

(g) * * *

(2) *Liability for tax*—(i) *Liability of the blender*. The blender is liable for the tax imposed under paragraph (g)(1) of this section.

(ii) *Liability of seller of untaxed liquid*. On and after April 2, 2003, a person that sells any liquid that is used to produce blended taxable fuel is jointly and severally liable for the tax imposed under paragraph (g)(1) of this section on the removal or sale of that blended taxable fuel if the liquid—

(A) Is described in § 48.4081–1(c)(1)(i)(B) (relating to liquids on which tax has not been imposed under section 4081); and

(B) Is sold by that person as gasoline, diesel fuel, or kerosene that has been taxed under section 4081.

(3) *Examples*. The following examples illustrate the provisions of this paragraph (g) and the definitions of *blended taxable fuel* and *diesel fuel* in § 48.4081–1(c):

Example 1. (i) *Facts*. W is a wholesale distributor of petroleum products and R is a retailer of petroleum products. W sells to R 1,000 gallons of an untaxed liquid (a liquid described in § 48.4081–1(c)(1)(i)(B)) and delivers the liquid into a storage tank (tank) at R's retail facility. However, W's invoice to R states that the liquid is undyed diesel fuel. At the time of the delivery, the tank contains 4,000 gallons of undyed diesel fuel, a taxable fuel that has been taxed under section 4081. The resulting 5,000 gallon mixture is suitable for use as a fuel in a diesel-powered highway vehicle because it has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle. The mixture does not satisfy the dyeing requirements of § 48.4082–1. R sells the mixture from the tank to a construction company for off-highway business use.

(ii) *Analysis*—(A) *Production of blended taxable fuel*. R is a blender within the meaning of § 48.4081–1 because R has produced blended taxable fuel, as defined in § 48.4081–1, by mixing 1,000 gallons of a liquid that has not been taxed under section 4081 with 4,000 gallons of diesel fuel that has been taxed under section 4081. The mixing occurs outside of the bulk transfer/terminal system and the resulting product is diesel fuel because it is suitable for use as a fuel in a diesel-powered highway vehicle.

(B) *Imposition of tax*. Under paragraph (g)(1) of this section, tax is imposed on R's sale of the 5,000 gallons of blended taxable fuel to the construction company. Even though the blended taxable fuel is sold for off-highway business use, which is a nontaxable use as defined in section 4082(b), the sale is not exempt from tax because the blended taxable fuel does not satisfy the dyeing requirements of § 48.4082–1. Tax is computed on 1,000 gallons, which is the difference between the number of gallons of blended taxable fuel R sells (5,000) and the number of gallons of previously taxed taxable fuel used to produce the blended taxable fuel (4,000).

(C) *Liability for tax*. R, as the blender, is liable for this tax under paragraph (g)(2)(i) of this section. W is jointly and severally liable for this tax under paragraph (g)(2)(ii) of this section because the blended taxable fuel is produced using an untaxed liquid that W sold as undyed diesel fuel (that is, as diesel fuel that was taxed under section 4081).

Example 2. (i) *Facts*. W, a wholesale distributor of petroleum products, buys 7,000 gallons of diesel fuel at a terminal rack. The diesel fuel is delivered into a tank trailer. Tax is imposed on the diesel fuel under § 48.4081–2 when the diesel fuel is removed at the rack. W then goes to another location where X, the operator of a chemical plant, sells W 1,000 gallons of an untaxed liquid (a liquid described in § 48.4081–1(c)(1)(i)(B)). However, X's invoice to W states that the liquid is undyed diesel fuel. This liquid is delivered into the tank trailer already containing the 7,000 gallons of diesel fuel. The resulting 8,000 gallon mixture is suitable for use as a fuel in a diesel-powered highway vehicle because it has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle. The mixture does not satisfy the dyeing requirements of § 48.4082–1. W sells the mixture to R, a retailer of petroleum products, and delivers the mixture into a storage tank at R's retail facility. R sells the mixture to its customers.

(ii) *Analysis*—(A) *Production of blended taxable fuel*. W is a blender within the meaning of § 48.4081–1 because W has produced blended taxable fuel, as defined in § 48.4081–1, by mixing 1,000 gallons of a liquid that has not been taxed under section 4081 with 7,000 gallons of diesel fuel that has been taxed under section 4081. The mixing occurs outside of the bulk transfer/terminal system and the resulting product is diesel fuel because it is suitable for use as a fuel in a diesel-powered highway vehicle. Thus, R has bought blended taxable fuel.

(B) *Imposition of tax*. Under paragraph (g)(1) of this section, tax is imposed on W's sale of the 8,000 gallons of blended taxable fuel to R. Tax is computed on 1,000 gallons, which is the difference between the number of gallons of blended taxable fuel W sells (8,000) and the number of gallons of previously taxed taxable fuel used to produce the blended taxable fuel (7,000). No tax is imposed on R's subsequent sale of the blended taxable fuel because tax is imposed only with respect to a removal or sale by the blender.

(C) *Liability for tax*. W, as the blender, is liable for this tax under paragraph (g)(2)(i) of this section. X is jointly and severally liable for this tax under paragraph (g)(2)(ii) of this section because the blended taxable fuel is produced using an untaxed liquid that X sold as undyed diesel fuel (that is, as diesel fuel that was taxed under section 4081). R has no liability for tax because R is not a blender and did not sell any untaxed liquid as a taxed taxable fuel. R only sold taxed taxable fuel, the blended taxable fuel bought from W.

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§ 48.6427–8 [Amended]

■ 7. Section 48.6427–8, paragraph (d), introductory text, is amended by adding “or kerosene” after “diesel fuel”.

PART 49—FACILITIES AND SERVICES EXCISE TAXES

■ 8. The authority citation for part 49 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

§ 49.4291–1 [Amended]

■ 9. Section 49.4291–1 is amended as follows:

■ a. The language “district director” is removed in the three places it appears and “Commissioner” is added in its place.

■ b. In the fourth sentence, the language “same district conference” is removed and “same conference” is added in its place.

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Approved: March 7, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

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DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 602**

[TD 9046]

RIN 1545–AX81; 1545–BB49; 1545–BB50; 1545–BB48; 1545–BB53; 1545–BB51; 1545–BB52; 1545–AW26; 1545–AX79

Tax Shelter Regulations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 9046) which were published in the **Federal Register** on Tuesday, March 4, 2003 (68 FR 10161), relating to tax shelter regulations.

DATES: This correction is effective March 4, 2003.

FOR FURTHER INFORMATION CONTACT: Tara P. Volungis or Charlotte Chyr at (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

The final regulations that are subject to these corrections are under sections 6011(a), 6111(d) and 6112 of the Internal Revenue Code.