Indian Tribal Governments

and

Excise Taxes

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The purpose of this guide is to inform and assist Tribal Governments with excise tax issues. It is intended to reflect only excise tax exemptions as they relate to Tribal Governments, not individual Tribal members. For further assistance, please feel free to contact your Indian Tribal Government Specialist.

Section 7871(a)(2) of the Internal Revenue Code provides that an Indian Tribal Government shall be treated as a state, subject to section 7871(b), for purposes of any exemption from, credit or refund of, or payment with respect to, an excise tax imposed by:

A. Chapter 31 (relating to tax on special fuels)
B. Chapter 32 (relating to manufacturers excise tax)
C. Subchapter B of chapter 33 (relating to communications excise tax) or
D. Subchapter D of chapter 36 (relating to tax on use of certain highway vehicles).

Section 7871(b) provides that section 7871(a)(2) shall apply with respect to any transaction only if, in addition to any other requirement of Title 26 USC (Internal Revenue Code) applicable to similar transactions involving a state or political subdivision thereof, the transaction involves an essential governmental function of the Tribal Government.

Section 7871(e) provides that for the purposes of section 7871, the term essential governmental function "does not include any function not customarily performed by state and local governments with general taxing powers". Revenue Ruling 94-81 provides some examples of what is and what is not "essential governmental function." Also, various private letter rulings such as PLR 199909013 and PLR 9013002 discuss these functions.

Code section 7701(a)(40) defines an Indian Tribal Government. To qualify for these exemptions, the Tribe must be a recognized tribe. A listing of recognized tribes is provided in Revenue Ruling 2001-15. There is also a possibility of a separate governmental unit or political subdivision of a tribe to qualify under Section 7871(d). Those entities must file for determination via private letter ruling. Instructions are found in Revenue Procedures 2002-1, and 2004-1.

In general, the above provisions will apply to the Tribal administration, housing authorities, health clinics, police, fire, emergency, economic development, and similar "governmental functions". They do not apply to casinos or other business entities not normally associated with a state or local government.

The following is a synopsis of the taxes and methods by which the exemptions can be utilized. By no means is this meant to be more than a guideline and not meant to be cited as official policy of the Internal Revenue Service. Remember, this covers, in general terms, the excise taxes from which Tribes are exempt when performing essential government functions.

- ⇨ Tribes, states and local governments are subject to those excise taxes, such as air transport taxes, that are not specifically exempted. Also, the Supreme Court has decided that Tribes are subject to the various wagering taxes.

Communication Excise Tax:

This is the excise tax charged on telephone bills or on leased telephone systems. Those bills should be reviewed to determine whether excise tax is being charged on the telephone bill and/or leased systems used for essential government functions. If tax is being charged, a certificate of exemption should be filed with the provider of the telephone service or system and asked to refund any excise tax collected during the year. The certificate should include the following:

> This is to certify that per section 7871 of the Internal Revenue Code, the (name of tribe) is treated as a state with respect to the application of communication excise taxes and therefore is exempted from those taxes by section 4253 IRC.

The exemption certificate must be signed and dated by an official of the Tribe. The certificate will remain in effect for as long as the Tribal government continues to be considered a state by the IRC. If the service provider is changed, a new certificate must be filed with that provider.

- ⇨ **Caution:** If the same provider furnishes service to non-qualifying functions – i.e. not essential government services -, an allocation must be made to recognize as exempt, only the qualifying entities.

Tax on certain Highway Vehicles

Taxable highway vehicles are, in general, those with a gross vehicular weight of 55,000 pounds or more designed to carry a load over public highways. Vehicles used and actually operated by an Indian Tribal government are exempt from this tax only if the use is in the exercise of essential tribal governmental functions. Examples of types of vehicles could be fire-fighting equipment, certain buses, and vehicles used in highway maintenance. No forms 2290 are required to be filed on these vehicles. This does not include casino shuttle buses or other heavy vehicles not used for essential governmental functions.

Manufacturers Excise taxes and Retail tax on heavy trucks

The most common taxes of this type encountered by tribes would be on tires (in excess of 40 lbs), retail tax on heavy trucks, tractors and trailers, and “gas guzzler” vehicles. Note: The luxury tax on vehicles expired 12-31-2002 except on lease contracts entered into prior to January 1, 2003.

There is no general exclusion from the gas guzzler tax for state, local or tribal governments; however, vehicles used in law enforcement, fire fighting, search and rescue, or other law enforcement or public safety activities are specifically exempt.

Other manufacturers taxes are on sports fishing equipment, bows, arrow components and firearms. These items must be for essential government functions to be purchased tax- free. For information on other manufacturer excise taxes, see Revenue Ruling 94-81.

The retail tax on heavy trucks is only applicable to the first retail sale in the United States of the truck, tractor and/or trailer. There is no tax on vehicles purchased for the exclusive use of essential government services.

To purchase these items without tax for use in essential governmental functions, a certification must be provided to the seller. The certificate should be in substantially the following form:

> I hereby certify that I am _____(title of officer) of _____ (name of tribe) and I am authorized to execute this certificate and that the article or articles specified in this order are purchased for the exclusive use of _____ (name of tribe) in essential government functions.
> I understand that that the exemption from tax in the case of sales of articles under this exemption certificate to a Tribal Government is limited to the sale of articles purchased for its exclusive use. I understand that the fraudulent use of this certificate for the purpose of securing this exemption will subject me and all parties making such fraudulent use of this certificate to a fine or to imprisonment for not more than five years, or both, together with costs of prosecution.
>
> _____(Signature)

- ⇨ **A note of caution**: If any of the items purchased under this certificate are resold or transferred prior to being placed in service by the tribe for essential government functions, the original dealer must be informed and the applicable tax paid.

Fuel Taxes

Tribal governments are exempted from paying excise taxes on special fuels, in the same manner as state and local governments, when those fuels are used to carry on "essential governmental functions".

To purchase diesel fuel tax free, a certificate of exemption must be filed with the vendor. A sample certificate is attached. Fuel can be purchased in bulk or in single purchase. Note: diesel fuel can only be purchased tax free from a registered vendor, there is no provision to claim a fuel tax credit for taxed diesel fuel used by the Tribe for essential government functions.

Gasoline may be purchased tax free, with a certificate of exemption, only from a wholesale gasoline distributor. If fuel is purchased tax -paid for essential government functions, a claim can be filed using Form 8849. The Form 8849 can be filed quarterly when the amount claimed reaches at least $750 or in the 4th quarter of the Tribe's fiscal year. The claim should be noted as a 4th quarter claim at the top of the form if filed in the 4th quarter. Include schedule 1 of the Form 8849 and follow the instructions for State & Local Governments. See publication 378 for further information.

⇨ **Caution:** Recordkeeping requirements when using Form 8849.

Records should establish all of the following information for the taxed fuel usage:

- ✓ The number of gallons purchased and used during the period of the claim
- ✓ The dates of purchase.
- ✓ The names and addresses of suppliers and the amount purchased from each during the period covered by the claim
- ✓ The nontaxable use for which you used the fuel
- ✓ The number of gallons used for each nontaxable use

Currently there are procedures in place that allow the use of major oil company credit cards to purchase the gasoline at tax included prices and billed to the Tribe net of the fuel tax. A certificate of exemption must be filed with the issuer of the credit card. There is no provision, at present, to use fleet cards that are not issued by major oil companies in this manner. This use is being considered at this time but no rulings have been made.

⇨ **Note:** The exemptions listed above cannot be used to purchase fuel for resale in gas stations or for other non-governmental functions such as casino shuttle buses. If using the credit cards mentioned above, care must be taken to ensure only qualified vehicles receive the exemption.

Attachments:
Revenue Ruling 94-81.
Sample certificate used for purchase of fuel
Sample certificate used for exemption from communication excise tax
Instructions for filing a refund claim for communication excise tax previously paid
Information related to filing gasoline tax claims
Form 8849
Schedule 1, Form 8849
Instructions, Form 8849
Publication 378

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Revenue Ruling 94-81, 1994-2 CB 412, December 16, 1994.1994-52 I.R.B.

[*Code Secs. 4001 , 4041 , 4042 , 4051 , 4064 , 4071 , 4081 , 4091 , 4121 , 4131 , 4161 , 4181 , 4251 , 4261 , 4262 , 4271 , 4371 , 4401 , 4411 , 4461 , 4471 , 4481 , 4611 , 4661 , 4671 , 4681 , 5001 and 7871*]

Excise taxes: Indian tribal governments: Application of taxes.-- The IRS has issued guidance concerning the extent to which various excise taxes apply to Indian tribal governments. Examples are provided which illustrate the application of the taxes to various situations, and the appendix to the ruling provides a summary of the federal excise tax treatment of Indian tribal governments. BACK REFERENCES: ¶3575.01 , 5700 , 5835.01 , 6325.01 , 7615.01 , 8045.01 , 8915.01 , 9875.01 , 11,815.01 , 12,375.01 , 13,105.30 , 13,775.01 , 18,135.01 , 19,305.01 , 19,435.01 , 20,115.01 , 23,035.01 , 24,615.01 , 25,915.01 , 28,175.01 , 28,812 , 29,545.01 , 31,675.01 , 32,375.01 , 33,075.01 , 33,725.01 , 36,610.001 , 36,620.011 , 36,630.001 and 58,825.01 .

This revenue ruling discusses the extent to which various federal excise taxes apply to Indian tribal governments. The revenue ruling provides several examples that illustrate the application of the taxes to various situations, and the appendix to the ruling provides a summary of the federal excise tax treatment of Indian tribal governments.

Indian tribal governments have no inherent exemption from federal excise taxes. *Federated Tribes of the Warm Springs Reservation of Oregon v. Kurtz*, 691 F.2d 878 (9th Cir. 1982) (holding that Indian tribes are not exempt from federal excise tax), *cert. denied*, 460 U.S. 1040 (1983). Thus, absent a specific statutory exemption, Indian tribal governments must purchase taxable articles or services on a tax-paid basis and must pay tax on their sale or use of taxable articles or services.

Section 7871(a)(2) of the Internal Revenue Code provides that an Indian tribal government shall be treated as a state, subject to §7871(b) , for purposes of any exemption from, credit or refund of, or payment with respect to, an excise tax imposed by:

(A) chapter 31 (relating to tax on special fuels),

(B) chapter 32 (relating to manufacturers excise taxes),

(C) subchapter B of chapter 33 (relating to communications excise tax), or

(D) subchapter D of chapter 36 (relating to tax on use of certain highway vehicles).

Section 7871(b) provides that §7871(a)(2) shall apply with respect *to any transaction only if, in addition to any other requirement of title 26 applicable to similar transactions involving a state or political subdivision thereof, the transaction involves the exercise of an essential governmental function of the Indian tribal government.*

Section 7871(e) provides that for purposes of §7871 , *the term "essential governmental function" does not include any function that is not customarily performed by state and local governments with general taxing powers.*

The following examples illustrate the application of federal excise taxes to Indian tribal governments.

Example 1--(i) *Facts. S* is a federally recognized Indian tribe. The tribal government of *S* purchases gasoline and diesel fuel for use in school buses, police cars, and fire trucks.

(ii) *Analysis.* Section 4081 (a part of chapter 32) imposes a tax on gasoline and diesel fuel. Sections 6416 and 6427 provide methods under which gasoline and diesel fuel that were subject to tax may be sold to state or local governments free of tax. The gasoline wholesale distributor or the diesel fuel ultimate vendor may sell the fuel tax free and claim a credit or payment equal to the tax previously imposed.

Providing school, police, or firefighting services is an essential governmental function within the meaning of §7871(b) that is customarily performed by state and local governments with general taxing powers, and the purchases of gasoline and diesel fuel for use by the tribal government of S in providing those services is in furtherance of those governmental functions. With respect to those activities, the tribal government of S is treated as a state under §7871(a)(2) for purposes of the taxes imposed under chapter 32. Therefore, gasoline wholesale distributors and diesel fuel ultimate vendors may sell the fuel tax free to the tribal government of S for those purposes and claim a credit or payment under §§6416(a)(4) and 6427(1) equal to the tax previously paid.

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Example 2--(i) *Facts.* *T* is a federally recognized Indian tribe. The tribal government of *T* purchases gasoline and diesel fuel for resale at a retail service station located on Indian lands.

(ii) *Analysis.* There is no exemption that would allow a state (or an Indian tribal government) to purchase fuel tax free for resale to consumers. Therefore, gasoline wholesale distributors and diesel fuel ultimate vendors may not sell the fuel tax free to the tribal government of *S* for resale to consumers or claim a credit or payment equal to the tax previously paid.

Example 3--(i) *Facts.* *U* is a federally recognized Indian tribe. The tribal government of *U* manufactures and sells archery and sport fishing equipment to a sporting goods company. The equipment is manufactured to the sporting goods company's specifications and includes articles subject to federal excise tax, such as compound and recurve target and hunting bows, arrows with graphite or fiberglass shafts, fishing rods, and artificial lures.

(ii) *Analysis.* Section 4161 (a part of chapter 32) imposes taxes on the sale by the manufacturer, producer, or importer of certain sporting goods, including bows, arrows, fishing rods, and artificial lures. Section 4221(a)(4) provides that no manufacturers excise tax shall be imposed under §4161 on the sale to a state or local government for the exclusive use of a state or local government.

Under §7871(a)(2) , Indian tribal governments are to be treated as states for purposes of exemption from, credit or refund of, or payment with respect to, the tax imposed on archery and fishing equipment under §4161 . The exemption for states from taxes imposed under chapter 32 applies only to sales to states for their exclusive use. However, a state would not be exempt from tax on its sales of taxable archery and fishing equipment of its manufacture. *See State of New York v. United States,* 326 U.S. 572 (1946) (federal excise tax on the sale of mineral water was constitutionally valid as applied to sales of water from Saratoga Springs by the State of New York). Therefore, the tribal government of *U* is subject to manufacturers excise tax on its sales of taxable sporting goods.

Example 4--(i) *Facts.* *V* is a federally recognized Indian tribe. The tribal government of *V* owns and operates (either directly or through a management company) a casino that is open to the general public. As part of the casino's gaming activities, it conducts a lottery and pull-tab operation.

(ii) *Analysis.* Section 4401(a)(1) (a part of chapter 35) imposes an excise tax equal to 0.25 percent of the amount of the wager on any wager authorized under the law of the state in which accepted. Section 4411(a) (also a part of chapter 35) imposes a special tax to be paid by each person who is liable for the tax imposed under §4401(a)(1) or who is engaged in receiving wagers for or on behalf of any person so liable. Section 4402(3) provides that no tax shall be imposed by this subchapter on any wager placed in a sweepstakes, wagering pool, or lottery that is conducted by an agency of a state acting under authority of state law, but only if the wager is placed with the state agency conducting the sweepstakes, wagering pool, or lottery, or with its authorized employees or agents.

Section 4421 provides that the term "wager" means any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting the wagers, any wager placed in a wagering pool with respect to a sports event or a contest, if the pool is conducted for profit, and any wager placed in a lottery conducted for profit. The term "lottery" includes the numbers game, policy, and similar types of wagering. The term does not include any game of a type in which usually the wagers are placed, the winners are determined, and the distribution of prizes or other property is made, in the presence of all persons placing wagers in the game. *See* Rev. Rul. 57-258 , 1957-1 C.B. 418, which holds that a pull-tab game is a form of lottery.

The taxes imposed under chapter 35 are not included under §7871(a)(2) and, therefore, Indian tribal governments are not treated as states under §7871 with respect to wagering taxes. Thus, even though a wager placed with a lottery conducted by a state agency operating under state law would not be subject to tax, a wager placed with a lottery conducted by the tribal government of *V* is subject to tax. The holding of this example is not affected by §20(d) of the Indian Gaming Regulatory Act, 25 U.S.C. §2719(d) , which provides that Indian tribes shall be treated as states for purposes of reporting and withholding taxes on winnings from gaming activities.

ADDITIONAL TAXES

For the income tax treatment of Indian tribal entities, see Rev. Rul. 94-16 , 1994-1 C.B. 19.

DRAFTING INFORMATION

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The principal author of this revenue ruling is Edward Madden of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. Madden on (202) 622-3130 (not a toll-free call).

Appendix to Rev. Rul. 94-81

Appendix to Rev. Rul. 94-81

Summary of the federal excise tax treatment of Indian tribes under IRC section 7871(a)(2) and other provisions [1]

Code Section(s)	Application to States	Application to Indian Tribes
4001 Tax on Luxury	No categorical exemption. Exemption for exclusive use in police, firefighting, search and rescue, or other law enforcement or public safety activities, or public works activities. §4001(d).	Same as states, but limited to essential governmental functions.
4041, 4081, 4091 Taxes on Special Fuel, Gasoline, Diesel Fuel, Aviation Fuel, and Compressed Natural Gas	No tax on sales for the exclusive use of a state (accomplished by tax-free sale or by refund), §§4041(g)(2), 6416(a)(4) and (b)(2), 6427(l), Sales or resales by state for non-exempt uses are subject to tax.	Same as states, but limited to essential governmental functions.
4042 Tax on Fuel Used in Commercial Transportation on Inland Waterways	Exempt. §4042(c)(3).	Same as states, but limited to essential governmental functions.
4051 Retail Tax on Heavy Vehicles	No tax on sales for the exclusive use of a state (accomplished by tax-free sale or by refund). §§4221(a)(2), 6416(b)(2). Sales to a state under a resale agreement may be subject to tax.	Same as states, but limited to essential governmental functions.
4064 Tax on Gas Guzzler Automobiles	No categorical exemption, but certain vehicles sold for use and used by stages by law enforcement or emergency purposes are exempt. §4064(b)(1)(C).	Same as states, but limited to essential governmental functions.
4071 Tax on Heavy Tires	No tax on sales for the exclusive use of a state (accomplished by tax-free sale or by refund). §§4221(a)(2), 6416(b)(2).	Same as states, but limited to essential governmental functions.
4121 Tax on Coal	No exemption. §4221(a).	No exemption.
4131 Tax on Vaccines	No exemption. §4221(a).	No exemption.
4161 Tax on Sport Fishing Equipment and Bows and	No tax on sales for the exclusive use of a state (accomplished by tax-free	Same as states, but limited to essential governmental functions.

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Arrows	sale or by refund). §§4221(a)(2), 6416(b)(2).	
4181 Manufacturers Tax on Firearms. [2]	No tax on sales for the exclusive use of a state (accomplished by tax-free sale or by refund). §§4221(a)(2), 6416(b)(2).	Same as states, but limited to essential governmental functions.
4251 Tax on Communications	No tax is imposed on any amount paid for communications facilities or services furnished to a state. §4253(i).	Same as states, but limited to essential governmental functions.
4261, 4271 Tax on Air Transportation of Persons or Property	No exemption.	No exemption.
4371 Tax on Foreign Insurance	Policies issued to states are taxable, but if issued in the exercise of an essential governmental function the state is not liable. Rev. Rul. 56-259, 1956-1 C.B. 530.	No comparable exemption.
4401, 4411 Wagering and Occupational Taxes	No categorical exemption. Specific exemption for state conducted lotteries. §4402(3).	No exemption for tribal governments as such, but specific classes of wagers (for example, para-mutual wagers) may be exempt. §4402(1).
4461 Harbor Maintenance Tax [3]	No categorical exemption, but an exemption is provided for ferries. §4462(a)(4).	Same as states.
4471 Tax on Transportation by Water	No tax on any voyage on any vessel owned or operated by a state. §4472(1).	No comparable exemption.
4481 Heavy Vehicle Use Tax	Exempt. §4483(a).	Same as states, but limited to essential governmental function.
4611 Tax on Petroleum	No exemption.	No exemption.
4661 Tax on Certain Chemicals	No exemption.	No exemption.
4671 Tax on Certain Imported Substances	No exemption.	No exemption.
4681 Tax on Ozone-depleting Chemicals	No exemption.	No exemption.
5001, 5041, 5051 Taxes on Distilled Spirits, Wine and Beer [2]	No exemption.	No exemption.
5081, 5091, 5111, 5121 Occupational Taxes on Manufacture and Sale of Liquors [2]	No exemption, but limitation on number of special taxes required to be paid.	No exemption.
5701 Taxes on Tobacco Products [2]	No exemption.	No exemption.
5731 Occupational Taxes on	No exemption.	No exemption.

Model Certificate A

CERTIFICATE OF FARMING USE OR STATE USE

(To support vendor's claim for credit or payment under section 6427 of the Internal Revenue Code)

_____

Name, Address, and Employer Identification Number of Vendor

The undersigned buyer ("Buyer") hereby certifies the following under penalties of perjury:

A. Buyer will use the diesel fuel or kerosene to which this certificate relates — (check one):

1. ☐ On a farm for farming purposes (as defined in §48.6420-4 of the Manufacturers and Retailers Excise Tax Regulations) and Buyer is the owner, tenant, or operator of the farm on which the fuel will be used;
2. ☐ On a farm (as defined in §48.6420-4(c)) for any of the purposes described in ¶ (d) of that section (relating to cultivating, raising, or harvesting) and Buyer is not the owner, tenant, or operator of the farm on which the fuel will be used; or
3. ☐ For the exclusive use of a State or local government, or the District of Columbia.

B. This certificate applies to the following (complete as applicable):

1. If this is a single purchase certificate, check here ☐ and enter:
   a. Invoice or delivery ticket number _____
   b. Number of gallons _____
2. If this is a certificate covering all purchases under a specified account or order number, check here ☐ and enter:
   a. Effective date _____
   b. Expiration date _____
   (period not to exceed 1 year after effective date)
   c. Buyer account or order number _____

■ Buyer will provide a new certificate to the vendor if any information in this certificate changes.

■ If Buyer uses the diesel fuel or kerosene to which this certificate relates for a purpose other than stated in the certificate, Buyer will be liable for any tax.

■ Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____
Printed or typed name of person signing

_____
Title of person signing

_____
Name of Buyer

_____
Employer identification number

_____
Address of Buyer

_____
Signature and date signed

FEDERAL COMMUNICATIONS EXCISE TAX EXEMPTION CERTIFICATE

The undersigned claims exemption from the Federal Excise Tax imposed by Section 4251 of the Internal Revenue Code on all communications services billed to the account or billing number identified below for the year beginning _____.

The undersigned certifies that such exemption is allowable by law, that such services are being and will be furnished to and charges paid from funds of:
(Check one and fill in the blanks if appropriate)

Category 1 - Governmental and International Organizations

a) _____ The United States Government (Section 4253)
b) _____ A State or Territory, or Political Subdivision. (Section 4253(i))
c) _____ The American Red Cross or a Public International Organization made tax exempt by Presidential Executive Order Number _____.
d) _____ An organization created and specifically made tax exempt by Act of Congress, Public Law Number _____. *(Cite the law containing the Act of Congress)*
e) _____ A Quasi-Governmental Organization, performing the civic function of _____. *(Identify the function)*
f) _____ The Foreign Government of _____ *(Name the country)* whose accredited diplomatic representative claims exemption under the terms of a treaty and is engaged in official business.

Category 2 -- Other Organizations

a) _____ A Non-Profit Educational Institution that qualifies for exemption under Section 4253(j) of the Internal Revenue Code and which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where it's educational activities are carried on.
b) _____ A Non-Profit Hospital qualified for exemption under Section 4253(h) of the Internal Revenue Code.
c) _____ An organization that qualifies for exemption under Section 4253(f) of the Internal Revenue Code as a, ( ) Common Carrier, ( ) Telephone Company, ( ) Telegraph Company, ( ) Radio or Television Broadcasting Station or Network.
d) _____ An organization claiming exemption related to toll telephone services utilized exclusively in the collection of news for the public press, news ticket services or audio or video broadcasting or in dissemination of news through the public press. (Section 4253(b))

Further, the non-profit organization claiming exemption under Category 1 a) or b) above, has received a determination letter or a ruling from the Internal Revenue Service stating that the organization is exempt from Income Tax as an organization described in Section 501(c)(3) of the Internal Revenue Code. The date of such determination letter is _____ and such determination letter has not been revoked.

The undersigned understands that the fraudulent use of this certificate for the purpose of securing exemption from Federal Excise Taxes imposed by Section 4251 of the Internal Revenue Code, may subject him or her to fines, imprisonment, or both together with the cost of prosecution. In addition, the undersigned agrees to notify the Telephone Company, in writing, when the claimed status no longer applies.

Name _____ Account Number _____

Address _____

Signature of Authorized Representative _____

Title _____ Date _____

Filing a claim for communication excise taxes previously paid.

If communication taxes have been paid on telephone systems used for essential tribal government functions, it is possible to file a claim for refund of those taxes. The statute of limitations for filing such a claim is 3 years from the close of the tribal fiscal year. In other words, if the tribal fiscal year ends on December 31, 2000, the period for filing a claim for that year would end on December 31, 2003. Any claim for refund would have to be received by the Internal Revenue Service on or before that date.

To determine the amount of tax to be refunded, prepare a spreadsheet showing the amount of tax paid by quarter for all of the quarters for which the statute of limitations is open. The amount can be determined by review of the telephone bills for the qualifying telephones. This spreadsheet will become an attachment to the Form 8849, which is the claim form.

File Form 8849 and schedule 6 of Form 8849 to make the claim. Form 8849 is the cover sheet that contains the name, address, employer identification number of the entity making the claim, and identifies the type of claim being filed. For communication tax claims, check the box “other claims” and write in “communications excise tax”. Schedule 6, which will be attached along with the spreadsheet showing the tax paid by quarter, shows the total amount of the claimed tax.

In addition, a statement should be attached identifying the tribe as “a tribe treated as a state”, under section 7871 IRC, with respect to the application of communication excise taxes is therefore exempt from these taxes by section 4253 IRC”.

The Form 8849 should be signed and sent to the address as shown in the where to file section of the instructions for Form 8849. Retain a copy of the Form 8849 and attachments as well as the source documents (telephone bills) for at least 3 years. These claims are subject to examination to ensure that only the excise tax on telephones used for essential government purposes is being claimed.

Filing claims for Gasoline Taxes

Gasoline claims are normally filed on a quarterly basis (if the amount of the claim is at least $750) or on an annual basis. A quarterly claim can be filed in any of the quarters when the claim amount reaches the $750 level.

Prior to January 2003, the “one claim” rule allowed only one (1) claim to be filed for any period (Quarter or year). The “one claim rule” created problems for multiple tribal entities under one federal employer identification number (EIN). Treasury has abandoned the one claim rule for periods after January 2003. This decision was based on the findings in the case of Western Company of North America, Plaintiff-Appellant vs. United States, 2003-1 USTC 70205.

For tribal entities, all gasoline claims are filed using form 8849. This is true for both the quarterly and annual claims. Follow the instructions for completing form 8849 and mail the claim to:

Internal Revenue Service
Cincinnati, OH 45999-0002.

Reminder: Only the gasoline used for essential governmental services is eligible for the credit. Casino vehicles do not qualify for the credit.

Tribal governments cannot file fuel tax credits for diesel fuel. Diesel fuel should be purchased free of federal excise tax using the exemption mentioned earlier.

Form
8849
(Rev. January 2003)

Department of the Treasury—Internal Revenue Service

Claim for Refund of Excise Taxes

OMB No. 1545-1420

Print clearly. Leave a blank box between words.

Name of claimant

Employer identification number (EIN)

Address (number, street, room or suite no.)

Social security number (SSN)

City and state or province. If you have a foreign address, see page 2.

ZIP code

Foreign country, if applicable. Do not abbreviate.

Month claimant's income tax year ends

Daytime telephone number (optional)

Caution: ***Do not*** *use Form 8849 to make adjustments to liability reported on Forms 720 for prior quarters or to claim any amounts that were or will be claimed on* ***Schedule C (Form 720),*** *Claims,* ***Form 4136,*** *Credit for Federal Tax Paid on Fuels,* ***Form 2290,*** *Heavy Highway Vehicle Use Tax Return, or* ***Form 730,*** *Monthly Tax Return On Wagers.*

Schedules Attached

Check (√) the appropriate box(es) for the schedule(s) you attach to Form 8849. Only attach the schedules on which you are claiming a refund. Schedules 2, 3, 5, and section 4091(d) claims on Schedule 6 cannot be filed with any other schedules on Form 8849. File each of these schedules with a separate Form 8849.

Schedule 1	Nontaxable Use of Fuels	☐
Schedule 2	Sales by Registered Ultimate Vendors of Undyed Diesel Fuel and Undyed Kerosene	☐
Schedule 3	Gasohol Blending	☐
Schedule 4	Sales by Gasoline Wholesale Distributors	☐
Schedule 5	Section 4081(e) Claims	☐
Schedule 6	Other Claims	☐

Sign Here

Under penalties of perjury, I declare (1) that I have examined this claim, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete, and (2) that amounts claimed on this form have not been, and will not be, claimed on any other form.

Signature and title (if applicable) | Date

Type or print your name below signature.

General Instructions

Section references are to the Internal Revenue Code.

A Change To Note

After December 31, 2002, the rates change for gasohol. The new rates are shown on Schedule 1, lines 1b, 1c, and 1d, Schedule 3, and on Schedule 4, lines 2, 3, and 4.

Additional Information

You may find the following publications helpful when preparing Form 8849. The publications have definitions of terms used in the instructions.

- **Pub. 510,** Excise Taxes for 2003, has more information on excise taxes.
- **Pub. 378,** Fuel Tax Credits and Refunds, has more information on nontaxable uses.

Purpose of Form

Use Schedules 1 through 5 to claim certain fuel related refunds such as nontaxable uses (or sales) of fuels. Form 8849 lists the schedules by number and title.

Use Schedule 6 for claims not reportable on Schedules 1–5, including refunds of excise taxes reported on:

- **Form 720,** Quarterly Federal Excise Tax Return, including section 4091(d) claims;
- **Form 730,** Monthly Tax Return on Wagers;
- **Form 11-C,** Occupational Tax and Registration Return for Wagering; or
- **Form 2290,** Heavy Highway Vehicle Use Tax Return.

Filers only need to complete and attach to Form 8849 the applicable schedules.

Do not use Form 8849:

- To make adjustments to liability reported on Forms 720 filed for prior quarters. Use Form 720X.
- To claim amounts that you took or will take as a credit on Schedule C (Form 720), Form 4136, Form 2290, or Form 730.

How To Fill In Form 8849

Name and Address

Print the information in the spaces provided. Begin printing in the first box on the left. Leave a blank box between each name and word. If there are not enough boxes, print as many letters as there are boxes. Use hyphens for compound names; use one box for each hyphen.

P.O. box. If your post office does not deliver mail to your street address and you have a P.O. box, show your box number instead of your street address.

Foreign address. Enter the information in the following order: city, state or province, and the name of the country. Follow the country's practice for entering the postal code. Do not abbreviate the country's name.

Taxpayer Identification Number (TIN)

Enter your employer identification number (EIN) in the boxes provided. If you are not required to have an EIN, enter your social security number (SSN). An incorrect or missing number will delay processing your claim.

Month Income Tax Year Ends

Enter the month your income tax year ends. For example, if your income tax year ends in December, enter "12" in the boxes. If your year ends in March, enter "03".

Signature

Form 8849 must be signed by a person with authority to sign this form for the claimant.

Where To File

- For Schedules 1, 4, and 6 (except section 4091(d) claims on Schedule 6), mail Form 8849 to:

  Internal Revenue Service
  Cincinnati, OH 45999-0002

- For Schedules 2, 3, 5, and 6 (only section 4091(d) claims on Schedule 6), mail Form 8849 to:

  Internal Revenue Service
  P.O. Box 312
  Covington, KY 41012-0312

Caution: *Private delivery services designated by the IRS cannot deliver items to P.O. boxes. You must use the U.S. Postal Service to mail any item to an IRS P.O. box address. For details on designated private delivery services, see* ***Pub. 509,*** *Tax Calendars for 2003.*

Including the Refund in Income

Include any refund of excise taxes in your gross income if you claimed the amount of the tax as an expense deduction that reduced your income tax liability. See Pub. 378 for more information.

Information for Completing Schedules 1–5

Note: *Your refund will be delayed or Form 8849 will be returned to you if you do not follow the required procedures or do not provide all the required information. See the instructions for each schedule.*

Complete each schedule and attach all information requested for each claim you make. Be sure to enter your name and TIN on each schedule you attach. Generally, for each claim, you must enter the:

- Period of the claim.
- Item number (when requested) from the **Type of Use Table** on page 3.
- Rate (as needed). See the separate schedule instructions.
- Number of gallons.
- Amount of refund.

If you need more space for any line on a schedule (for example, you have more than one type of use) prepare a separate sheet with the same information. Include your name and TIN.

Period of Claim

Enter the period of the claim for each type of claim using the MMDDYYYY format. For example, the first quarter of 2003 for a calendar-year taxpayer would be 01012003 to 03312003.

Type of Use Table

The following table lists the nontaxable uses of fuels. You must enter the number from the table in the **Type of Use** column as required on Schedules 1 and 4.

No.	Type of Use
1	On a farm for farming purposes
2	Off-highway business use (for business use other than in a highway vehicle registered or required to be registered for highway use)
3	Export
4	In a boat engaged in commercial fishing
5	In certain intercity and local buses
6	For diesel fuel in a qualified local bus
7	In a bus transporting students and employees of schools (school buses)
8	For diesel fuel and kerosene used other than as a fuel in the propulsion engine of a train or diesel-powered highway vehicle (but not off-highway business use)
9	In foreign trade
10	Certain helicopter and fixed-wing air ambulance uses
11	For aviation fuel used other than as a fuel in the propulsion engine of an aircraft
12	In a highway vehicle owned by the United States that is not used on a highway
13	Exclusive use by a nonprofit educational organization
14	Exclusive use by a state, political subdivision of a state, or the District of Columbia
15	In an aircraft or vehicle owned by an aircraft museum
16	In military aircraft
17	For use in the production of special fuels

Additional Information for Schedules 1, 2, and 3

Annual Claims

An annual claim must be made on **Form 4136,** Credit for Federal Tax Paid on Fuels, for the income tax year during which the fuel was:

- Used by the ultimate purchaser.
- Sold by the registered ultimate vendor.
- Used to produce gasohol.

The following claimants must use Form 8849 (Schedule 1) for annual claims:

1. The United States,

2. A state, political subdivision of a state, or the District of Columbia, and

3. Organizations exempt from income tax under section 501(a) (provided that the organization is not required to file **Form 990-T,** Exempt Organization Business Income Tax Return, for that taxable year).

For claimants included in 1–3 above, the annual Form 8849 for fuel used during the taxable year must be filed within the 3 years following the close of the taxable year. For these claimants, the taxable year is based on the calendar year or fiscal year it regularly uses to keep its books.

Note: *Gasoline used by the above claimants on a farm for farming purposes (type of use 1) is an allowable use on Line 1 of Schedule 1.*

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on the form and schedules to carry out the Internal Revenue laws of the United States. We need it to figure and collect the right amount of tax. Subtitle F, Procedure and Administration, of the Internal Revenue Code allows refunds of taxes imposed under Subtitle D, Miscellaneous Excise Taxes. The form and schedules are used to determine the amount of the refund that is due to you. Section 6109 requires you to provide your taxpayer identification number (SSN or EIN). Routine uses of tax information include giving it to the Department of Justice for civil and criminal litigation, and cities, states, and the District of Columbia for use in administering their tax laws. We may also disclose this information to Federal and state agencies to enforce Federal nontax criminal law and to combat terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file the form and schedules will vary depending on individual circumstances. The estimated average times are:

	Recordkeeping	Learning about the law or the form	Preparing, copying, assembling, and sending the form to the IRS
Form 8849	3 hr., 35 min.	30 min.	34 min.
Schedule 1	11 hr., 57 min.		12 min.
Schedule 2	7 hr., 39 min.	12 min.	19 min.
Schedule 3	3 hr., 21 min.		3 min.
Schedule 4	4 hr., 46 min.		4 min.
Schedule 5	5 hr., 15 min.	6 min.	11 min.
Schedule 6	4 hr., 18 min.	12 min.	16 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making the form and schedules simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send Form 8849 to this address. Instead, see **Where To File** on page 2.

Schedule 1 (Form 8849)
(Rev. January 2003)

Department of the Treasury—Internal Revenue Service

Nontaxable Use of Fuels

▶ Attach to Form 8849.

OMB No. 1545-1420

Name as shown on Form 8849	EIN or SSN	Total refund (see instructions)
		$

Period of claim: *Enter month, day, and year in MMDDYYYY format.* **From** ▶ _____ **To** ▶ _____

1 Nontaxable Use of Gasoline and Gasohol	(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of refund *Multiply col. (b) by col. (c)*		(e) CRN
a Gasoline		$ .184		$		362
		.184				
b 10% gasohol		.132				359
c 7.7% gasohol		.14396				375
d 5.7% gasohol		.15436				376
2 Nontaxable Use of Aviation Gasoline						
a Use in commercial aviation (other than foreign trade)		$ .15		$		354
b Other nontaxable use		.194				324
		.194				

3 Nontaxable Use of Undyed Diesel Fuel

Claimant has the name and address of the person(s) who sold the diesel fuel to the claimant and the date(s) of the purchase(s) and if exported, the required proof of export.

Claimant certifies that the diesel fuel did not contain visible evidence of dye.

Exception. If any of the diesel fuel included in this claim **did** contain visible evidence of dye, attach a detailed explanation and check here . . . . . ▶ ☐

Caution: *Claims cannot be made on line 3 for diesel fuel used on a farm for farming purposes or for the exclusive use by a state or local government. Only registered ultimate vendors may make those claims using Schedule 2.*

	(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of refund *Multiply col. (b) by col. (c)*		(e) CRN
a Nontaxable use (see **Caution** above)		$ .244		$		360
		.244				
b Use in trains		.20				353
c Use in certain intercity and local buses		.17				350

4 Nontaxable Use of Undyed Kerosene

Claimant has the name and address of the person(s) who sold the kerosene to the claimant and the date(s) of the purchase(s) and if exported, the required proof of export.

Claimant certifies that the kerosene did not contain visible evidence of dye.

Exception. If any of the kerosene included in this claim **did** contain visible evidence of dye, attach a detailed explanation and check here . . . . . ▶ ☐

Caution: *Claims cannot be made on line 4 for kerosene used on a farm for farming purposes, for the exclusive use by a state or local government, or for sales from a blocked pump. Only registered ultimate vendors may make those claims using Schedule 2.*

	(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of refund *Multiply col. (b) by col. (c)*		(e) CRN
Nontaxable use (see **Caution** above)		$ .244		$		346
		.244				
5 Nontaxable Use of Aviation Fuel						
a Use in commercial aviation (other than foreign trade)		$ .175		$		355
b Other nontaxable use		.219				369
c Other nontaxable use		.044				377
6 Nontaxable Use of Liquefied Petroleum Gas (LPG) in Certain Buses						
a Use in certain intercity and local buses		$ .062		$		352
b Use in qualified local buses		.136				361
Use in school buses		.136				

Instructions

Purpose of Schedule

An ultimate purchaser of gasoline, gasohol, aviation gasoline, diesel fuel, kerosene, aviation fuel, and liquefied petroleum gas (LPG) uses Schedule 1 to make a claim for refund. The fuel must have been used in a nontaxable use. See the instructions for lines 1 through 5 for more information.

Claim Requirements

The following requirements must be met:

1. The amount claimed on Schedule 1 must be at least $750. This amount may be met by:

a. Making a claim for fuel used during any quarter of a claimant's income tax year or

b. Aggregating amounts from any quarters of the claimant's income tax year for which no other claim has been made.

2. The claim must be filed during the first quarter following the last quarter included in the claim. For example, a claim for the quarters consisting of July through September and October through December must be filed between January 1 and March 31.

3. Only one claim may be filed for a quarter.

Note: *If requirements 1–3 above are not met, see* ***Annual Claims*** *in the Form 8849 instructions.*

Total Refund

Add all amounts in column **(d)** and enter the result in the total refund box at the top of the schedule.

Type of Use

The fuel must have been used for one or more of the types of use listed in the instructions for lines 1 through 5. The nontaxable uses are listed in the Type of Use Table in the Form 8849 instructions.

How To File

Attach Schedule 1 to Form 8849. Mail to the IRS at the address under **Where To File** in the Form 8849 instructions.

Line 1. Nontaxable Use of Gasoline and Gasohol

Claimant. The ultimate purchaser of the gasoline or gasohol is the only person eligible to make this claim.

Allowable uses. The gasoline or gasohol must have been used during the period of claim for type of use 2, 3, 4, 5, 7, 12, 13, 14, or 15. Type of use 2 does not include any personal use or use in a motorboat.

Line 2. Nontaxable Use of Aviation Gasoline

Claimant. The ultimate purchaser of the aviation gasoline is the only person eligible to make this claim.

Allowable uses. For line 2b, the aviation gasoline must have been used during the period of claim for type of use 3, 9, 10, 13, 14, 15, or 16.

Line 3. Nontaxable Use of Undyed Diesel Fuel

Claimant. The ultimate purchaser of the diesel fuel is the only person eligible to make this claim.

Caution: *Claims cannot be made on line 3 for diesel fuel:*

- *Used on a farm for farming purposes or*
- *For the exclusive use by a state or local government.*

Only registered ultimate vendors may make those claims; see Schedule 2.

Allowable uses. For line 3a, the diesel fuel must have been used during the period of claim for type of use 2, 3, 6, 7, 8, 12, 13, or 15. Type of use 8 includes use as heating oil and use in a boat. Type of use 2 does not include any personal use or use in a motorboat.

Line 4. Nontaxable Use of Undyed Kerosene

Claimant. The ultimate purchaser of the kerosene is the only person eligible to make this claim.

Caution: *Claims cannot be made on line 4 for kerosene:*

- *Used on a farm for farming purposes,*
- *For the exclusive use by a state or local government, or*
- *Sales from a blocked pump.*

Only registered ultimate vendors may make those claims; see Schedule 2.

Allowable uses. The kerosene must have been used during the period of claim for type of use 2, 3, 7, 8, 12, 13, or 15. Type of use 8 includes use as heating oil and use in a boat. Type of use 2 does not include any personal use or use in a motorboat.

Line 5. Nontaxable Use of Aviation Fuel

Claimant. The ultimate purchaser of the aviation fuel is the only person eligible to make this claim.

Allowable uses. For line 5b (aviation fuel taxed at a rate of 21.9 cents a gallon) or line 5c (aviation fuel taxed at a rate of 4.4 cents a gallon), the aviation fuel must have been used during the period of claim for type of use 1, 3, 9, 10, 11, 13, 14, 15, or 16.

Line 6. Nontaxable Use of Liquefied Petroleum Gas (LPG) in Certain Buses

Claimant. The ultimate purchaser of the LPG (such as propane or butane) is the only person eligible to make this claim.

Schedule 6 (Form 8849)
(Rev. January 2003)

Department of the Treasury—Internal Revenue Service

Other Claims

▶ Attach to Form 8849.

OMB No. 1545-1420

Name as shown on Form 8849	EIN or SSN	Total refund (total of lines 1–5) $

Enter the earliest and latest **dates of the events** included in this claim. Enter in MMDDYYYY format.

Earliest date ▶ _____ Latest date ▶ _____

Claimant's registration number for Section 4091(d) claims. ▶ _____

	Tax	Amount of refund		CRN
1		$		
2				
3				
4				
5				

Use the space below for an explanation of each tax claimed.

For claims under section 6416(b)(2) relating to certain uses and resales of certain articles subject to manufacturers or retailers taxes, claimant certifies that it sold the article at a tax-excluded price, repaid the amount of tax to the ultimate vendor, or has obtained the written consent of the ultimate vendor to make the claim; and has the required supporting evidence.

Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of schedule. Use Schedule 6 for claims not reportable on Schedules 1–5, including refunds of excise taxes reported on:

- **Form 720,** Quarterly Federal Excise Tax Return, including section 4091(d) claims;
- **Form 2290,** Heavy Highway Vehicle Use Tax Return;
- **Form 730,** Monthly Tax Return for Wagers; and
- **Form 11-C,** Occupational Tax and Registration Return for Wagering.

Caution: *Do not use Schedule 6 to make adjustments to liability reported on Forms 720 filed for prior quarters. Use* ***Form 720X,*** *Amended Quarterly Federal Excise Tax Return. Also, do not use Schedule 6 to claim amounts that were taken or will be taken as a credit on Form 2290 or Form 730.*

Claim requirements. Generally, a claim must be filed within 3 years of the filing of the return to which the claim relates, or 2 years from when the tax reported on that return was paid, whichever is later.

How to file. Attach Schedule 6 to Form 8849. Mail it to the IRS at the address under **Where To File** in the Form 8849 instructions. If you are filing a Section 4091(d) claim, write "Section 4091(d)" at the top of Form 8849 and on the envelope. If you attach additional sheets, write your name and taxpayer identification number on each sheet.

Form 720

A claim relating to the taxes listed below may be made. See **Pub. 510,** Excise Taxes for 2003, for information on allowable claims relating to these taxes. The following information must be attached to the claim.

1. A detailed description of the claim.

2. Any additional information required by the regulations.

3. The amount of the claim.

4. How you figured the claim amount.

5. Any other information you believe will support the claim.

Tax	CRN
Ozone-depleting chemicals	398
Truck, trailer, and semitrailer chassis and bodies, and tractors	383
Passenger vehicles (luxury tax)	392
Highway-type tires	366
Gas guzzler automobiles	340
Vaccines	397
Sport fishing equipment	341
Electric outboard motors and sonar devices	342
Bows	344
Arrow components	370

Section 4091(d), CRN 369

Caution: *This claim cannot be filed with any other claim. See* ***Schedules Attached*** *on Form 8849.*

If a registered aviation fuel producer bought aviation fuel on which tax was paid to the government, then a claim for refund of the tax may be made.

Claimant. The registered producer that bought taxed aviation fuel is the only person eligible to make this claim.

Claim requirement. Attach all of the following information to Schedule 6:

1. Volume and type of aviation fuel.

2. Date on which the second producer acquired the aviation fuel included in the claim.

3. Amount of tax that the first producer paid to the government.

4. If the fuel was sold, a statement certifying that the amount of the prior tax has not been included in the price of the fuel and has not been collected from the purchaser by the claimant.

5. A copy of the First Producer's Report that relates to the aviation fuel covered by the claim.

6. A copy of any Statement of Subsequent Seller that the second producer received with respect to that aviation fuel.

Form 2290, CRN 365

A claim for refund may be made for the following:

- An overpayment of tax due to a mistake in tax liability previously reported on Form 2290.

Claimant. The claim is made by the person that paid the tax to the government.

- A pro rata refund of the tax paid on Form 2290 for a vehicle that was destroyed or stolen before June 1 of any period (July 1–June 30) and subsequently not used during the period. To make a claim for a vehicle that was destroyed or stolen, the following information must be attached to Schedule 6:

1. The vehicle identification number (VIN).

2. Whether the vehicle was destroyed or stolen.

3. Date of the accident or theft.

4. Computation of the refund amount. See the line 4 instructions for Form 2290.

Claimant. The claim is made by the person in whose name the vehicle is registered at the time it was destroyed or stolen.

- Any vehicle on which the tax was paid on Form 2290 if the vehicle was used 5,000 miles or less on public highways (7,500 or less for agricultural vehicles) during the period (July 1–June 30). The mileage limitation applies to the total mileage a vehicle is driven during a period regardless of the number of owners of the vehicle. A claim for this mileage refund cannot be filed until after June 30 of the period.

Claimant. The claim is made by the person that paid the tax to the government.

Form 730, CRN 368

A claim for refund may be made for the following:

- An overpayment of tax. The claim is not allowed unless a statement of the facts is attached that includes the following information.

1. An explanation of the reason for claiming a refund.

2. The date of payment and the amount of the tax.

3. Whether any previous claim covering the amount involved, or any part, has been filed.

4. A statement that you:

a. Have not collected (whether as a separate charge or otherwise) the amount of the tax from the person that placed the wager on which the tax was imposed, or

b. Have repaid the amount of the tax to the person that placed the wager, or

c. Have the written consent of the person that placed the wager to the making of the refund (the consent must be attached to the claim).

5. If the overpayment relates to a laid-off wager accepted by you, one of the above three statements must be attached for both the person that placed the laid-off wager and the person that placed the original wager.

Claimant. The claim is made by the person that paid the tax to the government.

- Credit for wagers laid off by you. If you accept a wager and lay off all or part of the wager with a person who is liable for the tax and have paid the tax, a claim may be allowed for the tax paid on the laid off amount. No claim is allowed unless the following information is attached to the claim.

1. The certificate described in Regulations section 44.6419-2(d).

2. A statement that includes: **(a)** the reason for the refund, **(b)** the month in which the tax was paid, **(c)** the date of payment, and **(d)** whether any previous claim covering the amount involved, or any part, has been filed.

Claimant. The claim is made by the person that paid the tax to the government.

Form 11-C, CRN 367

A claim for refund may be made for overpayment of tax due to a mistake in tax liability previously reported on Form 11-C.

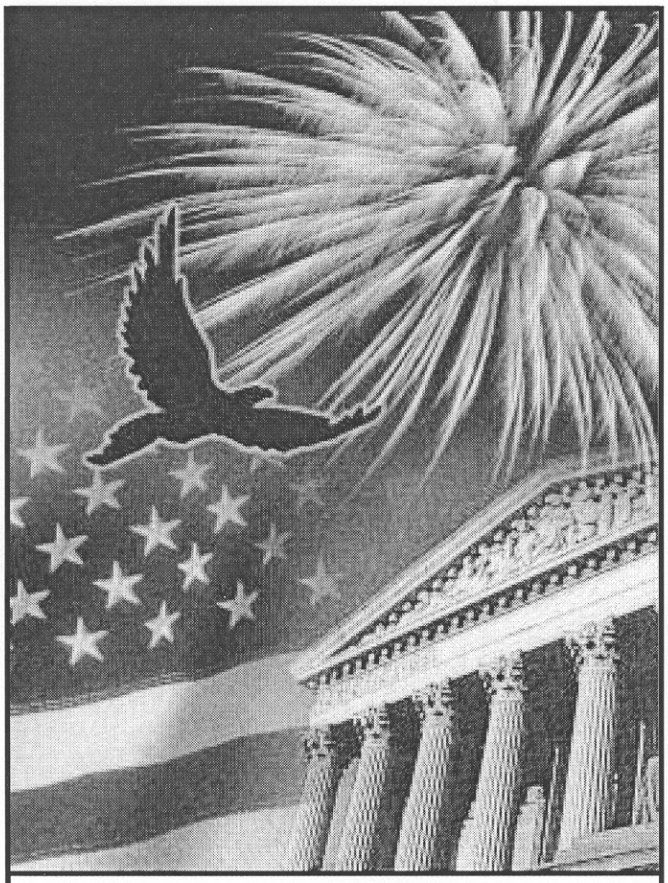
Claimant. The claim is made by the person that paid the tax to the government.

Department of the Treasury

Internal Revenue Service

Publication 378
(Rev. December 2003)
Cat. No. 46455F

Fuel Tax Credits and Refunds



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What's New

Pending legislation. At the time this publication went to print, Congress was considering legislation that would change fuel tax credits and refunds. We will provide written guidance on the IRS website at **www.irs.gov** if any of the legislation becomes law.

One claim rule. You may be able to amend a previously filed income tax return to make a claim on **Form 4136**, Credit for Federal Tax Paid on Fuels. See *Claiming a Credit* later.

Introduction

This publication covers federal fuel tax credits you may be able to claim on your income tax return. It also covers fuel tax refunds you may be able to claim during the year.

This publication discusses the following subjects.

- The kinds of fuels that qualify for a credit or refund.
- The uses of fuels that qualify for a credit or refund.
- Who may claim a credit or refund.
- How to claim a credit or refund for fuel taxes.
- The alcohol fuel credit.

It also contains an example with filled-in forms at the end of chapter 3.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can email us at ***taxforms@irs.gov**. Please put "Publications Comment" on the subject line.

You can write to us at the following address:

Internal Revenue Service
TE/GE and Specialty Forms and Publications Branch
SE:W:CAR:MP:T:T
1111 Constitution Ave. NW
Washington, DC 20224

We respond to many letters by telephone. Therefore, it would be helpful if you would in-

clude your daytime phone number, including the area code, in your correspondence.

Useful Items

You may want to see:

Publication

- ❑ **510** Excise Taxes for 2004

Form (and Instructions)

- ❑ **720** Quarterly Federal Excise Tax Return
- ❑ **720X** Amended Quarterly Federal Excise Tax Return
- ❑ **4136** Credit for Federal Tax Paid on Fuels
- ❑ **8849** Claim for Refund of Excise Taxes
- ❑ **6478** Credit for Alcohol Used as Fuel

1.

Fuels

Federal excise taxes are imposed on certain fuels. This chapter lists the nontaxable uses (defined in chapter 2) of each fuel for which a credit or refund of the excise tax may be allowed to an ultimate purchaser. It also covers the credit or refund allowed for gasohol blending and for certain sales by registered ultimate vendors of undyed diesel fuel and undyed kerosene.

CAUTION *The ultimate purchaser of compressed natural gas and special motor fuels other than liquefied petroleum gas used in buses, discussed later, generally does not use taxed fuel for a nontaxable use and no credit or refund would be allowable. These fuels are described in Publication 510.*

Type of use table. The nontaxable uses listed under each fuel are from *Table 1–1*. The first column of the table is the number you enter on Form 4136 (Nos. 1–11) or Form 8849 (Nos. 1–16) for that type of use.

Gasoline and Gasohol

Gasoline means all products (including gasohol) commonly or commercially known or sold as gasoline with an octane rating of 75 or more that are suitable for use as a motor fuel. It includes gasoline blendstocks, discussed in Publication 510. Aviation gasoline is discussed below.

Gasohol means a mixture of gasoline and alcohol that satisfies the alcohol-content requirements immediately after the mixture is produced. Alcohol includes ethanol and methanol. Generally, this includes ethanol used to produce ethyl tertiary butyl ether (ETBE) and methanol produced from methane gas formed in waste disposal sites. However, alcohol produced from petroleum, natural gas, coal (including peat), or any derivative or product of these items, and alcohol that is less than 190 proof, do not qualify as alcohol for these rules. See Publication 510 for a complete discussion of gasohol.

Nontaxable Uses

The following are the uses of gasoline and gasohol for which a credit or refund may be allowable to an ultimate purchaser.

- On a farm for farming purposes (credit only).
- Off-highway business use.
- Export.
- In a boat engaged in commercial fishing.
- In an intercity or local bus.
- In a school bus.
- In a highway vehicle owned by the United States that is not used on a highway.
- Exclusive use by a nonprofit educational organization.
- Exclusive use by a state, political subdivision of a state, or the District of Columbia.
- In an aircraft or vehicle owned by an aircraft museum.

Table 1–1. **Type of Use Table**

No.	Type of Use (See Chapter 2 for definition of terms)
1	On a farm for farming purposes
2	Off-highway business use (for business use other than in a highway vehicle registered or required to be registered for highway use)
3	Export
4	In a boat engaged in commercial fishing
5	In certain intercity and local buses
6	For diesel fuel in a qualified local bus
7	In a bus transporting students and employees of schools (school buses)
8	For diesel fuel and kerosene used other than as a fuel in the propulsion engine of a train or diesel-powered highway vehicle (but not off-highway business use)
9	In foreign trade
10	Certain helicopter and fixed-wing air ambulance uses
11	For aviation fuel used other than as a fuel in the propulsion engine of an aircraft
12	In a highway vehicle owned by the United States that is not used on a highway
13	Exclusive use by a nonprofit educational organization
14	Exclusive use by a state, political subdivision of a state, or the District of Columbia
15	In an aircraft or vehicle owned by an aircraft museum
16	In military aircraft

Gasohol Blending

A ***gasohol blender*** is any person that regularly produces gasohol outside of the bulk transfer/terminal system for sale or use in the blender's trade or business. A gasohol blender may be allowed a credit or refund for part of the excise tax imposed on gasoline the blender uses to produce gasohol.

The amount you may claim is based on the gallons of gasoline used to make gasohol. You cannot take a refund or credit if the gasoline was taxed at a reduced rate. See Publication 510 for a complete discussion of gasohol.

Aviation Gasoline

Aviation gasoline means all special grades of gasoline suitable for use in aviation reciprocating engines and covered by ASTM specification D 910 or military specification MIL-G-5572.

Nontaxable Uses

The following are the uses of aviation gasoline for which a credit or refund may be allowable to an ultimate purchaser.

- On a farm for farming purposes (credit only).
- Export.
- In foreign trade.
- Certain helicopter and fixed-wing air ambulance uses.
- In commercial aviation (other than foreign trade).
- Exclusive use by a nonprofit educational organization.
- Exclusive use by a state, political subdivision of a state, or the District of Columbia.
- In a aircraft owned by an aircraft museum.
- In military aircraft.

Undyed Diesel Fuel and Undyed Kerosene

Diesel fuel means any liquid that, without further processing or blending, is suitable for use as a fuel in a diesel-powered highway vehicle or train. A liquid is suitable for this use if the liquid has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train. A liquid may possess this practical and commercial fitness even though the specified use is not the liquid's predominant use. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the propulsion engine of a

diesel-powered highway vehicle or diesel-powered train. Diesel fuel does not include gasoline, kerosene, excluded liquid, No. 5 and No. 6 fuel oils covered by ASTM specification D 396, or F-76 (Fuel Naval Distillate) covered by military specification MIL-F-16884.

An ***excluded liquid*** is either of the following.

1) A liquid that contains less than 4% normal paraffins.
2) A liquid with all the following properties.
   a) Distillation range of 125 degrees Fahrenheit or less.
   b) Sulfur content of 10 ppm or less.
   c) Minimum color of +27 Saybolt.

Kerosene means any of the following liquids.

- One of the two grades of kerosene (No. 1–K and No. 2–K) covered by ASTM specification D 3699.
- Kerosene-type jet fuel (aviation-grade kerosene) covered by ASTM specification D 1655 or military specification MIL-DTL-5624T (Grade JP-5) or MIL-DTL-83133E (Grade JP-8).

Kerosene also includes any liquid that would be described above but for the presence of a dye of the type used to dye kerosene for a nontaxable use.

However, kerosene does not include an excluded liquid, discussed above.

Nontaxable Uses

The following are the uses of ***undyed*** diesel fuel for which a credit or refund may be allowable to an ultimate purchaser.

- Off-highway business use.
- Export.
- In an intercity or local bus.
- In a qualified local bus.
- In a school bus.
- Used other than as a fuel.
- In a train.
- In a highway vehicle owned by the United States that is not used on a highway.
- Exclusive use by a nonprofit educational organization.
- In a vehicle owned by an aircraft museum.

The following are the uses of ***undyed*** kerosene for which a credit or refund may be allowable to an ultimate purchaser.

- Off-highway business use.
- Export.
- In a school bus.
- Used other than as a fuel.
- In a highway vehicle owned by the United States that is not used on a highway.
- Exclusive use by a nonprofit educational organization.
- In a vehicle owned by an aircraft museum.

CAUTION *Only a registered ultimate vendor (defined below), can claim a credit or refund for:*

No credit or refund is allowable for any use of ***dyed*** diesel fuel and ***dyed*** kerosene. You buy these fuels excise tax free. See Publication 510 for more information about dyed fuels.

Sales by Registered Ultimate Vendors

The following are the sales for which a credit or refund may be allowable to the registered ultimate vendor only.

- Undyed diesel fuel or undyed kerosene sold for use on a farm for farming purposes or for exclusive use by a state or local government,
- Undyed kerosene sold from a blocked pump (defined below), or
- Undyed kerosene sold for blending.

Registered ultimate vendor (farming and state use). This is a person that sells undyed diesel fuel or undyed kerosene to any of the following.

- The owner, tenant, or operator of a farm for use by that person on a farm for farming purposes.
- A person other than the owner, tenant, or operator of a farm for use by that person on a farm in connection with cultivating, raising, or harvesting.
- A state or local government for its exclusive use.

The person must be registered by the IRS as an ultimate vendor. See Publication 510 for a discussion of the registration requirements.

Registered ultimate vendor (blocked pump). This is a person that sells undyed kerosene from a blocked pump. The person must be registered by the IRS as an ultimate vendor (blocked pump).

A credit or refund may be allowable to a registered ultimate vendor (blocked pump) if the vendor sold to a buyer undyed kerosene from a blocked pump for use other than as a fuel in a diesel-powered highway vehicle and the vendor had no reason to believe the kerosene would not be used in that manner.

Blocked pump. A blocked pump is a fuel pump that meets all the following requirements.

1) It is used to make retail sales of undyed kerosene for use by the buyer in any nontaxable use.
2) It is at a fixed location.
3) It is identified with a legible and conspicuous notice stating, "UNDYED UNTAXED KEROSENE, NONTAXABLE USE ONLY."
4) It meets either of the following conditions.
   a) It cannot reasonably be used to dispense fuel directly into the fuel supply tank of a diesel-powered highway vehicle or train.
   b) It is locked by the vendor after each sale and unlocked by the vendor only in response to a buyer's request for undyed kerosene for use other than as a fuel in a diesel-powered highway vehicle or train.

Registered ultimate vendor (blending). This is a taxable fuel registrant (discussed in Publication 510), a registered ultimate vendor, or a registered ultimate vendor (blocked pump).

A credit or refund may be allowable to a registered ultimate vendor (blending) if the vendor sold undyed kerosene in an area described in an IRS declaration of extreme cold for the production of a cold weather blend.

Cold weather blend. This is a blend of kerosene and diesel fuel produced in an area described in an IRS declaration of extreme cold and sold for use or used for heating purposes.

Aviation Fuel

Aviation fuel means any liquid, other than gasoline or diesel fuel, that is suitable for use as a fuel in an aircraft.

Nontaxable Uses

The following are the uses of aviation fuel for which a credit or refund may be allowable to an ultimate purchaser.

- On a farm for farming purposes.
- Export.
- In foreign trade.
- Certain helicopter and fixed-wing air ambulance uses.
- Used other than as a fuel.
- In commercial aviation (other than foreign trade).
- Exclusive use by a nonprofit educational organization.
- Exclusive use by a state, political subdivision of a state, or the District of Columbia.
- In a aircraft owned by an aircraft museum.
- In military aircraft.

Liquefied Petroleum Gas

Liquefied petroleum gas (LPG) includes propane, butane, and pentane, or mixtures of those gases.

Nontaxable Uses

The following are the uses of LPG for which a credit or refund may be allowable to an ultimate purchaser.

- In an intercity or local bus.
- In a qualified local bus.
- In a school bus.

2.

Definitions

This chapter provides definitions of the terms used in Table 1–1 for nontaxable uses. If applicable, the type of use number from Table 1–1 is indicated in each heading.

On a Farm for Farming Purposes (No. 1)

On a farm for farming purposes means fuel used in carrying on a trade or business of farming, on a farm in the United States, and for farming purposes.

CAUTION *If undyed diesel fuel or undyed kerosene is used on a farm for farming purposes, the claim is made by the registered ultimate vendor.*

Farm. A farm includes livestock, dairy, fish, poultry, fruit, fur-bearing animals, and truck farms, orchards, plantations, ranches, nurseries, ranges, and feed yards for fattening cattle. It also includes structures such as greenhouses used primarily for the raising of agricultural or horticultural commodities. A fish farm is an area where fish are grown or raised — not merely caught or harvested.

Farming purposes. As an owner, tenant, or operator, you use fuel on a farm for farming purposes if you use it in any of the following ways.

1) To cultivate the soil or to raise or harvest any agricultural or horticultural commodity.
2) To raise, shear, feed, care for, train, or manage livestock, bees, poultry, fur-bearing animals, or wildlife.
3) To operate, manage, conserve, improve, or maintain your farm and its tools and equipment.
4) To handle, dry, pack, grade, or store any raw agricultural or horticultural commodity. For this use to qualify, you must have produced more than half the commodity so treated during the tax year. Commodity means a single raw product. For example, apples and peaches are two separate commodities.
5) To plant, cultivate, care for, or cut trees or to prepare (other than sawing logs into lumber, chipping, or other milling) trees for market, but only if the planting, etc., is incidental to your farming operations. Your tree operations will be incidental only if they are minor in nature when compared to the total farming operations.

If any other person, such as a neighbor or custom operator, performs a service for you on your farm for any of the purposes listed in (1) or (2), you are considered to be the ultimate purchaser that used the fuel on a farm for farming purposes. However, see *Custom application of fertilizer and pesticide,* next.

If doubt exists whether the owner, the tenant, or the operator of the farm bought the fuel, determine who bore the cost of the fuel. For example, if the owner of a farm and the tenant equally share the cost of gasoline that is used on a farm for farming purposes, each can claim a credit for the tax on one-half the fuel used.

Custom application of fertilizer and pesticide. The use of fuel in the aerial or other application of fertilizer, pesticides, or other substances is a use of fuel on a farm for farming purposes. In the case of gasoline and aviation fuel, you, as the owner, tenant, or operator, may waive your right to be treated as the ultimate purchaser. If you waive your right, the applicator is treated as having used the gasoline or aviation fuel on a farm for farming purposes. See Chapter 18 of Pub. 225, Farmer's Tax Guide, for a sample waiver.

To waive your right to be treated as the ultimate purchaser, you must take all the following actions.

- Before the applicator files his or her claim, execute in writing an irrevocable agreement stating that you knowingly give up your right to the credit or refund. You may authorize an agent, such as a cooperative, to sign the waiver for you.
- Identify clearly the period the waiver covers.

The applicator must retain a copy of the waiver and give you a copy. Do ***not*** send a copy to the Internal Revenue Service unless requested to do so.

The waiver may be a separate document or it may appear on an invoice or another document from the applicator. If the waiver appears on an invoice or other document, it must be printed in a section clearly set off from all other material, and it must be printed in type sufficiently large to put you on notice that you are waiving your right to the credit or refund. If the waiver appears as part of an invoice or other document, it must be signed separately from any other item that requires your signature.

The effective period of the waiver cannot extend beyond your tax year. When the period covered by the waiver extends beyond the applicator's tax year, the applicator can only claim a credit or refund for gasoline used in the part of the waiver period included in the applicator's tax year. The applicator must wait until the next tax year to file a claim for gasoline used in the rest of the waiver period.

Fuel not used for farming. Fuel is not used on a farm for farming purposes if it is used in any of the following ways.

- Off the farm, such as on the highway or in noncommercial aviation, even if the fuel is used in transporting livestock, feed, crops, or equipment.
- For personal use, such as mowing the lawn.
- In processing, packaging, freezing, or canning operations.
- In processing crude gum into gum spirits of turpentine or gum resin or in processing maple sap into maple syrup or maple sugar.

Off-Highway Business Use (No. 2)

Off-highway business use means fuel used in a trade or business or in an income-producing activity other than as a fuel in a highway vehicle registered or required to be registered for use on public highways. The terms "registered ", "highway vehicle" and "public highway" are defined below. Do not consider any use in a boat as an off-highway business use.

Off-highway business use includes fuels used in any of the following ways.

- In stationary machines such as generators, compressors, power saws, and similar equipment.
- For cleaning purposes.
- In forklift trucks, bulldozers, and earthmovers.

Generally, this use does not include nonbusiness use of fuel, such as use by minibikes, snowmobiles, power lawn mowers, chain saws, and other yard equipment.

Example. Caroline owns a landscaping business. She uses power lawn mowers and chain saws in her business. The gasoline used in the power lawn mowers and chain saws qualifies as fuel used in an off-highway business use. The gasoline used in her personal lawn mower at home does not qualify.

Highway vehicle. A highway vehicle is any self-propelled vehicle designed to carry a load over public highways, whether or not it is also designed to perform other functions. Examples of vehicles designed to carry a load over public highways are passenger automobiles, motorcycles, buses, and highway-type trucks and truck tractors. A vehicle is a highway vehicle even though the vehicle's design allows it to perform a highway transportation function for only one of the following.

- A particular type of load, such as passengers, furnishings, and personal effects (as in a house, office, or utility trailer).
- A special kind of cargo, goods, supplies, or materials.
- Some off-highway task unrelated to highway transportation, except as discussed next.

Vehicles not considered highway vehicles. Generally, the following kinds of vehicles are not considered highway vehicles.

1) Specially designed mobile machinery for nontransportation functions. A self-propelled vehicle is not a highway vehicle if all the following apply.
   a) The chassis has permanently mounted to it machinery or equipment used to perform certain operations (construction, manufacturing, drilling, mining, timbering, processing, farming, or similar operations) if the operation of the machinery or equipment is unrelated to transportation on or off the public highways.

b) The chassis has been specially designed to serve only as a mobile carriage and mount for the machinery or equipment, whether or not the machinery or equipment is in operation.

c) The chassis could not, because of its special design and without substantial structural modification, be used as part of a vehicle designed to carry any other load.

2) Vehicles designed for off-highway transportation. A self-propelled vehicle is not a highway vehicle if both of the following apply.

a) The vehicle is designed primarily to carry a specific kind of load other than over the public highway for certain operations (construction, manufacturing, mining, processing, farming, drilling, timbering, or similar operations).

b) The vehicle's use in carrying this load over public highways is substantially limited or impaired because of its design. To make this determination, you can take into account whether the vehicle can travel at regular highway speeds, requires a special permit for highway use, or is overweight, overheight, or overwidth for regular highway use.

Public highway. A public highway includes any road in the United States that is not a private roadway. This includes federal, state, county, and city roads and streets.

Registered. A vehicle is considered registered when it is registered or required to be registered for highway use under the law of any state, the District of Columbia, or any foreign country in which it is operated or situated. Any highway vehicle operated under a dealer's tag, license, or permit is considered registered. A highway vehicle is not considered registered solely because a special permit allows the vehicle to be operated at particular times and under specified conditions.

Dual use of propulsion motor. Off-highway business use does not include any fuel used in the propulsion motor of a registered highway vehicle even though that motor also operates special equipment by means of a power take-off or power transfer. It does not matter if the special equipment is mounted on the vehicle.

Example. The motor of a registered concrete-mixer truck operates both the engine and the mixing unit by means of a power take-off. The fuel used in the motor to run the mixer is not off-highway business use.

Use in separate motor. Off-highway business use includes fuel used in a separate motor to operate special equipment, such as a refrigeration unit, pump, generator, or mixing unit. If you draw fuel from the same tank that supplies fuel to the propulsion motor, you must figure the quantity used in the separate motor operating the special equipment. You may make a reasonable estimate based on your operating experience and supported by your records.

You can use devices that measure the miles the vehicle has traveled (such as hubometers) to figure the gallons of fuel used to propel the vehicle. Add to this amount the fuel consumed while idling or warming up the motor before propelling the vehicle. The difference between your total fuel used and the fuel used to propel the vehicle is the fuel used in the separate motor.

Example. Hazel owns a refrigerated truck. It has a separate motor for the refrigeration unit. The same tank supplies both motors. Using the truck's hubometer, Hazel figures that 90% of the fuel was used to propel the truck. Therefore, 10% of the fuel is used in an off-highway business use.

Fuel lost or destroyed. You cannot treat fuel lost or destroyed through spillage, fire, or other casualty as fuel used in an off-highway business use.

Export (No. 3)

Export means fuel removed from the United States with the intention that the fuel remain in a foreign country or possession of the United States.

In a Boat Engaged in Commercial Fishing (No. 4)

In a boat engaged in commercial fishing means fuel used in taking, catching, processing, or transporting fish, shellfish, or other aquatic life for commercial purposes, such as selling or processing the catch, on a specific trip basis. They include boats used in both fresh and salt water fishing. They do not include boats used for both sport fishing and commercial fishing on the same trip.

Buses

In Certain Intercity and Local Buses (No. 5)

In certain intercity and local buses means fuel used in a bus engaged in furnishing (for compensation) passenger land transportation available to the general public. The bus must be engaged in one of the following activities.

- Scheduled transportation along regular routes regardless of the size of the bus.
- Nonscheduled operations if the seating capacity of the bus is at least 20 adults, not including the driver. Vans and similar vehicles used for van-pooling or taxi service do not qualify.

Available to the general public. This means you offer service to more than a limited number of persons or organizations. If a bus operator normally provides charter operations through travel agencies but has buses available for chartering by the general public, this service is available to the general public. A bus does not qualify when its operator uses it to provide exclusive services to only one person, group, or organization.

For Diesel Fuel in a Qualified Local Bus (No. 6)

In a qualified local bus means fuel used in a bus meeting all the following requirements.

- It is engaged in furnishing (for compensation) intracity passenger land transportation available to the general public.
- It operates along scheduled, regular routes.
- It has a seating capacity of at least 20 adults (excluding the driver).
- It is under contract with (or is receiving more than a nominal subsidy from) any state or local government to furnish the transportation.

Intracity passenger land transportation. This is the land transportation of passengers between points located within the same metropolitan area. It includes transportation along routes that cross state, city, or county boundaries if the routes remain within the metropolitan area.

Under contract. A bus is under contract with a state or local government only if the contract imposes a bona fide obligation on the bus operator to furnish the transportation.

More than a nominal subsidy. A subsidy is more than nominal if it is reasonably expected to exceed an amount equal to 3 cents multiplied by the number of gallons of fuel used in buses on subsidized routes. A company that operates its buses along subsidized and unsubsidized intracity routes may consider its buses qualified local buses only when the buses are used on the subsidized intracity routes.

In a School Bus (No. 7)

In a school bus means fuel used in a bus engaged in the transportation of students or employees of schools. A school is an educational organization with a regular faculty and curriculum and a regularly enrolled body of students who attend the place where the educational activities occur.

For Diesel Fuel and Kerosene Used Other Than as a Fuel (No. 8)

Diesel Fuel and Kerosene

Diesel fuel and kerosene used other than as a fuel in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train (not including off-highway business use), means diesel fuel and kerosene used in the following ways:

- For home heating, lighting, and cooking.
- In boats.
- For any of the following nonbusiness uses.

1) In stationary machines, such as generators and compressors.
2) For cleaning purposes.
3) In minibikes and snowmobiles.

In Foreign Trade (No. 9)

In foreign trade means fuel used in civil aircraft employed in foreign trade or trade between the United States and any of its possessions. In the case of aircraft registered in a foreign country, the country must allow reciprocal benefits for aircraft registered in the United States.

Certain Helicopter and Fixed-Wing Air Ambulance Uses (No. 10)

Certain helicopter uses. Certain helicopter uses means fuel used by a helicopter for any of the following purposes.

1) Transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas.
2) Planting, cultivating, cutting, transporting, or caring for trees (including logging operations).
3) Providing emergency medical services.

During a use described in items (1) and (2), the helicopter must not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code. For item (1), treat each flight segment as a separate flight.

Fixed-wing air ambulance uses. Fixed-wing air ambulance uses means fuel used by a fixed-wing aircraft providing emergency medical services. The aircraft must be equipped for and exclusively dedicated on that flight to acute care emergency medical services.

For Aviation Fuel Used Other Than as a Fuel (No. 11)

Aviation fuel used other than as a fuel in the propulsion engine of an aircraft means aviation fuel used in the following ways.

- In stationary machines, such as generators and compressors.
- For cleaning purposes.
- In vehicles.

In a Highway Vehicle Owned by the United States That is Not Used on a Highway (No. 12)

In a highway vehicle owned by the United States that is not used on a highway means fuel used in a vehicle was not used on public highways during the period covered by the claim. This use applies whether or not the vehicle is registered or required to be registered for highway use.

Exclusive Use by a Nonprofit Educational Organization (No. 13)

Exclusive use by a nonprofit educational organization means fuel used by an organization exempt from income tax under section 501(a) of the Internal Revenue Code that meets both of the following requirements.

- It has a regular faculty and curriculum.
- It has a regularly enrolled body of students who attend the place where the instruction normally occurs.

A nonprofit educational organization also includes a school operated by a church or other organization described in section 501(c)(3) of the Internal Revenue Code if the school meets the above requirements.

Exclusive Use by a State, Political Subdivision of a State, or the District of Columbia (No. 14)

CAUTION *If undyed diesel fuel or undyed kerosene is used by a state, the claim is made by the registered ultimate vendor.*

Exclusive use by a state, political subdivision of a state, or the District of Columbia means fuel purchased by the state or local government for its exclusive use. A state or local government is any state, any political subdivision thereof, or the District of Columbia. An ***Indian tribal government*** is treated as a state only if the fuel is used in an activity that involves the exercise of an essential tribal government function. Gasoline, diesel fuel, and kerosene used by the American Red Cross is considered to be the use of these fuels by a state.

In an Aircraft or Vehicle Owned by an Aircraft Museum (No. 15)

In an aircraft or vehicle owned by an aircraft museum means fuel used in an aircraft or vehicle is owned by an organization that meets all the following requirements.

1) It is exempt from income tax as an organization described in section 501(c)(3) of the Code.
2) It is operated as a museum under a state (or District of Columbia) charter.
3) It is operated exclusively for acquiring, exhibiting, and caring for aircraft of the type used for combat or transport in World War II.

The aircraft or vehicle (such as a ground servicing vehicle for aircraft) must be used exclusively for the purposes described in item (3).

In Military Aircraft (No. 16)

In a military aircraft means fuel used in an aircraft owned by the United States or any foreign nation and constituting a part of its armed forces.

In Commercial Aviation (Other Than Foreign Trade)

In commercial aviation (other than foreign trade) means fuel used in an aircraft in the business of transporting persons or property by air for pay. However, commercial aviation does not include any of the following.

- Any use of an aircraft that has a maximum certificated takeoff weight of 6,000 pounds or less unless the aircraft is operated on an established line.
- Any use exclusively for the purpose of skydiving.
- Any use of an aircraft owned or leased by a member of an affiliated group and unavailable for hire by nonmembers of the group. The determination of whether an aircraft is available for hire by nonmembers is made on a flight-by-flight basis.

Use in a Train

Use in a train means fuel used in the propulsion engine of equipment or machinery that rides on rails. This includes use in a locomotive, work train, switching engine, and track maintenance machine.

3.

Filing Claims

This chapter tells you how and when to make a claim for a credit or refund of excise taxes on fuels. This chapter also covers recordkeeping requirements, interest and penalty provisions, and when to include the credit or refund in your income.

General Information

Generally, you will provide all the information needed to claim a credit or refund when you properly complete Form 4136 or Form 8849. In some cases, you will have to attach additional information. You need to keep records that support your claim for a credit or refund.

Keep at your principal place of business all records needed to enable the IRS to verify that you are the person entitled to claim a credit or refund and the amount you claimed. No special method or format is required, but the records should establish all the following information.

Ultimate purchaser. If you are an ultimate purchaser, you must keep the following records.

- The number of gallons purchased and used during the period covered by your claim.
- The dates of the purchases.
- The names and addresses of suppliers and amounts purchased from each in the period covered by your claim.
- The nontaxable use for which you used the fuel.
- The number of gallons used for each nontaxable use.

It is important that your records show separately the number of gallons used for each nontaxable use that qualifies as a claim. If the fuel is exported, you must have proof of exportation.

For more information about keeping records, see Publication 583, *Starting a Business and Keeping Records,* or Publication 552, *Recordkeeping for Individuals.*

Gasohol blender. If you are a gasohol blender (as discussed in chapter 1 under *Gasohol Blending*), you must keep the following information for each batch of gasohol.

- The name and address of the person that sold you the gasoline.
- The date and location of the purchase of the gasoline.
- The number of gallons of gasoline.
- The name and address of the person that sold you the alcohol.
- The date and location of the purchase of the alcohol.
- The number of gallons and type of alcohol.

Registered ultimate vendor. If you are a registered ultimate vendor (as discussed in chapter 1 under *Undyed Diesel Fuel and Undyed Kerosene*), you must keep certain information pertaining to the sale of the fuel.

To make a claim, you must have sold the diesel fuel or kerosene at a tax-excluded price, repaid the tax to the buyer, or obtained the buyer's written consent to the allowance of the claim.

In addition, you must have a registration number that has not been revoked or suspended. If you are an ultimate vendor (farming and state use), you must have a UV registration number. If you are an ultimate vendor (blocked pump), you must have a UP registration number. You can get either registration number from the IRS by completing Form 637, *Application for Registration (For Certain Excise Tax Activities),* and providing the information requested in its instructions.

Table 3-1. **Model Certificate A**

CERTIFICATE OF FARMING USE OR STATE USE

(To support vendor's claim for credit or payment under section 6427 of the Internal Revenue Code)

_____

Name, Address, and Employer Identification Number of Vendor

The undersigned buyer ("Buyer") hereby certifies the following under penalties of perjury:

A. Buyer will use the diesel fuel or kerosene to which this certificate relates — (check one):

1. ☐ On a farm for farming purposes (as defined in §48.6420-4 of the Manufacturers and Retailers Excise Tax Regulations) and Buyer is the owner, tenant, or operator of the farm on which the fuel will be used;
2. ☐ On a farm (as defined in §48.6420-4(c)) for any of the purposes described in ¶ (d) of that section (relating to cultivating, raising, or harvesting) and Buyer is not the owner, tenant, or operator of the farm on which the fuel will be used; or
3. ☐ For the exclusive use of a State or local government, or the District of Columbia.

B. This certificate applies to the following (complete as applicable):

1. If this is a single purchase certificate, check here ☐ and enter:
   a. Invoice or delivery ticket number _____
   b. Number of gallons _____
2. If this is a certificate covering all purchases under a specified account or order number, check here ☐ and enter:
   a. Effective date _____
   b. Expiration date _____
   (period not to exceed 1 year after effective date)
   c. Buyer account or order number _____

■ Buyer will provide a new certificate to the vendor if any information in this certificate changes.

■ If Buyer uses the diesel fuel or kerosene to which this certificate relates for a purpose other than stated in the certificate, Buyer will be liable for any tax.

■ Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Name of Buyer

_____

Employer identification number

_____

Address of Buyer

_____

Signature and date signed

Table 3-2. **Model Certificate B**

CERTIFICATE OF BUYER FOR PRODUCTION OF A COLD WEATHER BLEND

(To support vendor's claim for credit or payment under section 6427 of the Internal Revenue Code)

_____ (Buyer) certifies the following under penalties
Name of Buyer

of perjury:

A. The kerosene to which this certificate applies will be used by Buyer to produce a blend of kerosene and diesel fuel in an area described in a declaration of extreme cold and the blend will be sold for use or used for heating purposes.

B. This certificate applies to _____ percent of Buyer's purchases from _____

_____

(name, address, and employer identification number of seller) on invoice or delivery

ticket number _____ .

- If Buyer violates the terms of this certificate, the Internal Revenue Service may withdraw Buyer's right to provide a certificate.
- Buyer has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn.
- Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____
Printed or typed name of person signing

_____
Title of person signing

_____
Employer identification number

_____
Address of Buyer

_____
Signature and date signed

Farming and state use. If you sell undyed diesel fuel or undyed kerosene for use on a farm for farming purposes or for use by a state or local government, you must keep the following information.

- The name and taxpayer identification number of each person (farmer, custom harvester, or government unit) that bought the fuel.
- The number of gallons sold to each person.
- An unexpired certificate from the buyer. See the model certificate in *Table 3–1* on page 7. The certificate expires on the earlier of one year after the date of the certificate or the date a new certificate is given to the registered ultimate vendor.

Blocked pump. If you sell undyed kerosene from a pump that qualifies as a blocked pump because it is locked by you after each sale and is unlocked by you at the request of the buyer, you must keep the following information for each sale of more than 5 gallons.

- The date of each sale.
- The name and address of the buyer.
- The number of gallons sold to that buyer.

Blending. If you sell undyed kerosene for blending with diesel fuel in an area under a declaration of extreme cold and the blend will be sold for use or used for heating purposes, you must keep the following information.

- The number of gallons sold to each person.
- An unexpired certificate from the buyer for each purchase of kerosene. See the model certificate in *Table 3–2* above.

Taxpayer identification number. To file a claim, you must have a taxpayer identification number. Your taxpayer identification number can be any of the following.

- Employer identification number (EIN).
- Social security number (SSN).
- Individual taxpayer identification number (ITIN), if you are an alien individual and do not have and are not eligible to get an SSN.

If you normally file only a U.S. individual income tax return (such as Form 1040 or 1040NR), use your SSN or ITIN. You get an SSN by filing Form SS–5, *Application for a Social Security Card,* with the Social Security Administration. To get an ITIN, file Form W–7, *Application for IRS Individual Taxpayer Identification Number,* with the IRS.

If you operate a business, use your EIN. You get an EIN by filing Form SS–4, *Application for Employer Identification Number,* with the IRS.

Filing date on holiday or weekend. If the last day for filing your claim falls on a Saturday, Sunday, or legal holiday, the due date is delayed until the next business day.

Credit or refund. A credit is an amount you claim on your income tax return when you file it at the end of the year. If you meet certain requirements (discussed later), you can claim a refund during the year.

Credit only. You can claim the following taxes only as a credit.

- Tax on gasoline, gasohol, or aviation gasoline used on a farm for farming purposes.
- Tax on fuels used for nontaxable uses if the total for the tax year is less than $750.
- Tax on fuel you did not include in any claim for refund previously filed for any quarter of the tax year.

Claiming a Credit

You make a claim for credit on ***Form 4136*** and attach it to your income tax return. Do not claim a credit for any amount for which you have filed a refund claim.

When to file. You can claim a fuel tax credit on your income tax return for the year you used the fuel (or sold the fuel in the case of gasohol blender or registered ultimate vendor claims).

TIP *You may be able to make a fuel tax claim on an amended income tax return for the year you used the fuel. Generally you must file an amended return by the later of 3 years from the date you filed your original return or within 2 years from the date you paid the income tax.*

How to claim a credit. How you claim a credit depends on whether you are an individual, partnership, corporation, S corporation, or farmers' cooperative association.

Individuals. You claim the credit on the "Other payments from" line of Form 1040. Also check box b on that line. If you would not otherwise have to file an income tax return, you must do so to get a fuel tax credit.

Partnership. Partnerships (other than electing large partnerships) claim the credit by including a statement on Schedule K-1 (Form 1065), *Partner's Share of Income, Credits, Deductions, etc.*, showing each partners share of the number of gallons of each fuel sold or used for a nontaxable use, the type of use, and the applicable credit per gallon. Each partner claims the credit on his or her income tax return for the partners share of the fuel used by the partnership.

Other entities. Corporations, S corporations, farmers' cooperative associations, and

trusts must make the claim on the line for "credit for Federal tax paid on fuels" of the applicable income tax return.

Federal, state, and local governments, and certain tax-exempt organizations (as discussed below under *Claiming a Refund*) must use Form 8849, not Form 4136, to make an annual claim.

Claiming a Refund

You may claim a refund on ***Form 8849***. Complete and attach to Form 8849 the appropriate Form 8849 schedules. If you file Form 720, you can use the Schedule C portion of Form 720 for your refund claims. (See the Form 720 instructions.) Do not claim a refund on Form 8849 for any amount for which you have filed or will file a claim on Schedule C (Form 720) or Form 4136.

Ultimate Purchasers

If you are an ultimate purchaser, you may claim a refund for the excise tax on fuels you purchase and use for a nontaxable use. You may file a claim for refund for any quarter of your tax year for which you can claim at least $750. This amount is the excise tax on all fuels ***used*** for a nontaxable use during that quarter or any prior quarter (for which no other claim has been filed) during the tax year.

If you cannot claim at least $750 at the end of a quarter, you carry the amount over to the next quarter of your tax year to determine if you can claim at least $750. If you cannot claim at least $750 at the end of your tax year, you must claim a credit on your income tax return using Form 4136.

How to file. File the claim for refund by filling out Schedule 1 (Form 8849) and attaching it to Form 8849. Send it to the address shown in the instructions. Only one claim may be filed for a quarter.

CAUTION *Only the registered ultimate vendor can claim a refund for the excise tax on undyed diesel fuel and undyed kerosene in certain situations, as discussed later.*

Example. You purchased gasoline and undyed diesel fuel. For the first quarter of your tax year, the excise tax on fuel you use for an off-highway business use is $184 for gasoline and $244 for diesel fuel. You cannot file a claim for refund since the total ($428) is less than $750.

For the second quarter, the excise tax on fuel you use for an off-highway business use is $92 for gasoline and $244 for diesel fuel. You add the amount from the first quarter ($428) to the total amount from the second quarter ($336) and determine you can file a claim for refund since the total is $764.

When to file. You must file a quarterly claim by the last day of the first quarter following the last quarter included in the claim. If you do not file a timely refund claim for any quarter of your tax year, you will have to claim a credit for that amount on your income tax return, as discussed earlier.

Generally, an **annual claim** must be made on Form 4136 (as discussed under *Claiming a Credit* on page 8). However, the following must use Schedule 1 (Form 8849) to file an annual claim.

- The United States.
- A state, political subdivision of a state, and the District of Columbia.
- An organization exempt from income tax under section 501(a) of the Internal Revenue Code that is not required to file an income tax return.

Gasohol Blending

If you are a gasohol blender, you can make a claim to get a refund of part of the excise tax on gasoline used to produce gasohol. See *Gasohol Blending* under *Gasoline and Gasohol* in chapter 1. The following claim requirements apply.

- The claim must be for gasohol sold or used during a period of at least 1 week.
- The claim must be for at least $200.
- The claim can only be made by the gasohol blender.

How to file. File the claim for refund by filling out Schedule 3 (Form 8849) and attaching it to Form 8849. Send it to the address shown in the instructions. Write "Gasohol Claim" on the envelope.

CAUTION **Do not** *combine this claim with any other claim on Form 8849.*

When to file. The claim must be filed by the last day of the first quarter following the earliest quarter included in the claim. If you do not meet the requirements or file a timely refund claim, you will have to claim a credit on your income tax return, as discussed earlier.

Registered Ultimate Vendors

If you are a registered ultimate vendor, you can make a claim to get a refund of the excise tax on undyed diesel fuel or undyed kerosene that you sold for certain uses. See *Sales by Registered Ultimate Vendors* under *Undyed Diesel Fuel and Undyed Kerosene* in chapter 1.

Undyed diesel fuel. You must meet the following requirements for this claim.

- The claim must be for undyed diesel fuel sold for use on a farm for farming purposes or by a state or local government.
- The claim must be for sales during a period of at least 1 week.
- The claim must be for at least $200. Claims for sales by a registered ultimate vendor of undyed kerosene can be combined with claims for sales of undyed diesel fuel to meet this requirement.
- Complete Form 8849 and Schedule 2, including line 3, Farmer and Government Unit Information.

Undyed kerosene. You must meet the following requirements for this claim.

- The claim must be for undyed kerosene sold for use on a farm for farming purposes, for use by a state or local government, from a blocked pump, or for blending with diesel fuel to be used for heating purposes.
- The claim must be for sales during a period of at least 1 week.
- The claim must be for at least $100. Only claims for sales by a registered ultimate vendor of undyed kerosene can be used to meet this requirement.
- Complete Form 8849 and Schedule 2, including line 3, Farmer and Government Unit Information.

How to file. File the claim by filling out Schedule 2 (Form 8849) and attaching it to Form 8849. Send it to the address shown in the instructions. Write "Diesel Fuel/Kerosene Claim" on the envelope.

CAUTION *Do not combine this claim with any other claim on Form 8849.*

When to file. The claim must be filed by the last day of the first quarter following the earliest quarter included in the claim. If you do not meet the requirements or file a timely refund claim, you will have to claim a credit on your income tax return, as discussed earlier.

Interest

IRS pays no interest on refunds described in this publication other than refunds to gasohol blenders and registered ultimate vendors (discussed earlier) not paid within 20 days. Refunds resulting from credits claimed on income tax returns may qualify for interest.

Penalties

There are criminal penalties for false or fraudulent claims. In addition, any person who files a refund claim, discussed earlier, for an excessive amount (without reasonable cause) may have to pay a penalty. An excessive amount is the amount claimed that is more than the allowable amount. The penalty is the greater of two times the excessive amount or $10.

Including the Credit or Refund in Income

Include any credit or refund of excise taxes on fuels in your gross income if you claimed the total cost of the fuel (including the excise taxes) as an expense deduction that reduced your income tax liability.

The year you include a credit or refund in gross income depends on whether you use the cash or an accrual method of accounting.

Cash method. If you use the cash method and file a claim for refund, include the refund amount in your gross income for the tax year in which you receive the refund. If you claim a

credit on your income tax return, include the credit amount in gross income for the tax year in which you file Form 4136. If you file an amended return and claim a credit, include the credit amount in gross income for the tax year in which you receive the credit.

Example 1. Ed Brown, a cash basis farmer, filed his 2003 Form 1040 on March 3, 2004. On his Schedule F, Ed deducted the total cost of gasoline (including $110 of excise taxes) used on the farm. Then, on Form 4136, Ed claimed the $110 as a credit. Ed reports the $110 as additional income on his 2004 Schedule F.

Example 2. March Corporation uses the calendar year as its tax year. For 2003, the following amounts of excise tax were included in the cost of gasoline the corporation used each quarter in a nontaxable use:

January 1 through March 31	$1,300
April 1 through June 30	1,100
July 1 through September 30	400
October 1 through December 31	300
Total	**$3,100**

The corporation deducts the entire cost of the gasoline (including the $3,100 in excise taxes) it used during the year as a business expense on its corporation income tax return, thereby reducing its corporate income tax liability for that year.

Form 8849. March Corporation files quarterly refund claims for the first two quarters (ending March 31 and June 30). It cannot file a quarterly refund claim for the third or fourth quarter because it did not meet the $750 minimum requirement.

Since March Corporation uses the cash method of accounting, the corporation includes $2,400 ($1,300 + $1,100) in its gross income for the tax year in which it receives the refunds (2003).

Form 4136. The corporation claims the remaining amounts ($400 + $300) as a credit on its 2003 income tax return by attaching Form 4136. It files its tax return in 2004. It includes this credit ($700) in its 2004 gross income.

Accrual method. If you use an accrual method, include the amount of credit or refund in gross income for the tax year in which you used the fuels (or sold the fuels if you are a registered ultimate vendor). It does not matter whether you filed for a quarterly refund or claimed the entire amount as a credit.

Example 3. Todd Green uses an accrual method. He files his 2003 return on April 15, 2004. On Schedule C (Form 1040) he deducts the total cost of gasoline (including $155 of excise taxes) used for an off-highway business use during 2003. On Form 4136, Todd claims the $155 as a credit. He reports the $155 as additional income on his 2003 Schedule C.

Example 4. Use the same facts as in *Example 2* above, except that March Corporation uses an accrual method of accounting. Since the nontaxable use occurred in 2003, the corporation reports the $3,100 of excise taxes as income on its 2003 income tax return. This consists of the $2,400 it claimed on Form 8849 and the $700 it claimed on Form 4136.

Example

Steven S. Sands used undyed diesel fuel in vehicles used in his construction business. The vehicles were not registered (or required to be registered) for highway use. In the fourth quarter of his 2003 income tax year, which ends in December, he used 3,000 gallons of fuel. The excise tax on the 3,000 gallons of fuel he used was $732 (24.4 cents per gallon).

Because the tax is less than $750, Steven must claim a credit for the tax on his 2003 income tax return. He fills out Form 4136 (shown later) and attaches it to his 2003 income tax return, which he files in 2004. He enters the $732 on line 67 of his Form 1040 and checks box b.

Steven uses the cash method of accounting. On his 2003 Schedule C (Form 1040), he deducts the total cost of the fuel, including the tax. When Steven files his 2004 Form 1040, he will include the $732 credit shown on his 2003 Form 4136 as additional income on his Schedule C (Form 1040) for 2004.

For the first two quarters of 2003, Steven's records show the following.

Quarter	Gallons Used	Tax Rate	Claim Amount
First	2,750	.244	$671
Second	2,500	.244	610

Steven could not file a claim for a refund for the first quarter because the amount of the claim was less than $750. He adds the first quarter amount ($671) to the second quarter amount ($610) and claims a refund of $1,281 by filing Form 8849 and Schedule 1 (Form 8849), which are shown later. He will have to include the $1,281 excise tax refund as additional income on his Schedule C (Form 1040) for 2003.

Form **4136**

Department of the Treasury
Internal Revenue Service

Credit for Federal Tax Paid on Fuels

▶ See the Instructions on page 3.
▶ Attach this form to your income tax return.

OMB No. 1545-0162

2003

Attachment Sequence No. **23**

Name (as shown on your income tax return): Steven S. Sands

Taxpayer identification number: 514-00-3894

Caution: • *You cannot claim any amounts on Form 4136 that you claimed on Form 8849 or Schedule C (Form 720).*
• *Sales by gasoline wholesale distributors cannot be claimed on Form 4136. Instead, use Schedule 4 (Form 8849) or Schedule C, line 11 (Form 720) to make these claims.*

1 Nontaxable Use of Gasoline and Gasohol

	(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of credit	(e) CRN
a Off-highway business use of gasoline		$ .184		$	362
b Use of gasoline on a farm for farming purposes		.184			
c Other nontaxable use of gasoline		.184			
		.184			
d 10% gasohol		.132		$	359
e 7.7% gasohol		.14396			375
f 5.7% gasohol		.15436			376

2 Nontaxable Use of Aviation Gasoline

	(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of credit	(e) CRN
a Use in commercial aviation (other than foreign trade)		$ .15		$	354
b Other nontaxable use		.194			324
		.194			

3 Nontaxable Use of Undyed Diesel Fuel

Claimant has the name and address of the person(s) who sold the diesel fuel to the claimant and the date(s) of the purchase(s) and if exported, the required proof of export.

Claimant certifies that the diesel fuel did not contain visible evidence of dye.
Exception. If any of the diesel fuel included in this claim **did** contain visible evidence of dye, attach a detailed explanation and check here . . . . . ▶ ☐

Caution: *Claims cannot be made on line 3 for diesel fuel used on a farm for farming purposes. Only registered ultimate vendors may make those claims (see line 6).*	(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of credit	(e) CRN
a Nontaxable use	2	$ .244	3,000	$ 732 00	360
		.244			
b Use in trains		.20			353
c Use in certain intercity and local buses		.17			350

4 Nontaxable Use of Undyed Kerosene

Claimant has the name and address of the person(s) who sold the kerosene to the claimant and the date(s) of the purchase(s) and if exported, the required proof of export.

Claimant certifies that the kerosene did not contain visible evidence of dye.
Exception. If any of the kerosene included in this claim **did** contain visible evidence of dye, attach a detailed explanation and check here . . . . . ▶ ☐

Caution: *Claims cannot be made on line 4 for kerosene used on a farm for farming purposes or for kerosene sold from a blocked pump. Only registered ultimate vendors may make those claims (see line 7).*	(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of credit	(e) CRN
Nontaxable use		$ .244		$	346
		.244			

For Paperwork Reduction Act Notice, see the instructions. Cat. No. 12625R Form **4136** (2003)

5 Nontaxable Use of Aviation Fuel

	(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of credit	(e) CRN
a Use in commercial aviation (other than foreign trade)		$ .175		$	355
b Other nontaxable use		.219			369
c Other nontaxable uses		.044			377

6 Sales by Registered Ultimate Vendors of Undyed Diesel Fuel UV Registration No. ▶

Claimant sold the diesel fuel at a tax-excluded price, repaid the amount of tax to the buyer, or has obtained written consent of the buyer to take the claim; and obtained the required certificate from the buyer and has no reason to believe any information in the certificate is false. See the instructions for additional information to be submitted.

Claimant certifies that the diesel fuel did not contain visible evidence of dye.
Exception. If any of the diesel fuel included in this claim **did** contain visible evidence of dye, attach a detailed explanation and check here ▶ ☐

	(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of credit	(e) CRN
a Use on a farm for farming purposes		$ .244		$	360
b Use by a state or local government		.244			

7 Sales by Registered Ultimate Vendors of Undyed Kerosene UV Registration No. ▶ UP Registration No. ▶

Claimant sold the kerosene at a tax-excluded price, repaid the amount of tax to the buyer, or has obtained written consent of the buyer to take the claim; and obtained the required certificate (for lines 7a and 7b) from the buyer and has no reason to believe any information in the certificate is false, or has the Regulations section 48.6427-10(e)(4) statement, if required, for line 7c. See the instructions for additional information to be submitted.

Claimant certifies that the kerosene did not contain visible evidence of dye.
Exception. If any of the kerosene included in this claim **did** contain visible evidence of dye, attach a detailed explanation and check here ▶ ☐

	(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of credit	(e) CRN
a Use on a farm for farming purposes		$ .244		$	346
b Use by a state or local government		.244			
c Sales from a blocked pump		.244			

8 Nontaxable Use of Liquefied Petroleum Gas (LPG) in Certain Buses

	(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of credit	(e) CRN
a Use in certain intercity and local buses		$ .062		$	352
b Use in qualified local buses or school buses		.136			361

9 Gasohol Blending

Claimant bought gasoline taxed at the full rate and blended it with alcohol to make gasohol. The gasohol was sold or used in claimant's trade or business. For **each batch** of gasohol, claimant has the required information relating to the purchase of the gasoline and alcohol used to make the gasohol and to support the amount claimed.

	(a) Rate	Gallons of (b) Gasoline	Gallons of (c) Alcohol	(d) Amount of credit (col. (a) × col. (b))	(e) CRN
a 10% gasohol	$ .03734			$	356
b 7.7% gasohol	.02804				357
c 5.7% gasohol	.02031				363

10 **Total income tax credit claimed.** Add lines 1 through 9, column (d). Enter here and on Form 1040, line 67 (also check box b on line 67); Form 1120, line 32g; Form 1120-A, line 28g; Form 1120S, line 23c; Form 1041, line 24g; or the proper line of other returns. ▶	10	$ 732	00

Form **8849** (Rev. January 2003)

Department of the Treasury—Internal Revenue Service

Claim for Refund of Excise Taxes

OMB No. 1545-1420

Print clearly. Leave a blank box between words.

Name of claimant: STEVEN S SANDS

Employer identification number (EIN): 109876543

Address (number, street, room or suite no.): 987 WEST STREET

Social security number (SSN):

City and state or province. If you have a foreign address, see page 2.: ANYTOWN USA

ZIP code: 12345

Foreign country, if applicable. Do not abbreviate.:

Month claimant's income tax year ends: 12

Daytime telephone number (optional): 9875550000

Caution: ***Do not*** *use Form 8849 to make adjustments to liability reported on Forms 720 for prior quarters or to claim any amounts that were or will be claimed on* **Schedule C (Form 720),** *Claims,* **Form 4136,** *Credit for Federal Tax Paid on Fuels,* **Form 2290,** *Heavy Highway Vehicle Use Tax Return, or* **Form 730,** *Monthly Tax Return On Wagers.*

Schedules Attached

Check (√) the appropriate box(es) for the schedule(s) you attach to Form 8849. Only attach the schedules on which you are claiming a refund. Schedules 2, 3, 5, and section 4091(d) claims on Schedule 6 cannot be filed with any other schedules on Form 8849. File each of these schedules with a separate Form 8849.

Schedule 1	Nontaxable Use of Fuels	☑
Schedule 2	Sales by Registered Ultimate Vendors of Undyed Diesel Fuel and Undyed Kerosene	☐
Schedule 3	Gasohol Blending	☐
Schedule 4	Sales by Gasoline Wholesale Distributors	☐
Schedule 5	Section 4081(e) Claims	☐
Schedule 6	Other Claims	☐

Sign Here

Under penalties of perjury, I declare (1) that I have examined this claim, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete, and (2) that amounts claimed on this form have not been, and will not be, claimed on any other form.

Steven S. Sands — Signature and title (if applicable)

9/29/2003 — Date

Steven S. Sands
Type or print your name below signature.

For Privacy Act and Paperwork Reduction Act Notice, see instructions. Cat. No. 20027J Form **8849** (Rev. 1-2003)

Schedule 1 (Form 8849) (Rev. January 2003)

Department of the Treasury—Internal Revenue Service

Nontaxable Use of Fuels

▶ Attach to Form 8849.

OMB No. 1545-1420

Name as shown on Form 8849	EIN or SSN	Total refund (see instructions)
Steven S. Sands	109876543	$ 1281

Period of claim: *Enter month, day, and year in MMDDYYYY format.* **From** ▶ 01012003 **To** ▶ 06302003

1 Nontaxable Use of Gasoline and Gasohol	(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of refund *Multiply col. (b) by col. (c)*	(e) CRN
a Gasoline		$ .184		$	362
		.184			
b 10% gasohol		.132			359
c 7.7% gasohol		.14396			375
d 5.7% gasohol		.15436			376
2 Nontaxable Use of Aviation Gasoline					
a Use in commercial aviation (other than foreign trade)		$ .15		$	354
b Other nontaxable use		.194			324
		.194			
3 Nontaxable Use of Undyed Diesel Fuel					

Claimant has the name and address of the person(s) who sold the diesel fuel to the claimant and the date(s) of the purchase(s) and if exported, the required proof of export.

Claimant certifies that the diesel fuel did not contain visible evidence of dye.

Exception. If any of the diesel fuel included in this claim **did** contain visible evidence of dye, attach a detailed explanation and check here . . . . . ▶ ☐

Caution: *Claims cannot be made on line 3 for diesel fuel used on a farm for farming purposes or for the exclusive use by a state or local government. Only registered ultimate vendors may make those claims using Schedule 2.*

	(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of refund *Multiply col. (b) by col. (c)*	(e) CRN
a Nontaxable use (see **Caution** above)	2	$ .244	5250	$ 1281	360
		.244			
b Use in trains		.20			353
c Use in certain intercity and local buses		.17			350
4 Nontaxable Use of Undyed Kerosene					

Claimant has the name and address of the person(s) who sold the kerosene to the claimant and the date(s) of the purchase(s) and if exported, the required proof of export.

Claimant certifies that the kerosene did not contain visible evidence of dye.

Exception. If any of the kerosene included in this claim **did** contain visible evidence of dye, attach a detailed explanation and check here . . . . . ▶ ☐

Caution: *Claims cannot be made on line 4 for kerosene used on a farm for farming purposes, for the exclusive use by a state or local government, or for sales from a blocked pump. Only registered ultimate vendors may make those claims using Schedule 2.*

	(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of refund *Multiply col. (b) by col. (c)*	(e) CRN
Nontaxable use (see **Caution** above)		$ .244		$	346
		.244			
5 Nontaxable Use of Aviation Fuel					
a Use in commercial aviation (other than foreign trade)		$ .175		$	355
b Other nontaxable use		.219			369
c Other nontaxable use		.044			377
6 Nontaxable Use of Liquefied Petroleum Gas (LPG) in Certain Buses					
a Use in certain intercity and local buses		$ .062		$	352
b Use in qualified local buses		.136			361
Use in school buses		.136			

For Privacy Act and Paperwork Reduction Act Notice, see Form 8849 instructions. Cat. No. 27449T **Schedule 1 (Form 8849)** (Rev. 1-2003)

4.

Alcohol Fuel Credit

If you sell or use alcohol as a fuel, you may be eligible for an income tax credit. The alcohol fuel credit consists of a straight alcohol credit, an alcohol mixture credit, and a small ethanol producer credit. Each of these credits is discussed later.

Alcohol eligible for the credit includes methanol and ethanol. This includes methanol produced from methane gas formed in waste disposal sites. But it does not include any of the following.

- Alcohol produced from petroleum, natural gas, or coal (including peat).
- Alcohol with a proof of less than 150.
- Ethanol produced as a by-product from manufacturing ethylcellulose derived from ethane.

In figuring the proof of any alcohol, disregard any denaturants (additives that make the alcohol unfit for human consumption).

Straight alcohol credit. You can claim the credit for any alcohol not mixed with gasoline or a special fuel other than denaturants.

You are eligible for the credit for straight alcohol only if you met one of the following requirements during the tax year.

- You used it as a fuel in your trade or business.
- You sold it at retail and placed it in the fuel tank of the buyer's vehicle.

The buyer cannot claim the credit for the alcohol bought at retail, even if the buyer uses it as a fuel in a trade or business.

Mixing or failure to use as fuel. If the credit applied to alcohol you bought and you later mix the alcohol or do not use it as a fuel, you must pay a tax equal to the credit. Report this tax on Form 720.

Alcohol mixture credit. You can take the credit for alcohol you use to produce a qualified mixture. A qualified mixture is a mixture of alcohol with gasoline or with a special fuel. You do not treat adding denaturants to alcohol as the production of a mixture.

You can take the credit only for a mixture you produce. You must sell the mixture for use as a fuel, not merely as an octane enhancer, or use it as a fuel in your trade or business. You can claim the credit whether you sell the fuels directly to the user or to a buyer for resale to the user. Take into account alcohol you use to produce a qualified mixture only if the sale or use is in your trade or business and only for the tax year in which the sale or use occurs.

A special fuel includes any liquid fuel, other than gasoline, suitable for use in an internal combustion engine.

You cannot take a credit for the casual off-farm production of a qualified mixture.

If you combine alcohol eligible for the credit with alcohol that is not eligible and use the combined alcohol in a way that qualifies for the credit, you figure the credit based on the proportionate amount of eligible alcohol contained in the combined alcohol.

Separation or failure to use as fuel. If the credit applied to alcohol used in the production of a qualified mixture, and you later separate the alcohol from the mixture or do not use the mixture as fuel, you must pay a tax equal to the credit. Report this tax on Form 720.

Amount of credit. The straight alcohol credit and the alcohol mixture credit are based on the proof content of the alcohol. You figure the proof without considering denaturants added to the alcohol. Use Form 6478 to determine the credit for each gallon of alcohol.

Reduced credit for certain excise tax benefits. You may have been entitled to a reduced rate, an exemption, credit, or refund for the federal excise tax on certain fuel-alcohol mixtures. You must reduce the credit allowable on these mixtures (such as gasohol) by the amount of these benefits.

Volume of alcohol. When figuring the number of gallons of alcohol sold or used, include the volume of any denaturant (including gasoline) added under formulas approved by the Secretary of the Treasury. Also include the denaturant when you figure the percentage of any mixture that is alcohol. However, denaturants can be counted only up to 5% of the total volume of alcohol (including denaturants).

Small ethanol producer credit. If you are an eligible small ethanol producer, you qualify for a credit on up to 15 million gallons of your qualified ethanol fuel production for any tax year. This additional alcohol fuel credit is 10 cents for each gallon.

You are an eligible small ethanol producer if, at all times during the tax year, you have an annual productive capacity of not more than 30 million gallons of any type of alcohol.

For a partnership, trust, or S corporation, the 15- and 30-million gallon limits apply at both the entity level and the partner, beneficiary, or shareholder level.

Qualified ethanol fuel production. Your qualified ethanol fuel production is any ethanol you produce and sell during the tax year to another person for any of the following purposes.

- Use in the production of a qualified mixture in that person's trade or business (except casual off-farm production).
- Use as a fuel in that person's trade or business.
- Sale at retail by that person who puts the ethanol in the fuel tank of the buyer's vehicle.

It also includes your use or sale of the ethanol for these purposes.

Qualified ethanol fuel production does not include any alcohol bought by a producer who then increases the proof of the alcohol by additional distillation.

Failure to use for qualifying purposes. If the credit applied to an eligible small ethanol producer and you do not use the ethanol for a purpose listed under *Qualified ethanol fuel production*, you must pay a tax equal to the credit. Report this tax on Form 720.

How to claim the credit. You take the alcohol fuel credit by completing ***Form 6478*** and attaching it to your income tax return. All individuals and corporations taking the credit use Form 6478. Partnerships (including electing large partnerships), S corporations, estates, and trusts figure the credit on Form 6478 but divide the credit among their partners, shareholders, or beneficiaries.

If you take the alcohol fuel credit, you must include the credit for the tax year in your gross income for that year.

General business credit. You combine the alcohol fuel credit with other credits on Form 3800, *General Business Credit*, to figure your general business credit for the year. See the Form 3800 instructions for a list of these credits and whether you must file Form 3800.

5.

How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get more information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Contacting your Taxpayer Advocate. If you have attempted to deal with an IRS problem unsuccessfully, you should contact your Taxpayer Advocate.

The Taxpayer Advocate independently represents your interests and concerns within the IRS by protecting your rights and resolving problems that have not been fixed through normal channels. While Taxpayer Advocates cannot change the tax law or make a technical tax decision, they can clear up problems that resulted from previous contacts and ensure that your case is given a complete and impartial review.

To contact your Taxpayer Advocate:

- Call the Taxpayer Advocate toll free at **1-877-777-4778.**
- Call, write, or fax the Taxpayer Advocate office in your area.
- Call **1-800-829-4059** if you are a TTY/TDD user.
- Visit the website at **www.irs.gov/advocate**.

For more information, see Publication 1546, *The Taxpayer Advocate Service of the IRS.*

Free tax services. To find out what services are available, get Publication 910, *Guide to Free Tax Services.* It contains a list of free tax publications and an index of tax topics. It also describes other free tax information services,

including tax education and assistance programs and a list of TeleTax topics.

Internet. You can access the IRS website 24 hours a day, 7 days a week at **www.irs.gov** to:

- Download forms, instructions, and publications.
- Order IRS products online.
- See answers to frequently asked tax questions.
- Search publications online by topic or keyword.
- Send us comments or request help by email.
- Sign up to receive local and national tax news by email.
- Get information on starting and operating a small business.

Fax. You can get over 100 of the most requested forms and instructions 24 hours a day, 7 days a week, by fax. Just call **703–368–9694** from your fax machine. Follow the directions from the prompts. When you order forms, enter the catalog number for the form you need. The items you request will be faxed to you.

For help with transmission problems, call **703–487–4608.**

Long-distance charges may apply.

Phone. Many services are available by phone.

- *Ordering forms, instructions, and publications.* Call **1–800–829–3676** to order current-year forms, instructions, and publications and prior-year forms and instructions. You should receive your order within 10 days.
- *Asking tax questions.* Call the IRS with your tax questions at **1–800–829–4933.**
- *Solving problems.* You can get face-to-face help solving tax problems every business day in IRS Taxpayer Assistance Centers. An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. Call your local Taxpayer Assistance Center for an appointment. To find the number, go to **www.irs.gov** or look in the phone book under "United States Government, Internal Revenue Service."
- *TTY/TDD equipment.* If you have access to TTY/TDD equipment, call **1–800–829–4059** to ask tax or account questions or to order forms and publications.
- *TeleTax topics.* Call **1–800–829–4477** to listen to pre-recorded messages covering various tax topics.

Evaluating the quality of our telephone services. To ensure that IRS representatives give accurate, courteous, and professional answers, we use several methods to evaluate the quality of our telephone services. One method is for a second IRS representative to sometimes listen in on or record telephone calls. Another is to ask some callers to complete a short survey at the end of the call.

Walk-in. Many products and services are available on a walk-in basis.

- *Products.* You can walk in to many post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Some IRS offices, libraries, grocery stores, copy centers, city and county governments, credit unions, and office supply stores have an extensive collection of products available to print from a CD-ROM or photocopy from reproducible proofs. Also, some IRS offices and libraries have the Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.
- *Services.* You can walk in to your local Taxpayer Assistance Center every business day to ask tax questions or get help with a tax problem. An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. You can set up an appointment by calling your local Center and, at the prompt, leaving a message requesting Everyday Tax Solutions help. A representative will call you back within 2 business days to schedule an in-person appointment at your convenience. To find the number, go to **www.irs.gov** or look in the phone book under "United States Government, Internal Revenue Service."

Mail. You can send your order for forms, instructions, and publications to the Distribution Center nearest to you and receive a response within 10 workdays after your request is received. Find the address that applies to your part of the country.

- **Western part of U.S.:**
  Western Area Distribution Center
  Rancho Cordova, CA 95743–0001
- **Central part of U.S.:**
  Central Area Distribution Center
  P.O. Box 8903
  Bloomington, IL 61702–8903
- **Eastern part of U.S. and foreign addresses:**
  Eastern Area Distribution Center
  P.O. Box 85074
  Richmond, VA 23261–5074

CD-ROM for tax products. You can order IRS Publication 1796, *Federal Tax Products on CD-ROM,* and obtain:

- Current tax forms, instructions, and publications.
- Prior-year tax forms and instructions.
- Frequently requested tax forms that may be filled in electronically, printed out for submission, and saved for recordkeeping.
- Internal Revenue Bulletins.

Buy the CD-ROM from National Technical Information Service (NTIS) on the Internet at **www.irs.gov/cdorders** for $22 (no handling fee) or call **1–877–233–6767** toll free to buy the CD-ROM for $22 (plus a $5 handling fee). The first release is available in early January and the final release is available in late February.

CD-ROM for small businesses. IRS Publication 3207, *Small Business Resource Guide,* is a must for every small business owner or any taxpayer about to start a business. This handy, interactive CD contains all the business tax forms, instructions, and publications needed to successfully manage a business. In addition, the CD provides an abundance of other helpful information, such as how to prepare a business plan, finding financing for your business, and much more. The design of the CD makes finding information easy and quick and incorporates file formats and browsers that can be run on virtually any desktop or laptop computer.

It is available in March. You can get a free copy by calling **1-800-829-3676** or by visiting the website at **www.irs.gov/smallbiz.**

Photographs of missing children. The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling **1–800–THE–LOST (1–800–843–5678)** if you recognize a child.

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To help us develop a more useful index, please let us know if you have ideas for index entries. See "Comments and Suggestions" in the "Introduction" for the ways you can reach us.

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Tax Publications for Business Taxpayers

See *How To Get Tax Help* for a variety of ways to get publications, including by computer, phone, and mail.

General Guides

- **1** Your Rights as a Taxpayer
- **17** Your Federal Income Tax (For Individuals)
- **334** Tax Guide for Small Business (For Individuals Who Use Schedule C or C-EZ)
- **509** Tax Calendars for 2004
- **553** Highlights of 2003 Tax Changes
- **910** Guide to Free Tax Services

Employer's Guides

- **15** Circular E, Employer's Tax Guide
- **15-A** Employer's Supplemental Tax Guide
- **15-B** Employer's Tax Guide to Fringe Benefits
- **51** Circular A, Agricultural Employer's Tax Guide
- **80** Circular SS, Federal Tax Guide For Employers in the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands
- **179** Circular PR Guía Contributiva Federal Para Patronos Puertorriqueños
- **926** Household Employer's Tax Guide

Specialized Publications

- **225** Farmer's Tax Guide
- **378** Fuel Tax Credits and Refunds
- **463** Travel, Entertainment, Gift, and Car Expenses
- **505** Tax Withholding and Estimated Tax
- **510** Excise Taxes for 2004
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- **908** Bankruptcy Tax Guide
- **911** Direct Sellers
- **925** Passive Activity and At-Risk Rules
- **946** How To Depreciate Property
- **947** Practice Before the IRS and Power of Attorney
- **954** Tax Incentives for Distressed Communities
- **1544** Reporting Cash Payments of Over $10,000
- **1546** The Taxpayer Advocate Service of the IRS

Spanish Language Publications

- **1SP** Derechos del Contribuyente
- **579SP** Cómo Preparar la Declaración de Impuesto Federal
- **594SP** Comprendiendo el Proceso de Cobro
- **850** English-Spanish Glossary of Words and Phrases Used in Publications Issued by the Internal Revenue Service
- **1544SP** Informe de Pagos en Efectivo en Exceso de $10,000 (Recibidos en una Ocupación o Negocio)

Commonly Used Tax Forms

See *How To Get Tax Help* for a variety of ways to get forms, including by computer, fax, phone, and mail. Items with an asterisk are available by fax. For these orders only, use the catalog number when ordering.

Form Number and Title	Catalog Number
W-2 Wage and Tax Statement	10134
W-4 Employee's Withholding Allowance Certificate*	10220
940 Employer's Annual Federal Unemployment (FUTA) Tax Return*	11234
940-EZ Employer's Annual Federal Unemployment (FUTA) Tax Return*	10983
941 Employer's Quarterly Federal Tax Return	17001
1040 U.S. Individual Income Tax Return*	11320
Sch A & B Itemized Deductions & Interest and Ordinary Dividends*	11330
Sch C Profit or Loss From Business*	11334
Sch C-EZ Net Profit From Business*	14374
Sch D Capital Gains and Losses*	11338
Sch D-1 Continuation Sheet for Schedule D*	10424
Sch E Supplemental Income and Loss*	11344
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Sch R Credit for the Elderly or the Disabled*	11359
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4797 Sales of Business Property*	13086
4868 Application for Automatic Extension of Time To File U.S. Individual Income Tax Return*	13141
5329 Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts*	13329
6252 Installment Sale Income*	13601
8283 Noncash Charitable Contributions*	62299
8300 Report of Cash Payments Over $10,000 Received in a Trade or Business*	62133
8582 Passive Activity Loss Limitations*	63704
8606 Nondeductible IRAs*	63966
8822 Change of Address*	12081
8829 Expenses for Business Use of Your Home*	13232