

made by clause (i) [amending this section] shall only apply with respect to gasoline used as a fuel after June 30, 1970.”

Amendment by section 1906(a)(27)(B)–(D), (b)(13)(A) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94-455, set out as a note under section 6013 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by section 205(b)(1), (c)(8) of Pub. L. 91-258 effective July 1, 1970, and amendment by section 207(b) of Pub. L. 91-258 applicable with respect to taxable years ending after June 30, 1970, see section 211(a), (b) of Pub. L. 91-258, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-44 applicable with respect to gasoline used on or after July 1, 1965, see section 809(f) of Pub. L. 89-44, set out as a note under section 6420 of this title.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87-508, §5(d), June 28, 1962, 76 Stat. 119, provided in part that: “The amendments made by subsection (c)(2) [amending this section] shall apply only in respect of claims filed with respect to gasoline used on or after November 16, 1962.”

#### EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-61 effective July 1, 1961, see section 208 of Pub. L. 87-61, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 163(d)(3) of Pub. L. 85-859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85-859, set out as a note under section 6415 of this title.

Pub. L. 85-859, title I, §164(b), Sept. 2, 1958, 72 Stat. 1312, provided that: “The amendment made by subsection (a) [amending this section] shall apply only with respect to claims the last day for the filing of which occurs after the effective date specified in section 1(c) of this Act.”

#### EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 25, 1956, applicable to amounts paid on or after first day of first month which begins more than sixty days after July 25, 1956, for transportation commencing on or after such first day, see section 6 of act July 25, 1956, set out as a note under section 4261 of this title.

### § 6422. Cross references

(1) For limitations on credits and refunds, see subchapter B of chapter 66.

(2) For overpayment in case of adjustments to accrued foreign taxes, see section 905(c).

(3) For credit or refund in case of deficiency dividends paid by a personal holding company, see section 547.

(4) For refund, credit, or abatement of amounts disallowed by courts upon review of Tax Court decision, see section 7486.

(5) For refund or redemption of stamps, see chapter 69.

(6) For abatement, credit, or refund in case of jeopardy assessments, see chapter 70.

(7) For treatment of certain overpayments as having been refunded, in connection with sale of surplus war-built vessels, see section 9(b)(8) of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742).

(8) For restrictions on transfers and assignments of claims against the United States, see section 3727 of title 31, United States Code.

(9) For set-off of claims against amounts due the United States, see section 3728 of title 31, United States Code.

(10) For special provisions relating to alcohol and tobacco taxes, see subtitle E.

(11) For<sup>1</sup> credit or refund in case of deficiency dividends paid by a regulated investment company or real estate investment trust, see section 860.

(12) For special rules in the case of a credit or refund attributable to partnership items, see section 6227 and subsections (c) and (d) of section 6230.

(Aug. 16, 1954, ch. 736, 68A Stat. 802, §6420; renumbered §6421, Apr. 2, 1956, ch. 160, §1, 70 Stat. 87; renumbered §6422, June 29, 1956, ch. 462, title II, §208(c), 70 Stat. 394; amended Pub. L. 85-859, title II, §204(4), Sept. 2, 1958, 72 Stat. 1429; Pub. L. 88-36, title II, §201(c), June 4, 1963, 77 Stat. 54; Pub. L. 94-455, title XVI, §1601(f)(1), title XIX, §§1901(b)(36)(B), 1906(a)(28), Oct. 4, 1976, 90 Stat. 1746, 1802, 1828; Pub. L. 95-600, title III, §362(d)(4), Nov. 6, 1978, 92 Stat. 2852; Pub. L. 97-248, title IV, §402(c)(4), Sept. 3, 1982, 96 Stat. 667; Pub. L. 97-258, §3(f)(8), (9), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 101-508, title XI, §11801(c)(17)(A), Nov. 5, 1990, 104 Stat. 1388-527; Pub. L. 105-34, title XI, §1131(c)(3), Aug. 5, 1997, 111 Stat. 980.)

#### REFERENCES IN TEXT

Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742), referred to in par. (7), was repealed by Pub. L. 94-412, title V, §501(g), Sept. 14, 1976, 90 Stat. 1258.

#### AMENDMENTS

1997—Pars. (5) to (13). Pub. L. 105-34 struck out par. (5) and redesignated pars. (6) to (13) as (5) to (12), respectively. Prior to amendment, par. (5) read as follows: “For abatement or refund of tax on transfers to avoid income tax, see section 1494(b).”

1990—Pub. L. 101-508 struck out par. (6) and redesignated the succeeding pars. accordingly, which was executed with respect to the succeeding pars. (consisting of pars. (7) to (12), (14), and (15)) by redesignating such pars. as (6) to (13), respectively. Prior to amendment, par. (6) provided a cross reference to section 1481 of this title for overpayment in certain renegotiations of war contracts.

1982—Par. (10). Pub. L. 97-258, §3(f)(8), substituted “section 3727 of title 31, United States Code” for “R.S. 3477 (31 U.S.C. 203)”.

Par. (11). Pub. L. 97-258, §3(f)(9), substituted “section 3728 of title 31, United States Code” for “the act of March 3, 1875, as amended by section 13 of the act of March 3, 1933 (31 U.S.C. 227)”.

Par. (15). Pub. L. 97-248 added par. (15).

1978—Par. (14). Pub. L. 95-600 inserted “regulated investment company or” before “real estate investment trust” and substituted “section 860” for “section 859”.

1976—Par. (2). Pub. L. 94-455, §1901(b)(36)(B), redesignated par. (3) as (2). Former par. (2), which set forth a cross reference to section 1321 of this title for overpayment arising out of adjustments incident to involuntary liquidation of inventory, was struck out.

Pars. (3) to (8). Pub. L. 94-455, §1901(b)(36)(B), redesignated pars. (4) to (9) as (3) to (8), respectively.

Par. (9). Pub. L. 94-455, §§1901(b)(36)(B), 1906(a)(28)(A), redesignated par. (10) as (9) and substituted “(50 U.S.C. App. 1742)” for “(60 Stat. 48; 50 U.S.C. App. 1742)”. Former par. (9) redesignated (8).

Par. (10). Pub. L. 94-455, §1901(b)(36)(B), redesignated par. (11) as (10). Former par. (10) redesignated (9).

Par. (11). Pub. L. 94-455, §§1901(b)(36)(B), 1906(a)(28)(B), redesignated par. (12) as (11) and substituted “(31 U.S.C. 227)” for “(47 Stat. 1516; 31 U.S.C. 227)”. Former par. (11) redesignated (10).

<sup>1</sup> So in original. Probably should be capitalized.

Pars. (12), (13). Pub. L. 94-455, § 1901(b)(36)(B), redesignated pars. (12) and (13) as (11) and (12), respectively.

Par. (14). Pub. L. 94-455, § 1601(f)(1), added par. (14).

1963—Pars. (7) to (14). Pub. L. 88-36 redesignated pars. (8) to (14) as (7) to (13), respectively. Former par. (7), which was cross reference provision for abatement or refund in case of tax on silver bullion to section 4894, was struck out.

1958—Pub. L. 85-859 substituted “subtitle E” for “sections 5011, 5044, 5057, 5063, 5705, and 5707” in par. (14).

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for applicability of amendment to any partnership taxable year ending after Sept. 3, 1982, if partnership, each partner, and each indirect partner requests such application and Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97-248, set out as an Effective Date note under section 6221 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95-600, set out as an Effective Date note under section 860 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1601(f)(1) of Pub. L. 94-455, see section 1608(a) of Pub. L. 94-455, set out as a note under section 857 of this title.

Amendment by section 1901(b)(36)(B) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Amendment by section 1906(a)(28) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94-455, set out as a note under section 6013 of this title.

#### EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88-36 applicable only with respect to transfers after June 4, 1963, see section 202 of Pub. L. 88-36, title II, June 4, 1963, 77 Stat. 54.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85-859, set out as an Effective Date note under section 5001 of this title.

#### SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

### § 6423. Conditions to allowance in the case of alcohol and tobacco taxes

#### (a) Conditions

No credit or refund shall be allowed or made, in pursuance of a court decision or otherwise, of any amount paid or collected as an alcohol or tobacco tax unless the claimant establishes (under regulations prescribed by the Secretary)—

- (1) that he bore the ultimate burden of the amount claimed; or
- (2) that he has unconditionally repaid the amount claimed to the person who bore the ultimate burden of such amount; or

(3) that (A) the owner of the commodity furnished him the amount claimed for payment of the tax, (B) he has filed with the Secretary the written consent of such owner to the allowance to the claimant of the credit or refund, and (C) such owner satisfies the requirements of paragraph (1) or (2).

#### (b) Filing of claims

No credit or refund of any amount to which subsection (a) applies shall be allowed or made unless a claim therefor has been filed by the person who paid the amount claimed, and unless such claim is filed within the time prescribed by law and in accordance with regulations prescribed by the Secretary. All evidence relied upon in support of such claim shall be clearly set forth and submitted with the claim.

#### (c) Application of section

This section shall apply only if the credit or refund is claimed on the grounds that an amount of alcohol or tobacco tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive. This section shall not apply to—

- (1) any claim for drawback, and
- (2) any claim made in accordance with any law expressly providing for credit or refund where a commodity is withdrawn from the market, returned to bond, or lost or destroyed.

#### (d) Meaning of terms

For purposes of this section—

##### (1) Alcohol or tobacco tax

The term “alcohol or tobacco tax” means—

(A) any tax imposed by chapter 51 (other than part II of subchapter A, relating to occupational taxes) or by chapter 52 or by any corresponding provision of prior internal revenue laws, and

(B) in the case of any commodity of a kind subject to a tax described in subparagraph (A), any tax equal to any such tax, any additional tax, or any floor stocks tax.

##### (2) Tax

The term “tax” includes a tax and an exaction denominated a “tax”, and any penalty, addition to tax, additional amount, or interest applicable to any such tax.

##### (3) Ultimate burden

The claimant shall be treated as having borne the ultimate burden of an amount of an alcohol or tobacco tax for purposes of subsection (a)(1), and the owner referred to in subsection (a)(3) shall be treated as having borne such burden for purposes of such subsection, only if—

(A) he has not, directly or indirectly, been relieved of such burden or shifted such burden to any other person,

(B) no understanding or agreement exists for any such relief or shifting, and

(C) if he has neither sold nor contracted to sell the commodities involved in such claim, he agrees that there will be no such relief or shifting, and furnishes such bond as the Secretary may require to insure faithful compliance with his agreement.