

§ 48.6421-3

26 CFR Ch. I (4-1-01 Edition)

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

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

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

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

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

(2) The total number of gallons of gasoline purchased and used in each bus while engaged in school bus transportation operations multiplied by the rate at which tax was imposed on the gasoline by section 4081, and

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

[T.D. 8043, 50 FR 32040, Aug. 8, 1985, as amended by T.D. 8879, 65 FR 17161, Mar. 31, 2000]

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

(a) *In general.* A claim for credit or payment described in § 48.6421-1 with respect to gasoline used in a qualified business use or as a fuel in an aircraft (other than aircraft in noncommercial aviation) or in § 48.6421-2 with respect to gasoline used either in an intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations, shall cover only gasoline used during the taxable year,

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

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

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

(2) *Quarterly claims.* A claim for payment of \$1,000 or more in respect of gasoline used during any of the first three quarters of the taxable year, filed either under § 48.6421-1(c)(3) in respect of gasoline used in a qualified business use or as a fuel in an aircraft (other than aircraft used in noncommercial aviation) or under § 48.6421-2(c)(3) in respect of gasoline used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus operations, shall not be allowed unless the claim is filed on or before the last

day of the first calendar quarter following the calendar quarter for which the claim is filed. No quarterly claim may be filed for the last calendar quarter of the taxable year. Amounts for which payment is disallowed under this paragraph (b)(2) merely because the claim was not filed on time may be included in an annual claim filed under paragraph (b)(1) of this section, but other amounts for which a claim for payment has been filed under this paragraph (b)(2) may not be included in an annual claim filed under paragraph (b)(1) of this section.

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

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

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

(2) *Claim for payment.* The claim for payment to which this section applies must be made on Form 8849 (or on such other form as the Commissioner may designate) in accordance with the instructions prescribed for the preparation of the form. Each form must designate the taxable year, or calendar quarter, for which it is filed.

(3) *Death or termination.* (i) If an individual dies, or if a sole proprietorship,

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

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

(e) *Restrictions on claims for credit or payment.* Credits or payments are allowable only in respect of gasoline that

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

[T.D. 8043, 50 FR 32041, Aug. 8, 1985, as amended by T.D. 8659, 61 FR 10463, Mar. 14, 1996; T.D. 8748, 63 FR 26, Jan. 2, 1998]

§ 48.6421-4 Meaning of terms.

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

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

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

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

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

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

of this section for the definition of “highway.”

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

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

(4) Examples of gasoline used in a qualified business use include:

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

(ii) Gasoline used (in a trade or business or for the production of income) for cleaning purposes;

(iii) Gasoline used (in a trade or business or for the production of income) in forklift trucks, bulldozers, and earthmovers; and

(iv) Gasoline used by a nonhighway vehicle in connection with the trade or business of construction, mining or logging.

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

Example. M Corporation, a logging company, files its income tax return on the basis of the calendar year. During 1982, the company used 20,000 gallons of gasoline in its logging business. Of this amount, 12,000 gallons were used as fuel in registered highway vehicles which were operated both on the public highways and on the company’s private roads. Of the remaining 8,000 gallons, 6,000 were used in nonhighway vehicles, such as tractors and bulldozers, and 2,000 gallons were used in highway vehicles, such as heavy trucks which, at the time of use, were neither registered nor required to be registered under state law for highway use by reason of being operated entirely on the company’s property. As the ultimate purchaser, M may take a credit on its income tax return for