

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 48 and 602

(T.D. 8421)

RIN 1545-AP48

Gasoline Excise Tax

AGENCY: Internal Revenue Service,
Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations relating to the federal excise tax on gasoline. These regulations reflect and implement certain changes made by the Tax Reform Act of 1986 and the Revenue Reconciliation Act of 1990. These regulations affect refiners, importers, and distributors of gasoline and provide guidance relating to taxable transactions, persons liable for tax, gasoline blendstocks, and gasohol.

EFFECTIVE DATES: These regulations are effective January 1, 1993, except that § 48.4081-9 is effective July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Frank Boiland, (202) 566-4475 (not a toll-free call).

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. 3504(h)) under control number 1545-1270. The estimated annual burden per respondent varies from .1 hour to .25 hours,

depending on individual circumstances, with an estimated average of .2 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time depending on their particular circumstances.

Comments regarding the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

Sections 4081 and 4082 of the Internal Revenue Code impose, and provide certain rules relating to, the federal gasoline excise tax. Sections 4081 and 4082 were amended in relevant part by the Tax Reform Act of 1986 (the "1986 Act") and the Revenue Reconciliation Act of 1990 (the "1990 Act").

On August 27, 1991, the IRS published in the Federal Register (56 FR 42287) proposed amendments to the regulations (26 CFR part 38) under sections 4081 and 4082. The IRS received a number of comments with respect to the proposed regulations, and a public hearing was held on November 25, 1991. After consideration of all comments received and statements made at the public hearing, the proposed regulations are adopted as revised by this Treasury decision.

Significant Issues Raised in Comments and Changes Made by the Final Regulations**Overview**

Three major issues were raised in the public comments on the proposed regulations: (1) The identity of the person liable for tax on removal of

gasoline at the terminal rack, (2) the treatment of gasoline blendstocks, and (3) the refund procedures under section 4081(e). Generally, the final regulations adopt the proposed rule that the position holder is liable for tax on removal of gasoline at the terminal rack, modify the proposed rules for gasoline blendstocks to allow tax-free nonbulk transfers of gasoline blendstocks to approved terminals and refineries, and modify the proposed refund procedures by revising the form and content of the claim for a refund. The final regulations generally are effective on and after January 1, 1993. Transitional rules are provided for the period from July 1, 1991, to December 31, 1992.

Definitions (§ 48.4081-1)

Under the proposed regulations, the term "bulk transfer" means any transfer of gasoline by pipeline or marine vessel. Several commentators suggested that the term be expanded to include a gasoline registrant's transfer of its gasoline by truck or rail car from one approved terminal to another approved terminal.

The final regulations do not adopt this suggestion. The principal purpose of the 1990 Act amendments to section 4081 was to make all nonbulk removals of gasoline from a terminal taxable. Enforcement of the federal gasoline excise tax is greatly complicated if some removals of gasoline at the terminal rack are exempt from tax.

In response to a comment, the final regulations clarify that entry into the United States does not occur when gasoline is brought into Puerto Rico (which is part of the United States customs territory). However, entry into the United States does occur when gasoline is brought into the United States from Puerto Rico.

The final regulations shorten the term "gasoline blendstocks and additives" to "gasoline blendstocks" and adopt the list of gasoline blendstocks contained in the proposed regulations, with certain modifications.

In the final regulations, the term "debutanized natural gasoline" is replaced by the term "natural gasoline."

The proposed regulations included in the list of gasoline blendstocks a mixture of two or more gasoline blendstocks if the mixture is not gasoline. One commenter suggested that this product be deleted from the list because such a mixture generally has lost its effectiveness as a blendstock. The final regulations adopt this suggestion.

Notice 88-16, 1988-1 C.B. 482, provides that the term "gasoline blendstocks" does not include any product that cannot be blended into gasoline without further processing or fractionation. One commentator suggested that the final regulations incorporate this principle, and the final regulations do so.

One commentator suggested that the definition of the term "transmix containing gasoline" be revised to avoid unnecessary accounting for transmix that contains only insignificant amounts of gasoline. This revision is now unnecessary because only transmix containing gasoline that can be blended into gasoline without further processing or fractionation is considered a gasoline blendstock under the final regulations.

Tax on Removal at a Terminal Rack (§ 48.4081-2)

The Proposed Regulations

Under proposed § 48.4081-2(b), tax is imposed on gasoline removed from a terminal at the rack. Under existing rules, the person liable for tax is the owner of the gasoline at the time of removal. However, under proposed § 48.4081-2(c), the person liable for tax is the position holder (the "position holder rule"). Proposed § 48.4081-1(m) defines the position holder to be the person that holds the inventory position to the gasoline as reflected on the records of the terminal operator. This is generally a person that has a contract with the terminal operator for the use of storage facilities and terminaling services at a terminal for the gasoline, but the term also includes a terminal operator that owns gasoline in its own terminal.

A position holder may not necessarily own the gasoline when it is removed at the rack. This may occur, for example, because the position holder transfers title to the gasoline to a buyer without any physical movement of the gasoline and without changing the holder of the inventory position on the terminal operator's books. A similar result occurs under various financing arrangements or when a position holder merely subleases its space in the terminal without

informing the terminal operator of the sublease. Another common transaction in which one person owns the gasoline and another person holds the inventory position is a location exchange. As an example of a location exchange, M operates a terminal in Maryland and N operates a terminal in New Jersey. X, a customer of M, wants to buy gasoline in New Jersey. To accommodate its customer, M exchanges the gasoline with N, without transferring inventory positions on the books of the terminal operators.

Under existing rules, these transactions can be conducted on a tax-free basis so long as the gasoline is transferred between registered persons. Under the position holder rule, no tax is imposed when title to gasoline is transferred in the terminal without changing the person holding the inventory position on the books of the terminal operator because the transfer is not treated as a sale. See proposed § 48.4081-1(r). However, a position holder remains liable for the tax imposed when the gasoline is subsequently removed at the terminal rack. Thus, in the above example, N, the position holder, would be liable for the tax when M's customer, X, removes the gasoline at N's terminal rack.

Public Comments

Several commentators argued that, because the position holder remains liable for the tax imposed when the gasoline is subsequently removed at the terminal rack, the position holder will include the amount of that tax in the price it charges its buyer. This will result in an increased outlay for the buyer that will not be recovered until the buyer sells the gasoline and includes the amount of the tax in the price it charges its customer.

According to the commentators, the change in pricing under the position holder rule would increase costs for market participants, reduce competition, and impair the ability of the market to respond to changes in supply and demand. For example, commentators argued that smaller companies may find it difficult or expensive to finance the increased cost of buying gasoline at a tax-included price. Moreover, because of their limited financial resources and access to credit, these companies may not be able to become position holders themselves in order to buy gasoline tax free. As a result, these companies may withdraw from a segment of the gasoline market, making it less competitive.

As another example, commentators suggested that the position holder rule would decrease the frequency of exchanges and increase their cost.

Companies might have to create a burdensome and expensive "tax invoice" system in order to be properly reimbursed for the amount of the tax from their exchange partners. This could be especially problematic for complex arrangements involving multiple parties and facilities.

The commentators suggest that additional costs and dislocations also may result where the position holder charges its buyer for the amount of the tax it expects to be due, but no tax is imposed because the buyer (or a subsequent buyer) removes the gasoline from the terminal in bulk or a reduced rate of tax is imposed because the buyer (or a subsequent buyer) sells the gasoline at the terminal rack to a gasohol blender. According to the commentators, new and perhaps costly mechanisms will need to be developed to reimburse such a buyer (or subsequent buyer) for the excess of the amount it paid its seller in respect of tax over the amount of tax, if any, actually due from the position holder. One effect may be to limit opportunities for gasohol blenders to purchase gasoline at the reduced rate.

Accordingly, several commentators argued that the final regulations should retain the existing rules concerning the identity of the person liable for tax when gasoline is removed at the rack. Alternatively, one commentator suggested modifying the proposed regulations so that the receiving party in an exchange would be primarily liable for the tax while the position holder would be secondarily liable for tax. Another commentator proposed that a terminal operator should be allowed to recognize any gasoline registrant as a position holder even though the registrant does not have a terminaling and storage agreement with the operator.

The Final Regulations

The final regulations adopt the position holder rule as proposed, with the effective date delayed until January 1, 1993, in order to allow additional time for companies to adjust to that rule. The position holder rule provides the most effective method of assuring that the proper amount of gasoline tax is paid. The Service recognizes that the position holder rule may cause some companies to incur costs in restructuring some business relationships and accounting procedures and that the effect on certain companies may be greater than on others. However, the Service believes that each alternative to the position holder rule imposes significant compliance burdens that would not be

distributed equally among participants in the industry. Moreover, any disadvantages of the rule should be more than offset by the benefits legitimate businesses will achieve through the elimination of rules that allow significant opportunities for unfair competition through tax evasion. These legitimate businesses will be better able to compete if everyone in their market pays the same amount of tax on a gallon of gasoline.

Congress, the Executive Branch, state governments, and various segments of the petroleum industry have long been concerned with the problem of gasoline tax evasion. See *Compliance with Federal Gasoline Excise Tax Provisions: Hearing before the Subcommittee on Oversight of the House Committee on Ways and Means, 99th Cong., 2nd Sess. (1986)*; and *Shortfalls in Highway Trust Fund Collections: Hearing before the Subcommittee on Investigations and Oversight of the House Committee of Public Works and Transportation, 101st Cong., 1st Sess. (1989)*. Congress addressed these concerns by twice changing the law in recent years. The 1986 Act moved the point of taxation from the producer's sale of gasoline to the earlier of the sale or removal of gasoline from the terminal, effective January 1, 1988. The 1990 Act provided that the removal of gasoline at the terminal rack was subject to tax regardless of whether the gasoline had previously been subject to tax, effective July 1, 1991.

Neither the 1986 Act nor the 1990 Act identifies the person that is required to pay the tax to the government. Instead, the conference report to the 1990 Act, H.P. Conf. Rep. No. 964, 101st Cong., 2d Sess. 1052 (1990), confirms that the IRS is to provide rules and administrative procedures for determining liability for payment of the tax. Congress clearly intended that IRS develop rules to assure that tax is, in fact, paid to the government.

The existing rule that the owner of the gasoline at the time of the taxable event is liable for the tax has allowed certain persons to obscure the identity of the taxpayer through a complex chain of sales among related parties. This creates the potential for, and according to several commentators and authorities has resulted in, considerable gasoline tax evasion.

Under the position holder rule, the taxpayer with respect to a removal at the terminal rack will be either the terminal operator or a person that has a contractual relationship with the terminal operator. Thus, the IRS can easily identify the person liable for tax

by examining the records of the terminal operator.

In addition, terminal operators should ensure that each position holder is registered with the IRS because the terminal operator may be jointly and severally liable for the tax if the position holder is not a gasoline registrant. As an additional check on the position holder, the terminal operator is likely for its own business purposes to review the credit and financial resources of persons requesting terminaling and storage services in the terminal.

Another important enforcement benefit of the position holder rule is that it should reduce the number of taxpayers and registrants. This will allow the IRS to maximize the effectiveness of its enforcement resources.

The recordkeeping burden associated with the position holder rule should, in most cases, be no greater than the burden for taxpayers under the existing rule. The position holder rule, in fact, reduces the burden with respect to transfers in a terminal because the transfers are not treated as sales potentially subject to tax and thus the seller need not determine whether its transferee is registered. In the case of exchanges, the Service recognizes that the position holder rule may create the need for additional recordkeeping, but believes that these transactions already require considerable recordkeeping for business and tax purposes. The position holder rule also should reduce the need for refunds under section 4081(e) because the rule will reduce the possibilities of taxable sales within a terminal.

The final regulations do not adopt the suggestion that primary liability be shifted to the receiving party in an exchange leaving the position holder only secondarily liable for tax. Unlike the position holder rule, this alternative would prevent the IRS from identifying the taxpayer through an audit of the terminal operator's books. It would require detailed recordkeeping by the parties to the exchange because each party potentially would be liable for tax with respect to the gasoline it receives and the gasoline it exchanges. It also would expand the number of taxpayers, as compared to the position holder rule, and could allow companies to obscure the identity of the taxpayer, especially in complicated, multi-party exchanges.

The final regulations also do not adopt the suggestion that a terminal operator be allowed to recognize gasoline registrants as position holders even if the registrants do not have terminaling and storage agreements with

the terminal operator. Although this approach might provide throughputters with some additional flexibility, it would place a large recordkeeping burden on terminal operators. An operator would have to maintain both its regular inventory records and a new set of "tax" records so it could determine the identity of the "tax" position holder. The proposal also would expand the number of taxpayers as compared to the position holder rule.

Taxable Events Other Than Removal at the Terminal Rack (§ 48.4081-3)

Proposed § 48.4081-3 provides rules for taxing events other than the removal of gasoline at the terminal rack. These taxes are imposed on certain removals from a refinery, entries into the United States, bulk transfers not received at an approved terminal or refinery, bulk transfers by an unregistered position holder, sales to unregistered persons, and removal or sale of blended gasoline by a blender.

The final regulations generally adopt these provisions as proposed. However, proposed § 48.4081-3(b) is revised to provide that no tax is imposed on removals from a refinery rack if (1) the gasoline is removed by rail car from an approved refinery and received at an approved terminal, (2) the refinery and the terminal are operated by the same gasoline registrant, and (3) the gasoline cannot be removed by bulk transfer because the refinery is not served by pipeline or waterborne gasoline transporting vessel.

Under proposed § 48.4081-3(d), tax is imposed on the bulk transfer from a terminal if the position holder is not registered. One commentator noted that the proposed regulations did not describe the tax consequences of bulk transfers from a terminal by a person other than the position holder. The final regulations clarify that tax is not imposed on the bulk transfer from a terminal by such a person (whether or not registered) so long as the position holder with respect to the gasoline is registered. Under § 48.4081-2, tax is imposed only when gasoline is removed at the terminal rack, and bulk transfers are not removals at the terminal rack. However, tax is imposed under § 48.4081-3(e) if gasoline is removed from a terminal in a bulk transfer and is received at an unapproved terminal or refinery.

Special Rules for Gasoline Blendstocks (§ 48.4081-4)

Under the final regulations (as under the proposed regulations), gasoline blendstocks generally are treated the

same as gasoline so long as they are in the bulk transfer/terminal system. Accordingly, tax is not imposed on a bulk transfer of gasoline blendstocks if the relevant party (determined under the rules applicable to gasoline in the bulk transfer/terminal system) is a gasoline registrant.

Under Notice 88-18, a registered person may, by nonbulk transfer, remove gasoline blendstocks from a terminal or refinery tax free even if the person will use the gasoline blendstocks to produce gasoline. A registered person also may sell gasoline blendstocks tax free to another registered person even if the sale is in connection with a nonbulk removal and the gasoline will be used by the buyer to produce gasoline.

In contrast, under the proposed regulations, nonbulk removals of gasoline blendstocks are generally taxable if the blendstocks will be used to produce gasoline regardless of whether the removals are by a registered person. Under a special rule, however, ETBE, MTBE, TAME, and TBA may, by nonbulk transfer, be removed from a terminal or refinery, or brought into the United States, tax free if these products are received at an approved terminal or refinery.

Some commentators objected to the proposed treatment of nonbulk removals of gasoline blendstocks and recommended that the rules of Notice 88-18 be retained. The commentators argued that gasoline blendstocks are frequently transported between facilities in the bulk transfer/terminal system by nonbulk transfer. The effect of applying the rule in the proposed regulations would be that taxed and untaxed gasoline blendstocks often would be commingled in refineries and terminals. When gasoline produced from these blendstocks is removed at the terminal rack, a refund would be available for the portion representing previously-taxed blendstocks (but not with respect to the remainder). The recordkeeping required to determine the amount of that portion would make the proposed rule difficult to administer for taxpayers and the IRS.

Accordingly, the final regulations apply to all gasoline blendstocks the special rule that applied under the proposed regulations only to ETBE, MTBE, TAME, and TBA. Thus, tax is not imposed on nonbulk removals from a terminal or refinery, or on nonbulk entries into the United States, of any gasoline blendstocks if the person otherwise liable for tax (1) is a gasoline registrant, (2) has an unexpired notification certificate (as described in § 48.4081-5) from the operator of the terminal or refinery where the gasoline blendstocks are received, (3) does not

know that any information in the certificate is false, and (4) has verified the accuracy of the notification certificate in accordance with IRS procedures.

Gasohol (§ 48.4081-6)

Regulations concerning the tolerance rule for determining the percentage of alcohol required for gasohol and the rule relating to the later blending of gasohol were published in the Federal Register on March 4, 1992, (57 FR 7653). These final regulations incorporate the tolerance and later blending rules without substantive change.

Conditions for, and Reporting Relating to, Refunds of Gasoline Tax Under Section 4081(e) (§ 48.4081-7)

The Proposed Regulations

Beginning July 1, 1991, section 4081 may impose tax more than once on a particular volume of gasoline. For example, gasoline sold to an unregistered person within the bulk transfer/terminal system is taxed on that sale (the "first tax") and taxed again (the "second tax") when it is removed at the terminal rack. Under the proposed regulations, each seller liable for tax on the sale of gasoline within the bulk transfer/terminal system to an unregistered buyer must include with its return of tax a statement identifying the buyer and amount and type of gasoline sold (the "first taxpayer's report"). The proposed regulations also prescribe conditions under which the person who pays the second tax to the government may obtain a refund. A claimant must (1) identify the person who paid the first tax to the government (the "first taxpayer"), (2) identify every owner in the chain of sales between the first taxpayer and the claimant, (3) obtain invoices of all the transactions in this chain of sales, (4) obtain a statement from the person who paid the first tax that such person has not claimed or received a credit for, or refund of, the first tax, and (5) obtain evidence that the claimant has met the conditions to allowance for refund of manufacturers' taxes of section 6418(a) (relating to whether the claimant bore the burden of the tax) with respect to the second tax. The conditions also include, where applicable, satisfaction of the reporting requirement by the person paying the first tax and a requirement that the claimant submit a copy of the first taxpayer's report with the refund claim. These provisions were proposed to be effective on July 1, 1991.

Public Comments

Commentators argued that the information-collection requirements under the proposed regulations are too burdensome.

The Final Regulations

The final regulations retain the requirement that the claimant identify the first taxpayer and the subsequent owners of the gasoline. This requirement is necessary so that the IRS may verify that a first tax actually has been paid to the government and that the claimant has paid the second tax on the same gasoline. However, the final regulations modify the reporting and information-collection requirements so that claimants will not have to obtain invoices relating to previous sales of the gasoline. Instead, a claimant will fulfill its responsibility by including with its return a copy of the first taxpayer's report, which should be passed down the chain of sales.

Section 48.4081-7 of the final regulations set forth the format for the first taxpayer's report and expands the reporting requirement to cover all taxable events except removals at a terminal or refinery rack, nonbulk entries into the United States, and removals or sales by blenders. Reporting is optional for these events, but taxpayers are encouraged to report if they expect that a second tax will be imposed with respect to the gasoline.

Under the final regulations, in order for a person who pays a second tax to claim a refund in respect of a first tax imposed after December 31, 1992, (regardless of the point at which the first tax is imposed), a copy of the first taxpayer's report must be submitted by the person who pays the second tax. Accordingly, any first taxpayer required to report must give a copy of the report to certain persons. For example, if the first tax is imposed on the sale of gasoline within the bulk transfer/terminal system to an unregistered buyer, the first taxpayer must give a copy to the buyer. First taxpayers filing optional reports should (but are not required to) follow similar procedures for transactions outside of the bulk transfer/terminal system.

If a person receives a first taxpayer's report and subsequently sells the gasoline within the bulk transfer/terminal system (other than a sale in a terminal that does not involve a change in the position holder), that person must give a copy of the first taxpayer's report and a statement describing the subsequent sale to its buyer. A person receiving a first taxpayer's report in a

sale outside of the bulk transfer/terminal system should (but is not required to) follow a similar procedure if that person subsequently sells the gasoline and the parties expect that another tax will be imposed under section 4081 with respect to the gasoline.

If the first taxpayer's volume of gasoline is divided among more than one buyer, multiple copies of the report should be made at the stage the gasoline is divided, with appropriate notations concerning the volume sold to each buyer, so that each buyer has a copy of the first taxpayer's report.

The claimant's submission of a copy of the first taxpayer's report does not mean that the claim will be allowed. For example, a claim will not be allowed if the first taxpayer did not actually pay the first tax to the government. A claim also will not be allowed if the IRS cannot determine that the first taxpayer's report applies to the gasoline to which the claim relates.

The final regulations require the first taxpayer to state on the first taxpayer's report that it has not claimed or received a credit for, or refund of, the first tax (instead of requiring the claimant to obtain such a statement from the first taxpayer). In addition, under the final regulations, the requirements of section 6416(a) are satisfied by a statement by the claimant that it has not included the amount of the second tax in the sale price of the gasoline and has not collected that amount from its buyer.

One commentator suggested that a credit rather than a refund be allowed when the same person pays both the first and second taxes. This would occur, for example, when a taxpayer removes gasoline at a terminal rack, trucks the gasoline to a second terminal, and then removes the gasoline at the rack of the second terminal. This suggestion is not adopted because such a credit is not authorized by sections 4081(e) or 6416(d). However, the final regulations provided a simplified refund procedure in these cases.

Transitional Rules Applicable After June 30, 1991, and Before January 1, 1993
(§ 48.4081-9)

The 1990 Act amendments relating to section 4081 are effective July 1, 1991, even though §§ 48.4081-1 through 48.4081-8 are not effective until January 1, 1993.

Section 48.4081-9 of the final regulations provides transitional rules applying the 1990 Act's gasoline tax amendments during the period from July 1, 1991, to December 31, 1992. The transitional rules provide that taxable events during this period are determined

under sections 4081 and 4082 and that the owner of the gasoline immediately before the taxable event is liable for tax. Where two taxes are imposed with respect to the same gasoline and the first tax is imposed before January 1, 1993, the first taxpayer need not file a first taxpayer's report and the second taxpayer need not include a copy of that report in a refund claim to satisfy the conditions for allowance under section 4081(e). For other matters, taxpayers may rely on previously published guidance to the extent this guidance is not inconsistent with section 4081, as amended by the 1990 Act. The relevant guidance in this area includes Notice 87-83, 1987-2 C.B. 393, Notice 88-16, 1988-1 C.B. 482, Notice 88-109, 1988-2 C.B. 446, Notice 89-101, 1989-2 C.B. 435, and Rev. Rul. 88-70, 1988-2 C.B. 338.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Frank Boland, Office of the Assistant Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service. However, other persons from the Service and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 48

Agriculture, Aircraft, Boats, Coal, Excise taxes, Furs, Jewelry, Motor fuels, Motor vehicles, Sporting goods, Tires.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

Paragraph 1. The authority citation for part 48 is amended by adding the following citations:

Authority 26 U.S.C. 7805 * * * Section 48.4081-4 also issued under 26 U.S.C. 4082(a); Section 48.4081-6 also issued under 26 U.S.C. 4081(c); Sections 48.4081-7 and 48.4081-9(e) also issued under 26 U.S.C. 4081(e) * * *

Par. 2. Subpart H of part 48 is amended as follows:

1. New § 48.4081-0 is added.
2. Sections 48.4081-1 and 48.4081-2 are revised.
3. The authority citation following § 48.4081-2 is removed.
4. New §§ 48.4081-3 through 48.4081-9 are added.
5. Sections 48.4082-1, 48.4083-1, 48.4083-2, 48.4084, the authority citation following 48.4084, 48.4084-1, and 48.9000-0 are removed.
6. The added and revised provisions read as follows:

§ 48.4081-0 Gasoline tax; table of contents.

This section lists captions contained in §§ 48.4081-1 through 48.4081-9.

Section 48.4081-1 Gasoline tax; definitions.

- (a) Overview.
- (b) Approved terminal or refinery.
- (c) Blended gasoline.
- (d) Blender.
- (e) Bulk transfer.
- (f) Bulk transfer/terminal system.
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- (h) Entry into the United States.
- (i) Gasoline.
- (j) Gasoline blendstocks.
- (1) In general.
- (2) Products requiring further processing.
- (k) Gasoline registrant.
- (l) Industrial user.
- (m) Position holder.
- (n) Rack.
- (o) Refiner.
- (p) Refinery.
- (q) Removal.
- (r) Sale.
- (1) In general.
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- (s) Terminal.
- (t) Terminal operator.
- (u) Throughputter.
- (v) Vessel.
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Section 48.4081-2 Gasoline tax; tax on removal at a terminal rack.

- (a) Overview.
- (b) Imposition of tax.
- (c) Liability for tax.
- (1) In general.
- (2) Joint and several liability of terminal operator.
- (3) Conditions for avoidance of liability.
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Section 48.4081-3 Gasoline tax; taxable events other than removal at the terminal rack.

- (a) Overview.
- (b) Tax on the removal from a refinery.
- (1) In general.

- (2) Exemption for certain refineries.
- (3) Liability for tax.
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- (c) Tax on entry into the United States.
 - (1) In general.
 - (2) Liability for tax.
 - (3) Rate of tax.
- (d) Tax on bulk transfers from a terminal by an unregistered position holder.
 - (1) In general.
 - (2) Liability for tax.
 - (3) Rate of tax.
- (e) Tax on bulk transfers not received at an approved terminal or refinery.
 - (1) In general.
 - (2) Liability for tax.
 - (3) Rate of tax.
- (f) Tax on sales of gasoline within the bulk transfer/terminal system.
 - (1) In general.
 - (2) Liability for tax.
 - (3) Rate of tax.
 - (g) Tax on removal or sale by the blender.
 - (1) In general.
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 - (3) Rate of tax.
 - (4) Example.
 - (h) Effective date.

Section 48.4081-4 Gasoline tax: special rules for gasoline blendstocks.

- (a) Overview.
- (b) Nonbulk removals and entries of gasoline blendstocks not used to produce gasoline.
 - (1) Removals and entries not in connection with sales.
 - (2) Removals and entries in connection with sales.
 - (3) Tax on sales after certain nonbulk removals or entries.
- (c) Nonbulk removals and entries of gasoline blendstocks received at an approved terminal or refinery.
 - (d) Bulk transfers to a registered industrial user.
 - (e) Certificate.
 - (1) In general.
 - (2) Withdrawal of right to provide certificate.
 - (3) Form of certificate.
 - (f) Effective date.

Section 48.4081-5 Gasoline tax: notification certificate of gasoline registrant.

- (a) Overview.
- (b) Certificate.
 - (1) In general.
 - (2) Form of certificate.
 - (3) Use of Form 637 as a notification certificate prohibited.
 - (c) Effective date.

Section 48.4081-6 Gasoline tax: gasohol.

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- (b) Definitions.
 - (1) Alcohol.
 - (2) Gasohol.
 - (3) Gasohol blender.
 - (4) Registered gasohol blender.
 - (c) Rate of tax on gasohol removed or entered for gasohol production.
 - (1) In general.
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 - (d) Rate of tax on gasohol removed or entered.
 - (e) Tax rates.

- (1) Gasohol production tax rate.
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- (f) Later blending.
 - (1) In general.
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 - (4) Examples.
 - (g) Later separation and failure to blend.
 - (1) Later separation.
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Section 48.4081-7 Gasoline tax: conditions for, and reporting relating to, refunds of gasoline tax under section 4081(e).

- (a) Overview.
- (b) Conditions to allowance of refund.
- (c) Reporting requirements.
 - (1) Reporting by persons paying first tax.
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 - (3) Optional reporting for certain taxable events.
 - (4) Information provided to subsequent owners, etc.
 - (5) Exception if the same person incurs two taxes in the same calendar quarter.
 - (d) Form and content of refund claim.
 - (1) In general.
 - (2) Information to be included on claim form by claimant that did not pay the first tax to the government.
 - (3) Information to be included on claim form by claimant that paid the first tax to the government.
 - (e) Time for filing claim.
 - (f) Examples.
 - (g) Effective date.
 - (1) In general.
 - (2) Cross reference.

Section 48.4081-8 Gasoline tax: measurement.

- (a) In general.
- (b) Effective date.

Section 48.4081-9 Gasoline tax: rules applicable after June 30, 1991, and before January 1, 1993.

- (a) Overview.
- (b) Imposition of tax.
- (c) Liability for tax.
 - (1) Primary liability.
 - (2) Secondary liability.
 - (d) Reliance on previously issued guidance.
 - (e) Conditions for refunds of gasoline tax under section 4081(e).
 - (1) Conditions to allowance of refund.
 - (2) Form and content of claim.
 - (3) Time for filing claim.
 - (f) Effective date.

§ 48.4081-1 Gasoline tax: definitions.

- (a) Overview. This section provides definitions for purposes of the regulations relating to the gasoline tax imposed by section 4081 of the Internal Revenue Code.
- (b) *Approved terminal or refinery.* The term "approved terminal or refinery" means a terminal or refinery that is operated, respectively, by a gasoline registrant that is a terminal operator, or by a gasoline registrant that is a refiner.
- (c) *Blended gasoline.*—(1) *In general.* Except as provided in paragraph (c)(2)

of this section, the term "blended gasoline" means gasoline that is a mixture of—

(i) Gasoline with respect to which tax has been imposed under section 4081(a); and

(ii) Any substance with respect to which tax has not been imposed under section 4081(a), other than a de minimis amount of a product such as carburetor detergent or oxidation inhibitor.

(2) *Exception.* In the case of a mixture that is gasohol (as defined in § 48.4081-6(b)(2)) the term "blended gasoline" does not include a mixture of—

(i) Gasoline with respect to which tax was imposed under section 4081(a) at a rate described in § 48.4081-6(e) (relating to gasohol) or with respect to which a valid claim is made under section 6427(f); and

(ii) Alcohol.

(d) *Blender.* The term "blender" means any person that produces blended gasoline outside the bulk transfer/terminal system.

(e) *Bulk transfer.* The term "bulk transfer" means any transfer of gasoline by pipeline or vessel.

(f) *Bulk transfer/terminal system.* The term "bulk transfer/terminal system" means the gasoline distribution system consisting of refineries, pipelines, vessels, and terminals. Thus, gasoline in a refinery, pipeline, vessel, or terminal is in the bulk transfer/terminal system. Gasoline in the fuel supply tank of any engine, or in any tank car, rail car, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.

(g) *Enterer.* The term "enterer" generally means the importer of record (under customs law) with respect to the gasoline. However, if the importer of record is acting as an agent (for example, the importer of record is a customs broker engaged by the owner of the gasoline), the person for whom the agent is acting is the enterer. If there is no importer of record for gasoline entered into the United States, the owner of the gasoline at the time it is brought into the United States is the enterer.

(h) *Entry into the United States.* Gasoline is entered into the United States if, and entry occurs when—

(1) The gasoline is brought into the United States and applicable customs law requires that the gasoline be entered into the United States for consumption, use, or warehousing; or

(2) The gasoline is brought into the United States from Puerto Rico and applicable customs law would require that the gasoline be entered into the United States for consumption, use, or

warehousing if the gasoline were brought into the United States from somewhere other than Puerto Rico.

(i) *Gasoline*. The term "gasoline" means—

(1) All products (including gasohol (as defined in § 48.4081-8(b)(2))) that are commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel (other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method); and

(2) Gasoline blendstocks.

(j) *Gasoline blendstocks*—(1) *In general*. Except as provided in paragraph (j)(2) of this section, the term "gasoline blendstocks" means—

- (i) Alkylate;
- (ii) Butane;
- (iii) Butene;
- (iv) Catalytically cracked gasoline;
- (v) Coker gasoline;
- (vi) Ethyl tertiary butyl ether (ETBE);
- (vii) Hexane;
- (viii) Hydrocrackate;
- (ix) Isomerate;
- (x) Methyl tertiary butyl ether (MTBE);
- (xi) Mixed xylene (not including any separated isomer of xylene);
- (xii) Natural gasoline;
- (xiii) Pentane;
- (xiv) Pentane mixture;
- (xv) Polymer gasoline;
- (xvi) Raffinate;
- (xvii) Reformate;
- (xviii) Straight-run gasoline;
- (xix) Straight-run naptha;
- (xx) Tertiary amyl methy.

(TAME);

(xxi) Tertiary butyl alcohol (gasoline grade) (TBA);

(xxii) Thermally cracked gasoline;

(xxiii) Toluene;

(xxiv) Transmix containing gasoline;

and

(xxv) Any other product designated as a gasoline blendstock by the Commissioner by revenue ruling or other administrative pronouncement.

(2) *Products requiring further processing*. The term "gasoline blendstocks" does not include any product that cannot, without further processing, be used in the production of gasoline described in paragraph (i)(1) of this section. For example, a mixed hydrocarbon stream that is produced in a natural gas processing plant is not a gasoline blendstock if the stream cannot be used to produce gasoline described in paragraph (i)(1) of this section without further processing.

(k) *Gasoline registrant*. The term "gasoline registrant" means an enterer, industrial user, refiner, terminal

operator, or throughputter that is registered under section 4101.

(l) *Industrial user*. The term "industrial user" means any person that receives gasoline blendstocks by bulk transfer for its own use in the manufacture of products other than gasoline described in paragraph (i)(1) of this section.

(m) *Position holder*. The term "position holder" means, with respect to gasoline in a terminal, the person that holds the inventory position in the gasoline, as reflected on the records of the terminal operator. A person holds the inventory position in gasoline when that person has a contractual agreement with the terminal operator for the use of storage facilities and terminaling services at a terminal with respect to the gasoline. The term also includes a terminal operator that owns gasoline in its terminal.

(n) *Rack*. The term "rack" means a mechanism for delivering gasoline from a refinery or terminal into a truck, trailer, railroad car, or other means of nonbulk transfer.

(o) *Refiner*. The term "refiner" means any person that owns, operates, or otherwise controls a refinery.

(p) *Refinery*. The term "refinery" means a facility used to produce gasoline from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons and from which gasoline may be removed by pipeline, by vessel, or at a rack. However, the term does not include a facility where only blended gasoline or gasohol (as defined in § 48.4081-8(b)(2)), and no other type of gasoline, is produced.

(q) *Removal*. The term "removal" means any physical transfer of gasoline, and any use of gasoline other than as a material in the production of gasoline or special fuels (as defined in § 48.4041-8(f)). However, gasoline is not removed when it evaporates or is otherwise lost or destroyed.

(r) *Sale*—(1) *In general*. The term "sale" means—

(i) The transfer of title to, or substantial incidents of ownership in, gasoline (other than gasoline in a terminal) to the buyer for a consideration, which may consist of money, services, or other property; or

(ii) The transfer of the inventory position with respect to gasoline in a terminal if the transferee becomes the position holder with respect to the gasoline.

(2) *Example*. The following example illustrates the rule of this paragraph (r):

Example. B owns one million gallons of gasoline that is stored in A's terminal. B also is the position holder with respect to the gasoline. While the gasoline remains stored

in the terminal, B transfers title to 200,000 gallons of the gasoline to C. C then transfers title to the 200,000 gallons to D. B continues to hold the inventory position on A's records with respect to the one million gallons. Because B continues as the position holder with respect to the gasoline, the transfers of title to the gasoline from B to C and from C to D are not sales of gasoline.

(s) *Terminal*. The term "terminal" means a gasoline storage and distribution facility that is supplied by pipeline or vessel, and from which gasoline may be removed at a rack. However, the term does not include any facility at which gasoline blendstocks are used in the manufacture of products other than gasoline (as defined in paragraph (i)(1) of this section) and from which no gasoline is removed.

(t) *Terminal operator*. The term "terminal operator" means any person that owns, operates, or otherwise controls a terminal.

(u) *Throughputter*. The term "throughputter" means any person that—

(1) Owns gasoline within the bulk transfer/terminal system (other than in a terminal); or

(2) Is a position holder.

(v) *Vessel*. The term "vessel" means a waterborne gasoline transporting vessel.

(w) *Effective date*. This section is effective January 1, 1993.

§ 48.4081-2 Gasoline tax; tax on removal at a terminal rack.

(a) *Overview*. This section provides the general rule that all removals of gasoline at a terminal rack are taxable and the position holder with respect to the gasoline is liable for the tax.

(b) *Imposition of tax*. Except as provided in § 48.4081-4 (relating to gasoline blendstocks), tax is imposed on the removal of gasoline from a terminal if the gasoline is removed at the rack.

(c) *Liability for tax*—(1) *In general*. The position holder with respect to the gasoline is liable for the tax imposed under paragraph (b) of this section.

(2) *Joint and several liability of terminal operator*. The terminal operator is jointly and severally liable for the tax imposed under paragraph (b) of this section if—

(i) The position holder with respect to the gasoline is a person other than the terminal operator and is not a gasoline registrant; and

(ii) The terminal operator has not met the conditions of paragraph (c)(3) of this section.

(3) *Conditions for avoidance of liability*. A terminal operator is not liable for tax under paragraph (c)(2) of this section if, at the time of the removal, the terminal operator—

(i) Is a gasoline registrant;
 (ii) Has an unexpired notification certificate (described in § 48.4081-5) from the position holder;
 (iii) Does not know that any information in the notification certificate is false; and

(iv) Has verified the accuracy of the notification certificate in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement.

(d) *Rate of tax.* For the rate of tax generally, see section 4081(a). For the rate of tax on gasohol and on gasoline sold for gasohol production, see § 48.4081-8.

(e) *Effective date.* This section is effective January 1, 1993.

§ 48.4081-3 Gasoline tax; taxable events other than removal at the terminal rack.

(a) *Overview.* Although tax is imposed when gasoline is removed at the terminal rack, tax is also imposed in certain other situations described in this section. This section provides rules for the imposition of tax when gasoline is removed from a refinery, entered into the United States, removed by bulk transfer from a terminal by an unregistered position holder, removed by bulk transfer and not received at an approved terminal or refinery, or sold to an unregistered person within the bulk transfer/terminal system. This section also provides rules for the imposition of tax when blended gasoline is removed or sold by the blender.

(b) *Tax on removal from a refinery—*
 (1) *In general.* Except as provided in § 48.4081-4 (relating to gasoline blendstocks), and paragraph (b)(2) of this section (relating to an exemption for certain refineries), a tax is imposed on the removal of gasoline from a refinery if—

(i) The removal is by bulk transfer and the refiner or the owner of the gasoline immediately before the removal is not a gasoline registrant; or

(ii) The removal is at the rack.

(2) *Exemption for certain refineries.* The tax imposed under paragraph (b)(1)(ii) of this section does not apply to a removal of gasoline if—

(i) The gasoline is removed by rail car from an approved refinery and is received at an approved terminal;

(ii) The refinery and the terminal are operated by the same gasoline registrant; and

(iii) The refinery is not served by pipeline (other than a pipeline for the receipt of crude oil) or vessel.

(3) *Liability for tax.* The refiner is liable for the tax imposed under paragraph (b) of this section.

(4) *Rate of tax.* For the rate of tax generally, see section 4081(a). For the rate of tax on gasohol and on gasoline sold for gasohol production, see § 48.4081-8.

(c) *Tax on entry into the United States—*(1) *In general.* Except as provided in § 48.4081-4 (relating to gasoline blendstocks), a tax is imposed on the entry of gasoline into the United States if—

(i) The entry is by bulk transfer and the enterer is not a gasoline registrant; or

(ii) The entry is not by bulk transfer.

(2) *Liability for tax.* The enterer is liable for the tax imposed under paragraph (c) of this section.

(3) *Rate of tax.* For the rate of tax generally, see section 4081(a). For the rate of tax on gasohol and on gasoline sold for gasohol production, see § 48.4081-8.

(d) *Tax on bulk transfers from a terminal by an unregistered position holder—*(1) *In general.* A tax is imposed on the removal by bulk transfer of gasoline from a terminal if the position holder with respect to the gasoline is not a gasoline registrant.

(2) *Liability for tax—*(i) *In general.* The position holder with respect to the gasoline is liable for the tax imposed under paragraph (d)(1) of this section.

(ii) *Joint and several liability of terminal operator.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (d)(1) of this section if—

(A) The position holder with respect to the gasoline is a person other than the terminal operator; and

(B) The terminal operator has not met the conditions of paragraph (d)(2)(iii) of this section.

(iii) *Conditions for avoidance of liability.* A terminal operator is not liable for tax under this paragraph (d)(2) if, at the time of the bulk transfer, the terminal operator—

(A) Is a gasoline registrant;

(B) Has an unexpired notification certificate (described in § 48.4081-5) from the position holder;

(C) Does not know that any information in the notification certificate is false; and

(D) Has verified the accuracy of the notification certificate in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement.

(3) *Rate of tax.* For the rate of tax, see section 4081(a).

(e) *Tax on bulk transfers not received at an approved terminal or refinery—*(1) *In general.* Except as provided in § 48.4081-4 (relating to gasoline

blendstocks) a tax on gasoline is imposed if—

(i) Gasoline is removed by bulk transfer from a refinery or terminal, or entered by bulk transfer into the United States;

(ii) No tax was imposed on such removal or entry under paragraph (b), (c), or (d) of this section; and

(iii) Upon removal from the pipeline or vessel, the gasoline is not received at an approved terminal or refinery (or at another pipeline or vessel).

(2) *Liability for tax—*(i) *In general.* The owner of the gasoline when it is removed from the pipeline or vessel is liable for the tax imposed under paragraph (e)(1) of this section if the owner has not met the conditions of paragraph (e)(2)(ii) of this section.

(ii) *Conditions for avoidance of liability.* An owner of gasoline is not liable for tax under paragraph (e)(2)(i) of this section if, at the time the gasoline is removed from the pipeline or vessel, the owner of the gasoline—

(A) Is a gasoline registrant;

(B) Has an unexpired notification certificate (described in § 48.4081-5) from the operator of the terminal or refinery where the gasoline is received;

(C) Does not know that any information in the notification certificate is false; and

(D) Has verified the accuracy of the notification certificate in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement.

(iii) *Liability of the operator of the facility where the gasoline is received.* The operator of the facility where the gasoline is received is liable for the tax imposed under paragraph (e)(1) of this section if the owner of the gasoline has met the conditions of paragraph (e)(2)(ii) of this section and is jointly and severally liable for the tax if the owner has not met such conditions.

(3) *Rate of tax.* For the rate of tax, see section 4081(a).

(f) *Tax on sales within the bulk transfer/terminal system—*(1) *In general.* A tax is imposed on the sale of gasoline located within the bulk transfer/terminal system if the sale is to a person that is not a gasoline registrant and tax has not been imposed on such gasoline under § 48.4081-2, or paragraph (b), (c), (d), or (e) of this section.

(2) *Liability for tax—*(i) *In general.* The seller of the gasoline is liable for the tax imposed under paragraph (f)(1) of this section if the seller has not met the conditions of paragraph (f)(2)(ii) of this section.

(ii) *Conditions for avoidance of liability.* A seller is not liable for tax under paragraph (f)(2)(i) of this section if, at the time of the sale, the seller—

- (A) Is a gasoline registrant;
- (B) Has an unexpired notification certificate (described in § 48.4081-5) from the buyer;
- (C) Does not know that any information in the certificate is false; and
- (D) Has verified the accuracy of the notification certificate in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement.

(iii) *Liability of the buyer.* The buyer of the gasoline is liable for the tax imposed under paragraph (f)(1) of this section if the seller of the gasoline has met the conditions of paragraph (f)(2)(ii) of this section and is jointly and severally liable for the tax if the seller has not met such conditions.

(3) *Rate of tax.* For the rate of tax, see section 4081(a).

(g) *Tax on removal or sale by the blender.*—(1) *In general.* A tax is imposed on the removal or sale of blended gasoline by the blender thereof. The number of gallons of blended gasoline subject to tax is the difference between the total number of gallons of blended gasoline removed or sold and the number of gallons of previously taxed gasoline used to produce the blended gasoline.

(2) *Liability for tax.* The blender is liable for the tax imposed under paragraph (g)(1) of this section.

(3) *Rate of tax.* For the rate of tax, see section 4081(a).

(4) *Example.* The following example illustrates the provisions of this paragraph (g) and § 48.4081-1(c):

Example. (i) X, a gasoline wholesale distributor, buys 10,000 gallons of gasoline at a terminal rack. The gasoline is delivered into a tank trailer. Tax is imposed on the position holder in the terminal under § 48.4081-2(b) when the gasoline is removed at the rack. X then goes to another location where 500 gallons of alcohol (a substance not subject to tax under section 4081) are delivered into the tank trailer already containing the 10,000 gallons of gasoline. The gasoline and alcohol are splash blended as X drives to X's retail service station where X pumps the blended gasoline into a storage tank for sale to consumers.

(ii) X is a blender within the meaning of § 48.4081-1(d) because X has produced blended gasoline, as defined in § 48.4081-1(c), by mixing the 10,000 gallons of gasoline on which tax has been imposed under § 48.4081-2(b) with 500 gallons of alcohol, a substance not subject to tax under section 4081. The 10,500 gallon mixture is not gasoline because it does not satisfy the alcohol-content requirement described in § 48.4081-8(b)(2)(i).

X, the blender, is liable for the tax imposed under § 48.4081-3(g) on the blended gasoline. The tax is imposed when the blended gasoline is removed from the tank trailer at the retail station. Tax is computed on 500 gallons, the number of gallons not previously subject to tax under section 4081.

(h) *Effective date.* This section is effective January 1, 1993.

§ 48.4081-4 Gasoline tax; special rules for gasoline blendstocks.

(a) *Overview.* This section provides rules exempting from tax certain removals, entries, and sales of gasoline blendstocks. Generally, under prescribed conditions, tax is not imposed on gasoline blendstocks that are not used to produce gasoline or that are received at an approved terminal or refinery.

(b) *Nonbulk removals and entries of gasoline blendstocks not used to produce gasoline.*—(1) *Removals and entries not in connection with sales.* Tax is not imposed under § 48.4081-2(b), § 48.4081-3(b)(1)(ii), or § 48.4081-3(c)(1)(ii) on the removal or entry of gasoline blendstocks not in connection with a sale if—

(i) The person otherwise liable for tax under § 48.4081-2(c)(1) (the position holder), § 48.4081-3(b)(3) (the refiner), or § 48.4081-3(c)(2) (the enterer) is a gasoline registrant; and

(ii) Such person does not use the gasoline blendstocks to produce gasoline (as defined in § 48.4081-1(i)(1)).

(2) *Removals and entries in connection with sales.* Tax is not imposed under § 48.4081-2(b), § 48.4081-3(b)(1)(ii), or § 48.4081-3(c)(1)(ii) on the removal or entry of gasoline blendstocks in connection with a sale if—

(i) The person otherwise liable for tax under § 48.4081-2(c)(1) (the position holder), § 48.4081-3(b)(3) (the refiner), or § 48.4081-3(c)(2) (the enterer) is a gasoline registrant; and

(ii) At the time of the sale, such person has an unexpired certificate (described in paragraph (e) of this section) from the buyer and has no reason to believe any information in the certificate is false.

(3) *Tax on sales after certain nonbulk removals or entries.*—(i) *In general.* If paragraph (b) (1) or (2) of this section applies to the removal or entry of gasoline blendstocks, tax is imposed on any sale of such blendstocks unless, at the time of the sale, the seller—

(A) Has an unexpired certificate (described in paragraph (e) of this section) from its buyer; and

(B) Has no reason to believe any information in the certificate is false.

(ii) *Liability for tax.* The seller is liable for the tax imposed under this paragraph (b)(3).

(iii) *Rate of tax.* For the rate of tax, see section 4081.

(c) *Nonbulk removals and entries of gasoline blendstocks received at an approved terminal or refinery.* Tax is not imposed under § 48.4081-2(b), § 48.4081-3(b)(1)(ii), or § 48.4081-3(c)(1)(ii) on the removal or entry of gasoline blendstocks that are received at a terminal or refinery if the person otherwise liable for tax under § 48.4081-2(c)(1) (the position holder), § 48.4081-3(b)(3) (the refiner), or § 48.4081-3(c)(2) (the enterer)—

(1) Is a gasoline registrant;

(2) Has an unexpired notification certificate (described in § 48.4081-5) from the operator of the terminal or refinery where the gasoline blendstocks are received;

(3) Does not know that any information in the certificate is false; and

(4) Has verified the accuracy of the notification certificate in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement.

(d) *Bulk transfer to a registered industrial user.* Tax is not imposed under § 48.4081-3(e)(1) if, upon the removal of gasoline blendstocks from a pipeline or vessel, the gasoline blendstocks are received by a gasoline registrant that is an industrial user.

(e) *Certificate.*—(1) *In general.* The certificate to be provided by a buyer of gasoline blendstocks consists of a statement that is signed under penalties of perjury by a person with authority to bind the buyer, is in substantially the same form as the model certificate provided in paragraph (e)(3) of this section, and contains all information necessary to complete such model certificate. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(i) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).

(ii) The date a new certificate is provided to the seller.

(iii) The date the seller is notified by the Internal Revenue Service or the buyer that the buyer's right to provide a certificate has been withdrawn.

(2) *Withdrawal of right to provide certificate.* The Internal Revenue Service may withdraw the right of a buyer of gasoline blendstocks to provide a certificate under this paragraph (e) if

such buyer uses gasoline blendstocks to which a certificate applies in the production of gasoline or resells the gasoline blendstocks without obtaining a certificate from its buyer. The Internal Revenue Service may notify any seller to whom the buyer has provided a certificate that the buyer's right to provide a certificate has been withdrawn.

(3) Model certificate.

Certificate of Person Buying Gasoline Blendstock for use Other Than in the Production of Gasoline

(To support tax-free sales under section 4081 of the Internal Revenue Code)

Name, address, and employer identification number of seller

The undersigned buyer ("Buyer") hereby certifies the following under penalties of perjury:

The gasoline blendstocks to which this certificate relates will not be used to produce gasoline.

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here _____ and enter:

1. Invoice or delivery ticket number _____
2. _____ (number of gallons) of _____ (type of gasoline blendstocks)

If this is a certificate covering all purchases under a specified account or order number, check here _____ and enter:

1. Effective date _____
2. Expiration date _____

(period not to exceed 1 year after the effective date)

3. Type (or types) of gasoline blendstocks _____

4. Buyer account or order number _____

Buyer will not claim a credit or refund under section 6427(h) of the Internal Revenue Code for any gasoline blendstocks covered by this certificate.

Buyer will provide a new certificate to the seller if any information in this certificate changes.

If Buyer resells the gasoline blendstocks to which this certificate relates, Buyer will be liable for tax unless Buyer obtains a certificate from the purchaser stating that the gasoline blendstocks will not be used to produce gasoline and otherwise complies with the conditions of § 48.4081-4(b)(3) of the Manufacturers and Retailers Excise Tax Regulations.

Buyer understands that if Buyer violates the terms of this certificate, the Internal Revenue Service may withdraw Buyer's right to provide a certificate.

Buyer has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn. In addition, the Internal Revenue Service has not notified Buyer that the right to provide a certificate has been withdrawn from a purchaser to which Buyer sells gasoline blendstocks tax free.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all

parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

Signature and date signed

Printed or typed name of person signing

Title of person signing

Name of Buyer

Employer identification number

Address of Buyer

(f) Effective date. This section is effective January 1, 1993.

§ 48.4081-5 Gasoline tax; notification certificate of gasoline registrant.

(a) Overview. This section set forth requirements for the notification certificate used under §§ 48.4081-2(c)(3), 48.4081-3(d)(2)(iii), 48.4081-3(e)(2)(iii), 48.4081-3(f)(2)(ii), and 48.4081-4(c) to notify another person of the gasoline registrant's registration status.

(b) Certificate.—(1) In general. The certificate to be provided by a gasoline registrant consists of a statement that is signed under penalties of perjury by a person with authority to bind the registrant, is in substantially the same form as the model provided in paragraph (b)(2) of this section, and contains all information necessary to complete such model. A new certificate must be given if any information in the most recently provided certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earlier of the following dates:

- (i) The date the registrant provides a new certificate.
- (ii) The date the recipient of the certificate is notified by either the Internal Revenue Service or the registrant that the registrant's registration has been revoked or suspended.

(2) Model certificate.

Notification Certificate of Gasoline Registrant

Name, address, and employer identification number of person receiving certificate

The undersigned gasoline registrant ("Registrant") hereby certifies under penalties of perjury that Registrant is registered by the Internal Revenue Service with registration number _____ and that Registrant's registration has not been

revoked or suspended by the Internal Revenue Service.

Registrant understands that the fraudulent use of this certificate may subject Registrant and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the cost of prosecution.

Signature and date signed

Printed or typed name of person signing

Title of person signing

Name of registrant

Employer identification number

Address of registrant

(3) Use of Form 637 as a notification certificate prohibited. A copy of the certificate of registry (Form 637) issued to a registrant by the Internal Revenue Service is not a notification certificate described in paragraph (b)(2) of this section.

(c) Effective date. This section is effective January 1, 1993.

§ 48.4081-6 Gasoline tax; gasohol.

(a) Overview. This section provides definitions relating to gasohol and rules for determining the applicability of reduced rates of tax on a removal or entry of gasohol or of gasoline used to produce gasohol. Rules are also provided for the imposition of tax on the separation of gasoline from gasohol and the failure to use gasohol (which has been taxed at a reduced rate) to produce gasohol.

(b) Definitions.—(1) Alcohol.—(i) In general; source of the alcohol. Except as provided in paragraph (b)(1)(ii) of this section, the term "alcohol" means any alcohol that is not a derivative product of petroleum, natural gas, coal, or peat. Thus, the term includes methanol and ethanol that are not derived from petroleum, natural gas, coal, or peat. The term also includes alcohol produced either within or outside the United States.

(ii) Proof and denaturants. The term "alcohol" does not include alcohol with a proof of less than 190 degrees (determined without regard to added denaturants). If the alcohol added to a fuel/alcohol mixture (the "added alcohol") includes impurities or denaturants, the volume of alcohol in the mixture is determined under the following rules:

- (A) The volume of alcohol in the mixture includes the volume of any

impurities (other than added denaturants and any fuel with which the alcohol is mixed) that reduce the purity of the added alcohol to not less than 190 proof (determined without regard to added denaturants).

(B) The volume of alcohol in the mixture includes the volume of any approved denaturants that reduce the purity of the added alcohol, but only to the extent that the volume of the approved denaturants does not exceed 5% of the volume of the added alcohol (including the approved denaturants). If the volume of the approved denaturants exceeds 5% of the volume of the added alcohol, the excess over 5% is considered part of the nonalcohol content of the mixture.

(C) For purposes of this paragraph (b)(3)(ii), "approved denaturants" are any denaturants (including gasoline and non-alcohol fuel denaturants) that reduce the purity of the added alcohol and are added to such alcohol under a formula approved by the Secretary.

(2) *Gasohol*—(i) *In general*. Gasohol is a blend of gasoline and alcohol in a mixture that satisfies the alcohol-content requirement immediately after the mixture is blended. The determination of whether a particular mixture satisfies the alcohol-content requirement is made on a batch-by-batch basis. Except to the extent provided in paragraph (b)(2)(ii) of this section, a batch satisfies the alcohol-content requirement if and only if it contains at least 9.8 percent alcohol by volume, without rounding. A batch of gasohol is a discrete mixture of gasoline and alcohol. If a batch is splash blended, a batch typically corresponds to a gasoline meter delivery ticket and an alcohol meter delivery ticket, each of which shows the number of gallons of liquid delivered into the mixture. In such case, the volume of each component in a batch (without adjustment for temperature) ordinarily is determined by the number of metered gallons shown on the delivery tickets for the gasoline and alcohol delivered. However, if a blended adds metered gallons of gasoline and alcohol to a tank already containing more than a de minimis amount of liquid (other than gasohol), the determination of whether a batch satisfies the alcohol-content requirement will be made by taking into account the amount of alcohol and non-alcohol fuel contained in the liquid already in the tank. Ordinarily, any amount in excess of 0.5 percent of the capacity of the tank will not be considered de minimis.

(ii) *Batches containing less than 10 percent but at least 9.8 percent alcohol*. If a batch of mixture contains less than 10 percent alcohol but at least 9.8 percent alcohol, only a portion of the

batch is considered to be gasohol. That portion equals the number of gallons of alcohol in the batch multiplied by 10. Any remaining liquid in the mixture is "excess liquid." If tax was imposed on the excess liquid at the gasohol production rate (as defined in paragraph (e)(1) of this section), the excess liquid in the batch is considered to be gasoline with respect to which there is a failure to blend into gasohol for purposes of paragraph (g) of this section. Excess liquid is considered to be removed before the removal of the gasohol portion.

(iii) *Examples*. The following examples illustrate the provisions of this paragraph (b)(2):

Example 1. A gasohol blender splash blends a batch of gasohol in a tank holding approximately 8000 gallons of mixture. The applicable delivery tickets show that the mixture is blended by first pumping 7200 metered gallons of gasoline into the empty tank, and then pumping 800 metered gallons of alcohol into the tank. Accordingly, the mixture contains 10 percent alcohol (as determined based on the delivery tickets provided to the blender) and qualifies as gasohol.

Example 2. The facts are the same as in *Example 1* except that the applicable delivery tickets show that a mixture is blended by first pumping 7220 metered gallons of gasoline into the empty tank, and then pumping 780 metered gallons of alcohol into the tank. Because the mixture contains only 9.75 percent alcohol (as determined based on the delivery tickets provided to the blender), the mixture does not qualify as gasohol.

Example 3. The facts are the same as in *Example 1* except that the applicable delivery tickets show that a mixture is blended by first pumping 7205 metered gallons of gasoline into the empty tank, and then pumping 795 metered gallons of alcohol into the tank. Because the mixture contains less than 10 percent alcohol, but more than 9.8 percent alcohol, (as determined based on the delivery tickets provided to the blender), only 7950 gallons of the mixture qualify as gasohol. The remaining 50 gallons of the mixture are treated as gasoline with respect to which there was a failure to blend into gasohol for purposes of paragraph (g) of this section.

(3) *Gasohol blender*. The term "gasohol blender" means any person that regularly buys gasoline and alcohol and produces gasohol for use in its trade or business or for resale.

(4) *Registered gasohol blender*. The term "registered gasohol blender" means a person that is registered under section 4101 as a gasohol blender.

(c) *Rate of tax on gasoline removed or entered for gasohol production*—(1) *In general*. The rate of tax imposed on gasoline under §§ 48.4081-2(b) (relating to tax imposed at the terminal rack), 48.4081-3(b)(1)(ii) (relating to tax imposed at the refinery rack), or

§ 48.4081-3(c)(1)(ii) (relating to tax imposed on nonbulk entries) is the gasohol production tax rate if—

(i) The person liable for tax under § 48.4081-2(c)(1) (the position holder), § 48.4081-3(b)(2) (the refiner), or § 48.4081-3(c)(2) (the enterer) is a gasoline registrant and a registered gasohol blender, and such person produces gasohol with such gasoline within 24 hours after removing or entering the gasoline; or

(ii) The gasoline is sold in connection with the removal or entry, the person liable for tax under § 48.4081-2(c)(1) (the position holder), § 48.4081-3(b)(2) (the refiner), or § 48.4081-3(c)(2) (the enterer) is a gasoline registrant and such person, at the time of the sale—

(A) Has an unexpired certificate (as described in paragraph (c)(2) of this section) from the buyer;

(B) Does not know that any information in the certificate is false; and

(C) Has verified, in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement, that the buyer is a registered gasohol blender.

(2) *Certificate*—(i) *In general*. The certificate to be provided by a registered gasohol blender consists of a statement that is signed under penalties of perjury by a person with authority to bind the registered gasohol blender, in substantially the same form as the model certificate provided in paragraph (c)(4)(ii) of this section, and contains all information necessary to complete such model certificate. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(A) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).

(B) The date the registered gasohol blender provides a new certificate to the seller.

(C) The date the seller is notified by the Internal Revenue Service or the gasohol blender that the gasohol blender's registration has been revoked or suspended.

(ii) *Model certificate*.

Certificate of Registered Gasohol Blender

(To support sales of gasoline at the gasohol production tax rate under section 4081(c) of the Internal Revenue Code)

Name, address, and employer identification number of seller.

The undersigned buyer ("Buyer") hereby certifies the following under penalties of perjury

Buyer is registered as a gasohol blender with registration number _____

Buyer's registration has not been suspended or revoked by the Internal Revenue Service.

The gasoline bought under this certificate will be used by Buyer to produce gasohol (as defined in § 48.4081-6(b) of the Manufacturers and Retailers Excise Tax Regulations) within 24 hours after buying the gasoline.

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here _____ and enter:

1. Account number _____
2. Number of gallons _____

If this is a certificate covering all purchases under a specified account or order number, check here _____ and enter:

1. Effective date _____
2. Expiration date _____

(period not to exceed 1 year after the effective date)

3. Buyer account or order number _____

Buyer will not claim a credit or refund under section 6427(f) of the Internal Revenue Code for any gasoline covered by this certificate.

Buyer agrees to provide seller with a new certificate if any information on this certificate changes.

Buyer understands that any use other than in Buyer's production of gasohol, or resale, of the gasoline covered by this certificate may result in the revocation of Buyer's registration.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

Signature and date signed _____

Printed or typed name of person signing _____

Title of person signing _____

Name of Buyer _____

Employer identification number _____

Address of Buyer _____

(iii) *Use of Form 637 as a gasohol blender's certificate prohibited.* A copy of the certificate of registry (Form 637) issued to a gasohol blender by the Internal Revenue Service is not a gasohol blender's certificate described in paragraph (c)(2)(ii) of this section.

(d) *Rate of tax on gasohol removed or entered.* The rate of tax imposed on removals or entries of any gasohol under §§ 48.4081-2(b), 48.4081-3(b)(1)(ii), and 48.4081-3(c)(1)(ii) is the gasohol tax rate. The rate of tax imposed on removals and entries of excess liquid (as described in paragraph (b)(2)(ii) of this section) is the rate of tax applicable to gasoline under section 4081(a).

(e) *Tax rates—(1) Gasohol production tax rate.* The gasohol production tax rate is the rate applicable under section 4081(c) to the type of gasohol produced.

(2) *Gasohol tax rate.* The gasohol tax rate is nine-tenths of the gasohol production tax rate applicable to the type of gasohol produced.

(f) *Later blending—(1) In general.* A tax is imposed on the sale or removal of a mixture by the blender thereof if—

(i) The blender produced the mixture by blending gasohol and gasoline (other than gasohol) for the purpose of producing fuel that contains a specific percentage of alcohol that is less than 10 percent;

(ii) Tax was imposed with respect to the gasohol at the reduced rate prescribed in paragraph (e) of this section (or tax was imposed with respect to the gasohol at the rate prescribed in section 4081(a) for gasoline and a refund or credit is claimed pursuant to section 6427(f)); and

(iii) Immediately after blending, the mixture contains less than 10 percent alcohol.

(2) *Amount of tax.* The amount of tax imposed under this paragraph (f) is the difference between—

(i) The number of gallons in the mixture, times the rate prescribed under section 4081(a) for gasoline; and

(ii) The total amount of tax previously imposed under section 4081(a) (and not returned or credited) with respect to the components of the mixture.

(3) *Liability for tax.* The blender of the mixture is liable for the tax imposed under this paragraph (f).

(4) *Examples.* The provisions of this paragraph (f) are illustrated by the following examples.

Example 1. A retailer advertises fuel containing 5 percent alcohol. To produce the mixture, the retailer buys 5,000 gallons of gasohol on which tax has been imposed at the rate prescribed in paragraph (e) of this section. The blender then blends the gasohol with 5,000 gallons of gasoline. Because the retailer blends the gasoline and gasohol for the purpose of producing a mixture that contains only 5 percent alcohol, this paragraph (f) applies and tax is imposed on the sale or removal of the mixture. Under paragraph (f)(2) of this section, the amount of tax imposed is the difference between (i) 10,000 gallons times the rate prescribed under section 4081(a) for gasoline, and (ii) the total amount of tax previously imposed under section 4081(a) with respect to components of the mixture. The retailer may be entitled to claim a credit under section 40(b) for the amount of alcohol contained in the mixture.

Example 2. A retailer who has been selling gasoline decides to begin selling

gasohol. The retailer buys 5,000 gallons of gasohol on which tax has been imposed at the rate prescribed in paragraph (e) of this section. The retailer pumps the gasohol into the gasoline storage tank that had not been emptied prior to the conversion to gasohol sales. Because the retailer did not blend the gasohol bought and the gasoline already in the storage tank for the purpose of producing a mixture containing a specific percentage of alcohol that is less than 10 percent, tax is not imposed under this section even if the resulting mixture contains less than 10 percent alcohol. Similarly, tax would not be imposed under this paragraph (f) if, several months later, the retailer decides to switch back to gasoline sales because of a shortage in the supply of gasohol and pumps gasoline into the storage tank while it still contains some gasohol.

(g) *Later separation and failure to blend—(1) Later separation—(i)*

Imposition of tax. A tax is imposed on the removal or sale of gasoline separated from gasohol with respect to which tax was imposed at a rate described in paragraph (e) of this section or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1).

(ii) *Liability for tax.* The person that owns the gasohol at the time the gasoline is separated from the gasohol is liable for the tax imposed under paragraph (g)(1)(i) of this section.

(iii) *Rate of tax.* The rate of tax imposed under paragraph (g)(1)(i) of this section is the difference between the rate of tax applicable to gasoline not described in this section and the applicable gasohol production tax rate.

(2) *Failure to blend—(i) Imposition of tax.* A tax is imposed on the entry, removal, or sale of gasoline (including excess liquid described in paragraph (b)(2)(ii) of this section) with respect to which tax was imposed at the gasohol production tax rate but which was not blended into gasohol.

(ii) *Liability for tax—(A)* In the case of gasoline with respect to which tax was imposed at the gasohol production rate under paragraph (c)(1)(i) of this section (relating to entries and removals not in connection with sales), the person liable for the tax imposed by paragraph (g)(2)(i) of this section is the person that was liable for tax on the entry or removal.

(B) In the case of gasoline with respect to which tax was imposed at the gasohol production rate under paragraph (c)(1)(ii) of this section (relating to entries and removals in connection with sales), the person that bought the gasoline in connection with

the entry or removal is liable for the tax imposed under paragraph (g)(2)(i) of this section.

(iii) *Rate of tax.* the rate of tax imposed under paragraph (g)(2)(i) of this section is the difference between the rate of tax applicable to gasoline not described in this section and the applicable gasoline production tax rate.

(h) *Effective date.* This section is effective January 1, 1993.

§ 48.4081-7 Gasoline tax; conditions for, and reporting relating to, refunds of gasoline tax under section 4081(e).

(a) *Overview.* This section provides reporting requirements and other conditions that a person paying tax to the government under section 4081 must satisfy to receive a refund (but not a credit) under section 4081(e) with respect to gasoline on which a prior tax was paid to the government under section 4081. No credit against any tax imposed under the Internal Revenue Code is allowed under this section.

(b) *Conditions to allowance of refund.* A claim for refund of tax imposed by section 4081 with respect to gasoline is allowed under section 4081(e) and this section only if—

(1) A tax imposed by section 4081 with respect to the gasoline was paid to the government and not credited or refunded (the "first tax");

(2) After imposition of the first tax, another tax was imposed by section 4081 with respect to the same gasoline and was also paid to the government (the "second tax");

(3) The person that paid the second tax to the government has filed a timely claim for refund that contains the information required under paragraph (d) of this section; and

(4)(i) The person that paid the first tax to the government has included with its return the applicable statements under paragraph (c) of this section; or

(ii) Paragraph (c)(5) of this section applies.

(c) *Reporting requirements—(1) Reporting by persons paying first tax.* Except as provided in paragraph (c) (3) or (5) of this section, the person that paid the first tax under § 48.4081-3 (the "first taxpayer") must include with its return of that tax a statement that is in substantially the same form as the model report provided in paragraph (c)(2) of this section and contains all information necessary to complete such model report (the "first taxpayer's report").

(2) *Model first taxpayer's report.*

First Taxpayer's Report

1. _____

First Taxpayer's name, address, and employer identification number

2. _____

Name, address, and employer identification number of the buyer of the gasoline subject to tax

3. _____

Date and location of removal, entry, or sale

4. _____

Volume and type of gasoline removed, entered, or sold

5. Check type of taxable event:

_____ Removal from refinery

_____ Entry into United States

_____ Bulk transfer from terminal by unregistered position holder

_____ Bulk transfer not received at an approved terminal

_____ Sale within the bulk transfer/terminal system

6. _____

Amount of Federal excise tax paid on account of the removal, entry, or sale

7. _____

Location of IRS service center where this report is filed

8. _____

The undersigned taxpayer (the "Taxpayer") has not received, and will not claim, a credit with respect to, or a refund of, the tax on the gasoline to which this form relates.

Under penalties of perjury, the Taxpayer declares that Taxpayer has examined this statement, including any accompanying schedules and statements, and, to the best of Taxpayer's knowledge and belief, they are true, correct and complete.

9. _____

Signature and date signed

10. _____

Printed or typed name of person signing this report

11. _____

Title

12. _____

(3) *Optional reporting for certain taxable events.* Paragraph (c)(1) of this section does not apply with respect to a tax imposed under § 48.4081-2 (removal at a terminal rack), § 48.4081-3(b)(1)(ii) (nonbulk entries into the United States), or § 48.4081-3(g) (removals or sales by blenders). However, if the person liable for the tax expects that another tax will be imposed under section 4081 with respect to the gasoline, that person should (but is not required to) include with its return of the tax a statement that is in substantially the same form as the model report provided in paragraph (c)(2) of this section and contains all information necessary to complete such model report.

(4) *Information provided to subsequent owners, etc.—(i) By person required to file first taxpayer's report.* A first taxpayer required to file a first taxpayer's report under paragraph (c)(1) of this section must give a copy of the report to—

(A) The person to whom the first taxpayer sells (within the meaning of

§ 48.4081-1(r)) the gasoline within the bulk transfer/terminal system; or

(B) The owner of the gasoline immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(ii) *By person filing optional first taxpayer's report.* A first taxpayer filing a first taxpayer's report under paragraph (c)(3) of this section should (but is not required to) give a copy of the report to—

(A) The person to whom the first taxpayer sells the gasoline; or

(B) The owner of the gasoline immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(iii) *By person receiving first taxpayer's report.* A person that receives a copy of the first taxpayer's report and subsequently sells (within the meaning of § 48.4081-1(r)) the gasoline within the bulk transfer/terminal system must give the copy and a statement that satisfies the requirements of paragraph (c)(4)(iv) of this section to the buyer. A person that receives a copy of the first taxpayer's report and subsequently sells the gasoline outside the bulk transfer/terminal system should (but is not required to) give the copy and a statement that satisfies the requirements of paragraph (c)(4)(iv) of this section to the buyer, if that person expects that another tax will be imposed under section 4081 with respect to the gasoline.

(iv) *Form of statement—(A) In general.* A statement satisfies the requirements of this paragraph (c)(4)(iv) if it is provided at the bottom or on the back of the copy of the first taxpayer's report (or in an attached document). This statement must contain all information necessary to complete the model statement provided in paragraph (c)(4)(iv)(B) of this section but need not be in the same format.

(B) *Model statement describing subsequent sale.*

Statement of Subsequent Seller

1. _____

connection with Seller's purchase of the gasoline described in this statement.

Under penalties of perjury, Seller declares that Seller has examined this statement, including any accompanying schedules and statements, and, to the best of Seller's knowledge and belief, they are true, correct and complete.

Signature and date signed

Printed or typed name of person signing this statement

Title

(v) *Scale to multiple buyers.* If the first taxpayer's report relates to gasoline divided among more than one buyer, multiple copies of the first taxpayer's report must be made at the stage that the gasoline is divided and each buyer must be given a copy of the report.

(E) *Exception if the same person incurs two taxes in the same calendar quarter.* A first taxpayer's report under paragraph (c)(1) of this section is not required if the first tax and second tax are incurred by the same person in the same calendar quarter.

(E) *Form and content of refund claim—(1) In general.* The following rules apply to claims for refund under section 4081(e):

(i) The claim must be made by the person that paid the second tax to the government.

(ii) The claim must be made on Form 843, Claim for Refund and Request for Abatement (or such other form as the Commissioner may designate), in accordance with the instructions on the form. The form shall be marked "Section 4081(e) Claim" at the top. Section 4081(e) claims shall not be included with a claim for a refund under any other provision of the Internal Revenue Code.

(iii) If the person that paid the second tax did not pay the first tax to the government, the claim must contain all the information described in paragraph (d)(2) of this section.

(iv) If the person that paid the second tax also paid the first tax to the government, the claim must contain all the information described in paragraph (d)(3) of this section.

(2) *Information to be included on claim form by claimant that did not pay the first tax to the government.* If the person that paid the second tax did not pay the first tax to the government, the claim for a refund under section 4081(e) must contain the following information with respect to the gasoline covered by the claim:

(i) Volume and type of gasoline.

(ii) Date on which claimant incurred the tax liability to which this claim relates.

(iii) Amount of tax on this gasoline that claimant paid to the government and a statement that claimant has not included the amount of this tax in the sales price of the gasoline and has not collected that amount from the person that bought the gasoline from claimant.

(iv) Name, address, and employer identification number of the person that paid the first tax to the government.

(v) A copy of the first taxpayer's report (described in paragraph (c) of this section).

(3) *Information to be included on claim form by claimant that paid the first tax to the government.* If the person that paid the second tax also paid the first tax to the government, the claim for a refund under section 4081(e) must contain the following information with respect to the gasoline covered by the claim:

(i) Volume and type of gasoline.

(ii) Date on which claimant incurred liability for the first tax on the gasoline.

(iii) Location of the refinery, terminal, or point of entry where claimant incurred liability for the first tax.

(iv) Amount of the first tax claimant paid to the government.

(v) Date on which claimant incurred tax liability for the second tax on the gasoline.

(vi) Location of the refinery or terminal where claimant incurred liability for the second tax.

(vii) Amount of the second tax claimant paid to the government and a statement that claimant has not included the amount of this tax in the sales price of the gasoline and has not collected that amount from the person that bought the gasoline from claimant.

(e) *Time for filing claim.* A claim for refund under section 4081(e) may be filed any time after the claimant has filed the return of the second tax and before the end of the period prescribed by section 6511 for the filing of a claim for a refund.

(f) *Examples.* The following examples illustrate the provisions of this section.

Example 1. (i) A is a gasoline registrant that owns 10,000 gallons of gasoline, and on April 5, 1993, is transporting the gasoline by barge on a waterway in the United States. That day, A sells the gasoline to B, a person that is not a gasoline registrant. A is liable for tax on the sale under § 48.4081-3(f). A pays this tax to the government and attaches to its return of the gasoline tax for the 2nd quarter of 1993 the first taxpayer's report described in paragraph (c)(2) of this section. A also gives a copy of this report to B.

(ii) On April 9, 1993, B sells the gasoline to C, a gasoline registrant. B also gives C a copy of the first taxpayer's report and the

statement of subsequent seller (required under paragraph (c)(4) of this section). On April 14, 1993, the gasoline is removed from a terminal at the rack. C is the position holder of the gasoline at the time of the removal and thus is liable for tax on the removal under § 48.4081-2(c)(1). C pays this tax to the government.

(iii) After C has filed a return of the second tax and before the end of the period prescribed by section 6511 for filing a claim for a refund, C files a claim for a refund of the second tax. The claim is in the form prescribed in paragraph (d)(2) of this section. C includes with its claim a copy of the first taxpayer's report and statement of subsequent seller. Because the conditions to allowance of a refund under paragraph (b) of this section have been met, C is allowed a refund of the second tax.

Example 2. The facts are the same as in *Example 1* except that A does not pay the tax to the government. Because the first tax was not paid to the government as required by paragraph (b)(1) of this section, the conditions to allowance of a refund under paragraph (b) of this section have not been met. Therefore, C is not allowed a refund of the second tax.

(g) *Effective date—(1) In general.* This section is effective in the case of gasoline with respect to which the first tax is imposed after December 31, 1992.

(2) *Cross reference.* For rules applicable if the first tax is imposed before January 1, 1993, see § 48.4081-9(e).

§ 48.4081-8 Gasoline tax; measurement.

(a) *In general.* For purposes of the tax imposed by section 4081, gallons of gasoline may be measured on the basis of—

- (1) Actual volumetric gallons
- (2) Gallons adjusted to 60 degrees Fahrenheit; or
- (3) Any other temperature adjustment method approved by the Commissioner.

(b) *Effective Date.* This section is effective January 1, 1993.

§ 48.4081-9 Gasoline tax; rules applicable after June 30, 1991, and before January 1, 1993.

(a) *Overview.* This section provides transitional rules for applying the amendments made to section 4081 by the Revenue Reconciliation Act of 1990 during the period beginning July 1, 1991 (the effective date of those amendments) and ending December 31, 1992 (the last day before the effective date of §§ 48.4081-1 through 48.4081-8).

(b) *Imposition of tax.* For the imposition of tax, see sections 4081 and 4082.

(c) *Liability for tax—(1) Primary liability.* The owner of the gasoline immediately before the taxable event is liable for the tax imposed under sections 4081 and 4082.

(2) *Secondary liability.* The terminal operator is secondarily liable for tax imposed under section 4081(a)(1)(ii) if it permits an unregistered owner of gasoline to remove the gasoline at its terminal rack. However, the terminal operator may rely on the rules of Notice 87-83, 1987-2 C.B. 393, to avoid such liability.

(d) *Reliance on previously issued guidance.* Taxpayers may rely on guidance previously published by the Internal Revenue Service under sections 4081 and 4082 to the extent the guidance is not inconsistent with sections 4081 and 4082 (as amended by the Revenue Reconciliation Act of 1990). The relevant guidance includes Notice 87-83, 1987-2 C.B. 393, Notice 88-18, 1988-1 C.B. 482, Notice 88-108, 1988-2 C.B. 446, Notice 89-101, 1989-2 C.B. 435, and Rev. Rul. 88-70, 1988-2 C.B. 338.

(e) *Conditions for refunds of gasoline tax under section 4081(e)—(1) Conditions to allowance of refund.* A claim for refund of tax imposed by section 4081 with respect to gasoline is allowed under section 4081(e) and this section only if—

(i) A tax imposed by section 4081 with respect to the gasoline was paid to the government and not credited or refunded (the "first tax");

(ii) After imposition of the first tax, another tax was imposed by section 4081 with respect to the same gasoline and was also paid to the government (the "second tax"); and

(iii) The person that paid the second tax to the government has filed a timely claim for refund that contains the information required under paragraph (d)(2) of this section.

(2) *Form and content of refund claim.* The claim for refund under section 4081(e) shall be made by the person that paid the second tax. The claim must be made on Form 843, Claim for Refund and Request for Abatement (or such other form as the Commissioner may designate), in accordance with the instructions on the form. Each claim for a refund under this section must contain the following information with respect to the gasoline covered by the claim:

(i) The volume and type of gasoline.

(ii) The name, address, employer identification number, and registration number of the first taxpayer.

(iii) The date on which the claimant bought the gasoline.

(iv) The location at which the claimant bought the gasoline.

(v) The date on which the claimant incurred the tax liability to which the claim relates.

(3) *Time for filing claim.* A claim for refund under section 4081(e) may be filed any time after the claimant has

filed the return of the second tax and before the end of the period prescribed by section 6511 for the filing of a claim for a refund.

(f) *Effective date.* This section is effective after June 30, 1991, and before January 1, 1993, except that paragraph (e) of this section applies to any refund relating to a first tax imposed before January 1, 1993.

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 28 CFR 7805.

Par. 4. Section 602.101(c) is amended by removing the entries in the table for §§ 48.4081-1, 48.4081-2, 48.4082-1, 48.4083-1, 48.4083-2, and 48.4084-1 and adding the following entries in the table to read as follows:

§ 602.101 OMB control numbers.

(c) . . .

CFR part or section where identified and described	Current OMB control number
48.4081-2(c)(3)	1545-1270
48.4081-3(d)(2)(iii)	1545-1270
48.4081-3(e)(2)(ii)	1545-1270
48.4081-3(f)(2)(ii)	1545-1270
48.4081-4(b)(2)(i)	1545-1270
48.4081-4(b)(3)(i)	1545-1270
48.4081-4(c)	1545-1270
48.4081-6(c)(1)(ii)	1545-1270
48.4081-7	1545-1270
48.4081-9	1545-1270

Shirley D. Peterson,
Commissioner of Internal Revenue.

Approved:

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92-16561 Filed 7-21-92; 8:45 am]

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