

(c) *Limit of one claim per taxable year.* Not more than one claim may be filed under section 6420 by any person with respect to gasoline used during the same taxable year.

(d) *Form and content of claim—(1) Claim for credit.* (i) The claim for credit with respect to gasoline used on a farm for farming purposes must be made by attaching a Form 4136 to the income tax return of an individual or a corporation. Form 4136 must be executed in accordance with the instructions prescribed for the preparation of the form. A partnership may not file Form 4136. When a partnership files Form 1065, U.S. Partnership Return of Income, it must include a statement showing how many gallons of gasoline are allocated to each partner and the use made of the gasoline.

(ii) If an individual dies during the taxable year, the claim for credit may be made only for that portion of the individual's taxable year ending with the date of death. If a sole proprietorship, a partnership or corporation is terminated or liquidated during the taxable year, the claim for credit may be made only for the portion of its year ending with the date of the termination or liquidation.

(2) *Claim for payment.* The claim for payment with respect to gasoline used on a farm for farming purposes by a governmental unit or exempt organization described in § 48.6420-1(c) must be made on Form 843 in accordance with the instructions prescribed for the preparation of the form. The claim by such a unit or organization must be filed with the service center for the internal revenue region in which the principal place of business or principal office of the claimant is located.

[T.D. 8043, 50 FR 32035, Aug. 8, 1985]

§ 48.6420-3 Exempt sales; other payments or refunds available.

(a) *Exempt sales.* Credits or payments are allowable only for gasoline that was sold by the producer or importer in a transaction that was subject to tax under section 4081. No credit or payment shall be allowed or made under § 48.6420-1 with respect to gasoline which was exempt from the tax imposed by 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 on a farm for farming purposes. Similarly, payment may not be made with respect to gasoline purchased by a State tax free for its exclusive use, as provided in section 4221, which is used on a State prison farm for farming purposes.

(b) *Other payments or refunds available.* Any amount which, without regard to the second sentence of section 6420(d) and this paragraph (b), would be allowable as a credit or payable to any person under § 48.6420-1 with respect to any gasoline is reduced by any other amount which is allowable as a credit or payable under section 6420, or is refundable under any other provision of the Code, to any person with respect to the same gasoline. Thus, a person who is the ultimate purchaser of gasoline may not file a claim for credit or payment with respect to that gasoline if another person is entitled to claim a payment, credit, 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 to enable the producer to claim a credit or refund for the tax that was paid. See, for example, §§ 48.6416(a)-3(b)(2), 48.6416(b)(2)-2(d), and 48.6416(b)(2)-3(b)(1).

[T.D. 8043, 50 FR 32036, Aug. 8, 1985]

§ 48.6420-4 Meaning of terms.

For purposes of the regulations under section 6420, unless otherwise expressly indicated—

(a) *Used on a farm for farming purposes.* The term “used on a farm for farming purposes” applies only to gasoline which is used (1) in carrying on a trade or business of farming, (2) on a farm in the United States, and (3) for farming purposes. Gasoline used in an aircraft will qualify if its use otherwise satisfies these requirements. For the meaning of the term “trade or business of farming,” see paragraph (b) of this section. For the definition of the term “farm,” see paragraph (c) of this section. For the definition of the term “farming purposes,” see paragraphs (d) through (g) of this section. The term

“United States” has the meaning assigned to it by section 7701(a)(9).

(b) *Trade or business of farming.* A person will be considered to be engaged in the trade or business of farming if the person cultivates, operates, or manages a farm for gain or profit, either as an owner or a tenant. A person engaged in forestry or the growing of timber is not thereby engaged in the trade or business of farming. A person who operates a garden plot, orchard, or farm for the primary purpose of growing produce for the person's own use is not considered to be engaged in the trade or business of farming. Generally, the operation of a farm does not constitute the carrying on of a trade or business if the farm is occupied by a person primarily for residential purposes or is used primarily for pleasure, such as for the entertainment of guests or as a hobby.

(c) *Farm.* The term “farm” is used in its ordinary and accepted sense, and generally means land used for the production of crops, fruits, or other agricultural products or for the sustenance of livestock or poultry. The term “livestock” includes cattle, hogs, horses, mules, donkeys, sheep, goats, and captive fur-bearing animals. The term “poultry” includes chickens, turkeys, geese, ducks, and pigeons. Thus, a farm includes livestock, dairy, poultry, fish, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, orchards, feed yards for fattening cattle, and greenhouses and other similar structures used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures that are used primarily for purposes other than the raising of agricultural or horticultural commodities do not constitute farms, as, for example, structures that are used primarily for the display, storage, fabrication, or sale of wreaths, corsages, and bouquets. A fish farm is an area where fish are grown or raised, as opposed to merely caught or harvested.

(d) *Gasoline used in cultivating, raising, or harvesting.* Gasoline is used for “farming purposes” when it is used on a farm by the owner, tenant, or operator of the farm in connection with cultivating the soil, raising or harvesting any agricultural or horti-

cultural commodity, or raising, shearing, feeding, caring for, training, or managing livestock, poultry, bees, or wildlife. Examples of operations which are considered to be operations for “farming purposes” within the meaning of this paragraph include plowing, seeding, fertilizing, weed killing, corn or cotton picking, threshing, combining, baling, silo filling, and chopping silage.

(e) *Gasoline used in handling, packing, or storing.* (1) Gasoline is used for “farming purposes” when it is used by the owner, tenant, or operator of the farm in handling, drying, packing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator produced more than one-half of the commodity which was so treated during the taxable year for which claim for credit or payment is filed.

(2) Gasoline used in connection with canning, freezing, packaging, or processing operations will not be considered to be used for farming purposes, even though these operations are performed on a farm. Thus, for example, although gasoline used on a farm in connection with the production or harvesting of maple sap or oleoresin from a living tree is considered to be used for farming purposes under paragraph (d) of this section, gasoline used in the processing of maple sap into maple syrup or maple sugar or used in the processing of oleoresin into gum spirits of turpentine or gum resin is not used for farming purposes, even though these processing operations are conducted on a farm.

(3) Gasoline used in connection with processing operations which change a commodity from its raw or natural state, or operations performed with respect to a commodity after its character has been changed from its raw or natural state by a processing operation, will not be considered to be used for farming purposes. For example, gasoline used for the extraction of juices from fruits or vegetables is used in a processing operation which changes the character of the fruits or vegetables from their raw or natural state and will not be considered to be used for “farming purposes.”

(4) The term “commodity,” as used in this paragraph (e), refers to a single agricultural or horticultural product. For example, all apples are treated as a single commodity while apples and peaches are treated as two separate commodities. Operations with respect to each commodity are to be considered separately in applying the “one-half” production test described in paragraph (e)(1) of this section.

(f) *Gasoline used in planting, cultivating, or caring for trees.* Gasoline is used “for farming purposes” when it is used by the owner, tenant, or operator of the farm in connection with the planting, cultivating, caring for, or cutting of trees that is incidental to the farming operations of the farm on which it is performed or incidental to the farming operations of the owner, tenant, or operator of the farm, or in connection with the preparation (other than milling) of trees for market that is incidental to these farming operations. These operations include the felling of trees and cutting them into logs or firewood but do not include sawing logs into lumber, chipping, or other milling operations. Operations of the prescribed character will be considered incidental to farming operations only if they are of a minor nature in comparison with the total farming operations involved. Therefore, a tree farmer or timber grower may not claim credit or payment under § 48.6420-1 with respect to gasoline used in connection with the trade or business of tree farming or timber growing.

(g) *Gasoline used in the maintenance of a farm or farm equipment.* Gasoline is used “for farming purposes” when it is used by the owner, tenant, or operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment. The activities included are those which contribute in any way to the conduct of the farm as such, as distinguished from any other enterprise in which the owner, tenant, or operator may be engaged. Examples of included operations are clearing land, repairing fences and farm buildings, building terraces or irrigation ditches, cleaning tools or farm machinery, and painting farm buildings. Since the gasoline must be used

by the owner, tenant, or operator of the farm to which the operations relate, gasoline used by an organization which contracts with a farmer to renovate his farm properties is not used for farming purposes. Gasoline used in a gasoline-powered lawn mower for maintaining a lawn is not used for farming purposes.

(h) *Taxable year.* The “taxable year” of a governmental unit or tax-exempt organization described in § 48.6420-1(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 as it has under section 7701(a)(23).

(i) *Gasoline.* The term “gasoline” has the same meaning given to this term by section 4082(b) and the regulations thereunder.

(j) *Ultimate purchaser.* The term “ultimate purchaser” includes only a person who is an owner, tenant, or operator of a farm. A person who is an owner, tenant, or operator of a farm is an ultimate purchaser of gasoline only with respect to such gasoline as is purchased by the person and used for farming purposes on a farm of which the person is the owner, tenant, or operator. Thus the owner of a farm who purchases gasoline which is used on the farm by its owner, tenant, or operator for farming purposes is generally the ultimate purchaser of the gasoline. If, however, the cost of gasoline supplied by an owner, tenant, or operator of a farm, is by agreement or other arrangement borne by a second person who is an owner, or operator of the farm, the second person who bore the cost of the gasoline is considered to be the ultimate purchaser of the gasoline.

(k) *Certain farming use by persons other than the owner, tenant or operator—(1) In general.* Except as provided in paragraph (l) of this section, the owner, tenant, or operator of a farm on which gasoline is used by any other person for the purposes described in section 6420(c)(3)(A) and paragraph (d) of this section (relating to gasoline used in cultivating, raising, or harvesting) will be treated, for the purposes of § 48.6420-1 (a), as the ultimate purchaser who used the gasoline on the farm for farming purposes.

(2) *Example.* The rule of paragraph (k)(1) of this section may be illustrated by the following example.

Example. Farmer A hired custom operator B to cultivate the soil on A's farm. B used 200 gallons of gasoline which B had purchased in performing the work on A's farm. In addition, A hired Farmer C to do some plowing on A's farm, using C's own tractor and 50 gallons of gasoline which C had purchased. A is deemed to be the ultimate purchaser and user of the gasoline used on A's farm by B and C, and A is entitled to take a credit in respect of the gasoline. Accordingly, no credit in respect to the gasoline may be taken by either B or C.

(1) *Aerial applicators treated as ultimate purchasers—(1) General rule.* Section 6420(c)(3)(A) provides that only the owner, tenant, or operator of a farm is entitled to be treated as a user and ultimate purchaser. Section 6420(c)(4) provides that, under section 6420(c)(3)(A), an aerial applicator or other applicator is entitled to be treated as the user and ultimate purchaser of gasoline used by it on a farm for the purposes described in section 6420(c)(3)(A), but only if the owner, tenant, or operator who is otherwise entitled to treatment as the user and ultimate purchaser waives the right to credit or payment. See paragraph (1)(2) of this section.

(2) *Form and manner of waiver.* To waive the right to be treated as user and ultimate purchaser of gasoline which is used on a farm by an aerial applicator or other applicator, the owner, tenant, or operator of a farm who is otherwise entitled to treatment as user and ultimate purchaser must execute an irrevocable written agreement (as here described) no later than the date on which the aerial applicator or other applicator claiming the credit or payment files its return for the taxable year in which the gasoline is used. The agreement must identify the period for which the owner, tenant, or operator waives the right to credit or payment. The effective period of the waiver cannot extend beyond the last day of the taxable year of the owner, tenant, or operator of the farm on which the gasoline was used. If the owner, tenant, or operator's taxable year extends beyond the taxable year of the applicator, the applicator can only claim a credit or payment for pe-

riods included in the applicator's taxable year. Periods after the last day of the applicator's taxable year which are included under the agreement must be claimed on the applicator's return for the next succeeding taxable year. The waiver may be in the form shown under paragraph (1)(6) of this section or in any other form that meets the requirements of this paragraph and clearly states that the owner, tenant, or operator of the farm knowingly waives the right to receive the credit or payment.

(3) *Agreement included on aerial applicator's invoice.* The agreement waiving a right to receive a credit or payment under section 6420 may be a separate document or may appear on the invoice for aerial application services or other unrelated document from the aerial applicator or other applicator to the owner, tenant, or operator of the farm. If the waiver agreement appears on an invoice or other unrelated document, however, it must be printed in a section of the invoice or other document clearly set off from all other material contained in the invoice or other document, and it must be printed in type sufficiently large to put the owner, tenant, or operator of the farm on notice that the person has waived the right to receive a credit or payment under section 6420. Additionally, if the waiver agreement appears as part of any invoice or other unrelated document, it must be executed separately from any other item included in the invoice or other document which requires the owner, tenant, or operator's signature.

(4) *Copies of agreement waiving right to credit or payment.* No copies of any agreement waiving a right to credits or payments under section 6420 are to be submitted to the Internal Revenue Service unless a request is made by the Service to the taxpayer for the waivers. Aerial applicators must, however, retain copies of all waivers, and a copy of each waiver must be supplied by the aerial applicator to the owner, tenant, or operator of the farm who waives the right to receive a credit or payment. See regulations § 48.6420-6 for general requirements for records to be kept.

(5) *Waiver on behalf of owner, tenant, or operator of farm.* An agent of the owner, tenant, or operator of a farm

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who is expressly authorized to act on behalf of and to bind the owner, tenant, or operator may waive that person's rights to a credit or payment under section 6420 by signing the waiver on the person's behalf.

(6) *Sample form of agreement.* While no specific form is required for an effective waiver, an acceptable form waiving the right to receive a credit or payment under section 6420 follows:

I hereby waive my right as owner/tenant/operator of a farm located at (address) to receive credit or payment from the United States for gasoline used by (aerial applicator) on the farm in connection with cultivating the soil, or the raising or harvesting of any agricultural or horticultural commodity. This waiver applies to gasoline used during the period , both dates inclusive. I understand that by signing this waiver, I give up my right to claim any credit or payment for gasoline used by the aerial applicator during the period indicated, and I acknowledge that I have not previously claimed any credit for that gasoline.

(Signature of Owner/Tenant/Operator)

[T.D. 8043, 50 FR 32036, Aug. 8, 1985, as amended by T.D. 8152, 52 FR 31621, Aug. 21, 1987]

§ 48.6420-5 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 6420, apply in respect of the payments provided for in section 6420 to the same extent as if these payments were refunds of overpayments of the tax imposed on the sale of gasoline under section 4081. For special rules applicable to the assessment and collection of amounts constituting excessive payments under section 6420, see section 6206 and the regulations thereunder. For the civil penalty assessable in the case of excessive claims under section 6420, see section 6675 and the regulations thereunder. For the treatment as an overpayment of an amount allowable as an excessive credit under section 39 with respect to amounts payable under section 6420, see section 6401(b).

(b) *Examination of books and witnesses.* For the purpose of ascertaining (1) the correctness of any claim made under

section 6420 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 credit or payment under section 6420 were the person liable for tax.

(c) *Fractional part of a dollar.* Section 6420(e)(3) provides that section 7504, relating to fractional parts of a dollar, shall not apply with respect to the allowance of any amount as a credit or payment under section 6420. Accordingly, credits or payments authorized by section 6420 shall be made in the exact amount to which the claimant is entitled and shall not be rounded to the nearest whole dollar amount.

[T.D. 8043, 50 FR 32038, Aug. 8, 1985]

§ 48.6420-6 Records to be kept in substantiation of credits or payments.

(a) *In general.* Every person making a claim for credit or payment under section 6420 must keep records sufficient to enable the district director to determine whether the person is entitled to credit or payment under section 6420 and, if so, the amount of the credit or payment. No particular form is prescribed for keeping the records, but the records must include a copy of the income tax return or claim and a copy of any statement or document submitted with the return or claim. The records must also show with respect to the taxable year covered by the claim—

(1) The number of gallons of gasoline purchased and the dates of purchase,

(2) The name and address of each vendor from whom gasoline was purchased and the total number of gallons purchased from each,

(3) The number of gallons of gasoline purchased by the claimant and used during the taxable year for farming purposes on a farm of which the claimant is the owner, tenant, or operator,

(4) The number of gallons of gasoline used during the taxable year for the purposes described in section 6420(c)(3)(A) and § 48.6420-4(d) (relating to cultivating, raising, or harvesting) by a person other than the owner, tenant, or operator on a farm of which the claimant is the owner, tenant, or operator, and