

Subpart O—Refunds and Other Administrative Provisions of Special Application to Retailers and Manufacturers Taxes

§ 48.6412-1 Floor stocks credit or refund.

(a) *In general.* This section sets forth the procedures to be followed in claiming the credit or refund authorized by section 6412 for manufacturers excise taxes paid in respect of certain articles held by dealers as floor stocks on October 1, 1988. See § 48.6412-2 for definitions of the following terms when used in this section: “floor stocks”, “inventory date”, “dealer”, “held by a dealer”, “old rate”, “new rate”, “dealer request limitation date”, “claim limitation date”, and “tax paid”. See § 48.6412-3 for determining the amount of tax paid on articles that are held as floor stocks. The manufacturers excise taxes for which credit or refund may be claimed under this section are those imposed by section 4071, relating to tires of the type used on highway vehicles; and section 4081, relating to gasoline. For definition of the term “highway vehicle”, see § 48.4061(a)-1(d).

(b) *Computation of the amount of floor stocks credit or refund.* The amount of floor stocks credit or refund which may be claimed by the manufacturer under section 6412(a)(1) may not exceed an amount equal to the difference between the tax paid by the manufacturer on the sale of the article and the amount of tax made applicable to the article on the inventory date. No interest is allowable with respect to any amount of tax credited or refunded under section 6412 and this section. In applying the floor stocks credit or refund provisions, the date on which the manufacturer paid the tax with respect to the article held as floor stocks is not relevant. Thus, the period of limitations provided in section 6511 with respect to claims for credit or refund does not apply; however, see paragraph (f) of this section. For definition of the term “manufacturer”, see § 48.0-2(a)(4).

(c) *Limitation.* Except as provided in § 48.6412-3, no credit or refund is allowable under this section for an amount paid as tax which may be credited or refunded under any provisions of law other than section 6412(a)(1), or which

was allowable as a credit or refund under section 6412 with respect to an earlier inventory date.

(d) *Relationship between credits or refunds for floor stocks and credits or refunds for price readjustments.* The amount which may be credited or refunded for floor stocks and for price readjustments on an article may not in the aggregate exceed the tax paid in respect of the article. A credit or refund computed on the basis of the old tax rate will be allowed with respect to a price readjustment of an article on which a floor stock credit or refund was allowed, but only if the amount of the floor stock credit or refund otherwise allowable was reduced by taking into account such price readjustment, as determined under § 48.6412-3(e). The manufacturer must keep readily available for inspection sufficient records to enable examining officers of the Internal Revenue Service to ascertain the correctness of any claim for credit or refund for a price readjustment of an article on which a floor stock refund was claimed.

(e) *Participation of dealers—(1) Request by dealer.* On or before the dealer request limitation date, a dealer may submit to a manufacturer a request with respect to a credit or refund allowable under this section for tax paid by the manufacturer with respect to articles held by the dealer as floor stocks. This request may be submitted directly to the manufacturer, or it may be submitted to him indirectly through another dealer in the distribution chain if the request is received by the manufacturer or an authorized agent of the manufacturer on or before the dealer request limitation date.

(2) *Requirements for claim by manufacturer.* No amount of credit or refund under this section may be claimed by a manufacturer with respect to articles held by a dealer as floor stocks unless—

(i) The claim for the amount is based upon a request submitted by the dealer to the claimant on or before the dealer request limitation date;

(ii) The amount is paid by the claimant to the dealer, or the dealer’s written consent to allowance of the credit or refund has been received by the

claimant, on or before the claim limitation date; and

(iii) The request by the dealer is supported by an inventory statement, made under the penalties of perjury and signed by the dealer or by the dealer's authorized representative, setting forth the following information:

(A) The name and address of the dealer and of the applicable manufacturer, (if the name and address of the applicable manufacturer is unknown to the dealer, these items may be added by any person in the chain of distribution);

(B) The identification number, if any, of the article, such as a serial, stock, model, type, or class number, or some other suitable means of identification;

(C) A brief description of the article, such as its common name or designation; and

(D) The quantity of articles held by the dealer as floor stocks on the inventory date.

(3) *Actual manufacturer unknown.* If a dealer addresses a request to the person, who from markings on the article the dealer presumes to be the manufacturer, the request may be treated as made to the actual manufacturer if the actual manufacturer accepts the dealer's request.

(4) *Payment to dealer by claimant.* Payment may be made directly to the dealer or to the dealer's authorized agent or representative by the claimant or by the claimant's authorized agent or representative. If a claimant pays a dealer through the claimant's agent or representative, the evidence must show that the dealer actually received the payment. If a dealer authorizes the claimant to pay the dealer through the dealer's agent or representative, evidence showing receipt of the payment by the agent or representative will be accepted as proof of actual payment to the dealer. Payment shall be made, at the manufacturer's option, in cash, by check, or by credit to the dealer's account as maintained by the claimant. The amount of the payment which may be made by crediting the dealer's account may not exceed the undisputed debit balance due at the time the credit is made. However, payment may be made in merchandise at the dealer's

option with the concurrence of the manufacturer.

(5) *Date of performance.* The date on which any act described in this paragraph (e) is performed by an agent or representative on behalf of a claimant or dealer is deemed to be the date on which the act is performed by the principal.

(6) *Record of inventories.* For provisions relating to the record of a dealer's inventories to be kept by the claimant, see paragraph (g) of this section.

(7) *Sample written consent.* No particular form is prescribed or required for the written consent of the dealer described in paragraph (e)(2)(ii) of this section. However, the following is an example of an acceptable consent statement by a dealer:

CONSENT STATEMENT OF DEALER

(For use by dealer in requesting manufacturer, producer, or importer to obtain credit under section 6412 of the Internal Revenue Code of 1954 with respect to floor stocks.)

I hereby consent to the allowance to the manufacturer, producer, or importer of the floor stocks credit or refund of the excise tax imposed by the Internal Revenue Code of 1954 with respect to the articles in my inventory on _____.

(Name) _____

By _____

(Signature of Officer)

(Title) _____

(Date) _____

(f) *Procedure for claiming credit or refund—(1) In general.* Each claim for credit or refund under this section shall be filed on or before the applicable claim limitation date, in the manner and subject to the conditions stated in this section and in § 301.6402-2 of this chapter (Regulations on Procedure and Administration). Either credit or refund, or a combination thereof, may be claimed, but the amount which may be claimed as a credit on a return shall not exceed the total tax liability shown on the return, reduced by the amount of any deposits made under § 48.6302(c)-1 with respect to the return and by any amount of credit claimed on the return pursuant to any provision of law other

than section 6412. If the total amount which may be claimed exceeds the amount that may be claimed as credit on a return, the excess amount may be claimed on or before the applicable claim limitation date either as a refund or as a credit on a subsequent return. If credit is claimed the amount of the credit shall be entered as a credit on a timely-filed return of tax. The statement described in paragraph (f)(2) of this section must show the amount and date of each previous and concurrent claim for credit or refund under this section and indicate whether any future claims are expected to be filed.

(2) *Supporting evidence to be submitted by the manufacturer.* No credit or refund shall be allowed under this section unless there is submitted, in support of the claim for credit or refund, a statement signed by the person making the claim, that describes in general terms the articles covered by the claim, sets forth the method of computing the amount claimed (including a description of any procedures used pursuant to § 48.6412-3), and states that—

(i) The claimant paid to the district director or the director of the internal revenue service center the tax for which credit or refund is claimed;

(ii) The total amount claimed represents payments requested by dealers before the dealer request limitation date;

(iii) The total amount claimed either was paid by the claimant to the dealers, or the claimant received the written consent of the dealers to the allowance of the amount claimed;

(iv) The claimant has in his possession, and available for inspection by internal revenue officers, the evidence with respect to inventories required by paragraph (g)(2) of this section, and any written consents referred to in paragraph (f)(2)(iii) of this section; and

(v) No other claim for credit or refund under this section has been or will be made by the claimant with respect to any amount covered by the claim.

(g) *Evidence to be retained in the manufacturer's records.* Every person filing a claim for credit or refund pursuant to this section shall support the claim by keeping as part of the claimant's records—

(1) The dealer's inventory statements required by paragraph (e)(2)(iii) of this section, to the extent that the articles are covered by the claim;

(2) Records, in respect of the articles held by each dealer, showing—

(i) The name and address of the dealer,

(ii) The quantities of each article held by the dealer as floor stocks by taxable category, for example, by model or type number,

(iii) The amount of tax considered to be paid by the manufacturer with respect to each article held by the dealer, as determined under § 48.6412-3,

(iv) The amount of tax, if any, which the claimant would pay on the sale of each article held by the dealer if the tax were computed at the new rate,

(v) The total amount of reimbursement due the dealer,

(vi) The date on which the claimant received from the dealer the request described in paragraph (e)(1) of this section, but only if payment was not made to the dealer before the dealer request limitation date, and

(vii) The date and amount of each payment to a dealer, or the date of receipt by the claimant from the dealer of a written consent, as set forth in paragraph (e)(2)(ii) of this section; and

(3) Any such written consent received from a dealer.

(h) *Special rules where the presumed manufacturer is the agent of the actual manufacturer.* For purposes of this section, if a manufacturer sells articles tax-paid to a second manufacturer for resale by the second manufacturer under its own brand name, the second manufacturer may perform any acts and keep any records which are a prerequisite to the first manufacturer's filing a claim for floor stocks credit or refund with respect to the articles. If such a procedure is followed, the claim filed by the first manufacturer shall include a statement indicating the name and address of the second manufacturer and the amount of its claim which relates to articles sold to the second manufacturer.

(i) *Effect on other claims for credit or refund.* If a claim for credit or refund is made pursuant to section 6416 and the regulations thereunder, relating in part to returned sales, sales for export

or for exempt use, sales to States, etc., with respect to a tax imposed by section 4071 or section 4081, and if the claim is made with respect to articles sold by the claimant before the date on which the tax is reduced in rate or terminated, the claim shall be based on the new rate of tax unless the claimant can establish that the tax was imposed at the old rate and that no refund or credit under this section was allowed with respect to the articles. See, however, paragraph (d) of this section.

(j) *Other applicable provisions.* All provisions of law, including penalties, applicable in respect of the taxes imposed by sections 4071 and 4081 shall, insofar as applicable and not inconsistent with section 6412, apply in respect to the credits and refunds provided for in section 6412 to the same extent as if the credits or refunds constituted overpayments of the taxes. For provisions under which timely mailing is treated as timely filing, and for provisions applicable to the time for performance of acts when the last day falls on Saturday, Sunday, or a legal holiday, see §§ 301.7502-1 and 301.7503-1, respectively, of this chapter (Regulations on Procedure and Administration).

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§ 48.6412-2 Definitions for purposes of floor stocks credit or refund.

For purposes of section 6412 and the regulations thereunder—

(a) *Floor stocks.* The term “floor stocks” means any article subject to the tax imposed by section 4071 or section 4081 which—

(1) Is sold by the manufacturer (otherwise than in a tax-free sale) before October 1, 1988,

(2) Is held by a dealer at the first moment on October 1, 1988, and has not been used, and

(3) Is intended for sale.

However, the term “floor stocks” does not include gasoline in retail stocks held at the place where intended to be sold at retail, nor with respect to gasoline held for sale by a producer or importer of gasoline.

(b) *Inventory date.* The term “inventory date” means the first moment on the date on which an article is treated as floor stocks within the meaning of paragraph (a) of this section.

(c) *Dealer.* The term “dealer” includes a wholesaler, jobber, distributor, or retailer.

(d) *Held by a dealer—(1) In general.* (i) An article is considered as “held by a dealer” if title to the article has passed to the dealer (whether or not delivery to the dealer has been made), and if, for purposes of consumption, title to or possession of the article has not at any time been transferred to any person other than a dealer.

(ii) Floor samples, demonstrators, and articles undergoing repair (whether or not on the dealer’s premises) that are carried in stock to be sold as new articles, and articles purchased tax-paid by a manufacturer or a sales subsidiary and held by the person on the inventory date for resale as such, will be considered as unused and held by a dealer, if title to or possession of the article has not at any time been transferred to any person for purposes of consumption.

(iii) Articles sold by a dealer to a consumer before the inventory date and thereafter repossessed by the dealer, and articles purchased tax-paid by a manufacturer for use in further manufacture within the meaning of section 4221(d)(6), will not be considered as held by a dealer.

(iv) The determination as to the time title or possession passes for purposes of consumption shall be made under applicable local law.

(2) *Examples.* The application of this paragraph (d) may be illustrated by the following examples:

Example (1). If, under local law, title to an article sold by a dealer under a conditional sales contract is in the dealer on the inventory date, but the consumer has physical possession of the article on that date, the article is not considered as held by the dealer.

Example (2). If, under local law, title to an article is in the consumer on the inventory date because the article is specifically identified with a contract, but on that date the dealer still has physical possession of the article, for example, in his will-call department, the article is not considered as held by the dealer on that date because title to the article has passed to the consumer for purposes of consumption.

Example (3). If, under local law, title to an article is in the consumer on the inventory date because the dealer transferred the article to a common carrier for delivery to the