

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

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to: Joseph J. Tiberio
Acting Chief, Excise Tax Program

from: Frank Boland
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subject: Off-highway Business Use of Gasoline

This responds to your request for non-taxpayer specific legal advice regarding off-highway business use of gasoline under § 6421 of the Internal Revenue Code. This advice may not be used or cited as precedent.

ISSUES

1. Whether gasoline used by an automobile manufacturer to perform tests in new motor vehicles that are not registered or required to be registered for highway use qualifies as off-highway business use under § 6421(a). If so, who is eligible to make the claim?
2. Whether the gasoline that remains in the fuel supply tank when the vehicle is sold to a dealer qualifies as off-highway business use. If so, who is eligible to make the claim?

CONCLUSIONS

1. Gasoline used by an automobile manufacturer to perform tests on new motor vehicles that are not registered or required to be registered for highway use qualifies as off-highway business use under § 6421(a). The automobile manufacturer, as the ultimate purchaser of the gasoline, is eligible to make the claim.
2. Gasoline remaining in the fuel supply tank when the vehicle is sold to a dealer does not qualify as an off-highway business use.

FACTS

Section 4081 imposes a tax on gasoline that automobile manufacturers later purchase to test their newly-built vehicles. Typically, at the end of the assembly line, the manufacturer puts a measured amount of gasoline into a motor vehicle. The manufacturer then performs stationary tests with the engine running and drives the vehicle on its private test track. The vehicle is not registered and is not required to be

registered for highway use at this point. After the vehicle passes whatever tests the manufacturer requires, the manufacturer sells the vehicle to a dealer for further sale and state law requires the vehicle to be registered at that point. There is still some gasoline remaining in the fuel supply tank when the manufacturer sells the vehicle to the dealer. The manufacturer can measure the amount of remaining gasoline when it sells the vehicle to the dealer.

LAW

Section 4081 imposes a tax on certain removals, entries, and sales of gasoline.

Section 6421(a) generally provides that 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 by § 4081.

Section 6421(e)(2) defines "off-highway business use" as including any use by a person in a trade or business of such person or in an income producing activity otherwise than as a fuel in a highway vehicle that is registered or required to be registered for use on public highways.

Section 48.6421-3(a) of the Manufacturers and Retailers Excise Tax Regulations describes the timing for a claim for off-highway business use of gasoline. Under these regulations, gasoline on-hand at the end of a taxable year, or if applicable, a calendar quarter, such as gasoline in fuel supply tanks of vehicles, is excluded from a claim filed for the taxable year or calendar quarter, as the case may be.

ANALYSIS

The automobile manufacturer purchases gasoline and in the course of its business uses it as fuel in a motor vehicle that is not registered and is not required to be registered. This qualifies as an off-highway business use and entitles the ultimate purchaser to make a claim under § 6421(a). The manufacturer is the ultimate purchaser of this gasoline.

Section 48.6421-3(a) disallows off-highway business use claims for gasoline that is in the fuel supply tank of a motor vehicle at the end of the claim period. Therefore, the manufacturer may not make an off-highway business use claim for the fuel that remains in the fuel supply tank when it sells the vehicle. Once it sells the vehicle to the dealer, the vehicle is required to be registered. Thus, the gasoline no longer qualifies for off-highway business use and may not be claimed as off-highway business use.

Please call (202) 622-3130 if you have any further questions.