

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

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1982 under this section in respect of the 6,000 gallons used in the nonhighway vehicles and the 2,000 gallons used in the unregistered highway vehicles. However, no credit may be allowed with respect to the 12,000 gallons used in the registered highway vehicles even though a portion of this gasoline was used in operating the vehicles on the company's own property.

(c) *Highway vehicle.* The term "highway vehicle" has the same meaning assigned to this term under § 48.4061(a)-1(d).

(d) *Highway.* The term "highway" includes any road, whether a Federal highway, State highway, city street, or otherwise, in the United States which is not a private roadway.

(e) *Noncommercial aviation.* The term "non-commercial aviation" has the same meaning given to such term by section 4041(c)(4).

(f) *Calendar quarter.* The term "calendar quarter" means a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(g) *Taxable year.* The "taxable year" of a governmental unit or tax-exempt organization described in § 48.6421-1(c) or § 48.6421-2(c) is the calendar or fiscal year on the basis of which it regularly keeps its books. The "taxable year" of persons subject to income tax shall have the meaning it has under section 7701(a)(23).

[T.D. 8043, 50 FR 32042, Aug. 8, 1985]

§ 48.6421-5 Exempt sales; other payments or refunds available.

(a) *Exempt sales.* No credit or payment shall be allowed or made under § 48.6421-1 or § 48.6421-2 with respect to gasoline which was exempt from the tax imposed by section 4081. For example, credit or payment may not be allowed or made with respect to gasoline purchased tax free for use as supplies for certain vessels and airplanes, or with respect to gasoline purchased by a State tax free for its exclusive use, as provided in section 4221.

(b) *Other payments or refunds available.* Any amount which, without regard to the second sentence of section 6421(e)(1) and this paragraph (b), would be allowable as a credit or payable to any person under § 48.6421-1 or § 48.6421-2 is reduced by any other amount

which is allowable as a credit or payable under section 6421, or is refundable under any other provision of the Code, to any person with respect to the same gasoline.

(c) *Gasoline used on farms.* Payments with respect to gasoline used on a farm for farming purposes shall be claimed under section 6420 and § 48.6420-1, and no claim in respect of that gasoline may be made under section 6421 and the regulations thereunder.

[T.D. 8043, 50 FR 32042, Aug. 8, 1985]

§ 48.6421-6 Applicable laws.

(a) *Penalties, excessive claims, etc.* All provisions of law, including penalties, applicable in respect of the tax imposed by section 4081 shall, to the extent applicable and consistent with section 6421, apply in respect of the payments provided for in section 6421 to the same extent as if these payments were refunds of overpayments of the tax imposed on the sale of gasoline by section 4081. For special rules applicable to the assessment and collection of amounts constituting excessive payments under section 6421, see section 6206 and the regulations thereunder. For the civil penalty assessable in the case of excessive claims under section 6421, see section 6675 and the regulations thereunder. For the treatment as an overpayment of an amount allowable as an excessive credit under section 34 (section 39 of the Internal Revenue Code of 1954 prior to its revision by the Tax Reform Act of 1984) with respect to amounts payable under section 6421, see section 6401(b).

(b) *Examination of books and witnesses.* For the purpose of ascertaining (1) the correctness of any claim made under section 6421 or (2) the correctness of any credit or payment made in respect of the claim, the Commissioner shall have the same authority granted by paragraphs (1), (2), and (3) of section 7602, relating to examination of books and witnesses, as if the person claiming credits or payment under section 6421 were the person liable for tax.

[T.D. 8043, 50 FR 32042, Aug. 8, 1985]