

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:PSI:07:AFDunlap
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to: Darren Lefebvre
Excise Fuel Policy Program Manager

from: Stephanie N. Bland
Branch Chief, CC:PSI:7

subject: Claims by Credit Card Issuers

This responds to your request for non-taxpayer specific legal advice regarding the registration requirements for credit card issuers. This advice may not be used or cited as precedent.

ISSUE

Whether a credit card issuer that is already registered under section 4101 as an ultimate vendor under Activity Letter "UV" must also be registered as a credit card issuer under Activity Letter "CC" to claim a credit, refund, or payment with respect to taxable fuel purchased with a credit card issued to an exempt user.

CONCLUSION

A credit card issuer must be registered as a credit card issuer under Activity Letter "CC" to claim a credit, refund, or payment with respect to taxable fuel purchased with a credit card issued to an exempt user, even if the credit card issuer is already registered as an ultimate vendor.

FACTS

Generally, the federal excise tax paid on taxable fuel is deemed to be an overpayment if the taxable fuel is sold to an exempt user for the exclusive use of the exempt user. For sales of gasoline, an exempt user is a state or local government or a nonprofit educational organization. For sales of diesel fuel or kerosene, an exempt user is a state or local government.

In some instances, an exempt user purchases taxable fuel using a credit card. A question has arisen as to whether, in these instances, a credit card issuer that is registered under Activity Letter "UV" must be also be registered under Activity Letter

“CC” in order to make a claim for credit, refund or payment with respect to the taxable fuel purchased with the credit card.

LAW

Section 4081 imposes a tax on certain removals, entries, and sales of taxable fuel (gasoline, diesel fuel, and kerosene).

Section 4101 states, in part, that every person required to register under section 4101 with respect to the tax imposed by section 4041(a) or 4081, shall register with the Secretary at such time, in such form and manner, and subject to such terms and conditions, as the Secretary may by regulations prescribe. A registration under section 4101 may be used only in accordance with regulations prescribed under that section.

Section 4101(a)(4) provides that the Secretary shall require registration by any person which (A) extends credit by credit card to any ultimate purchaser described in subparagraph (C) or (D) of section 6416(b)(2) for the purchase of taxable fuel upon which tax has been imposed under section 4041 or 4081, and (B) does not collect the amount of such tax from such ultimate purchaser.

Section 6416(a)(4)(A) provides that if a registered ultimate vendor purchases tax-paid gasoline and sells it to a state for its exclusive use or school for its exclusive use, then the registered ultimate vendor is treated as the person (and the only person) that paid the tax, unless section 6416(a)(4)(B) applies.

Section 6416(a)(4)(B) provides that a credit card issuer extending credit to a state or school for the purchase of gasoline may make a claim if, among other conditions, the credit card issuer is registered under section 4101.

Section 6427(l)(5)(C) provides that if taxed diesel fuel or kerosene is purchased by a state without the use of a credit card issued to the state, then the ultimate vendor may claim a credit or payment related to the tax if, among other things, the ultimate vendor is registered under section 4101.

Section 6427(l)(5)(D) provides that a credit card issuer extending credit to a state (but not a school) for the purchase of diesel fuel or kerosene may make a claim if, among other conditions, the credit card issuer is registered under section 4101.

Section 48.4101-1(e) of the Manufacturers and Retailers Excise Tax Regulations states that application for registration under section 4101 must be made in accordance with the instructions for Form 637, Application for Registration (For Certain Excise Tax Activities).

Notice 2005-80, 2005-2 C.B. 953, sets forth procedures under which a person extending credit on a credit card may make a claim with respect to taxable fuel sold exclusively for the use of an exempt user.

Section 4(d)(1) of Notice 2005-80 provides that application for registration is made on Form 637, in accordance with the instructions for that form and that Form 637 will be revised to include an activity letter for credit card issuers.

Section 4(d)(2) of Notice 2005-80 provides that the Service will register an applicant as a credit card issuer only if the Service (i) determines that the applicant is engaged in business as a credit card issuer and in that business extends credit to states or schools by means of a credit card used for the purchase of taxable fuel; and (ii) is satisfied with the filing, deposit, payment, reporting, and claim history for all federal taxes of the applicant and any related person (as defined in section 48.4101-1(b)(5)).

Section 4(d)(4) of Notice 2005-80 provides that a person that is registered under section 4101 under Activity Letter “UV” or “UP” is treated as registered for purposes of claims under this section related to the tax on fuels that are purchased **without the use of a credit card** and will not have to be reregistered unless notified to do so by the Service. (Emphasis added).

Section 4(e) of Notice 2005-80 provides the conditions to allowance of credit, refund or payment under section 6416(a)(4)(B) or section 6427(l)(5)(D): the claimant must be a registered credit card issuer; the claim must relate to the tax on fuel sold to a state or gasoline sold to a school; the fuel must have been purchased with a credit card issued by the claimant; tax was imposed on the fuel under section 4041 or 4081; the claimant must have filed a timely claim for credit, refund, or payment; and the claim must contain all required information, including the registration number.

ANALYSIS

A credit card issuer must be registered by the Service as a credit card issuer under Activity Letter “CC” in order to claim a credit, refund, or payment with respect to taxable fuel purchased with a credit card issued to an exempt user. See Notice 2005-80, Section 4. A person that is registered under section 4101 as an ultimate vendor under Activity Letter “UV” but not as a credit card issuer under Activity Letter “CC” does not satisfy Sections (4)(d)(4) and (4)(e) of Notice 2005-80, and is therefore not the proper claimant for claims related to the tax on fuels purchased with a credit card issued to an exempt user.

If you have any questions concerning this memorandum, please contact Amanda F. Dunlap at (202) 317-6855.