



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[REG-119294-25]

RIN 1545-BS09

Section 6435 Payments; Refunds for Previously Taxed Dyed Fuel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register** are temporary regulations regarding the statutory provision providing for payments to taxpayers with respect to certain previously taxed dyed fuel. Specifically, the temporary regulations provide guidance as to the taxpayers that may claim such payments and the procedures these taxpayers must follow to claim the payments. The text of those regulations also serves as the text of these proposed regulations. These proposed regulations would affect taxpayers that withdraw previously taxed dyed fuel from a terminal.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-119294-25) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the

Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket on <https://www.regulations.gov>. Send paper submissions to: CC:PA:01:PR (REG-119294-25), Room 5503, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. A plain language summary of the proposed regulations will be made available at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Danielle Mayfield or Andrew Clark of the Office of Associate Chief Counsel (Energy, Credits, and Excise Tax) at (202) 317-6855 (not a toll-free number); concerning submissions of comments or requests for a public hearing, Publications and Regulations Section at (202) 317-6901 (not a toll-free number) or by email at publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This document contains proposed amendments to the Manufacturers and Retailers Excise Tax Regulations (26 CFR part 48) under section 6435 of the Internal Revenue Code (Code) relating to the determination of payments regarding dyed diesel fuel or dyed kerosene with respect to which excise tax under section 4081 of the Code was paid (proposed regulations). The proposed regulations would be issued under the authority granted by sections 6435(a), 6001, and 7805(a) of the Code.

Section 6435(a) requires that a person claiming a payment under section 6435 establish to the satisfaction of the Secretary of the Treasury or the Secretary's delegate (Secretary) that such person meets the requirements under section 6435(b).

Section 6001 authorizes the Secretary to prescribe regulations related to recordkeeping, statements, and returns.

Section 7805(a) authorizes the Secretary to prescribe all needful rules and

regulations for the enforcement of the Code, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** add § 48.6435-1T to the Manufacturers and Retailers Excise Tax Regulations (26 CFR part 48). The temporary regulations relate to the statutory provision providing for payments to taxpayers with respect to certain previously taxed dyed fuel. Specifically, the temporary regulations provide guidance as to the taxpayers that may claim such payments and the procedures these taxpayers must follow to claim the payments. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Proposed Applicability Date

Proposed § 48.6435-1 would apply to removals of eligible dyed fuel occurring on or after December 31, 2025. See section 7805(b)(2).

Special Analyses

I. Regulatory Planning and Review

These proposed regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (July 4, 2025) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a Federal agency obtain the approval of the OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or

sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the OMB.

These proposed regulations set forth intended collections of information to be provided to the IRS with Form 8849, *Claim for Refund of Excise Taxes*, and Schedule 5 (Form 8849), *Section 4081(e) and 6435 Claims*.

The collections of information in these proposed regulations would include reporting and recordkeeping requirements that are necessary to ensure that a taxpayer qualifies for a section 6435 refund. The collections would be used by the IRS for tax compliance purposes and by taxpayers to establish eligibility for a section 6435 refund.

The reporting requirements would include reporting related to claiming a section 6435 refund, including the execution and filing of reports as detailed in proposed § 48.6435-1(e). The recordkeeping requirements would include that a taxpayer keep records to establish its eligibility for and the amount of a section 6435 claim. The burden for these requirements is included with Form 8849 and its instructions and with Schedule 5 (Form 8849) and its instructions. These forms and form instructions are already approved under OMB control number 1545-1420.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

These proposed regulations would not change or create new collection requirements beyond the requirements that are being reviewed and approved by OMB under the temporary regulations.

III. *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on

a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act.

As discussed in Announcement 2026-1, 2026-4 I.R.B 402 (released December 22, 2025), absent a statutory change, the Treasury Department and the IRS lack the authority to pay section 6435 claims to anyone other than the person that paid the section 4081 tax to the IRS with respect to the eligible dyed fuel to which the claim relates. Section 6435 allows a person that establishes to the satisfaction of the Secretary that the person removed eligible indelibly dyed diesel fuel or kerosene (eligible dyed fuel) from a terminal to claim a payment (without interest) equal to the amount of the section 4081 tax previously paid with respect to such dyed fuel. The proposed regulations would provide needed guidance for such taxpayers on eligibility and filing procedures for making a section 6435 claim. These proposed regulations would establish reporting procedures, including a model report, that allow the IRS to verify a taxpayer's entitlement to a payment under section 6435 as contemplated by the statute. Accordingly, the Treasury Department and the IRS intend that the proposed rules provide clarity for taxpayers on the availability and claim procedures for a payment under section 6435.

These proposed regulations would affect a narrow subset of businesses within the fuel industry: taxpayers removing dyed fuel from an approved terminal with respect to which they previously paid tax. Because section 6435 first went into effect on December 31, 2025, no historical data is available on the number or size of section 6435 claimants. While there is uncertainty as to the exact number of small businesses within this group, such taxpayers are necessarily a subset of taxpayers filing Form 720 with respect to certain taxes paid on diesel fuel and kerosene. From 2021 to 2024, more than 85 percent of such identifiable Form 720 filers were businesses with total positive incomes of at least \$25 million, and more than two-thirds were businesses with

total assets of at least \$25 million. Moreover, under section 4081(e), the most analogous existing provision, the vast majority of taxpayers the IRS can identify have total positive incomes and assets of at least \$100 million. This data is constrained by issues matching between databases, but the IRS has no reason to believe it is skewed. As such, of the relatively few taxpayers affected by section 6435, nearly all can be expected to be predominantly large, sophisticated businesses in the fuel industry.

Even if a substantial number of small entities are affected, the economic impact of these proposed regulations on small entities is not likely to be significant. The proposed regulations would provide taxpayers with guidance regarding the eligibility and filing requirements for section 6435, including the reporting requirements. As explained in the PRA section, the reporting and recordkeeping obligations imposed by these proposed regulations would include filing a report to make a claim. It is estimated that fewer than 60 taxpayers will prepare one or more of such reports annually and that each report will take no more than one hour to complete.

Accordingly, the Secretary of the Treasury certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS specifically invite comments from any party, particularly affected small entities, on the accuracy of this certification.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private

sector, of \$100 million (updated annually for inflation). These proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector, in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed rules do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request for comments on all aspects of the proposed regulations. Any comments will be made available at <https://www.regulations.gov> or upon request.

A public hearing will be scheduled if requested in writing by any person that timely submits electronic or written comments. If a public hearing is scheduled, a notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal authors of these proposed regulations are Danielle Mayfield and Andrew Clark of the Office of Associate Chief Counsel (Energy, Credits, and Excise Tax). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 48

Excise taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 48 as follows:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Paragraph 1. The authority citation for part 48 is amended by adding an entry for § 48.6435-1 in numerical order to read in part as follows:

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

* * * * *

Section 48.6435-1 also issued under 26 U.S.C. 6435(a) and 6001.

Par. 2. Add § 48.6435-1 to subpart O to read as follows:

§ 48.6435-1 Dyed fuel refund.

[The text of proposed § 48.6435-1 is the same as the text of § 48.6435-1T in the temporary rule published elsewhere in this issue of the **Federal Register**].

Frank J. Bisignano,

Chief Executive Officer.