der § 3401(a). However, § 6041(g)(2) does not require the reporting of amounts includible in gross income under § 409A that are treated as having been paid to a person with respect to whom a Form 1099–MISC is not required to be filed.

Q–35 How should a payer report to a nonemployee amounts includible in gross income under § 409A and not treated as wages under § 3401(a) as required by § 6041(g)(2)?

A–35 A payer should report the amounts includible in gross income under § 409A and not treated as wages under § 3401(a) in box 7 (nonemployee compensation) of Form 1099–MISC. Additionally, a payer should report such amounts in box 15b of Form 1099–MISC. The amount reported in box 15b should include only the amounts includible in gross income under § 409A and not included in wages under § 3401(a). The instructions for Form 1099–MISC provide additional information relating to this reporting requirement.

Q–36 What are the SECA tax consequences of a failure to satisfy the requirements of § 409A?

A–36 Gross income of a self-employed individual (for example, a nonemployee director, partner, or independent contractor) derived by the individual from any trade or business is generally subject to tax in accordance with the Self-Employment Contributions Act (SECA) when includible in gross income. *See* §§ 1401, 1402(a). Accordingly, an amount derived from an individual's trade or business that is includible in the self-employed individual's gross income under § 409A is generally subject to the application of SECA taxes at the time such amount is includible in gross income.

Q–37 Does § 885 of the Act affect the imposition of the employee tax and the employer tax under the Federal Insurance Contributions Act (FICA) with respect to wages paid and received for employment under a nonqualified deferred compensation plan within the meaning of § 409A(d)?

A–37 No. Section 885 of the Act does not affect the imposition of the employee tax and the employer tax under FICA with respect to wages paid and received for employment under a nonqualified deferred compensation plan within the meaning of § 409A(d). Thus, remuneration for employment constituting wages within the meaning of § 3121(a) is taken into account for FICA tax purposes in accordance with the rules for wage inclusion under §§ 3121(a) and 3121(v)(2).

H. Interim Reporting for Expedited Form W–2

Q–38 What are an employer's withholding and reporting obligations where an employee is terminated or a business files a final Form 941 prior to the issuance of further guidance providing methods for calculating the amount of deferrals for the year and the amounts includible in gross income under § 409A and in wages under § 3401(a)?

A–38 An employer is generally required to issue a Form W–2 reporting compensation paid during a calendar year no later than January 31 of the succeeding calendar year. However, if an employee's employment is terminated before the close of the calendar year, an employer must furnish an expedited Form W–2 if requested to do so by the employee. Additionally, an employer may, at its option, furnish a Form W–2 to such an employee at any time after the termination but no later than January 31 of the succeeding calendar year. *See* § 31.6051–1(d)(i). In addition, if an employer makes a final return on Form 941, the employer must furnish expedited Form W–2s to employees and file expedited Form W–2s with the Social Security Administration. *See* §§ 31.6051–1(d)(ii), 31.6071(a)–1. If an employer furnishes an expedited Form W–2 before the issuance of additional guidance providing methods for determining the amount of deferrals for the year or the amounts includible in gross income under § 409A and in wages under § 3401(a), the employer need not report an amount described in Q&A–25 (deferrals for the year) or in Q&A–31 (amounts includible in gross income and wages) on the Form W–2. However, if an employer furnishes an expedited Form W–2 prior to the issuance of additional guidance that requires the employer to report a deferral for the year or an amount includible in gross income and wages, then the employer must subsequently furnish a corrected Form W–2. See § 31.6051(c).

V. Drafting Information

The principal author of this notice is Stephen Tackney of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) and, regarding the employment tax and information reporting requirements, Neil D. Shepherd of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the Service participated in its development. For further information regarding this notice, contact Stephen Tackney (202) 927–9639; or for further information regarding the employment tax and information reporting requirements, Neil D. Shepherd (202) 622–6040; or regarding the submission of comments, contact LaNita Van Dyke (202) 622–7180 (not toll-free calls).

Fuel Tax Guidance; Request for Public Comments

Notice 2005–4

Section 1. PURPOSE

This notice provides guidance on certain excise tax provisions in the Internal Revenue Code that were added or affected by the American Jobs Creation Act of 2004 (Pub. L. 108–357) (Act). These provisions relate to: alcohol and biodiesel fuels; the definition of off-highway vehicles; aviation-grade kerosene; claims related to diesel fuel used in certain buses; the display of registration on certain vessels; claims related to sales of gasoline to state and local governments and nonprofit educational organizations; two party exchanges of taxable fuel; and the classification of transmix and certain diesel fuel blendstocks as diesel fuel. Also, this notice requests comments from the public on these provisions as well as other excise tax provisions that were added or affected by the Act.

The provisions in this notice will be the subject of a notice of proposed rulemaking (NPRM) that Treasury and the Internal Revenue Service plan to issue in 2005. Also, excise tax provisions of the Act on which guidance is not provided by this no-

tice may be the subject of future guidance or addressed in the NPRM.

Unless otherwise specified, references to Code provisions in this notice are to the Code as in effect on January 1, 2005. Unless otherwise specified, references to regulations are to the Manufacturers and Retailers Excise Tax Regulations.

Section 2. ALCOHOL AND BIODIESEL FUELS

(a) *Overview*. Effective January 1, 2005, the Act generally eliminates the reduced rate of excise tax for most alcohol-blended fuels. In place of a reduced rate, the Act allows certain credits or payments related to alcohol and biodiesel fuels under §§ 40, 40A, 6426, and 6427(e). If the alcohol is ethanol with a proof of 190 or greater, the credit or payment amount is $0.51 per gallon. For agri-biodiesel, the credit or payment amount is $1.00 per gallon; for biodiesel other than agri-biodiesel, the credit or payment amount is $0.50 per gallon. Under the Code's coordination rules, a claim may be taken only once with respect to any particular gallon of alcohol or biodiesel.

(b) *Definitions*.

Alcohol has the meaning given to the term in § 48.4081–6(b)(1) except that, for purposes of the credit allowed by § 40, alcohol also includes alcohol with a proof of at least 150.

Alcohol fuel mixture and *biodiesel mixture* have the meaning given to the terms by § 6426(b)(3) and 6426(c)(3), respectively.

Biodiesel and *agri-biodiesel* have the meanings given to the terms by § 40A(d)(1) and 40A(d)(2), respectively.

(c) *Excise tax credit for alcohol fuel and biodiesel mixtures; § 6426*. Section 6426 allows a credit against the tax imposed by § 4081 on taxable fuel. The credit is equal to the sum of the alcohol fuel mixture credit and the biodiesel mixture credit. The credit is allowable to the person that produces the mixture for sale or use in the producer's trade or business. The credit is claimed on Form 720, *Quarterly Federal Excise Tax Return*, in accordance with the instructions for that form. For the requirement that the claimant obtain a certificate from a producer of biodiesel, see section 2(h) of this notice.

(d) *Income tax credits or payments for alcohol or biodiesel used to produce alcohol fuel and biodiesel mixtures; §§ 34 and 6427(e)*—(1) *In general*. To the extent that the sum of the alcohol fuel mixture credit and biodiesel mixture credit described in § 6426 exceeds a person's § 4081 liability for any particular quarter, an income tax credit or a payment under § 6427(e) is allowable to the producer of the mixture. This credit or payment is claimed on Form 720, Q*uarterly Federal Excise Tax Return*; Form 4136, *Credit for Federal Tax Paid on Fuels*; or Form 8849, *Claim for Refund of Excise Taxes*; in accordance with the instructions for those forms. For the requirement that the claimant obtain a certificate from a producer of biodiesel, see section 2(h) of this notice.

(2) *Coordination with excise tax credit*. If a person receives a payment under § 6427(e) for an amount claimed on Form 8849 with respect to a mixture for which the person is allowed a credit under § 6426, the amount of the payment constitutes an excessive amount for purposes of § 6206 and such amount, as well as the civil penalty under § 6675, may be assessed as if it were a tax imposed by § 4081. If an erroneous refund is repaid to the government, with interest from the date of the payment (§ 6602), on or before the due date of the Form 720, *Quarterly Federal Excise Tax Return*, on which the credit is allowed with respect to the mixture, the claim for the excessive amount will be treated as due to reasonable cause and the penalty under § 6675 will not be imposed with respect to the claim. If, in lieu of a payment under § 6427(e), a person claims an income tax credit on Form 4136 with respect to a mixture for which the person is allowed a credit under § 6426, the income tax rules related to assessing an underpayment of income tax liability apply. The § 6675 penalty for excessive claims with respect to fuels does not apply in the case of § 34 income tax credits.

(e) *Biodiesel used as a fuel; § 40A*. Section 40A allows a nonrefundable income tax credit, included in the general business credit, for biodiesel used as a fuel. (See § 38 for limit on the general business credit based on the amount of tax.) The credit is the sum of the biodiesel credit and the biodiesel mixture credit. In the case of biodiesel not in a mixture (100% biodiesel or B100), the credit is allowable to the person selling the biodiesel in a qualifying retail sale or, if the biodiesel has not been sold in a qualifying retail sale, to the person using the biodiesel as a fuel in a trade or business. A sale is a qualifying retail sale for this purpose if it is at retail and the biodiesel is placed in the fuel tank of the purchaser's vehicle at the time of the sale. In the case of biodiesel in a mixture, the credit is allowable to the producer of a mixture that is sold or used in the producer's trade or business. This credit is claimed on Form 8864, *Biodiesel Fuels Credit*, in accordance with the instructions for that form. For the requirement that the claimant obtain a certificate from a producer of biodiesel, see section 2(h) of this notice.

(f) *Registration*—(1) *Producers of alcohol and biodiesel; § 4101(a)(1)*—(i) *In general*. Under § 4101(a)(1) and this notice, every person producing or importing alcohol (other than alcohol with a proof of less than 190) or biodiesel must be registered by the Service by July 1, 2005. Application for registration is made on Form 637, *Application for Registration (For Certain Excise Tax Activities)*, in accordance with the instructions for that form. For penalties for failure to register as required, see § 6719 and § 48.4101–1(c)(3).

(ii) *Requirements*. The Service will register an applicant as an alcohol producer or biodiesel producer only if the Service—

(A) Determines that the applicant is engaged as a producer or importer of alcohol or biodiesel, or is likely to become so engaged within a reasonable time after being registered under § 4101; and

(B) Is satisfied with the filing, deposit, payment, reporting, and claim history for all federal taxes of the applicant and any related person (as defined in § 48.4101–1(b)(5)).

(2) *Blender registration*. Section 48.4101–1(c) requires any person that produces blended taxable fuel to be registered by the Service under § 4101. Application for this registration is made on Form 637, *Application for Registration (For Certain Excise Tax Activities)*, under Activity Letter "M" (Blender of taxable fuel outside the bulk transfer/terminal system) in accordance with the instructions for that form. A person that is registered under Activity Letter "T" (Buyer of gasoline for blending into gasohol outside the bulk transfer/terminal system) will be treated

as being registered under Activity Letter "M" for production occurring before July 1, 2005.

(g) *Conditions to allowance of credit or payment for biodiesel; form of claim*. A general description of the conditions to allowance and form of claim are included in sections 2(c), (d), and (e) of this notice.

(h) *Content of claim*—(1) *In general*. Section 6426(c)(4) provides that the biodiesel mixture credit of § 6426 is not allowed unless the producer of the mixture obtains a certificate, in such form and manner as may be prescribed by the Secretary, from the producer of the biodiesel that identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product. Section 40A(b)(4) provides a similar rule for the biodiesel mixture credit and biodiesel credit allowed by § 40A. Under this notice, this rule will also apply to the credit or payment allowed for biodiesel mixtures by § 6427(e). Accordingly, each claim for a credit or payment under §§ 6426, 6427, and 40A, with respect to a biodiesel mixture must contain a statement that the claimant has in its possession an unexpired certificate (in the form described in section 2(h)(2) of this notice) from the producer of the biodiesel in the mixture and has no reason to believe any information in that certificate is false.

(2) *Certificate*—(i) *In general*. The certificate to be obtained by the claimant claiming a credit or payment under §§ 6426(c), 6427(e), and 40A consists of a statement that is signed under penalties of perjury by a person with authority to bind the biodiesel producer, is substantially in the same form as the model certificate in paragraph (h)(2)(ii) of this section, and contains all the information necessary to complete such model certificate. The claimant must have the certificate at the time the credit or payment is claimed. The certificate may be included as part of the business records normally used to support a claim.

(ii) *Model certificate*.

CERTIFICATE FOR BIODIESEL

(To support a claim under §§ 6426(c), 6427(e), and 40A of the Internal Revenue Code)

_____

_____

_____

Name, address, and employer identification number of claimant.

The undersigned biodiesel producer ("Producer") hereby certifies the following under penalties of perjury:

Producer certifies that the biodiesel to which this certificate relates is monoalkyl esters of long chain fatty acids derived from plant or animal matter that meets the requirements of the American Society of Testing and Materials D6751 and the registration requirements for fuels and fuel additives established by EPA under § 211 of the Clean Air Act (42 U.S.C. § 7545).

Producer certifies that the biodiesel to which this certificate relates is:

_____% Agri-biodiesel (derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds and from animal fats).

_____% Biodiesel (other than agri-biodiesel)

This certificate applies to the following:

1. _____ Invoice or delivery ticket number

2. _____ Number of gallons

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

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Name of Producer

_____

Employer identification number

Address of Producer

Signature and date signed

(i) *Tax on alcohol and biodiesel fuels*.—(1) *Alcohol fuels*. Section 48.4081–1(c)(1)(i) generally defines *blended taxable fuel* as any taxable fuel that is produced outside the bulk transfer/terminal system by mixing taxable fuel on which tax has been imposed by § 4081 and any other liquid on which tax has not been imposed by § 4081. Section 48.4081–1(c)(1)(iii), however, excludes certain gasohol from the definition of blended taxable fuel. The regulations will be revised so that § 48.4081–1(c)(1)(iii) and the last sentence of § 48.4081–3(g)(1) (treating the alcohol in gasohol as previously taxed fuel) generally will not apply to the removal or sale of gasohol after December 31, 2004. As a result, gasohol produced outside the bulk transfer/terminal system after that date will be taxed as blended taxable fuel taxed under the revised rules of § 48.4081–3(g). However, in the case of gasoline removed or entered before January 1, 2005, if tax is imposed at a reduced rate for the production of gasohol and the gasoline is used to produce gasohol on or after such date, § 48.4081–1(c)(1)(iii) and the last sentence of § 48.4081–3(g)(1) will apply and the benefit allowed by §§ 40, 6426, and 6427(e) will be reduced by the amount of benefit received under former § 4081(c).

(2) *Biodiesel*. For rules relating to the taxation of biodiesel and blended taxable fuel containing biodiesel, see Rev. Rul. 2002–76, 2002–2 C.B. 840.

(j) *Information reporting for persons claiming certain tax benefits*. Section 4104 requires persons claiming tax benefits under §§ 34, 40, 40A, 4041(b)(2), 6426, and 6427(e) to file certain returns in such manner as may be prescribed by the Secretary. In the case of tax benefits claimed under §§ 34 and 40 for taxable years ending before January 1, 2005, this requirement is satisfied by filing the income tax return for the taxable year. The manner of reporting for other claims to which § 4104 applies is not prescribed in this notice. The reporting requirements for these claims will be prescribed in subsequent guidance.

Section 3. DEFINITION OF OFF-HIGHWAY VEHICLE

(a) *In general*. Section 7701(a)(48) provides that a vehicle with certain described features for off-highway transportation is not treated as a highway vehicle. This provision generally is effective on October 22, 2004; however, with respect to the taxes on special fuels imposed by § 4041 and on taxable fuels imposed by § 4081, the provision applies to taxable periods beginning after October 22, 2004.

(b) *Revision to regulations*. Section 48.4061(a)–1(d)(2)(ii) provides that, for purposes of §§ 4051 and 4481, a vehicle with certain described features for off-highway transportation is not a highway vehicle. Section 48.4041–8(b)(2)(ii) provides a similar exception for purposes of § 4041, § 4081, and the credits, refunds and payments related to § 4081. Sections 48.4041–8(b)(2)(ii) and 48.4061(a)–1(d)(2)(ii) will be revised so that they will not apply with respect to calendar quarters beginning after October 22, 2004.

Section 4. AVIATION-GRADE KEROSENE

(a) *Overview*. Effective January 1, 2005, the tax imposed by § 4091 on the sale of aviation fuel by the producer thereof is repealed. In its place, § 4081 provides reduced rates and special rules for aviation-grade kerosene, which is taxed as taxable fuel. Also, § 4082(d)(1), which allowed for the tax-free removal of undyed aviation-grade kerosene if the Secretary determined that such kerosene was destined for use as a fuel in an aircraft, is repealed effective January 1, 2005.

(b) *Definitions*.

Aviation-grade kerosene means kerosene-type jet fuel covered by ASTM specification D 1655 or military specification MIL-DTL–5624T (Grade JP–5) or MIL-DTL–83133E (Grade JP–8).

Commercial aviation has the meaning given to the term by § 4083(b).

Position holder includes a receiving person that is liable for tax under § 4105 (relating to two-party exchanges) and section 8 of this notice.

(c) *Imposition of tax; rate of tax; general rules*—(1) *In general*. Aviation-grade kerosene is taxable fuel and the provisions of §§ 48.4081–2 (relating to imposition of tax at the terminal rack) and 48.4081–3 (relating to other taxable events) apply unless the Code or this notice provides differently. The rate of tax on the removal, entry, or sale of aviation-grade kerosene is $0.219 per gallon unless a reduced rate of tax applies as described in this section.

(2) *Tax on each removal*. Taxpayers are reminded that, unless otherwise provided by § 4082, tax is imposed on each removal of aviation-grade kerosene from a terminal at the terminal rack even if that kerosene had previously been taxed on a removal from another terminal. For the conditions under which a refund (but not a credit) is allowable to the person that paid a second tax to the government, see § 48.4081–7.

(d) *Commercial aviation; liability for tax; rate of tax*—(1) *In general*. Under § 48.4081–2(c), the position holder is liable for tax with respect to the removal of taxable fuel from a terminal at a rack. However, the position holder is not liable for tax on the removal of aviation-grade kerosene from a terminal at the terminal rack if the kerosene is removed directly into the fuel tank of an aircraft for use in commercial aviation. In such a case, the operator of the aircraft in commercial aviation is liable for the tax on the removal at the rate of $0.044 per gallon. For purposes of determining whether a position holder is liable for tax under these rules, kerosene that is removed directly into the fuel tank of an aircraft will be treated as removed for use in commercial aviation if the position holder—

(i) Is a taxable fuel registrant,

(ii) Has an unexpired certificate (in the form described in section 4(g) of this notice) from the operator of the aircraft, and

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

(2) *Certain refueler trucks, etc*.—(i) *In general*. For purposes of the tax imposed on aviation-grade kerosene removed di-

rectly into the fuel tank of an aircraft for use in commercial aviation, the Act provides that certain refueler trucks, tankers, and tank wagons are treated as part of a terminal if the conditions described in § 4081(a)(3)(A) and (B) are met. One such condition is that, except in the case of exigent circumstances identified by the Secretary in regulations, no vehicle registered for highway use is loaded with aviation-grade kerosene at such terminal. This notice does not describe any such exigent circumstances. Also, § 4081(a)(3)(C) provides for reporting by terminal operators with respect to certain deliveries by refueler trucks, etc. This notice does not prescribe any such reporting. The reporting requirements under § 4081(a)(3)(C) will be prescribed in subsequent guidance. Until the issuance of this guidance, taxpayers are required to retain records containing the information described in § 4081(a)(3)(C) but are not required to report such information.

(ii) *Terminals within secured areas of airports*. Another condition for treating certain refueler trucks as part of a terminal is that the terminal must be located within a secured area of an airport. Section 4081(a)(3)(A)(i). The conference report to the Act, H.R. Conf. Rep. No. 755, 108th Cong., 2d Sess. 692 n.718 (2004), provides an initial list of qualifying terminals and the airports at which they are located. The conference report also provides that this list is subject to the Secretary's verification. This notice adopts the list in the conference report except for the following airport terminals, which the Commissioner has determined are not located within a secure area of the airport they serve: San Jose Municipal Airport, T–77–CA–4650; John Wayne Airport/Orange County, T–33–CA–4772; and Eppley Airfield, T–47–NE–3608. This list identifies airport fueling operations that are not susceptible to avoidance of the federal excise tax on taxable fuel, and has nothing to do with the general security of airports either included or not included on the list.

(e) *Exceptions*. Under the Act and this notice, in the case of aviation-grade kerosene that is exempt from the tax imposed by § 4041(c) (other than by reason of a prior imposition of tax) and that is removed from any refinery or terminal directly into the fuel tank of an aircraft, the rate of tax under § 4081 is zero. For purposes of determining the tax liability of the position holder under this rule, aviation-grade kerosene that is removed directly into the fuel tank of an aircraft will be treated as exempt from the tax imposed by § 4041(c) (other than by reason of a prior imposition of tax) if the position holder: (1) is a taxable fuel registrant; (2) has an unexpired certificate (described in section 4(g) of this notice) from the operator of the aircraft; and (3) has no reason to believe that any information in the certificate is false. Exemptions from the tax imposed by § 4041(c) include an exemption for aviation-grade kerosene sold for use or used as supplies for vessels or aircraft (within the meaning of § 4221(d)(3)), including fuel sold for use or used in aircraft actually engaged in foreign trade, and an exemption for aviation-grade kerosene sold for the exclusive use of a state or political subdivision of a state.

(f) *Registration*—(1) *Commercial aircraft operators; in general*. Under this notice, effective July 1, 2005, each commercial aircraft operator (other than an operator engaged exclusively in foreign trade) must be registered by the Service as a condition of providing the certificate that aviation-grade kerosene will be used in commercial aviation. Application for registration is made on Form 637, *Application for Registration (For Certain Excise Tax Activities)*, in accordance with the instructions for that form. A commercial aircraft operator that is registered under Activity Letter "Y" (Buyer of aviation fuel for its use in commercial aviation (other than foreign trade)) will be treated as being registered for this purpose and will not have to apply to be reregistered unless notified to do so by the Service.

(2) *Commercial aircraft operators; requirements*. The Service will register an applicant as a commercial aircraft operator only if the Service—

(i) Determines that the applicant is, in the course of its trade or business, regularly engaged as an operator of an aircraft in commercial aviation, or is likely to become so engaged within a reasonable time after being registered under § 4101; and

(ii) Is satisfied with the filing, deposit, payment, reporting, and claim history for all federal taxes of the applicant and any related person (as defined in § 48.4101–1(b)(5)).

(3) *Full rate buyers; in general*. Under this notice, effective July 1, 2005, each person that buys aviation-grade kerosene in connection with a removal from a terminal (other than a removal directly into the fuel tank of an aircraft) (full rate buyer) must be registered by the Service. Application for registration is made on Form 637, *Application for Registration (For Certain Excise Tax Activities)*, in accordance with the instructions for that form.

(4) *Full rate buyers; requirements*. The Service will register an applicant as a full rate buyer of aviation-grade kerosene only if the Service—

(i) Determines that the applicant buys aviation-grade kerosene in connection with the removal from a terminal (other than a removal directly into the fuel tank of an aircraft), or is likely to become such a buyer within a reasonable time after being registered under § 4101; and

(ii) Is satisfied with the filing, deposit, payment, reporting, and claim history for all federal taxes of the applicant and any related person (as defined in § 48.4101–1(b)(5)).

(g) *Certificate for commercial aviation and exempt use*—(1) *In general*. The certificate referred to in paragraphs (d)(1) and (e) of this section is 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 below, and contains all information necessary to complete the model certificate. A new certificate or notice that the current certificate is invalid 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 Service may withdraw the right of a buyer of aviation-grade kerosene to provide a certificate under this section if the buyer uses the aviation-grade kerosene to which a certificate relates other than as stated in the certificate. The 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. 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 the buyer provides the seller a new certificate or notice that the current certificate is invalid.

(iii) The date the Service or the buyer notifies the seller that the buyer's right to provide a certificate has been withdrawn.

(2) *Model certificate.*

CERTIFICATE OF PERSON BUYING AVIATION-GRADE KEROSENE FOR COMMERCIAL AVIATION OR NONTAXABLE USE

(To support operator liability for tax on removals of aviation-grade kerosene directly into the fuel tank of an aircraft in commercial aviation pursuant to § 4081 of the Internal Revenue Code or to support a tax rate of zero pursuant to §§ 4041 and 4082.)

_____

_____

_____

Name, address, and employer identification number of the position holder

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

The aviation-grade kerosene to which this certificate relates is purchased (check one):_____ for use on a farm for farming purposes; _____ for export; _____ for use in foreign trade (reciprocal benefits required for foreign registered airlines); _____ for use in certain helicopter and fixed-wing air ambulance uses; _____ for the exclusive use of a nonprofit educational organization; _____ for the exclusive use of a state; _____ for use in an aircraft owned by an aircraft museum; _____ for use in military aircraft; or _____ for use in commercial aviation (other than foreign trade).

With respect to aviation-grade kerosene purchased after June 30, 2005, for use in commercial aviation (other than foreign trade), Buyer's registration number is _____. Buyer's registration has not been suspended or revoked by the Internal Revenue Service.

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

_____ This is a single purchase certificate:

1. _____ Invoice or delivery ticket number
2. _____ Number of gallons

_____ This is a certificate covering all purchases under a specified account or order number:

1. Effective date _____
2. Expiration date _____ (period not to exceed 1 year after the effective date)
3. Buyer account number _____

Buyer agrees to provide the person liable for tax with a new certificate if any information in this certificate changes.

If the aviation-grade kerosene to which this certificate relates is being bought for use in commercial aviation (other than foreign trade), Buyer is liable for tax on its use of the fuel and will pay that tax to the government.

If Buyer sells or uses the aviation-grade kerosene to which this certificate relates for a use other than the use stated above, Buyer will be liable for tax.

Buyer understands that it must be prepared to establish by satisfactory evidence the purpose for which the fuel purchased under this certificate was used.

Buyer has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn. If Buyer violates the terms of this certificate, the Internal Revenue Service may withdraw Buyer's right to provide a certificate.

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

_____

Printed or typed name of person signing

_____

Title of person signing

Name of Buyer

Employer identification number

Address of Buyer

Signature and date signed

(h) *Claims by registered ultimate vendors (nontaxable uses)*—(1) *In general*. Section 6427(l)(4)(B) provides that if an ultimate purchaser of aviation-grade kerosene used for a nontaxable use waives its right to an income tax credit or payment, in the form and manner prescribed by the Secretary, and assigns such right to the registered ultimate vendor, then the ultimate vendor, and not the ultimate purchaser, may claim a payment or income tax credit. Neither the Code nor this notice requires any vendor to apply for registration or to file any claim.

(2) *Definitions*.

Nontaxable use means any use that is exempt from the tax imposed by § 4041(c) (other than by reason of a prior imposition of tax) and any use in commercial aviation within the meaning of § 4083(b).

Registered ultimate vendor is a person that sells aviation-grade kerosene to the ultimate purchaser for a nontaxable use and is registered as an ultimate vendor under § 4101.

(3) *Conditions to allowance of credit or payment*. A claim for an income tax credit or payment with respect to aviation-grade kerosene is allowable to an ultimate vendor by § 6427(l)(4)(B) only if—

(i) Tax was imposed on the aviation-grade kerosene under § 4081;

(ii) The claimant sold the aviation-grade kerosene to the ultimate purchaser for use in a nontaxable use;

(iii) The claimant is a registered ultimate vendor;

(iv) The ultimate purchaser has waived its right to a credit or payment as provided in paragraph (h)(6) of this section; and

(v) The claimant has filed a timely claim for a credit or payment and the claim contains all of the information required in paragraph (h)(5) of this section.

(4) *Form of claim*. A claim under § 6427(l)(4)(B) for a payment is made on Form 8849, *Claim for Refund of Excise Taxes*, and a claim under § 6427(l)(4)(B) for an income tax credit is made on Form 4136, *Credit for Federal Tax Paid on Fuels*.

(5) *Content of claim*. Each claim for a credit or payment under § 6427(l)(4)(B) must contain the following information with respect to the aviation-grade kerosene covered by the claim:

(i) The total number of gallons.

(ii) The claimant's registration number.

(iii) A statement that the claimant—

(A) Has not included the amount of the tax in its sales price of the aviation-grade kerosene and has not collected the amount of tax from its buyer;

(B) Has repaid the amount of the tax to the ultimate purchaser of the fuel; or

(C) Has obtained the written consent of its buyer to allowance of the claim.

(iv) A statement that the claimant has in its possession an unexpired waiver described in paragraph (h)(6) of this section and has no reason to believe any information in the waiver is false.

(6) *Waiver*—(i) *In general*. The ultimate purchaser waives its right to a credit or payment for purposes of § 6427(l)(4)(B) by providing a statement that is signed under penalties of perjury by a person with authority to bind the ultimate purchaser, is in substantially the same form as the model waiver in paragraph (h)(6)(ii) of this section, and contains all of the information necessary to complete such model waiver. A new waiver must be given if any information in the current waiver changes. The claimant must have the waiver at the time the credit or payment is claimed under § 6427(l)(4)(B). The waiver may be included as part of any business records normally used to document a sale. The waiver expires on the earlier of the following dates:

(A) The date one year after the effective date of the waiver, or

(B) The date a new waiver is provided.

(ii) *Model waiver*.

WAIVER FOR USE BY ULTIMATE PURCHASERS OF AVIATION-GRADE KEROSENE USED IN NONTAXABLE USES

(To support vendor's claim for a credit or payment under § 6427 of the Internal Revenue Code.)

Name, address, and employer identification number of ultimate vendor

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

The aviation-grade kerosene to which this certificate relates is purchased (check one):_____ for use on a farm for farming purposes; _____ for export; _____ for use in foreign trade (reciprocal benefits required for foreign registered airlines); _____ for use in certain helicopter and fixed-wing air ambulance uses; _____ for the exclusive use of a nonprofit educational organization; _____ for the exclusive use of a state; _____ for use in an aircraft owned by an aircraft museum; _____ for use in military aircraft; or _____ for use in commercial aviation (other than foreign trade).

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

_____ This is a single purchase waiver:

1. _____ Invoice or delivery ticket number

2. _____ Number of gallons

_____ This is a waiver covering all purchases under a specified account or order number:

1. Effective date _____

2. Expiration date _____ (period not to exceed 1 year after the effective date)

3. Buyer account number _____

Buyer will provide a new waiver to the vendor if any information in this waiver changes.

If Buyer uses the aviation-grade kerosene to which this waiver relates for a use other than the use stated above, Buyer will be liable for tax.

Buyer understands that by signing this waiver, Buyer gives up its right to claim any credit or payment for the aviation-grade kerosene used in a nontaxable use.

Buyer acknowledges that it has not and will not claim any credit or payment for the aviation-grade kerosene to which this waiver relates.

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

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Name of Buyer

_____

Employer identification number

_____

Address of Buyer

_____

Signature and date signed

(7) *Registration*—(i) *In general*. Application for registration as a registered ultimate vendor of aviation-grade kerosene is made on Form 637, *Application for Registration (For Certain Excise Tax Activities)*, in accordance with the instructions for that form. A person that is registered under § 4101 under Activity Letter "UV" (Ultimate vendor that sells undyed diesel fuel or undyed kerosene to a state or local government for its exclusive use or for use by the buyer on a farm for farming purposes) is treated as registered for purposes of claims filed with respect to aviation-grade kerosene before July 1, 2005.

(ii) *Requirements*. The Service will register an applicant as an ultimate vendor of aviation-grade kerosene only if the Service—

(A) Determines that the applicant is, in the course of its trade or business, regularly engaged as a seller of aviation-grade kerosene to aircraft operators, or is likely to become so engaged within a reasonable time after being registered under § 4101; and

(B) Is satisfied with the filing, deposit, payment, reporting, and claim history for all federal taxes of the applicant and any related person (as defined in § 48.4101–1(b)(5)).

(i) *Extension of time to file Form 720 for the first quarter of 2005*. Under this notice, a return of tax on Form 720, *Quarterly Federal Excise Tax Return*, for the first quarter of 2005 is due May 31, 2005, if the return reports tax for either IRS No. 69, aviation-grade kerosene, or IRS No. 77, aviation-grade kerosene for use in commercial aviation (other than foreign trade).

A person must file only one return for a quarter. Thus, for example, a return of tax on Form 720 for the first quarter that reports tax for IRS No. 69 and IRS No. 26, transportation of persons by air, is due May 31, 2005. This rule does not extend the time for making deposits or paying any excise tax.

(j) *Deposits; application of the safe harbor deposit rule*. Section 40.6302(c)–1(b)(2)(ii)(D) of the Excise Tax Procedural Regulations provides that the safe harbor deposit rule for regular method taxes is applicable if, among other conditions, the person's liability does not include any regular method tax that was not imposed at all times during the look-back quarter. For the first and second quarters of 2005, the tax on aviation-grade kerosene under § 4081 will be treated under this notice as having been imposed during the look-back quarter if: (1) the person was a registered producer of aviation fuel (Activity Letter "H" (Importer or producer of aviation fuel) on Form 637, *Application For Registration (For Certain Excise Tax Activities)*) during the look-back quarter; or, (2) the deposit for each semimonthly period for the current quarter (determined under § 40.6302(c)–1(b)(2)) is increased by an amount equal to 95% of the person's net tax liability for aviation-grade kerosene under § 4081 incurred during the semimonthly period.

(k) *Floor stocks tax*—(1) *Imposition of tax*. A one-time floor stocks tax is imposed on aviation-grade kerosene if, on the first moment of January 1, 2005, the kerosene—

(i) Is outside of the bulk transfer/terminal system (as defined in § 48.4081–1(b) after taking paragraph (d)(2) of this section into account) and is not held in the fuel supply tank of an aircraft; and

(ii) Is held by a registered producer of aviation fuel (Activity Letter "H" (Importer or producer of aviation fuel) on Form 637, *Application for Registration (For Certain Excise Tax Activities)*) other than for use by the producer in a nontaxable use described in § 6427(l)(2)(B)(i).

(2) *Liability for tax*. The person holding the kerosene on the first moment of January 1, 2005, is liable for tax. Kerosene is considered held by a person if title thereto has passed to such person (whether or not delivery to the person has been made).

(3) *Rate of tax*. The rate of tax is $0.219 per gallon except that for aviation-grade kerosene held for the taxpayer's own use in commercial aviation, the rate of tax is $0.044 per gallon.

(4) *Persons holding not more than 2,000 gallons*—(i) A person is not liable for the floor stocks tax on aviation-grade kerosene if the amount of such aviation-grade kerosene held by the person on January 1, 2005, does not exceed 2,000 gallons. In determining whether this threshold is crossed, the amount of aviation-grade kerosene a person holds exclusively for an exempt use and the amount of aviation-grade kerosene a person holds in an aircraft fuel tank are not taken into account. If a person holds more than 2,000 gallons of aviation-grade kerosene, then the floor stocks tax is imposed on all aviation-grade kerosene that is held by the person and that is not otherwise exempt.

(ii) Members of controlled groups of corporations (as defined in § 1563(a)) must aggregate the aviation-grade kerosene held by all members in determining whether they hold no more than 2,000 gallons of kerosene. If holdings of all members in aggregate exceed 2,000 gallons, then the exception described in paragraph (k)(4)(i) of this section does not apply to any member of the group. The aggregation rule for controlled groups does not affect the requirement that each separate person liable for the floor stocks tax file a return.

(5) *Payment and return*. The floor stocks tax must be paid with a return on Form 720, *Quarterly Federal Excise Tax Return*. The return is due May 31, 2005. Persons that are required to report the floor stocks tax and are also required to report other excise taxes on Form 720 must report both the floor stocks tax and the other excise taxes for the first calendar quarter of 2005 on one Form 720 that is due May 31, 2005. This rule does not extend the time for making deposits or payments of the other excise taxes.

Section 5. DIESEL FUEL USED IN CERTAIN INTERCITY BUSES

(a) *Overview*. Before January 1, 2005, the penalty imposed by § 6715 on the misuse of dyed diesel fuel and dyed kerosene did not apply to dyed fuel used in buses while engaged in intercity bus transportation, as defined in paragraph (b) of this section. The operator of the bus was liable for a backup tax of $0.074 per gallon on dyed fuel used for this purpose. However, effective January 1, 2005, the § 6715 penalty applies to this use and the ability of these bus operators to use dyed diesel fuel and pay the $0.074-per-gallon backup tax is eliminated. As under prior law, an income tax credit or payment of $0.17 per gallon is allowable if undyed diesel fuel or undyed kerosene (which is taxed at $0.244 per gallon) is used for this purpose. In addition, § 6427(b)(4) provides that if the ultimate purchaser of undyed diesel fuel or undyed kerosene used in a bus for this purpose waives its right to an income tax credit or a payment, in the form and manner prescribed by the Secretary, and assigns such right to the registered ultimate vendor, then the ultimate vendor, and not the ultimate purchaser, may claim a payment or income tax credit. Neither the Code nor this notice requires any vendor to apply for registration or to file a claim.

(b) *Definitions*—(1) *Intercity bus transportation*—(i) *In general*. An automobile bus is engaged in *intercity bus transportation* if it is engaged in the furnishing (for compensation) of passenger land transportation available to the general public and the bus is engaged in-

(A) Scheduled transportation along regular routes; or

(B) Nonscheduled transportation if the seating capacity of the bus is at least 20 adults (not including the driver).

(ii) *Exceptions*. A bus is not engaged in intercity bus transportation if—

(A) The bus is engaged in transportation described in § 6427(b)(2)(B) (relating to the transportation of students and employees of schools); or

(B) The bus is engaged in transportation described in § 6427(b)(2)(C) (relating to intracity transportation in a qualified local bus).

(2) *Registered ultimate vendor*. A *registered ultimate vendor* is a person that sells diesel fuel to the ultimate purchaser for use in intercity bus transportation and is registered as an ultimate vendor under § 4101.

(c) *Conditions to allowance of credit or payment*. A claim for an income tax credit or payment with respect to diesel fuel or kerosene used for intercity bus transportation is allowable under § 6427(b)(4) only if—

(1) Tax was imposed on the diesel fuel or kerosene under § 4081;

(2) The claimant sold the diesel fuel or kerosene to the ultimate purchaser for use in intercity bus transportation;

(3) The claimant is a registered ultimate vendor;

(4) The ultimate purchaser has waived the right to payment as provided in paragraph (f) of this section; and

(5) The claimant has filed a timely claim for a credit or payment and the claim contains all of the information required in paragraph (e) of this section.

(d) *Form of claim.* A claim under § 6427(b)(4) for a payment is made on Form 8849, *Claim for Refund of Excise Taxes*, and a claim under § 6427(b)(4) for an income tax credit is made on Form 4136, *Credit for Federal Tax Paid on Fuels*.

(e) *Content of claim.* Each claim for a credit or payment under § 6427(b)(4) must contain the following information with respect to the diesel fuel or kerosene covered by the claim:

(1) The total number of gallons.

(2) The claimant's registration number.

(3) A statement that the claimant—

(i) Has not included the amount of the tax in its sales price of the diesel fuel or kerosene and has not collected the amount of tax from its buyer;

(ii) Has repaid the amount of the tax to the ultimate purchaser of the fuel; or

(iii) Has obtained the written consent of its buyer to allowance of the claim.

(4) A certification that the claimant has in its possession an unexpired waiver described in paragraph (f) of this section and has no reason to believe any information in the waiver is false.

(f) *Waiver*—(1) *In general.* The ultimate purchaser waives its right to credit or payment for purposes of § 6427(b)(4) by providing a statement that is signed under penalties of perjury by a person with authority to bind the ultimate purchaser, is in substantially the same form as the model waiver in paragraph (f)(2) of this section, and contains all of the information necessary to complete such model waiver. A new waiver must be given if any information in the current waiver changes. The claimant must have the waiver at the time the credit or payment is claimed under § 6427(b)(4). The waiver may be included as part of any business records normally used to document a sale. The waiver expires on the earlier of the following dates:

(i) The date one year after the effective date of the waiver.

(ii) The date a new waiver is provided.

(2) *Model waiver.*

WAIVER FOR USE BY ULTIMATE PURCHASERS OF DIESEL FUEL OR KEROSENE USED IN INTERCITY BUS TRANSPORTATION

(To support vendor's claim for a credit or payment under § 6427 of the Internal Revenue Code.)

_____

_____

_____

Name, address, and employer identification number of ultimate vendor

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

The diesel fuel or kerosene to which this waiver relates is purchased for use in intercity bus transportation.

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

____ This is a single purchase waiver:

1. _____ Invoice or delivery ticket number

2. _____ Number of gallons

____ This is a waiver covering all purchases under a specified account or order number:

1. Effective date _____

2. Expiration date _____ (period not to exceed 1 year after the effective date)

3. Buyer account number _____

Buyer will provide a new waiver to the vendor if any information in this waiver changes.

If Buyer uses the diesel fuel or kerosene to which this waiver relates for a use other than in intercity bus transportation, Buyer will be liable for tax.

Buyer understands that by signing this waiver, Buyer gives up its right to claim any credit or payment for diesel fuel or kerosene used in intercity bus transportation during the period indicated.

Buyer acknowledges that it has not and will not claim any credit or payment for the diesel fuel or kerosene to which this waiver relates.

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

Printed or typed name of person signing

Title of person signing

Name of Buyer

Employer identification number

Address of Buyer

Signature and date signed

(g) *Registration*—(1) *In general*. Application for registration as a registered ultimate vendor of diesel fuel or kerosene used in intercity bus transportation is made on Form 637, *Application for Registration (For Certain Excise Tax Activities)*, in accordance with the instructions for that form. A person that is registered under § 4101 under Activity Letter "UV" is treated as registered for purposes of claims with respect to diesel fuel or kerosene used in intercity bus transportation for claims filed before July 1, 2005.

(2) *Requirements*. The Service will register an applicant as an ultimate vendor of diesel fuel or kerosene used in intercity bus transportation only if the Service—

(i) Determines that the applicant is, in the course of its trade or business, regularly engaged as a seller of diesel fuel or kerosene for use in intercity bus transportation or is likely to become so engaged within a reasonable time after being registered under § 4101; and

(ii) Is satisfied with the filing, deposit, payment, reporting, and claim history for all federal taxes of the applicant and any related person (as defined in § 48.4101–1(b)(5)).

Section 6. DISPLAY OF REGISTRATION

Section 4101 provides that every operator of a vessel required to register must display proof of registration through an identification device prescribed by the Secretary on each vessel used by the operator to transport any taxable fuel. Section 6718 imposes a penalty on vessel operators who fail to display proof of registration. This notice does not prescribe the identification device that must be displayed. The identification device and the manner of its display will be prescribed in subsequent guidance. No penalty will be imposed on a registered operator under § 6718 with respect to any failure to display proof of registration occurring before the effective date of such guidance, and the effective date of the guidance will be after the date it is issued.

Section 7. GASOLINE; CLAIMS BY REGISTERED ULTIMATE VENDORS

(a) *Overview*—(1) *Claims by the person that paid the tax*—(i) *In general*. Section 6416(b)(2) generally provides that the tax paid on gasoline is deemed to be an overpayment if the gasoline was sold to a state for its exclusive use or to a nonprofit educational organization for its exclusive use. Section 6402(a) generally allows credits or refunds of overpayments to the person that made the overpayment (that is, the person that paid the tax to the government). Section 6416(a)(4) provides that the ultimate vendor of the gasoline is treated as the person (and the only person) that paid the tax, but only if such ultimate vendor is registered under § 4101. Thus, if the ultimate vendor is not registered as described in this section, then the person that actually paid the tax to the government may make the claim allowed by § 6416(b)(2). Guidance for claims by the person that actually paid the tax is set forth in §§ 48.6416(a)–3(b) and 48.6416(b)(2)–3. Guidance for claims by the person that is treated as having paid the tax (that is, the registered ultimate vendor) is set forth in this section. As noted in section 11 of this notice, Notice 89–29, 1989–1 C.B. 669, which provided guidance under former § 6416(a)(4), is obsolete.

(ii) *Sales on oil company credit cards*. Under the rules in effect prior to 2005, a sale charged on an oil company credit card issued to an exempt person is not considered a direct sale by the person actually selling the gasoline to the ultimate purchaser (*i.e.*, the person selling the gasoline is not the ultimate vendor) if the person actually selling the gasoline receives a reimbursement from the oil company based on a price that excludes the tax. Treasury and the Service are considering whether this rule has continuing applicability under new § 6416(a)(4) but, while considering the issue, will continue generally to apply the rule with respect to sales before March 1, 2005. Therefore, in the case of a sale of gasoline before March 1, 2005, on an oil company credit card issued to a state or nonprofit educational organization, the person that actually paid the tax is treated as the only person eligible to make the claim under §§ 6402 and 6416. As noted in paragraph (a)(1)(i) of this section, these claims must be in accordance with §§ 48.6416(a)–3(b) and 48.6416(b)(2)–3. If Treasury and the Service determine that the oil company credit card rule does not have continued application after February 28, 2005, commentators have suggested that persons paying the tax on gasoline (position holders) will find it difficult to determine whether they or the ultimate vendors of the gasoline are eligible for refunds. This, in turn, could re-

sult in multiple refund claims with respect to the same transaction. Congress may wish to address this issue prior to March 1, 2005, and Treasury and the Service will assist Congress in designing an administrable alternative.

(2) *Claims by the ultimate purchaser*. A claim for a credit or refund under § 6416 by the person that paid the tax (or that is treated as having paid the tax) is an alternative to a claim for an income tax credit or payment under § 6421(c) by the ultimate purchaser (that is, the state or nonprofit educational organization). For any particular transaction, a claim may not be made under § 6421(c) if the tax is credited or refunded under § 6416 to either the ultimate vendor or the person that actually paid the tax.

(b) *Definitions*.

Nonprofit educational organization has the meaning given to the term in § 4221(d)(5).

Registered ultimate vendor is a person that sells gasoline to a state for its exclusive use or to a nonprofit educational organization for its exclusive use and is registered as an ultimate vendor under § 4101.

State has the meaning given to the term by § 48.4081–1(b).

(c) *Conditions to allowance of a credit or refund*. A claim for credit or refund of an overpayment of tax is allowable under § 6416(b)(2)(C) or (D) and § 6416(a)(4) (relating to refunds of gasoline tax to registered ultimate vendors) if—

(1) The claimant sold the gasoline to a state for its exclusive use or to a nonprofit educational organization for its exclusive use;

(2) The claimant is a registered ultimate vendor; and

(3) The claim contains all of the information required in paragraph (e).

(d) *Form of claim*—(1) *In general*. A claim under § 6416(b)(2)(C) or (D) and § 6416(a)(4) is made—

(i) In the case of a claim for a refund, on Form 8849, *Claim for Refund of Excise Taxes*; and

(ii) In the case of a claimant reporting liability on Form 720, as a claim on Form 720 for an excise tax credit.

(2) *Electronic claim certification to the Secretary*. Section 6416(a)(4)(B) provides that electronic claims for refund under § 6416(a)(4) will be paid with interest if the claim is not paid within 20 days of the date it is filed and the claimant certifies that all ultimate purchasers are certified and entitled to a refund. This notice does not provide guidance on these certification procedures. These procedures and the procedures for filing an electronic claim will be prescribed in subsequent guidance.

(e) *Content of claim*. Each claim under § 6416(b)(2)(C) or (D) or § 6416(a)(4) for a credit or payment must contain the following information with respect to the gasoline covered by the claim:

(1) The total number of gallons.

(2) The claimant's registration number.

(3) A statement that the claimant—

(i) Has not included the amount of the tax in its sales price of the gasoline and has not collected the amount of tax from its buyer;

(ii) Has repaid the amount of the tax to the ultimate purchaser of the fuel; or

(iii) Has obtained the written consent of its buyer to allowance of the claim.

(4) A statement that the claimant has in its possession an unexpired certificate described in paragraph (f) of this section and has no reason to believe any information in the certificate is false.

(f) *Certificate*—(1) *In general*. The certificate to be provided to the ultimate vendor 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 in paragraph (f)(2) of this section, and contains all of the 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 earlier of the following dates:

(i) The date one year after the effective date of the certificate.

(ii) The date a new certificate is provided.

(2) *Model certificate*.

CERTIFICATE FOR STATE USE OR NONPROFIT EDUCATIONAL ORGANIZATION USE

(To support ultimate vendor's claim for a credit or refund under § 6416(a)(4) of the Internal Revenue Code.)

_____

_____

_____

Name, address, and employer identification number of ultimate vendor

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

Buyer will use the gasoline to which this certificate relates (check one):

_____ For the exclusive use of a state; or

_____ For the exclusive use of a nonprofit educational organization.

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

_____ This is a single purchase certificate:

1. _____ Invoice or delivery ticket number

2. _____ Number of gallons

_____ This is a certificate covering all purchases under a specified account or order number:

1. Effective date _____

2. Expiration date _____ (period not to exceed 1 year after the effective date)

3. Buyer account number _____

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

Buyer understands that by signing this certificate, Buyer gives up its right to claim a credit or payment for the gasoline to which this certificate relates.

Buyer acknowledges that it has not and will not claim any credit or payment for the gasoline to which this certificate relates.

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.

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Name of Buyer

_____

Employer identification number

_____

Address of Buyer

_____

Signature and date signed

(g) *Registration*—(1) *In general*. Application for registration as a registered ultimate vendor of gasoline is made on Form 637, *Application for Registration (For Certain Excise Tax Activities)*, in accordance with the instructions for that form. A person that is registered under § 4101 under Activity Letter "UV" or "UP" (Ultimate vendor that sells kerosene from a blocked pump) is treated as registered for purposes of claims under this section and will not have to be reregistered unless notified to do so by the Service.

(2) *Requirements*. The Service will register an applicant as an ultimate vendor of gasoline only if the Service—

(i) Determines that the applicant is, in the course of its trade or business, regularly engaged as a seller of gasoline to states or nonprofit educational organizations, or is likely to become so engaged within a reasonable time after being registered under § 4101; and

(ii) Is satisfied with the filing, deposit, payment, reporting, and claim history for all federal taxes of the applicant and any related person (as defined in § 48.4101–1(b)(5)).

Section 8. TWO-PARTY EXCHANGES

Section 4105(a) provides that in a two-party exchange, as defined in § 4105(b), the delivering person is not liable for the tax imposed on the removal of taxable fuel from the terminal at the terminal rack. Under this notice, in a two-party exchange the receiving person is liable for the tax imposed on the removal of taxable fuel from the terminal at the terminal rack. For purposes of § 48.4081–2(c)(2) (relating to the joint and several liability of a terminal operator), the "position holder" will include the receiving person in a two-party exchange. Also, a delivering person may treat a receiving person as a taxable fuel registrant for purposes of § 4105(b) if, at the time of the exchange, the delivering person has an unexpired notification certificate (described in § 48.4081–5) from the receiving person and has no reason to believe any information in the certificate is false.

Section 9. GASOLINE BLENDS, TRANSMIX, DIESEL FUEL BLENDSTOCKS

(a) *Gasoline blends*. Section 4083(a)(2) defines *gasoline* as including gasoline blends other than qualified methanol or ethanol fuel (as defined in § 4041(b)(2)(B)), partially exempt methanol or ethanol fuel (as defined in § 4041(m)(2)) or a denatured alcohol. Thus, for example, *gasoline* includes any gasoline/ethanol blend unless at least 85 percent of the blend consists of alcohol made from coal, at least 85 percent of the blend consists of alcohol made from nat-

ural gas, or the blend consists of alcohol with gasoline added solely as a denaturant.

(b) *Transmix*. Section 4083(a)(3)(A)(ii) defines *diesel fuel* as including any transmix as defined in § 4083(a)(3)(B). Effective January 1, 2005, § 48.4081–1(c)(3)(i) will be amended to remove *transmix containing gasoline* from the definition of a gasoline blendstock.

(c) *Diesel fuel blendstocks*. Section 4083(a)(3)(A)(iii) defines *diesel fuel* as including diesel fuel blendstocks identified by the Secretary. This notice does not identify any diesel fuel blendstocks.

Section 10. REQUEST FOR COMMENTS

Treasury and the Service invite comments from the public on any issue that should be addressed in regulations issued under the excise tax provisions identified in this notice and other excise tax provisions of the Act. Treasury and the Service are particularly interested in receiving comments on the following matters:

1. Concerning the credit or payment related to the taxes on fuel used in mobile machinery (§ 851 of the Act, § 6421 of the Code), the records and documentation required to substantiate that the vehicle was used on the public highways less than 7,500 miles during the taxpayer's taxable year.

2. Concerning whether a terminal is located within a secured area of an airport (§ 853 of the Act, § 4081 of the Code), the standards to be used in making such determination.

3. Concerning the requirement for display of registration on certain vessels (§ 861 of the Act, § 4101 of the Code), the type of identification device that should be used.

4. Concerning the definition of diesel fuel (§ 870 of the Act, § 4083 of the Code), the diesel fuel blendstocks that should be classified as diesel fuel.

All materials submitted will be available for public inspection and copying.

Send submissions to: CC:PA:LPD:PR (REG–153838–04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–153838–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent electronically, via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–153838–04).

Comments should be submitted by February 14, 2005.

Section 11. EFFECT ON OTHER DOCUMENTS

The following notices are obsolete:
Notice 88–30, 1988–1 C.B. 497.
Notice 88–132, 1988–2 C.B. 552.
Notice 89–29, 1989–1 C.B. 669.
Notice 89–38, 1989–1 C.B. 679.

Section 12. EFFECTIVE DATE

This notice is effective January 1, 2005.

Section 13. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–1915.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this notice are in the following sections.

Section 2(h)(2) describes the certificate that the producer of biodiesel must give to the claimant of a biodiesel mixture credit or biodiesel credit.

Section 4(d)(2) describes the recordkeeping requirements of certain terminal operators.

Section 4(g) describes the certificate that the buyer of aviation-grade kerosene must give to the seller in order to support removals of aviation-grade kerosene directly into the fuel tank of an aircraft in commercial aviation pursuant to § 4081 or to support a tax rate of zero pursuant to §§ 4041 and 4082.

Section 4(h)(6) describes the waiver that the ultimate purchaser of aviation-grade kerosene must give to the registered ultimate vendor in order to waive its right to an income tax credit or payment and assign such rights to the registered ultimate vendor.

Section 5(f) describes the waiver that the ultimate purchaser of diesel fuel or kerosene for use in an intercity bus must give to the registered ultimate vendor in order to waive its rights to an income tax credit or payment and assign such rights to the registered ultimate vendor.

Section 7(f) describes the certificate that the ultimate purchaser of gasoline for the exclusive use of the state or the exclusive use of a nonprofit educational organization must give to the registered ultimate vendor in order for the registered ultimate vendor to be treated as the taxpayer.

Section 8 describes the certificate that the delivering person may receive in order to treat the receiving person as a taxable fuel registrant.

The collections of information are required to obtain a tax benefit. This information will be used to substantiate claims for the tax benefits. The likely respondents are businesses, not-for-profit institutions, farmers, the federal government, and state, local or tribal governments.

The estimated total annual reporting and or recordkeeping burden is 34,390 hours.

The estimated average annual burden per respondent and/or recordkeeper is approximately .25 hours.

The estimated number of respondents and recordkeepers is 20,263.

Books or records relating to a collection of information must be retained as long as their contents may become material to the administration of the internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.

Section 14. DRAFTING INFORMATION

The principal authors of this notice are Susan Athy and Deborah Karet of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, please contact Ms. Karet (concerning off-highway vehicles, aviation-grade kerosene, display of registration on certain vessels, and two-party exchanges) or Ms. Athy (concerning all other issues) at (202) 622–3130 (not a toll-free call).

26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part 1, §§ 162, 263, 446, 461, 481; 1.167(a)–3(b), 1.263(a)–4, 1.263(a)–5, 1.446–1, 1.461–4, 1.461–5, 1.481–1.)

Rev. Proc. 2005–9

SECTION 1. PURPOSE

This revenue procedure provides the exclusive administrative procedures under which a taxpayer described in section 4 of this revenue procedure may obtain automatic consent for the taxpayer's second taxable year ending on or after December 31, 2003, to change to a method of accounting provided in §§ 1.263(a)–4, 1.263(a)–5, and 1.167(a)–3(b) of the Income Tax Regulations (the "final regulations").

SECTION 2. BACKGROUND

.01 On January 5, 2004, the Internal Revenue Service and Treasury Department published final regulations in the Federal Register (T.D. 9107, 2004–7 I.R.B. 447 [69 FR 436]). Section 1.263(a)–4 prescribes the extent to which taxpayers must capitalize amounts paid or incurred to acquire or create (or to facilitate the acquisition or creation of) intangibles. Section 1.263(a)–5 prescribes the extent to which taxpayers must capitalize amounts paid or incurred to facilitate an acquisition of a trade or business, a change in the capital structure of a business entity, and certain other transactions. Section 1.167(a)–3(b) provides a safe harbor useful life for certain intangible assets. The final regulations under §§ 1.263(a)–4 and 1.263(a)–5 are effective for amounts paid or incurred on or after December 31, 2003. The final regulations under § 1.167(a)–3(b) are effective for intangible assets created on or after December 31, 2003.

.02 Sections 1.263(a)–4(p) and 1.263(a)–5(n) provide that a taxpayer seeking to change to a method of accounting provided in the final regulations must secure the consent of the Commissioner in accordance with the requirements of § 1.446–1(e). In addition, §§ 1.263(a)–4(p) and 1.263(a)–5(n) provide that, for the taxpayer's first taxable year ending on or after December 31, 2003, the taxpayer is granted the consent of the Commissioner to change to a method of accounting provided in the final regulations, provided the taxpayer follows the administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 2002–9, 2002–1 C.B. 327, as modified and clarified by Announcement 2002–17, 2002–1 C.B. 561, modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, and amplified, clarified, and modified by Rev. Proc. 2002–54, 2002–2 C.B. 432). The final regulations further provide that any applicable § 481(a) adjustment for a change to a method of accounting provided in the final regulations for a taxpayer's first taxable year ending on or after December 31, 2003, is determined by taking into account only amounts paid or incurred in taxable years ending on or after January 24, 2002. The preamble to the final regulations states that the Service may issue additional guidance for utilizing the automatic consent procedures to change to a method of accounting provided in the regulations.

.03 Section 1.446–1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions deemed necessary to permit a taxpayer to obtain consent to change a method of accounting.

.04 Rev. Proc. 2002–9 provides procedures by which a taxpayer may obtain automatic consent to change to a method of accounting described in the Appendix of Rev. Proc. 2002–9.

.05 Rev. Rul. 90–38, 1990–1 C.B. 57, provides that, if a taxpayer uses an erroneous method of accounting for two or more consecutive taxable years, the taxpayer has adopted a method of accounting. The ruling further provides that a taxpayer may not, without the Commissioner's consent, retroactively change from an erroneous to a permissible method of accounting by filing an amended return.

.06 Rev. Proc. 2004–23, 2004–16 I.R.B. 785, provides the exclusive administrative procedures under which a taxpayer may obtain automatic consent for the taxpayer's first taxable year ending on or after December 31, 2003, to change to a method of accounting provided in the final regulations and, if desired, to change to a method of utilizing the 3½ month rule authorized by § 1.461–4(d)(6)(ii) or the recurring item exception authorized by § 1.461–5 in conjunction with a change to a method of accounting provided in the final regulations. Under Rev. Proc. 2004–23, a term and condition of the Commissioner's consent with respect to a change to a method of accounting provided in the final regulations is that any applicable § 481(a) adjustment take into account only amounts paid or incurred in taxable years ending on or after January 24, 2002. In addition, Rev. Proc. 2004–23 states that for taxable years subsequent to the first taxable year ending on or after December 31, 2003, a similar term and condition will apply. (For further background, see Section 2 of Rev. Proc. 2004–23.)

.07 This revenue procedure applies only for a taxpayer's second taxable year ending on or after December 31, 2003. As in Rev. Proc. 2004–23, this revenue procedure grants taxpayers the Commissioner's consent to change to a method of utilizing the 3½ month rule or the recurring item exception only for the item for which the taxpayer is simultaneously changing to a method of accounting provided in the final regulations. In addition, a term and condition of obtaining the Commissioner's consent, whether or not automatic, is that any applicable § 481(a) adjustment take into account only amounts paid or incurred in taxable years ending on or after January 24, 2002. The Service intends to issue future guidance for changes in methods of accounting made for subsequent taxable years, including automatic consent procedures for some or all methods of accounting provided in the final regulations. Such guidance will include as a term and condition of obtaining the Commissioner's consent, whether or not automatic, that any applicable § 481(a) adjustment take into account only amounts paid or incurred in taxable years ending on or after January 24, 2002.

.08 This revenue procedure constitutes the exclusive guidance for utilizing the automatic consent procedures to change to a method of accounting provided in the final regulations for a taxpayer's second taxable year ending on or after December 31, 2003. For any change in method of accounting to which this revenue procedure applies, a taxpayer may not file an application for a change in method of accounting