

(e) *Use by nonprofit educational organization.* A payment of tax under chapter 32 of the Code on the sale of any article will be considered to be an overpayment under section 6416(b)(2)(D) of the Code if the article is sold by any person to a nonprofit educational organization for its exclusive use. The term "nonprofit educational organization", as used in this paragraph (e), has the same meaning as when used in section 4221 (a)(5) or (d)(5) of the Code, whichever applies, and the regulations under § 53.136.

**§ 53.179 Supporting evidence required in case of manufacturers tax involving exportations, uses, sales, or resales.**

(a) *Evidence to be submitted by claimant.* No claim for credit or refund of an overpayment, within the meaning of section 6416(b)(2) of the Code and § 53.178, of tax under chapter 32 of the Code shall be allowed unless the person who paid the tax submits with the claim the evidence required by § 53.172(b)(2) and a statement, supported by sufficient available evidence:

(1) Showing the amount claimed in respect of each category of exportations, uses, sales, or resales on which the claim is based and which give rise to a right of credit or refund under section 6416(b)(2) of the Code and § 53.177,

(2) Identifying the article, both as to nature and quantity, in respect of which credit or refund is claimed,

(3) Showing the amount of tax paid in respect of the article or articles and the dates of payment, and

(4) Indicating that the person claiming a credit or refund possesses evidence (as set forth in paragraph (b)(1) of this section) that the article has been exported, or has been used, sold, or resold in a manner or for a purpose which gives rise to an overpayment within the meaning of section 6416(b)(2) of the Code and § 53.178.

(b) *Evidence required to be in possession of claimant—*(1) *Evidence required under paragraph (a)(4)—*(i) *In general.* The evidence required to be retained by the person who paid the tax, as provided in paragraph (a)(4) of this section, must, in the case of an article exported, consist of proof of exportation in the form prescribed in § 53.133 or must, in the

case of other articles sold tax-paid by that person, consist of a certificate, executed and signed by the ultimate purchaser of the article, in the form prescribed in paragraph (b)(1)(ii) of this section. However, if the article to which the claim relates has passed through a chain of sales from the person who paid the tax to the ultimate purchaser, the evidence required to be retained by the person who paid the tax may consist of a certificate, executed and signed by the ultimate vendor of the article, in the form provided in paragraph (b)(1)(iii) of this section, rather than the proof of exportation itself or the certificate of the ultimate purchaser.

(ii) *Certificate of ultimate purchaser.*  
(A) The certificate executed and signed by the ultimate purchaser of the article to which the claim relates must identify the article, both as to nature and quantity; show the address of the ultimate purchaser of the article, and the name and address of the ultimate vendor of the article; and describe the use actually made of the article in sufficient detail to establish that credit or refund is due, except that the use to be made of the article must be described in lieu of actual use if the claim is made by reason of the sale or resale of an article for a specified use which gives rise to the overpayment.

(B) If the certificate sets forth the use to be made of any article, rather than its actual use, it must show that the ultimate purchaser has agreed to notify the claimant if the article is not in fact used as specified in the certificate.

(C) The certificate must also contain a statement that the ultimate purchaser understands that the ultimate purchaser and any other party may, for fraudulent use of the certificate, be subject to all applicable criminal penalties under the Internal Revenue Code.

(D) A purchase order will be acceptable in lieu of a separate certificate of the ultimate purchaser if it contains all the information required by this paragraph.

(iii) *Certificate of ultimate vendor.* Any certificate executed and signed by an ultimate vendor as evidence to be retained by the person who paid the tax

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as provided in paragraph (a)(4) of this section may be executed with respect to any one or more overpayments by the person which arose under section 6416(b)(2) and § 53.178 by reason of exportations, uses, sales or resales, occurring within any period of not more than 12 consecutive calendar quarters, the beginning and ending dates of which are specified in the certificate. A certificate supporting a claim for credit or refund under this section shall contain the following:

(A) Name of ultimate vendor if other than person executing the certificate.

(B) Statement that article(s) was purchased by the ultimate vendor tax-paid and was thereafter exported, used, sold, or resold.

(C) Description of proof which supports exportation or certificate as to use executed by ultimate purchaser.

(D) Statement that ultimate vendor retains such proof for 3 years from the date of the statement and will, upon request, supply such proof at any time within such 3 year period to the taxpayer to establish that credit or refund is due in respect of the article.

(E) Statement that to the best knowledge and belief of the person executing the certificate, no statement in respect of the proof of exportation or certificate has previously been executed and that the person executing the certificate understands that any fraudulent use of the certificate may subject the person executing the certificate or any other party to all applicable criminal penalties under the Code.

(F) Name, title, address and signature of person executing certificate and date signed.

(G) Description of all articles covered by the certificate, with the corresponding vendor's invoice number, date of resale of article, quantity, whether articles were exported or used and the use made of article or to be made of article.

(iv) *ATF I 5600.33*. ATF I 5600.33, Statement of Ultimate Vendor, is available from the Bureau's Distribution Center which, when completed, contains all necessary information for a properly executed certificate. Additional copies may be reproduced as needed.

(2) *Repayment or consent of ultimate vendor*. If the person claiming credit or refund or an overpayment to which this section applies has repaid, or agreed to repay, the amount of the overpayment to the ultimate vendor or if the ultimate vendor consents to the allowance of the credit or refund, a statement to that effect, signed by the ultimate vendor, must be shown on, or made a part of, the supporting evidence required under this section to be retained by the person claiming the credit or refund. In this regard, see § 53.172(b)(2).

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-380, 61 FR 37007, July 16, 1996]

**§ 53.180 Tax-paid articles used for further manufacture and causing overpayments of tax.**

In the case of any payment of tax under chapter 32 of the Code that is determined to be an overpayment under section 6416(b)(3) of the Code and § 53.181 by reason of the sale of an article, directly or indirectly, by the manufacturer of the article to a subsequent manufacturer who uses the article in further manufacture of a second article or who sells the article with, or as a part of, the second article manufactured or produced by the subsequent manufacturer, the subsequent manufacturer may file claim for refund of the overpayment or may claim credit for the overpayment on any return of tax under this subpart subsequently filed. 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 27 CFR § 70.123 (Procedure and Administration), 53.172 and 53.182. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(d) of the Code and § 53.185.

**§ 53.181 Further manufacture included.**

(a) *In general*. The payment of tax imposed by chapter 32 of the Code on the sale of any article by a manufacturer of the article will be considered to be an overpayment by reason of any use in further manufacture, or sale as part