

§ 48.6420-3

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filed with the service center for the internal revenue region in which the principal place of business or principal office of the claimant is located.

[T.D. 8043, 50 FR 32035, Aug. 8, 1985]

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

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

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

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§ 48.6420-4 Meaning of terms.

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

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

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

(c) *Farm.* The term “farm” is used in its ordinary and accepted sense, and generally means land used for the production of crops, fruits, or other agricultural products or for the sustenance of livestock or poultry. The term “livestock” includes cattle, hogs, horses, mules, donkeys, sheep, goats, and captive fur-bearing animals. The term “poultry” includes chickens, turkeys, geese, ducks, and pigeons. Thus, a farm includes livestock, dairy, poultry, fish, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, orchards, feed yards for fattening cattle, and greenhouses and other similar structures used primarily