

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).

[T.D. 8043, 50 FR 32019, Aug. 8, 1985]

**§ 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

consumer, the article in transit is not considered as held by the dealer on that date because title has passed to the consumer for purposes of consumption, even though neither the dealer nor the consumer has physical possession of the article.

*Example (4).* If, under local law, title to an article is in the dealer on the inventory date and does not pass to the consumer until delivery by a common carrier, the article in transit shall be considered as held by the dealer on that date because neither the title nor possession has passed to the consumer for purposes of consumption.

*Example (5).* If an article has been mortgaged or otherwise hypothecated by a dealer as security for a loan and, under local law, title to the article is in the creditor on the inventory date, and physical possession is in the dealer, the article shall be considered as held by the dealer on that date because neither title nor possession has passed to the consumer for purposes of consumption.

(e) *Old rate.* The term “old rate” means the rate of tax in effect with respect to the sale of an article before the date designated in paragraph (a) or (b) of this section on which the tax is reduced in rate or is terminated.

(f) *New rate.* The term “new rate” means the rate of tax, if any, in effect with respect to the sale of an article on the date designated in paragraph (a) or (b) of this section on which the tax is reduced in rate or is terminated.

(g) *Dealer request limitation date.* The term “dealer request limitation date” is the date prescribed by section 6412(a)(1) before which the request on which the manufacturer’s claim is based must be submitted to the manufacturer by the dealer who held the floor stocks on the inventory date. In the case of an article held by a dealer on October 1, 1988, the dealer request limitation date is January 1, 1989.

(h) *Claim limitation date.* The term “claim limitation date” means the last date prescribed by section 6412(a)(1) on which refund or credit with respect to floor stocks may be claimed by a manufacturer. In the case of an article held by a dealer on October 1, 1988, the claim limitation date is March 31, 1989.

(i) *Tax paid.* A tax is considered paid if it was paid or was offset by an allowable credit on the return on which it was reported.

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### § 48.6412-3 Amount of tax paid on each article.

(a) *General rule.* For purposes of making the claim for credit or refund under § 48.6412-1 in respect of floor stocks held by a dealer, the tax paid on each article must be separately computed. If desired, the procedures set forth in paragraphs (b) through (g) of this section may be used in making the computation. The procedure used in determining the tax paid on an article must also be used in determining the amount of tax, if any, made applicable to the article on the effective date of reduction or repeal of the tax involved. Prior approval of the Internal Revenue Service for the method of computation need not be obtained and should not be requested.

(b) *Selling price.* In determining the price of an article on which the tax paid is to be computed, the average of the gross selling prices of identical articles sold during a representative period may be used. For example, truck chassis of the same model that are sold by the manufacturer with the same equipment and accessories are identical articles whose selling prices may be computed on the basis of an average.

(c) *Transportation charges.* In determining the price of an article on which the tax paid is to be computed, the average of the exclusions authorized by section 4216(a) for transportation, delivery, insurance, installation, etc., for a reasonable category of articles during a representative period may be used.

(d) *Credits for tax paid on inner tubes.* The average of the credits authorized by section 6416(c) for tax paid on tires or inner tubes may be averaged for a reasonable category of articles during a representative period. The credits shall be subtracted from the gross excise tax to arrive at the net excise tax paid.

(e) *Price readjustments.* (1) In determining the price on which the tax paid is to be computed, there must be taken into account any price readjustments with respect to which the manufacturer has filed a claim for credit or refund under section 6416(b). Other price readjustments which have been, or are reasonably expected to be, made with