

§ 48.6416(a)-3

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statement, supported by sufficient available evidence, asserting that—

(i) The person has neither included the tax in the price of the fuel with respect to which it was imposed nor collected the amount of the tax from a vendee, and identifying the nature of the evidence available to establish these facts, or

(ii) The person has repaid the amount of the tax to the ultimate purchaser of the fuel.

(3) *Ultimate purchaser.* The term “ultimate purchaser”, as used in paragraph (a)(2) of this section, means the vendee to whom the fuel was sold tax-paid by the person claiming credit or refund.

(b) *Overpayments determined under section 6416(b)(2)—(1) Claims included.* This paragraph applies only to claims for credit or refund of amounts paid as tax under section 4041(a)(1)(A) (relating to tax on the sale of diesel fuel) or section 4041(a)(2)(A) (relating to tax on the sale of special motor fuels) that are determined to be overpayments by reason of section 6416(b)(2) (relating to tax payments in respect of certain uses, sales, or resales of a taxable article).

(2) *Supporting evidence required.* No credit or refund of an overpayment to which this paragraph (b) applies shall be allowed unless the person who paid the tax submits with the claim a statement, supported by sufficient available evidence, asserting that—

(i) The person has neither included the tax in the price of the fuel with respect to which it was imposed nor collected the amount of the tax from a vendee, and identifying the nature of the evidence available to establish these facts, or

(ii) The person has repaid, or agreed to repay, the amount of the tax to the ultimate vendor of the fuel, or

(iii) The person has secured, and will submit upon request of the Service, the written consent of the ultimate vendor to the allowance of the credit or refund.

(3) *Ultimate vendor.* The term “ultimate vendor”, as used in paragraph (b)(2) of this section, means the seller making the sale which gives rise to the overpayment or which last precedes the exportation or use which gives rise to the overpayment.

(c) *Nonapplication to tax on use of special fuels.* This section shall not have any effect on overpayments of tax under section 4041(a)(1)(B) (relating to tax on the use of diesel fuel), section 4041(a)(2)(B) (relating to tax on the use of special motor fuels), section 4041(c)(1)(B) (relating to tax on the use of fuel other than gasoline in non-commercial aviation), section 4041(c)(2)(B) (relating to tax on the use of gasoline in noncommercial aviation), or section 4042 (relating to tax on fuel used in commercial transportation on inland waterways).

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

§ 48.6416(a)-3 Credit or refund of manufacturers tax under chapter 32.

(a) *Overpayment not described in section 6416(b)(3)(C) or (4) (prior to April 1, 1983) and section 6416(b)(2)—(1) Claims included.* This paragraph applies only to claims for credit or refund of an overpayment of manufacturers tax imposed by chapter 32. It does not apply, however, to a claim for credit or refund on any overpayment described in paragraph (b) of this section which arises by reason of the application of section 6416(b)(2), (3)(C), or (4).

(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 statement, supported by sufficient available evidence, asserting that—

(i) The person has neither included the tax in the price of the article with respect to which it was imposed nor collected the amount of the tax from a vendee, and identifying the nature of the evidence available to establish these facts, or

(ii) The person has repaid the amount of the tax to the ultimate purchaser of the article.

(3) *Ultimate purchaser—(i) General rule.* The term “ultimate purchaser”, as used in paragraph (a)(2) of this section, means the person who purchased the article for consumption, or for use in the manufacture of other articles and not for resale in the form in which purchased.

(ii) *Special rule under section 6416(a)(3)—(A) Conditions to be met.* If tax under chapter 32 is paid in respect of an article and the Commissioner determines that the article is not subject to tax under chapter 32, the term “ultimate purchaser”, as used in paragraph (a)(2) of this section, includes any wholesaler, jobber, distributor, or retailer who, on the 15th day after the date of the determination, holds for sale any such article with respect to which tax has been paid, if the claim for credit or refund of the overpayment in respect of the articles held for sale by the wholesaler, jobber, distributor, or retailer is filed on or before the date on which the person who paid the tax is required to file a return for the period ending with the first calendar quarter which begins more than 60 days after the date of the determination by the Commissioner.

(B) *Supporting statement.* A claim for credit or refund of an overpayment of tax in respect of an article as to which a wholesaler, jobber, distributor, or retailer is the ultimate purchaser, as provided in this paragraph (a)(3)(ii), must be supported by a statement that the person filing the claim has a statement, by each wholesaler, jobber, distributor, or retailer whose articles are covered by the claim, showing total inventory, by model number and quantity, of all such articles purchased tax-paid and held for sale as of 12:01 a.m. of the 15th day after the date of the determination by the Commissioner that the article is not subject to tax under chapter 32.

(C) *Inventory requirement.* The inventory shall not include any such article, title to which, or possession of which, has previously been transferred to any person for purposes of consumption unless the entire purchase price was repaid to the person or credited to the person's account and the sale was rescinded or any such article purchased by the wholesaler, jobber, distributor, or retailer as a component part of, or on or in connection with, another article. An article in transit at the first moment of the 15th day after the date of the determination is regarded as being held by the person to whom it was shipped, except that if title to the article does not pass until delivered to

the person the article is deemed to be held by the shipper.

(b) *Overpayments described in section 6416(b)(3)(C) or (4) (prior to April 1, 1983) and section 6416(b)(2)—(1) Claims included.* This paragraph applies only to claims for credit or refund of amounts paid as tax under chapter 32 that are determined to be overpayments by reason of section 6416(b)(2) (relating to tax payments in respect of certain uses, sales, or resales of a taxable article), section 6416(b)(3)(C) (relating to tax-paid tires or inner tubes used for further manufacture), or section 6416(b)(4) (relating to tires or inner tubes used by the manufacturer on another manufactured article).

(2) *Supporting evidence required.* No credit or refund of an overpayment to which this paragraph (b) applies shall be allowed unless the person who paid the tax submits with the claim a statement, supported by sufficient available evidence, asserting that—

(i) The person neither included the tax in the price of the article with respect to which it was imposed nor collected the amount of the tax from a vendee, and identifying the nature of the evidence available to establish these facts, or

(ii) The person repaid, or agreed to repay, the amount of the tax to the ultimate vendor of the article, or

(iii) The person has secured, and will submit upon request of the Service, the written consent of the ultimate vendor to the allowance of the credit or refund.

(3) *Ultimate vendor—(i) General rule—*The term “ultimate vendor”, as used in paragraph (b)(2) of this section, means the seller making the sale which gives rise to the overpayment or which last precedes the exportation or use which has given rise to the overpayment.

(ii) *Special rule under section 6416(a)(3)(B) prior to revision by the Highway Revenue Act of 1982.* In the case of an overpayment determined under section 6416(b)(2)(F), (3)(C), or (4) in respect of tires or inner tubes, where the taxable article is used as a component part of, or sold on or in connection with or with the sale of, a second article which is exported, sold to a non-profit educational organization for its exclusive use, sold to a State or local

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government for the exclusive use of a State or local government or used or sold for use as supplies for vessels or aircraft, the term "ultimate vendor", as used in paragraph (b)(2) of this section, means the ultimate vendor of the second article.

(c) *Overpayments not included.* This section does not apply to any overpayment determined under section 6416(b)(1) (relating to price readjustments), section 6416(b)(3)(A) (relating to certain cases in which refund or credit is allowable to the manufacturer who uses, in the further manufacture of a second article, a taxable article purchased by the manufacturer taxpayer), section 6416(b)(3)(B) prior to April 1, 1983 (relating to parts or accessories taxable under section 4061(b) and used by a subsequent manufacturer or producer as material or a component part of any other article manufactured or produced by him), section 6416(b)(4) after March 31, 1983 (relating to tires), section 6416(b)(5) (relating to the return to the seller of certain installment accounts which the seller had previously sold) or section 6416(b)(6) (relating to truck chassis, bodies, and semi-trailers used for further manufacture). In this regard, see §§ 48.6416(b)(1)-1, 48.6416(b)(3)-1, and 48.6416(b)(5)-1.

[T.D. 8043, 50 FR 32023, Aug. 8, 1985, as amended by T.D. 8748, 63 FR 15292, Mar. 31, 1998]

§ 48.6416(b)(1)-1 Price readjustments causing overpayments of manufacturers tax.

In the case of any payment of tax under chapter 32 that is determined to be an overpayment by reason of a price readjustment within the meaning of section 6416(b)(1) and § 48.6416(b)(1)-2 or § 48.6416(b)(1)-3, the person who paid the tax may file a claim for refund of the overpayment or may claim credit for the overpayment on any return of tax under this subpart which the person subsequently files. Price readjustments may not be anticipated. However, if the readjustment has actually been made before the return is filed for the period in which the sale was made, the tax to be reported in respect of the sale may, at the election of the taxpayer, be based either (a) on the price as so readjusted or (b) on the original sale price and a credit or refund claimed in re-

spect of the price readjustment. A price readjustment will be deemed to have been made at the time when the amount of the readjustment has been refunded to the vendor or the vendor has been informed that the vendor's account has been credited with the amount. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund, see § 301.6402-2 of this chapter (Regulations on Procedure and Administration), § 48.6416(a)-3(a)(2), and § 48.6416(b)(1)-4. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(d) and § 48.6416(f)-1.

[T.D. 8043, 50 FR 32024, Aug. 8, 1985]

§ 48.6416(b)(1)-2 Determination of price readjustments.

(a) *In general*—(1) *Rules of usual application*—(i) *Amount treated as overpayment.* If the tax imposed by chapter 32 has been paid and thereafter the price of the article on which the tax was based is readjusted, that part of the tax which is proportionate to the part of the price which is repaid or credited to the purchaser is considered to be an overpayment. A readjustment of price to the purchaser may occur by reason of—

- (A) The return of the article,
- (B) The repossession of the article,
- (C) The return or repossession of the covering or container of the article, or
- (D) A bona fide discount, rebate, or allowance against the price at which the article was sold.

(ii) *Requirements of price readjustment.* A price readjustment will not be deemed to have been made unless the person who paid the tax either—

- (A) Repays part or all of the purchase price in cash to the vendee,
- (B) Credits the vendee's account for part or all of the purchase price, or
- (C) Directly or indirectly reimburses a third party for part or all of the purchase price for the direct benefit of the vendee.

In addition, to be deemed a price readjustment, the payment or credit must be contractually or economically related to the taxable sale that the payment or credit purports to adjust. Thus, commissions or bonuses paid to a