

unless he files with the Secretary written consent of the person who placed such wager to the allowance of the credit or the making of the refund. In the case of any laid-off wager, no overpayment of tax imposed by chapter 35 shall be so credited or refunded to the person with whom such laid-off wager was placed unless he establishes, in accordance with regulations prescribed by the Secretary, that the provisions of the preceding sentence have been complied with both with respect to the person who placed the laid-off wager with him and with respect to the person who placed the original wager.

(b) Credit or refund on wagers laid-off by taxpayer

Where any taxpayer lays off part or all of a wager with another person who is liable for tax imposed by chapter 35 on the amount so laid off, a credit against such tax shall be allowed, or a refund shall be made to, the taxpayer laying off such amount. Such credit or refund shall be in an amount which bears the same ratio to the amount of tax which such taxpayer paid on the original wager as the amount so laid off bears to the amount of the original wager. Credit or refund under this subsection shall be allowed or made only in accordance with regulations prescribed by the Secretary, and no interest shall be allowed with respect to any amount so credited or refunded.

(Aug. 16, 1954, ch. 736, 68A Stat. 801; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsecs. (a), (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

§ 6420. Gasoline used on farms

(a) Gasoline

Except as provided in subsection (g), if gasoline is used on a farm for farming purposes, the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline the amount determined by multiplying—

- (1) the number of gallons so used, by
- (2) the rate of tax on gasoline under section 4081 which applied on the date he purchased such gasoline.

(b) Time for filing claims; period covered

Not more than one claim may be filed under this section by any person with respect to gasoline used during his taxable year, and no claim shall be allowed under this section with respect to gasoline used during any taxable year unless filed by such person not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for such taxable year. For purposes of this subsection, a person's taxable year shall be his taxable year for purposes of subtitle A.

(c) Meaning of terms

For purposes of this section—

(1) Use on a farm for farming purposes

Gasoline shall be treated as used on a farm for farming purposes only if used (A) in carrying on a trade or business, (B) on a farm situ-

ated in the United States, and (C) for farming purposes.

(2) Farm

The term “farm” includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(3) Farming purposes

Gasoline shall be treated as used for farming purposes only if used—

(A) by the owner, tenant, or operator of a farm, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife, on a farm of which he is the owner, tenant, or operator;

(B) by the owner, tenant, or operator of a farm, in handling, drying, packing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state; but only if such owner, tenant or operator produced more than one-half of the commodity which he so treated during the period with respect to which claim is filed;

(C) by the owner, tenant, or operator of a farm, in connection with—

- (i) the planting, cultivating, caring for, or cutting of trees, or
- (ii) the preparation (other than milling) of trees for market,

incidental to farming operations; or

(D) by the owner, tenant, or operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment.

(4) Certain farming use other than by owner, etc.

In applying paragraph (3)(A) to a use on a farm for any purpose described in paragraph (3)(A) by any person other than the owner, tenant, or operator of such farm—

(A) the owner, tenant, or operator of such farm shall be treated as the user and ultimate purchaser of the gasoline, except that

(B) if the person so using the gasoline is an aerial or other applicator of fertilizers or other substances and is the ultimate purchaser of the gasoline, then subparagraph (A) of this paragraph shall not apply and the aerial or other applicator shall be treated as having used such gasoline on a farm for farming purposes.

In the case of an aerial applicator, gasoline shall be treated as used on a farm for farming purposes if the gasoline is used for the direct flight between the airfield and one or more farms.

(5) Gasoline

The term “gasoline” has the meaning given to such term by section 4083(a).

(d) Exempt sales; other payments or refunds available

No amount shall be payable under this section with respect to any gasoline which the Secretary determines was exempt from the tax imposed by section 4081. The amount which (but for this sentence) would be payable under this section with respect to any gasoline shall be reduced by any other amount which the Secretary determines is payable under this section, or is refundable under any provision of this title, to any person with respect to such gasoline.

(e) Applicable laws**(1) In general**

All provisions of law, including penalties, applicable in respect of the tax imposed by section 4081 shall, insofar as applicable and not inconsistent with this section, apply in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of overpayments of the tax so imposed.

(2) Examination of books and witnesses

For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary shall have the authority granted by paragraphs (1), (2), and (3) of section 7602(a) (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

(3) Fractional parts of a dollar

Section 7504 (granting the Secretary discretion with respect to fractional parts of a dollar) shall not apply.

(f) Regulations

The Secretary may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

(g) Income tax credit in lieu of payment**(1) Persons not subject to income tax**

Payment shall be made under subsection (a), only to—

(A) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions, or

(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

(2) Allowance of credit against income tax

For allowance of credit against the tax imposed by subtitle A, see section 34.

[(h) Repealed. Pub. L. 103-66, title XIII, § 13241(f)(5), Aug. 10, 1993, 107 Stat. 512]**(i) Cross references**

(1) For exemption from tax in case of special fuels used on a farm for farming purposes, see section 4041(f).

(2) For civil penalty for excessive claim under this section, see section 6675.

(3) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).

(4) For treatment of an Indian tribal government as a State and¹ a subdivision of an Indian tribal government as a political subdivision of a State, see section 7871.

(Added Apr. 2, 1956, ch. 160, §1, 70 Stat. 87; amended Pub. L. 85-859, title I, §163(d)(2), Sept. 2, 1958, 72 Stat. 1311; Pub. L. 89-44, title VIII, §809(a), June 21, 1965, 79 Stat. 165; Pub. L. 91-258, title II, §§205(c)(7), 207(b), May 21, 1970, 84 Stat. 242, 248; Pub. L. 94-455, title XIX, §§1906(a)(26), (b)(6)(A), (13)(A), Oct. 4, 1976, 90 Stat. 1827, 1833, 1834; Pub. L. 95-458, §3(a), (c), Oct. 14, 1978, 92 Stat. 1257; Pub. L. 97-424, title V, §§511(f), 516(b)(4), Jan. 6, 1983, 96 Stat. 2172, 2183; Pub. L. 97-473, title II, §202(b)(12), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 98-369, div. A, title IV, §474(r)(38), July 18, 1984, 98 Stat. 846; Pub. L. 99-499, title V, §521(c)(1), Oct. 17, 1986, 100 Stat. 1778; Pub. L. 100-17, title V, §502(b)(6), Apr. 2, 1987, 101 Stat. 257; Pub. L. 101-239, title VII, §7841(d)(20), Dec. 19, 1989, 103 Stat. 2429; Pub. L. 101-508, title XI, §1121(d)(5), Nov. 5, 1990, 104 Stat. 1388-427; Pub. L. 102-240, title VIII, §8002(b)(5), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 103-66, title XIII, §§13241(f)(5), 13242(d)(20), Aug. 10, 1993, 107 Stat. 512, 524; Pub. L. 109-59, title XI, §11121(a), (b), Aug. 10, 2005, 119 Stat. 1951.)

PRIOR PROVISIONS

A prior section 6420 was renumbered section 6422 of this title.

AMENDMENTS

2005—Subsec. (c)(4). Pub. L. 109-59, §11121(b), inserted concluding provisions.

Subsec. (c)(4)(B). Pub. L. 109-59, §11121(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “if—

“(i) the person so using the gasoline is an aerial or other applicator of fertilizers or other substances and is the ultimate purchaser of the gasoline, and

“(ii) the person described in subparagraph (A) waives (at such time and in such form and manner as the Secretary shall prescribe) his right to be treated as the user and ultimate purchaser of the gasoline, then subparagraph (A) of this paragraph shall not apply and the aerial or other applicator shall be treated as having used such gasoline on a farm for farming purposes.”

1993—Subsec. (c)(5). Pub. L. 103-66, §13242(d)(20), substituted “section 4083(a)” for “section 4082(b)”.

Subsec. (h). Pub. L. 103-66, §13241(f)(5), struck out heading and text of subsec. (h). Text read as follows: “Except with respect to taxes imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, this section shall apply only with respect to gasoline purchased before October 1, 1999.”

1991—Subsec. (h). Pub. L. 102-240 substituted “1999” for “1995”.

1990—Subsec. (h). Pub. L. 101-508 substituted “1995” for “1993”.

1989—Subsec. (e)(2). Pub. L. 101-239 substituted “section 7602(a)” for “section 7602”.

1987—Subsec. (h). Pub. L. 100-17 substituted “1993” for “1988”.

1986—Subsec. (h). Pub. L. 99-499 substituted “Except with respect to taxes imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, this section” for “This section”.

1984—Subsec. (g)(2). Pub. L. 98-369 substituted “section 34” for “section 39”.

1983—Subsec. (c)(4)(B). Pub. L. 97-424, §511(f), substituted provision that, if the person so using the gasoline is an aerial or other applicator of fertilizers or

¹ So in original. Probably should be “(and)”.

other substances and is the ultimate purchaser of the gasoline, and the person described in subparagraph (A) waives (at such time and in such form and manner as the Secretary shall prescribe) his right to be treated as the user and ultimate purchaser of the gasoline, then subparagraph (A) of this paragraph shall not apply and the aerial or other applicator shall be treated as having used such gasoline on a farm for farming purposes, for provision that, if the person so using the gasoline were an aerial applicator who was the ultimate purchaser of the gasoline and the person described in subparagraph (A) waived (at such time and in such form and manner as the Secretary was to prescribe) his right to be treated as the user and ultimate purchaser of the gasoline, then subparagraph (A) of this paragraph would not apply and the aerial applicator would be treated as having used such gasoline on a farm for farming purposes.

Subsec. (h). Pub. L. 97-424, §516(b)(4), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (h)(4). Pub. L. 97-473 purported to add par. (4). See Amendment note below for subsec. (i)(4).

Subsec. (i). Pub. L. 97-424, §516(b)(4), redesignated former subsec. (h) as (i).

Subsec. (i)(4). Pub. L. 97-473 added par. (4). Notwithstanding the directory language that par. (4) be added to subsec. (h), it was added to subsec. (i) to reflect the probable intent of Congress and the intervening redesignation of subsec. (h) as (i) by Pub. L. 97-424.

1978—Subsec. (c)(3)(A). Pub. L. 95-458, §3(c), struck out provision that if the use of gasoline is by any person other than the owner, tenant, or operator of a farm, then in applying subsec. (a) of this subparagraph, the owner, tenant, or operator of the farm on which gasoline or a liquid taxable under section 4041 is used would be treated as the user or ultimate purchaser of the gasoline or liquid.

Subsec. (c)(4), (5). Pub. L. 95-458, §3(a), added par. (4) and redesignated former par. (4) as (5).

1976—Subsec. (a). Pub. L. 94-455, §1906(a)(26) (C)(ii), (b)(13)(A), substituted “subsection (g)” for “subsection (h)” and struck out “or his delegate” after “Secretary”.

Subsec. (b). Pub. L. 94-455, §1906(a)(26)(A), among other changes, struck out provisions relating to gasoline used before July 1, 1965, and struck out requirement that a person's first taxable year beginning after June 30, 1965, include the period after June 30, 1965, and before the beginning of that first taxable year.

Subsec. (c)(3)(A). Pub. L. 94-455, §1906(b)(6)(A), among other changes, struck out “and for purposes of section 6416(b)(2)(G)(ii) (but not for purposes of section 4041),” after “in applying subsection (a) to this subparagraph,” and provision that if the use of gasoline is by any person other than the owner, tenant, or operator of the farm, then, for purposes of applying section 6416(b)(2)(G)(ii), any tax paid under section 4041 in respect of a liquid used on a farm for farming purposes be treated as having been paid by the owner, tenant, or operator of the farm on which such liquid is used.

Subsec. (d). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (e)(1). Pub. L. 94-455, §1906(a)(26)(B), substituted “apply in respect” for “apply in in respect”.

Subsecs. (e)(2), (f). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (g). Pub. L. 94-455, §1906(a)(26)(C)(i), (D), redesignated subsec. (h) as (g), struck out in par. (1) “with respect to gasoline used after June 30, 1965,” after “subsection (a)”, and in par. (2) “for gasoline used after June 30, 1965” after “subtitle A”. Former subsec. (g), which provided that this section applies only with respect to gasoline purchased after Dec. 31, 1955, was struck out.

Subsecs. (h), (i). Pub. L. 94-455, §1906(a)(26)(C)(i), redesignated subsecs. (h) and (i) as (g) and (h), respectively.

1970—Subsec. (b)(2)(B). Pub. L. 91-258, §207(b), substituted “a claim for credit or refund of overpayment of income tax” for “an income tax return” after “time prescribed by law for filing”.

Subsec. (i)(1). Pub. L. 91-258, §205(c)(7)(A), (B), substituted “special fuels” for “diesel fuel and special motor fuels” and “section 4041(f)” for “section 4041(d)”, respectively.

1965—Subsec. (a). Pub. L. 89-44, §809(a)(1)(A), substituted “Except as provided in subsection (h), if” for “If”.

Subsec. (b). Pub. L. 89-44, §809(a)(2), designated existing provisions as par. (1) and made it applicable to gasoline used before July 1, 1965, and added par. (2).

Subsec. (d). Pub. L. 89-44, §809(a)(3), substituted “payable” for “paid” in first sentence.

Subsecs. (h), (i). Pub. L. 89-44, §809(a)(1)(B), added subsec. (h) and redesignated former subsec. (h) as (i).

1958—Subsec. (c)(3)(A). Pub. L. 85-859 substituted “section 6416(b)(2)(G)(ii)” for “section 6416(b)(2)(C)(ii)” in two places in cl. (A).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-59 applicable to fuel use or air transportation after Sept. 30, 2005, see section 11121(d) of Pub. L. 109-59, set out as a note under section 4261 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13241(f)(5) of Pub. L. 103-66 effective Oct. 1, 1993, see section 13241(g) of Pub. L. 103-66, set out as a note under section 4041 of this title.

Amendment by section 13242(d)(20) of Pub. L. 103-66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103-66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-499 effective Jan. 1, 1987, see section 521(e) of Pub. L. 99-499, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

For effective date of amendment by Pub. L. 97-473, see section 204 of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

Amendment by section 511(f) of Pub. L. 97-424 effective Apr. 1, 1983, see section 511(h)(1) of Pub. L. 97-424, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-458, §3(d), Oct. 14, 1978, 92 Stat. 1257, provided that: “The amendments made by this section [amending this section and section 6427 of this title] shall take effect on the first day of the first calendar quarter which begins more than 90 days after the date of the enactment of this Act [Oct. 14, 1978].”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1906(a)(26), (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.

Pub. L. 94-455, title XIX, §1906(b)(6)(B), Oct. 4, 1976, 90 Stat. 1834, provided that: “The amendments made by subparagraph (A) [amending this section] shall apply with respect to the use of liquids after December 31, 1970.”

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-258 effective July 1, 1970, and applicable with respect to taxable years ending after June 30, 1970, respectively, 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

Pub. L. 89-44, title VIII, §809(f), June 21, 1965, 79 Stat. 168, provided that: “The amendments made by sub-

sections (a) and (b) [amending this section and section 6421 of this title] shall apply with respect to gasoline used on or after July 1, 1965. The amendments made by subsections (c) and (d) [renumbering section 39 as 40, enacting section 39 and amending sections 72, 874, 1314, 1481, 6201, 6211, 6213, and 6401 of this title] shall apply to taxable years beginning on or after July 1, 1965.”

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by 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.

§ 6421. Gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes

(a) Nonhighway uses

Except as provided in subsection (i), if gasoline is used in an off-highway business use, the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the amount determined by multiplying the number of gallons so used by the rate at which tax was imposed on such gasoline under section 4081. Except as provided in paragraph (2) of subsection (f) of this section, in the case of gasoline used as a fuel in an aircraft, the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the amount determined by multiplying the number of gallons of gasoline so used by the rate at which tax was imposed on such gasoline under section 4081.

(b) Intercity, local, or school buses

(1) Allowance

Except as provided in paragraph (2) and subsection (i), if gasoline is used in an automobile bus while engaged in—

(A) furnishing (for compensation) passenger land transportation available to the general public, or

(B) the transportation of students and employees of schools (as defined in the last sentence of section 4221(d)(7)(C)),

the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the product of the number of gallons of gasoline so used multiplied by the rate at which tax was imposed on such gasoline by section 4081.

(2) Limitation in case of nonscheduled intercity or local buses

Paragraph (1)(A) shall not apply in respect of gasoline used in any automobile bus while engaged in furnishing transportation which is not scheduled and not along regular routes unless the seating capacity of such bus is at least 20 adults (not including the driver).

(c) Exempt purposes

If gasoline is sold to any person for any purpose described in paragraph (2), (3), (4)¹ (5), or (6) of section 4221(a), the Secretary shall pay (without interest) to such person an amount equal to the product of the number of gallons of gasoline so sold multiplied by the rate at which tax was imposed on such gasoline by section 4081. The

preceding sentence shall apply notwithstanding paragraphs (2) and (3) of subsection (f). Subsection (a) shall not apply to gasoline to which this subsection applies.

(d) Time for filing claims; period covered

(1) In general

Except as provided in paragraph (2), not more than one claim may be filed under subsection (a), not more than one claim may be filed under subsection (b), and not more than one claim may be filed under subsection (c), by any person with respect to gasoline used during his taxable year; and no claim shall be allowed under this paragraph with respect to gasoline used during any taxable year unless filed by such person not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for such taxable year. For purposes of this subsection, a person's taxable year shall be his taxable year for purposes of subtitle A.

(2) Exception

For payments per quarter based on aggregate amounts payable under this section and section 6427, see section 6427(i)(2).

(3) Application to sales under subsection (c)

For purposes of this subsection, gasoline shall be treated as used for a purpose referred to in subsection (c) when it is sold for such a purpose.

(e) Definitions

For purposes of this section—

(1) Gasoline

The term “gasoline” has the meaning given to such term by section 4083(a).

(2) Off-highway business use

(A) In general

The term “off-highway business use” means any use by a person in a trade or business of such person or in an activity of such person described in section 212 (relating to production of income) otherwise than as a fuel in a highway vehicle—

(i) which (at the time of such use), is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or

(ii) which, in the case of a highway vehicle owned by the United States, is used on the highway.

(B) Uses in boats

(i) In general

Except as otherwise provided in this subparagraph, the term “off-highway business use” does not include any use in a motorboat.

(ii) Fisheries and whaling

The term “off-highway business use” shall include any use in a vessel employed in the fisheries or in the whaling business.

(C) Uses in mobile machinery

(i) In general

The term “off-highway business use” shall include any use in a vehicle which

¹ So in original. Probably should be followed by a comma.