

consumer, the article in transit is not considered as held by the dealer on that date because title has passed to the consumer for purposes of consumption, even though neither the dealer nor the consumer has physical possession of the article.

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

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

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

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

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

(h) *Claim limitation date.* The term “claim limitation date” means the last date prescribed by section 6412(a)(1) on which refund or credit with respect to floor stocks may be claimed by a manufacturer. In the case of an article held by a dealer on October 1, 1988, the claim limitation date is March 31, 1989.

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

[T.D. 8043, 50 FR 32021, Aug. 8, 1985]

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

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

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

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

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

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

respect to the article may, at the option of the manufacturer, be taken into account in computing the price of the article.

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

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

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

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

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

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

(g) *Reasonable category.* Examples of a reasonable category of articles are articles that are identified by a common stock or class number or which are of the same model, class, or line. For the purpose of averaging exclusions, an-

other example of a reasonable category of articles is a grouping of articles that are shipped in the same container. If a manufacturer sells articles bearing his own trademark and also sells articles as private brands, separate computations of the two brands must be made under this section.

[T.D. 8043, 50 FR 32022, Aug. 8, 1985]

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

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

[T.D. 8043, 50 FR 32022, Aug. 8, 1985]

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

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

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