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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[REG-143219-01]

RIN 1545-BA27

Gasoline Tax Claims Under Section 6416(a)(4)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document invites comments from the public on issues that the IRS may address in proposed regulations relating to claims for credits or refunds of the gasoline tax. All materials submitted will be available for public inspection and copying.

DATES: Written and electronic comments must be received by January 22, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-143219-01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-143219-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may send submissions electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslst.html.

FOR FURTHER INFORMATION CONTACT: Concerning submissions, the Regulations Unit, (202) 622-7180; concerning the proposals, Frank Boland, (202) 622-3130 (not

toll-free numbers).

SUPPLEMENTARY INFORMATION:

Under section 6416(b)(2), the person that paid the gasoline tax imposed by section 4081 to the government may receive a credit or refund of the amount of the tax if the gasoline is, by any person, exported, used or sold for use as supplies for vessels or aircraft, sold to a state or local government for its exclusive use, sold to a nonprofit educational organization for its exclusive use, or used or sold for use in the production of special fuels (exempt purposes).

Section 6102 of the Technical and Miscellaneous Revenue Act of 1988 (the 1988 Act) (Public Law 100-647, 102 Stat. 3342) added section 6416(a)(4) to the Internal Revenue Code. Under section 6416(a)(4)(A), a wholesale distributor (described in section 6416(a)(4)(B)) that buys gasoline on which the tax imposed by section 4081 has been paid and sells the gasoline to its ultimate purchaser for an exempt purpose is treated as the person (and the only person) that paid the tax to the government and thus is the person eligible to claim a credit or refund of that tax.

Section 6416(a)(4)(B), as added by the 1988 Act, provides that the term wholesale distributor includes any person that sells gasoline to producers, retailers, or to users that purchase in bulk quantities and accept delivery into bulk storage tanks. For this purpose, the term producer includes a refiner, blender, or wholesale distributor of gasoline, or a dealer selling gasoline exclusively to producers of gasoline. The term wholesale distributor does not include any person that is an importer, refiner, or blender of gasoline, or is a dealer selling gasoline exclusively to producers. Section

905 of the Taxpayer Relief Act of 1997 (Public Law 105-34, 111 Stat. 788) amended section 6416(a)(4)(B) of the Code by providing that the term wholesale distributor also includes any person that makes retail sales of gasoline at 10 or more retail motor fuel outlets.

Notice 89-29 (1989-1 C.B. 669) provides rules for implementing section 6416(a)(4), as added by the 1988 Act. These include rules that allow claims by the person that actually paid the tax to the government instead of claims by the wholesale distributor if (1) tax is not included in the price of the gasoline bought by the wholesale distributor or (2) the sale by the wholesale distributor is charged on an oil company credit card issued to an exempt person.

In response to questions that have arisen concerning the application of the rules in Notice 89-29, the IRS is considering proposing regulations under section 6416(a)(4) that, when finalized, would replace the guidance provided by Notice 89-29. The IRS invites comments from the public on issues that should be addressed in the regulations, including issues relating to refund claims by persons other than the wholesale distributor.

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