of such person or in an activity of the person described in section 212 (relating to production of income).

Qualified business use does not include:

(1) use in a highway vehicle which is registered or required to be registered for highway use in any State or foreign country,

(2) use on the highway in a highway vehicle owned by the United States, or

(3) use in a motor boat.

Lubricating oil in respect of which credit or payment may be claimed under section 6424 includes, for example, previously unused lubricating oil used—

(i) In stationary engines (used in a trade or business or for the production of income) to operate pumps, generators, compressors, or power saws; or

(ii) In forklift trucks, bulldozers, earthmovers, trench diggers, road graders, farm tractors, cotton pickers, and other motorized agricultural equipment of similar nature, if used in a trade or business or for the production of income.

(c) *Qualified bus.* The term "qualified bus" has the same meaning assigned to this term by section 4221(d)(7) and the regulations thereunder.

(d) *Highway vehicle.* The term "highway vehicle" has the same meaning assigned to this term under § 48.4061(a)–1(d).

(e) *Highway.* The term "highway" includes any road, whether a Federal highway, State highway, city street, or otherwise, in the United States which is not a private roadway.

(f) *Calendar quarter.* The term "calendar quarter" means a period of three calendar months ending March 31, June 30, September 30, or December 31.

(g) *Taxable year.* The "taxable year" of a governmental unit or a tax-exempt organization described in § 48.6424–1(c) is the calendar or fiscal year on the basis of which it regularly keeps its books. The "taxable year" of persons subject to income tax shall have the meaning it has under section 7701(a)(23).

§ 48.6424–4 Exempt sales; other payments or refunds available.

(a) *Exempt sales.* No credit or payment shall be allowed or made under § 48.6424–1 with respect to lubricating oil which was exempt from the tax imposed by section 4091. For example, credit or payment may not be allowed or made with respect to lubricating oil purchased tax free for use as supplies for certain vessels and airplanes, or with respect to lubricating oil purchased by a State tax free for its exclusive use, as provided in section 4221.

(b) *Other payments or refunds available.* Any amounts which, without regard to the second sentence of section 6424(c) and this paragraph (b), would be allowable as a credit or payable to any person under § 48.6424–1 is reduced by any other amount which is allowable as a credit or payable under section 6424, or is refundable under any other provision of the Code, to any person with respect to the same lubricating oil.

§ 48.6424–5 Applicable laws.

(a) *Penalties, excessive claims, etc.* All provisions of law, including penalties, applicable in respect of the tax imposed by section 4091 shall, to the extent applicable and consistent with section 6424, apply in respect of the payments provided for in section 6424 to the same extent as if these payments were refunds of overpayments of the tax imposed on the sale of lubricating oil by section 4091. For special rules applicable to the assessment and collection of amounts constituting excessive payments under section 6424, see section 6406 and the regulations thereunder. For the civil penalty assessable in the case of excessive claims under section 6424, see section 6675 and the regulations thereunder. For the treatment as an overpayment of an amount allowable as an excessive credit under section 39 with respect to amounts payable under section 6424, see section 6401(b).

(b) *Examination of books and witnesses.* For the purpose of ascertaining (1) the correctness of any claim made under section 6424, or (2) the correctness of any credit or payment made in respect of the claim, the Commissioner shall have the same authority granted by paragraphs (1), (2), and (3) of section 7602, relating to examination of books and witnesses, as if the person claiming credit or payment under section 6424 were the person liable for tax.

§ 48.6424–6 Records to be kept in substantiation of credit or payments.

(a) *In general.* Every person making a claim for credit or payment under section 6424 must keep records sufficient to enable the district director to determine whether the person is entitled to credit or payment under

section 6424 and, if so, the amount of the credit or payment. No particular form is prescribed for keeping the records, but the records must include a copy of the income tax return or claim and a copy of any statement or document submitted with the return or claim. The records must also show with respect to the period covered by the claim—

(1) The number of gallons of lubricating oil purchased and the dates of purchase,

(2) The name and address of each vendor from whom lubricating oil was purchased and the total number of gallons purchased from each,

(3) The number of gallons of lubricating oil purchased by the claimant and used, during the period covered by the claim in a qualified business use or in a qualified bus, and

(4) Other information as necessary to establish the correctness of the claim.

(b) *Acceptable records.* (1) Evidence of purchases of lubricating oil, and the purposes for which it was used, to substantiate claims may include paid duplicate sales invoices or tickets from the dealer or other vendor, and detailed records of all lubricating oil used which show the amount used for the prescribed purpose and the amount used for other purposes.

(2) Records maintained for Federal or State income tax purposes, or to support claims for refund of a State tax on lubricating oil, may be used to the extent that they contain the information necessary to substantiate the accuracy of the claim for credit under section 6424.

(c) *Place and period for keeping records.* (1) All records required by this section must be kept by the claimant at a convenient and safe location within the United States which is accessible to internal revenue officers and shall during normal business hours be available for inspection by internal revenue officers. If the claimant has a principal place of business in the United States, the records must be kept at that place of business.

(2) Records required to substantiate a claim under section 6424 must be maintained for a period of at least 3 years from the last date prescribed for the filing of the claim for credit or payment.

Par. 36. The following §§ 48.6427–0, 48.6427–1, 48.6427–2, 48.6427–3, 48.6427–4 and 48.6427–5 are added immediately following new § 48.6424–6.

§ 48.6427–0 Off-highway business use.

For purposes of the regulations under section 6427, after March 31, 1983, the term "off-highway business use" is used in lieu of the term "qualified business use" and has the same meaning as "qualified business use" under § 48.6421–1(b).

§ 48.6427–1 Credit or payments to purchaser of special fuels resold or used for nontaxable, farming, or other purposes.

(a) *Amount of repayment*—(1) *Nontaxable or other uses.* (i) If tax has been paid under section 4041(a)(1) on the sale of diesel fuel for use as a fuel in a diesel-powered highway vehicle or under section 4041(a)(2) on the sale of special motor fuel for use as a fuel in a motor vehicle or a motorboat and the fuel is used by the purchaser for a nontaxable purpose or for a purpose taxable at a lower rate than the purposes for which sold, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect of the fuel shall be allowed or made to the purchaser of the fuel in an amount equal to—

(A) The amount of the tax imposed on the sale of the fuel to the purchaser if the purchaser resells the fuel, or

(B) If the purchaser uses the fuel, the amount of tax imposed on the sale of the fuel to the purchaser, less the amount of tax, if any, that would have been imposed on the purchaser's use of the fuel if no tax had been imposed on the sale of the fuel to the purchaser.

(ii) For purposes of paragraph (a)(1)(i) of this section, and for the regulations under section 6427 applying such paragraph, tax imposed on the sale of fuel will be treated as an overpayment by the purchaser if the person resells the fuel or uses it for a nontaxable purpose or for a purpose taxable at a lower rate than that for which sold to the purchaser. Thus, for example, special motor fuel which was sold tax paid to the purchaser for use otherwise than in a qualified business use in a motor vehicle will qualify for the payment under section 6427 if the purchaser uses it as a fuel in a qualified business use.

(2) *Used for farming purposes.* (i) If tax has been paid under section 4041(a)(1) on the sale of diesel fuel for use as a fuel in a diesel-powered highway vehicle, or under section 4041(a)(2) on the sale of special motor fuel for use as a fuel in a motor vehicle or a motor boat and the fuel is used on a farm for farming purposes, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) (1) or (2) of this section) in respect of the fuel shall be allowed or made to the purchaser of the fuel in an amount equal to the amount of tax that was imposed under section 4041 on the sale of the fuel. The provisions of section 6420(c) (1), (2), and (3) and § 48.6420–4 shall apply under this paragraph (a)(2) in determining whether the fuel is used on a farm for farming purposes.

(ii) The term "purchaser," as used in paragraph (a)(2)(i) of this section, includes only a person who is an owner, tenant, or operator of a farm. A person who is owner, tenant, or operator of a farm is a purchaser of fuel only with respect to such fuel as is purchased by the person and used for farming purposes on a farm of which the person is the owner, tenant, or operator. Thus, the owner of a farm who purchases fuel which is used on the farm by its owner, tenant, or operator for farming purposes is generally the purchaser of the fuel. If, however, the cost of fuel supplied by an owner, tenant, or operator of a farm, is by agreement or other arrangement borne by a second person who is an owner, tenant, or operator of the farm, the second person who bore the cost of the fuel is considered to be the purchaser of the fuel.

(iii) Except as provided in paragraph (a)(2)(iv) of this section, if fuel is used on a farm by any person other than the owner, tenant, or operator for the purposes described in section 6420(c)(3)(A) and § 48.6420–4(d) (relating to gasoline used in cultivating, raising, or harvesting), the owner, tenant, or operator (as the case may be) will be treated for the purposes of § 48.6427–1(a)(2)(i) as the purchaser who used the fuel on the farm for farming purposes.

(iv) Section 6427(c) provides that an aerial applicator is entitled to be treated as the user and ultimate purchaser of fuel that the applicator uses on a farm for the purposes described in section 6420(c)(3)(A), but only if the owner, tenant, or operator of the farm who is otherwise entitled to be treated as the ultimate purchaser waives the right to credit or payment. The rules contained in section 6420 and the regulations under the section regarding waivers by owners, tenants, and operators of farms of their rights to payments under section 6420 for gasoline used by aerial applicators on a farm for farming purposes apply to waivers under this section.

(3) *Definitions, uses, and other rules.* (i) No interest shall be paid on any payment allowed under paragraph (c) of this section. However, interest may be paid on any overpayment (as defined by section 6401) arising from a credit. See section 34(a), relating to credit for certain uses of gasoline and special fuels. See section 39(a) of the Internal Revenue Code of 1954 prior to its

revision by the Highway Revenue Act of 1982, relating to credit for certain uses of lubricating oil. See section 6611, relating to interest on overpayments.

(ii) See § 48.6427–3 for the time within which a claim for credit or payment must be made under this section.

(iii) See § 48.6420–4 for the meaning of the terms "used on a farm for farming purposes" and "farm." The term "gasoline" has the same meaning given to this term by section 4082(b) and the regulations thereunder. For the meaning of the terms "diesel fuel," "special motor fuel," "motor vehicle," "highway vehicle," and "registered" see section 4041 and the regulations thereunder. The term "fuel" means diesel fuel, special motor fuel, or gasoline, as the context requires. Where appropriate, the term "use" includes a resale. See § 48.6421–4 for the meaning of "calendar quarter" and "taxable year".

(iv) For purposes of determining the allowable credit or payment in respect of fuel used for nontaxable purposes, on a farm for farming purposes, or for purposes taxable at a lower rate, fuel on hand shall be considered used in the order in which it was purchased. Thus, if the purchaser made purchases at different times and subject to different rates of tax, then in determining credit or payment for fuel used for a described purpose, it will be assumed that the fuel first purchased was the first fuel used, and the rate applicable to that purchase will apply in determining the credit of payment, until all of that fuel is accounted for.

(v) Fuel lost or destroyed through spillage, fire, or other casualty is not considered to have been "used" within the meaning of this section, and, accordingly, no credit or payment of the tax paid on the sale of the fuel may be made under this section.

(b) *Allowance of income tax credit in lieu of payment.* Except as provided in paragraph (c) of this section, repayment under this section of the tax paid under section 4041 on fuel used by a person subject to income tax may be obtained only by claiming a credit for the amount of this tax against the tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6427 with respect to fuel used during the taxable year for nontaxable purposes on a farm for farming purposes, or for purposes taxable at a lower rate, if section 6427(i) and paragraph (c) of this section did not apply. See section 34(a)(3).

(c) *Allowance of payment.* Payments in respect of fuel upon which tax was paid under section 4041 that is used for nontaxable purposes, on a farm for farming purposes, or for purposes taxable at a lower rate, shall be made only to—

(1) The United States or any agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions of a State, or the District of Columbia,

(2) An organization which is exempt from tax under section 501(a) and is not required to make a return of the income tax imposed under subtitle A for its taxable year, or

(3) In the case of fuel used for nontaxable purposes to which section 6427(a) applies, to a person described in section 6427(g)(2) to whom $1,000 or more is payable (without regard to paragraph (b) of this section) under this section with respect to fuel used during any of the first three quarters of his taxable year.

(d) *Dual use of fuel.* The principles set forth in § 48.4041–7, relating to dual use of fuel, for determining whether liability is incurred under section 4041 at the time of sale of the fuel, are equally applicable in determining whether a credit or payment is to be allowed under this section. Thus, if diesel fuel or special motor fuel used in a separate motor is drawn from the same tank as the one which supplies fuel for the propulsion of the vehicle, a reasonable determination of the quantity of the fuel used in the separate motor will be acceptable for purposes of computing the payment or credit under this section. The determination must be based, however, on the operating experience of the person using the fuel, and a statement, signed by the person, evidencing the operating experience must be maintained as a part of the records of the person claiming the payment or credit.

(e) *Supporting evidence required.* Each claim under this section for credit or payment must include a statement showing—

(1) The total number of gallons of fuel purchased and used for nontaxable or farming purposes during the period covered by the claim, multiplied by the rate of payment allowable under this section with respect to such fuel;

(2) The purpose or purposes for which the fuel was used, determined by reference to general categories, and the amount used for each of the purposes; and

(3) If a claim on Form 843 is being filed, the internal revenue district or service center with which the claimant last filed an income tax return, (if any).

(f) *Illustrations.* The application of this section may be illustrated by the following example:

Example. Special motor fuel was sold for use as fuel in a highway vehicle that was registered for highway use. Tax was imposed on the sale at the rate of 9 cents a gallon under section 4041(a)(2). The special motor fuel was eventually used by the purchaser in a qualified business use. The credit or payment of tax is to be computed as follows.

	Cents per gallon
Rate at which tax was paid	9
Less: Rate at which tax would have been imposed on a qualified business use under sec 4041(b).	0
Net credit or payment under sec. 6427(a)	9

§ 48.6427–2 Credits or payments to purchaser of diesel or special motor fuels used in intercity, local, or school buses.

(a) *In general.* (1) If tax has been paid under section 4041(a)(1) on the sale of diesel fuel for use as a fuel in a diesel-powered highway vehicle or under section 4041(a)(2) on the sale of special motor fuel for use as a fuel in a motor vehicle or a motorboat and the fuel is used by the purchaser in an intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public or in a school bus in the transportation of students and employees of schools, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect of the fuel so used shall be allowed or made to the purchaser of the fuel. The credit or payment under this section shall be an amount equal to the product of the number of gallons of fuel so used multiplied by the rate at which tax was imposed on the fuel by section 4041(a)(1) or section 4041(a)(2), reduced as limited by section 6427(b)(2). No interest shall be paid on any payment allowed under paragraph (c) of this section. However, interest may be paid on any overpayment (as defined by section 6401) arising from a credit. See section 34(a), relating to credit for certain uses of gasoline and special fuels, (and lubricating oil prior to January 7, 1983). See section 6611, relating to interest on overpayments. See § 48.6427–3 for the time within which a claim for credit or payment must be made under this section.

(2) The terms "diesel fuel" and "special motor fuel" have the same meaning as in section 4041 and the regulations thereunder. The term "fuel" means diesel fuel and special motor fuel.

See § 48.6421-4 for the meaning of "calendar quarter" and "taxable year."

(b) *Allowance of income tax credit.* Except as provided in paragraph (c) of this section, repayment under this section of the tax paid under section 4041(a)(1) or section 4041(a)(2) on diesel or special motor fuel used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations by a person subject to income tax may be obtained only by claiming a credit for the amount of this tax against the tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6427 with respect to fuel used during the taxable year for passenger land transportation or school bus operations if section 6427(i) and paragraph (c) of this section did not apply. See section 34(a)(3).

(c) *Allowance of payment.* Payments in respect of diesel or special motor fuel upon which tax was paid under section 4041(a)(1) or section 4041(a)(2) that is used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations shall be made only to—

(1) The United States or any agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions of a State, or the District of Columbia,

(2) An organization which is exempt from tax under section 501(a) and is not required to make a return of the income tax imposed under subtitle A for its taxable year, or

(3) A person described in section 6427(g)(2) to whom $1,000 or more is payable (without regard to paragraph (b) of this section) under this section with respect to fuel used during any of the first three quarters of the person's taxable year.

(d) *Supporting evidence required.* Each claim under this section for credit or payment must include a statement showing—

(1) The total number of gallons of fuel purchased and used in each intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public multiplied by the rate at which tax was imposed on the fuel by section 4041(a)(1) or section 4041(a)(2). See, however, section 6427(b)(2) with respect to the limitation on the amount of credit for buses other than qualified local buses.

(2) The total number of gallons of fuel purchased and used in each bus while engaged in school bus transportation operations multiplied by the rate at which tax was imposed on the fuel by subsection (a)(1) or (a)(2) of section 4041. See, however, section 6427(b)(2) with respect to the limitation on the amount of credit for buses other than qualified local buses.

(3) If a claim on Form 843 is being filed, the internal revenue district or service center with which the purchaser last filed an income tax return (if any).

§ 48.6427-3 Time for filing claim for credit or payment.

(a) *In general.* A claim for credit or payment described in § 48.6427-1 with respect to fuel used for nontaxable, farming, or other purposes taxable at a lower rate or in § 48.6427-2 with respect to fuel used either in an intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations shall cover only fuel used during the taxable year, or when paragraph (b)(2) of this section applies, used during the calendar quarter. Therefore, fuel on hand at the end of a taxable year, or, if applicable, a calendar quarter, such as fuel in supply tanks of vehicles or in storage tanks or drums, must be excluded from a claim filed for the taxable year or calendar quarter, as the case may be. However, this fuel may be included in a claim filed for a later taxable year or a later calendar quarter if it is used during that later year or quarter for nontaxable or farming purposes, or in an intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations. Fuel used during the taxable year or calendar quarter may be covered by the claim for that period although the fuel has not been paid for at the time the claim is filed. The purposes of applying this section, a governmental unit or exempt organization described in § 48.6427-1(c) or § 48.6427-2(c) is considered to have as its taxable year the calendar year or fiscal year on the basis of which it regularly keeps its books; see § 48.6421-4.

(b) *Time for filing*—(1) *Annual claims.* (i) A claim under this section for credit or payment with respect to fuel used during a taxable year shall not be allowed unless it is filed no later than the time prescribed by section 6511 and the regulations thereunder for filing a claim for credit or refund of income tax for the particular taxable year.

(ii) A claim for payment of a governmental unit or exempt organization described in § 48.6427-1(c) or unit or exempt organization described in § 48.6427-2(c), must be filed no later than 3 years following the close of its taxable year. See § 48.6421-4.

(2) *Quarterly claims.* A claim for payment of $1,000 or more in respect to fuel used during any of the first three quarters of the taxable year, filed either under § 48.6427-1(c)(3) in respect of fuel used for nontaxable purposes or for purposes taxable at a lower rate, or under § 48.6427-2(c)(3) in respect of fuel used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations, shall not be allowed unless the claim is filed on or before the last day of the first calendar quarter following the calendar quarter for which the claim is filed. No quarterly claim may be filed for the last calendar quarter of the taxable year. Amounts for which payment is disallowed under this paragraph (b)(2) merely because the claim was not filed on time may be included in an annual claim filed under paragraph (b)(1) of this section, but other amounts for which a claim for payment has been filed under this paragraph (b)(2) may not be included in an annual claim filed under paragraph (b)(1) of this section.

(3) *Other applicable rules.* See § 301.7502-1 of this chapter (Regulations on Procedure and Administration) for provisions treating timely mailing as timely filing and § 301.7503-1 of this chapter for time for performance of an act where the last day falls on Saturday, Sunday, or a legal holiday.

(c) *Limit on claims per taxable year.* Not more than one claim may be filed under § 48.6427-1 or § 48.6427-2 by any person with respect to fuel used during any taxable year, except to the extent that quarterly claims may be filed under paragraph (b)(2) of this section with respect to any calendar quarter (other than the last calendar quarter) of the taxable year.

(d) *Form and content of claim.*—(1) *Claim for credit.* The claim for credit to which this section applies must be made by attaching a Form 4136, to the income tax return of an individual or a corporation. Form 4136 must be executed in accordance with the instructions prescribed for the preparation of the form. A partnership may not file Form 4136. When a partnership files Form 1065, U.S. Partnership Return of Income, it must include a statement showing how many gallons of fuel are allocated to each partner and the use made of the fuel.

(2) *Claim for payment.* The claim for payment to which this section applies

must be made on Form 843 in accordance with the instructions prescribed for the preparation of the form. Each form must designate the taxable year, or calendar quarter, for which it is filed. The form must be filed with the same service center where the income tax return was last filed or, in the case of a governmental unit or exempt organization described in § 48.6427-1(c) or § 48.6427-2(d), with the service center for the internal revenue region in which the principal place of business or principal office of the claimant is located.

(3) *Death or termination.* (i) If an individual dies, or if a sole proprietorship, partnership, or corporation is terminated or liquidated, during the taxable year, the claim for credit or payment may be filed in respect of fuel used during the short taxable year in the same manner as is provided for fuel used in a full taxable year. Those months which constitute a quarter of a full taxable year will constitute the same quarter of the short taxable year. For example, if a corporation using the calendar year is liquidated on September 30, 1982, and is entitled to $900 under § 48.6427-1 in respect of fuel used for nontaxable purposes for the calendar quarter ending March 31 and is also entitled to payments of $1,500 for each of the calendar quarters ending June 30 and September 30, it may file a claim for payment in respect of the fuel used for nontaxable purposes during the calendar quarters ending June 30, and September 30, 1982, and take a credit of $900 on its income tax return for the short taxable year in respect of the fuel used during the calendar quarter ending March 31, 1982.

(ii) A claim for payment on behalf of a decedent may be filed by the decedent's executor, administrator, or any other person charged with responsibility for the decedent's affairs. Such a claim must be accompanied by copies of the letters testamentary, letters of administration, or, in the case of a claim filed by other than the executor or administrator, the information called for in Form 1310 (Statement of Person Claiming Refund Due a Deceased Taxpayer).

The claim may cover only fuel in respect of which the decedent would have been entitled to claim payments. For example, if an individual dies on July 15, 1982, prior to claiming payment under § 48.6427-1 of $1,000 or more applicable to fuel purchased and used for nontaxable purposes during the calendar quarter ending June 30, 1982, the decedent's executor or other legal representative may file a claim for payment covering that calendar quarter, and take the credit provided by section 39(a)(3) against the decedent's income tax on the income tax return for the short taxable year in respect of fuel purchased by the decedent and so used during the period from July 1, 1982, to July 15, 1982, the date of death.

(e) *Restrictions on claims for credit or payment.* Credits or payments are allowable only in respect of fuel that was sold by the producer or importer in a transaction that was subject to tax under section 4041. For example, a State or local government may not file a claim with respect to any fuel which it purchased tax free from the producer, even though the State or local government used the fuel for the purposes described in paragraph (a) of this section. Similarly, a State or local government may not file a claim with respect to the use of fuel if it is known that another person is entitled to claim a payment, credit, or refund with respect to the same fuel. For example, a State or local government may not file a claim in respect of tax-paid fuel that has been resold by the purchaser to the State or local government.

§ 48.6427-4 Applicable laws.

(a) *Penalties, excessive claims, etc.* All provisions of law, including penalties, applicable in respect of the tax imposed by section 4041 shall, to the extent applicable and consistent with section 6427, apply in respect of the payments provided for in section 6427 to the same extent as if those payments constituted refunds of overpayments of the tax imposed on the sale of fuels by section 4041. For special rules applicable to the assessment and collection of amounts constituting excessive payments under section 6427, see section 6206 and the regulations thereunder. For the civil penalty assessable in the case of excessive claims under section 6427, see section 6675 and the regulations thereunder. For the treatment as an overpayment of an amount allowable as an excessive credit under section 34 with respect to amounts payable under section 6427, see section 6401(b).

(b) *Examination of books and witnesses.* For the purpose of ascertaining (1) the correctness of any claim made under section 6427 or (2) the correctness of any credit or payment made in respect of the claim, the Commissioner shall have the same authority granted by paragraphs (1), (2), and (3) of section 7602, relating to examination of books and witnesses, as if the person claiming credit or payment under section 6427 were the person liable for tax.

§ 48.6427-5 Records to be kept in substantiation of credits or payments.

(a) *In general.* Every person making a claim for credit or payment under section 6427 must keep records sufficient to enable the district director to determine whether the person is entitled to credit or payment under such section and, if so, the amount of the credit or payment. No particular form is prescribed for keeping the records, but the records must include a copy of the income tax return or claim and a copy of any statement or document submitted with the return or claim. The records must also show with respect to the period covered by the claim—

(1) The number of gallons of fuel purchased and the dates of purchase,

(2) The name and address of each vendor from whom fuel was purchased and the total number of gallons purchased from each,

(3) The number of gallons of fuel purchased by the claimant and used during the period covered by the claim for nontaxable purposes, farming purposes, for other purposes taxable at a lower rate, in local, intercity, or school buses, and

(4) Other information as necessary to establish the correctness of the claim.

(b) *Acceptable records.* (1) Evidence of purchases of fuel, and the purposes for which it was used, to substantiate claims may include paid duplicate sales invoices or tickets from the fuel dealer or other vendor, and detailed records of all fuel used which show the amount used the prescribed purpose and the amount used for other purposes.

(2) Records maintained for Federal or State income tax purposes, or to support claims for refund of a State tax on fuel, may be used to the extent that they contain the information necessary to substantiate the accuracy of the claim for credit under section 6427. However, the records must show separately the number of gallons of fuel used for nontaxable purposes, farming purposes, other purposes taxable at a lower rate, or in intercity, local, or school buses during the period covered by the claim.

(c) *Place and period for keeping records.* (1) All records required by this section must be kept by the claimant at a convenient and safe location within the United States which is accessible to internal revenue officers and shall during normal business hours be available for inspection by internal revenue officers. If the claimant has a principal place of business in the United States, the records must be kept at that place of business.

(2) Records required to substantiate a claim under section 6427 must be

maintained for a period of at least 3 years from the last date prescribed for the filing of the claim for credit or payment.

Par. 37. Section 48.6675–1 is revised to read as follows:

§ 48.6675–1 Excessive claims under section 6420, 6421, 6424, or 6427.

(a) *Civil penalty.* Any person making a claim for credit or payment under section 6420 (relating to gasoline used on farms), section 6421 (relating to gasoline used for certain non-highway purposes or by local transit system), section 6424 (relating to lubricating oil used for certain nontaxable purposes prior to January 7, 1983), or section 6427 (relating to fuels not used for taxable purposes) for an excessive amount shall be liable, in addition to any criminal penalty provided by law, to penalty in an amount equal to the greater of either (1) two times the excessive amount or (2) ten dollars, unless the person shows that the making of the excessive claim was due to reasonable cause. For provisions relating to the assessment and collection of the civil penalty provided by section 6675, see section 6206 and the regulations thereunder.

(b) *Excessive amount defined.* For purposes of section 6675(a), the term "excessive amount" means the amount by which—

(1) The claim for credit or payment under section 6420, section 6421, section 6424 or section 6427 exceeds

(2) The amount of credit or payment under the section for the period covered by the claim.

Par. 38. The authority citation for Part 154 continues to read as follows:

Authority: 26 U.S.C. 7805. * * *

PART 154—[AMENDED]

§ 154.4–1 [Amended]

Par. 39. Paragraph (e) of § 154.4–1 [Temporary Regulations in connection with the Airport and Airway Revenue Act of 1970] is removed.

PART 602—REPORTING AND RECORDKEEPING REQUIREMENTS

Par. 40. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 41. Section 602.101(c) is amended as follows:

1. The following tabular entries are inserted in the appropriate places in the table:

Sections	
48.0–1	1545–0723
48.4064–1	1545–0725
48.4091–0	1545–0725
48.4092–1	1545–0725
48.4101–1	1545–0725
48.4102–1	1545–0725
48.4161(a)–1	1545–0723
48.4161(a)–2	1545–0723
48.5161(a)–3	1545–0723
48.4161(b)–1	1545–0723
48.4161–2	1545–0723
48.4182–2	1545–0723
48.6011(a)–1	1545–0723
48.6011(a)–2	1545–0723
48.6071(a)–1	1545–0723
48.6081(a)–1	1545–0723
48.6091–1	1545–0723
48.6101–1	1545–0723
48.6109–1	1545–0723
48.6416(a)–1	1545–0723
48.6416(a)–2	1545–0723
48.6416(a)–3	1545–0723
48.6416(b)(1)–1	1545–0723
48.6416(b)(1)–2	1545–0723
48.6416(b)(1)–3	1545–0723
48.6416(b)(1)–4	1545–0723
48.6416(b)(2)–1	1545–0723
48.6416(b)(2)–2	1545–0723
48.6416(b)(2)–3	1545–0723
48.6416(b)(2)–4	1545–0723
48.6416(b)(3)–1	1545–0723
48.6416(b)(3)–2	1545–0723
48.6416(b)(3)–3	1545–0723
48.6416(b)(4)–1	1545–0723
48.6416(b)(5)–1	1545–0723
48.6416(c)–1	1545–0723
48.6416(e)–1	1545–0723
48.6416(f)–1	1545–0723
48.6416(g)–1	1545–0723
48.6416(h)–1	1545–0723
48.6420–1	1545–0723
48.6420–2	1545–0723
48.6420–3	1545–0723
48.6420–4	1545–0723
48.6420–5	1545–0723
48.6420–6	1545–0723
48.6420–7	1545–0723
48.6421–0	1545–0723
48.6421–1	1545–0723
48.6421–2	1545–0723
48.6421–3	1545–0723
48.6421–4	1545–0723
48.6421–5	1545–0723
48.6421–6	1545–0723
48.6421–7	1545–0723
48.6424–0	1545–0723
48.6424–1	1545–0723
48.6424–2	1545–0723
48.6424–3	1545–0723
48.6424–4	1545–0723
48.6424–5	1545–0723
48.6424–6	1545–0723
48.6424–7	1545–0723
48.6427–0	1545–0723
48.6427–1	1545–0723
48.6427–2	1545–0723
48.6427–3	1545–0723
48.6427–4	1545–0723
48.6427–5	1545–0723
48.6675–1	1545–0723

2. The entry in the table reading "§ 48.0–5 ..... 1545–0685" is revised to read: "§ 48.0–3 ..... 1545–0685".

3. The following tabular entries are removed from the table:

6416(b)–1 (d)	1545–0023
6416(b)–2 (b)	1545–0023
6416(b)–2 (c)	1545–0023
6416(b)–3 (a) and (c)	1545–0023
6416(b)–4 (c)	1545–0023
6416(b)–5 (c)	1545–0023
6420(f)–1 (a) and (b)	1545–0023
6420(c)–2 (c), (d) and (e)	1545–0023
6421(c)–1 (a), (b), (c), (d)	1545–0024
6421(g)–1 (a), (b), (c)	1545–0024
64	1545–0023
64	1545–0023
64	1545–0023
64	1545–0023
64	1545–0023
64	1545–0023
64	1545–0023

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: July 18, 1985.

Ronald A. Pearlman,
Assistant Secretary of the Treasury.

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