

owner, tenant, or operator of a farm who is otherwise entitled to treatment as user and ultimate purchaser must execute an irrevocable written agreement (as here described) no later than the date on which the aerial applicator or other applicator claiming the credit or payment files its return for the taxable year in which the gasoline is used. The agreement must identify the period for which the owner, tenant, or operator waives the right to credit or payment. The effective period of the waiver cannot extend beyond the last day of the taxable year of the owner, tenant, or operator of the farm on which the gasoline was used. If the owner, tenant, or operator's taxable year extends beyond the taxable year of the applicator, the applicator can only claim a credit or payment for periods included in the applicator's taxable year. Periods after the last day of the applicator's taxable year which are included under the agreement must be claimed on the applicator's return for the next succeeding taxable year. The waiver may be in the form shown under paragraph (1)(6) of this section or in any other form that meets the requirements of this paragraph and clearly states that the owner, tenant, or operator of the farm knowingly waives the right to receive the credit or payment.

(3) *Agreement included on aerial applicator's invoice.* The agreement waiving a right to receive a credit or payment under section 6420 may be a separate document or may appear on the invoice for aerial application services or other unrelated document from the aerial applicator or other applicator to the owner, tenant, or operator of the farm. If the waiver agreement appears on an invoice or other unrelated document, however, it must be printed in a section of the invoice or other document clearly set off from all other material contained in the invoice or other document, and it must be printed in type sufficiently large to put the owner, tenant, or operator of the farm on notice that the person has waived the right to receive a credit or payment under section 6420. Additionally, if the waiver agreement appears as part of any invoice or other unrelated document, it must be executed separately from any other item included in the in-

voice or other document which requires the owner, tenant, or operator's signature.

(4) *Copies of agreement waiving right to credit or payment.* No copies of any agreement waiving a right to credits or payments under section 6420 are to be submitted to the Internal Revenue Service unless a request is made by the Service to the taxpayer for the waivers. Aerial applicators must, however, retain copies of all waivers, and a copy of each waiver must be supplied by the aerial applicator to the owner, tenant, or operator of the farm who waives the right to receive a credit or payment. See regulations § 48.6420-6 for general requirements for records to be kept.

(5) *Waiver on behalf of owner, tenant, or operator of farm.* An agent of the owner, tenant, or operator of a farm who is expressly authorized to act on behalf of and to bind the owner, tenant, or operator may waive that person's rights to a credit or payment under section 6420 by signing the waiver on the person's behalf.

(6) *Sample form of agreement.* While no specific form is required for an effective waiver, an acceptable form waiving the right to receive a credit or payment under section 6420 follows:

I hereby waive my right as owner/tenant/operator of a farm located at _____ (address) _____ to receive credit or payment from the United States for gasoline used by _____ (aerial applicator) _____ on the farm in connection with cultivating the soil, or the raising or harvesting of any agricultural or horticultural commodity. This waiver applies to gasoline used during the period _____ both dates inclusive. I understand that by signing this waiver, I give up my right to claim any credit or payment for gasoline used by the aerial applicator during the period indicated, and I acknowledge that I have not previously claimed any credit for that gasoline.

(Signature of Owner/Tenant/Operator)

[T.D. 8043, 50 FR 32036, Aug. 8, 1985, as amended by T.D. 8152, 52 FR 31621, Aug. 21, 1987]

§ 48.6420-5 Applicable laws.

(a) *Penalties, excessive claims, etc.* All provisions of law, including penalties, applicable in respect of the tax imposed by section 4081 shall, to the extent applicable and consistent with section 6420, apply in respect of the

payments provided for in section 6420 to the same extent as if these payments were refunds of overpayments of the tax imposed on the sale of gasoline under section 4081. For special rules applicable to the assessment and collection of amounts constituting excessive payments under section 6420, see section 6206 and the regulations thereunder. For the civil penalty assessable in the case of excessive claims under section 6420, see section 6675 and the regulations thereunder. For the treatment as an overpayment of an amount allowable as an excessive credit under section 39 with respect to amounts payable under section 6420, see section 6401(b).

(b) *Examination of books and witnesses.* For the purpose of ascertaining (1) the correctness of any claim made under section 6420 or (2) the correctness of any credit or payment made in respect of the claim, the Commissioner shall have the same authority granted by paragraphs (1), (2), and (3) of section 7602, relating to examination of books and witnesses, as if the person claiming credit or payment under section 6420 were the person liable for tax.

(c) *Fractional part of a dollar.* Section 6420(e)(3) provides that section 7504, relating to fractional parts of a dollar, shall not apply with respect to the allowance of any amount as a credit or payment under section 6420. Accordingly, credits or payments authorized by section 6420 shall be made in the exact amount to which the claimant is entitled and shall not be rounded to the nearest whole dollar amount.

[T.D. 8043, 50 FR 32038, Aug. 8, 1985]

§ 48.6420-6 Records to be kept in substantiation of credits or payments.

(a) *In general.* Every person making a claim for credit or payment under section 6420 must keep records sufficient to enable the district director to determine whether the person is entitled to credit or payment under section 6420 and, if so, the amount of the credit or payment. No particular form is prescribed for keeping the records, but the records must include a copy of the income tax return or claim and a copy of any statement or document submitted with the return or claim. The records

must also show with respect to the taxable year covered by the claim—

(1) The number of gallons of gasoline purchased and the dates of purchase,

(2) The name and address of each vendor from whom gasoline was purchased and the total number of gallons purchased from each,

(3) The number of gallons of gasoline purchased by the claimant and used during the taxable year for farming purposes on a farm of which the claimant is the owner, tenant, or operator,

(4) The number of gallons of gasoline used during the taxable year for the purposes described in section 6420(c)(3)(A) and § 48.6420-4(d) (relating to cultivating, raising, or harvesting) by a person other than the owner, tenant, or operator on a farm of which the claimant is the owner, tenant, or operator, and

(5) Other information as necessary to establish the correctness of the claim.

(b) *Acceptable records.* (1) Evidence of purchases of gasoline, and the purposes for which it was used, to substantiate claims may include paid duplicate sales invoices or tickets from the gasoline dealer or other vendor, and detailed records of all fuel used which show the amount consumed on a farm for farming purposes and the amount used for other purposes.

(2) Records maintained for Federal or State income tax purposes, or to support claims for refund of a State tax on gasoline, may be used to the extent that they contain the information necessary to substantiate the accuracy of the claim for credit under section 6420. However, the records must show separately the number of gallons of gasoline used on a farm for farming purposes.

(3) If trucks or other vehicles are used both on and off the farm, an allocation of gasoline used in the vehicle will be required to show separately the number of gallons of gasoline used on a farm for farming purposes in respect of which the claim is made.

(4) If the owner, tenant, or operator is entitled under section 6420(c)(4)(A) to claim credit or payment in respect of gasoline used on the person's farm by another person other than an owner, tenant, or operator of the farm for a purpose described in section