

for farming purposes (as defined in §48.6420-4). The farm tractor is not a diesel-powered highway vehicle (as defined in §48.4081-1(b)). F used the remaining 50 gallons to heat F's residence. F filed a complete and timely claim for a credit relating to the 250 gallons.

(ii) A credit or payment is not allowable to F with respect to the 200 gallons of diesel fuel used in the farm tractor. Even though this fuel was used other than as a fuel in a propulsion engine of a diesel-powered highway vehicle (thus meeting the condition in paragraph (b)(1)(vii)(C) of this section), the condition in paragraph (b)(1)(v) of this section is not satisfied because the fuel was used on a farm for farming purposes.

(iii) A credit is allowable to F with respect to the 50 gallons F used for heating purposes because the conditions in paragraph (b)(1) of this section have been met. F used this fuel other than as a fuel in a propulsion engine of a diesel-powered highway vehicle and the use of the fuel for residential heating is not use on a farm for farming purposes.

Example 2. (i) In September 2000, W, a wholesale distributor, sold 3,500 gallons of diesel fuel on which tax has been imposed to C, a construction company located in the United States. W's selling price to C did not include an amount equal to the federal excise tax on the fuel. C used the fuel other than as a fuel in a propulsion engine of a diesel-powered highway vehicle. Both W and C file a complete and timely claim for a credit relating to the fuel.

(ii) Because W resold the fuel in the United States, the condition of paragraph (b)(1)(ii) of this section is not met. Thus, W is not allowed a credit or payment with respect to the fuel.

(iii) C is eligible for a credit or payment with respect to the fuel because the conditions to allowance in paragraph (b)(1) of this section have been met. The conditions to allowance do not include a requirement that C buy the fuel at a price that includes the amount of the tax.

(c) *Form of claim.* Each claim for an income tax credit under this section must be made on Form 4136 (or on such other form as the Commissioner may designate) in accordance with the instructions for that form. Each claim for a payment under this section must be made on Form 8849 (or on such other form as the Commissioner may designate) in accordance with the instructions for that form.

(d) *Content of claim.* Each claim for a credit or payment under this section must contain the following information with respect to all the diesel fuel or kerosene covered by the claim:

(1) The total number of gallons.

(2) A statement by the claimant that—

(i) The diesel fuel or kerosene did not contain visible evidence of dye; or

(ii) In the case of diesel fuel or kerosene that contains visible evidence of dye, explains the circumstances under which tax was imposed on that fuel.

(3) The use made of the diesel fuel or kerosene covered by the claim described by reference to specific categories listed in paragraph (b)(1)(vii) of this section (such as use in a qualified local bus or the exclusive use of a non-profit educational organization).

(4) If the diesel fuel or kerosene covered by the claim was exported, a declaration that the claimant has proof of exportation (as described in §48.4221-3(d)(1)).

(5) A declaration that the claimant has in its possession the name and address of the person(s) that sold the diesel fuel or kerosene to the claimant and the date(s) of the purchase(s).

(e) *Time and place for filing claim.* For rules relating to the time for filing a claim under section 6427, see section 6427(i). A claim under this section is not filed unless it contains all the information required by paragraph (d) of this section and is filed at the place required by the form.

(f) *Effective date.* This section is applicable with respect to diesel fuel after December 31, 1993, except for paragraph (b)(1)(iv) of this section, which is applicable to diesel fuel bought by ultimate purchasers after June 30, 1994. This section is applicable with respect to kerosene after June 30, 1998.

[T.D. 8659, 61 FR 10464, Mar. 14, 1996, as amended by T.D. 8879, 65 FR 17161, Mar. 31, 2000; T.D. 9051, 68 FR 15942, Apr. 2, 2003]

§ 48.6427-9 Diesel fuel and kerosene; claims by registered ultimate vendors (farming and State use).

(a) *Overview.* This section provides rules under which certain registered ultimate vendors of taxed diesel fuel and kerosene may claim the income tax credits or payments allowed by section 6427(1)(5)(A). These claims relate to diesel fuel and kerosene sold for use on a farm for farming purposes and by a State. Claims relating to diesel fuel and kerosene used for other nontaxable

purposes are made by ultimate purchasers under § 48.6427-8; claims relating to kerosene sold from a blocked pump are made by registered ultimate vendors (blocked pump) under § 48.6427-10; and claims relating to kerosene sold during certain periods of extreme cold for blending with diesel fuel to be used for heating purposes are made by registered ultimate vendors (blending) under § 48.6427-11.

(b) *Definitions.* (1) An *ultimate vendor*, as used in this section, is a person that sells undyed diesel fuel or undyed kerosene to—

(i) The owner, tenant, or operator of a farm for use by such person on a farm for farming purposes (as defined in § 48.6420-4);

(ii) A person other than the owner, tenant, or operator of a farm for use by such person for any of the purposes described in § 48.6420-4(d) (relating to cultivating, raising, or harvesting); or

(iii) Any State for its exclusive use.

(2) A *registered ultimate vendor* is an ultimate vendor that is registered under section 4101 as an ultimate vendor.

(c) *Conditions to allowance of credit or payment.* A claim for an income tax credit or payment with respect to diesel fuel or kerosene is allowed by section 6427(1)(5)(A) only if—

(1) Tax was imposed by section 4081 on the diesel fuel or kerosene to which the claim relates;

(2) The claimant sold the diesel fuel or kerosene to—

(i) The owner, tenant, or operator of a farm for use by such person on a farm for farming purposes (as defined in § 48.6420-4);

(ii) A person other than the owner, tenant, or operator of a farm for use by such person for any of the purposes described in § 48.6420-4(d) (relating to cultivating, raising, or harvesting); or

(iii) Any State for its exclusive use;

(3) The claimant is a registered ultimate vendor; and

(4) The claimant has filed a timely claim for a credit or payment that contains the information required under paragraph (e) of this section.

(d) *Form of claim.* Each claim for an income tax credit under this section must be made on Form 4136 (or on such other form as the Commissioner may

designate) in accordance with the instructions for that form. Each claim for a payment under this section must be made on Form 8849 (or on such other form as the Commissioner may designate) in accordance with the instructions for that form.

(e) *Content of claim—*(1) *In general.* Each claim for credit or payment under this section must contain the following information with respect to all the diesel fuel or kerosene covered by the claim:

(i) The total number of gallons.

(ii) A statement by the claimant that—

(A) The diesel fuel or kerosene did not contain visible evidence of dye; or

(B) In the case of diesel fuel or kerosene that contains visible evidence of dye, explains the circumstances under which tax was imposed on that fuel.

(iii) The claimant's registration number.

(iv) The name and taxpayer identification number of each person that bought diesel fuel or kerosene from the claimant in a transaction described in paragraph (c)(2) of this section and the number of gallons that the claimant sold to that person.

(v) A statement that the claimant—

(A) Has not included the amount of the tax in its sales price of the diesel fuel or kerosene and has not collected the amount of tax from its buyer;

(B) Has repaid the amount of the tax to the ultimate purchaser of the fuel; or

(C) Has obtained the written consent of its buyer to the allowance of the claim.

(vi) A statement that the claimant has in its possession an unexpired certificate described in paragraph (e)(2) of this section and the claimant has no reason to believe any information in the certificate is false.

(2) *Certificate—*(i) *In general.* The certificate to be provided to the ultimate vendor consists of a statement that is signed under penalties of perjury by a person with authority to bind the buyer, is in substantially the same form as the model certificate provided in paragraph (e)(2)(ii) of this section, and contains all information necessary to complete such model certificate. A

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new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earlier of the following dates:

(A) The date one year after the effective date of the certificate.

(B) The date a new certificate is provided to the seller.

(ii) *Model certificate.*

Certificate of Farming Use or State Use

(To support vendor's claim for a credit or payment under section 6427 of the Internal Revenue Code.)

Name, address, and employer identification number of vendor

The undersigned buyer ("Buyer") hereby certifies the following under penalties of perjury:

Buyer will use the diesel fuel or kerosene to which this certificate relates—(check one)

On a farm for farming purposes (as defined in §48.6420-4(c) of the Manufacturers and Retailers Excise Tax Regulations) and Buyer is the owner, tenant, or operator of the farm on which the fuel will be used;

On a farm (as defined in §48.6420-4(c)) for any of the purposes described in paragraph (d) of that section (relating to cultivating, raising, or harvesting) and Buyer is a person that is not the owner, tenant, or operator of the farm on which the fuel will be used; or

For the exclusive use of a State or local government, or the District of Columbia.

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here and enter:

- 1. Invoice or delivery ticket number
- 2. (number of gallons)

If this is a certificate covering all purchases under a specified account or order number, check here and enter:

- 1. Effective date
- 2. Expiration date (period not to exceed 1 year after the effective date)
- 3. Buyer account or order number

Buyer will provide a new certificate to the vendor if any information in this certificate changes.

If Buyer uses the diesel fuel or kerosene to which this certificate relates for a purpose other than stated in the certificate Buyer will be liable for tax.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this

certificate to a fine or imprisonment, or both, together with the costs of prosecution.

Printed or typed name of person signing

Title of person signing

Name of Buyer

Employer identification number

Address of Buyer

Signature and date signed

(f) *Time and place for filing claim.* For rules relating to the time for filing a claim under section 6427, see section 6427(i). A claim under this section is not filed unless it contains all the information required by paragraph (e) of this section and is filed at the place required by the form.

(g) *Effective date.* This section is applicable with respect to diesel fuel after December 31, 1993, and with respect to kerosene after June 30, 1998.

[T.D. 8659, 61 FR 10464, Mar. 14, 1996, as amended by T.D. 8879, 65 FR 17161, Mar. 31, 2000]

§ 48.6427-10 Kerosene; claims by registered ultimate vendors (blocked pumps).

(a) *Overview.* This section provides rules under which certain registered ultimate vendors of taxed kerosene may claim the income tax credits or payments allowed by section 6427(1)(5)(B)(i). These claims relate to kerosene sold from a blocked pump. Claims relating to kerosene sold for use on a farm for farming purposes and by a State are made by registered ultimate vendors under §48.6427-9; claims relating to kerosene sold during certain periods of extreme cold for blending with diesel fuel to be used for heating purposes are made by registered ultimate vendors (blending) under §48.6427-11; and claims relating to kerosene used for nontaxable purposes are made by ultimate purchasers under §48.6427-8.

(b) *Definitions.* The following definitions apply to this section:

(1) A *blocked pump* is a fuel pump that—