

Part III - Administrative, Procedural, and Miscellaneous

Excise Tax Changes Under SAFETEA and the Energy Act; Dye Injection

Notice 2005-80

Section 1. PURPOSE

This notice modifies Notice 2005-4, 2005-2 I.R.B. 289, as modified by Notice 2005-24, 2005-12 I.R.B. 757, and Notice 2005-62, 2005-35 I.R.B. 443 (Notice 2005-4), by providing guidance on certain excise tax provisions in the Internal Revenue Code (Code) that were added or affected by the Energy Policy Act of 2005 (Pub. L. 109-58) (Energy Act) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-59) (SAFETEA). These provisions relate to the Leaking Underground Storage Tank Trust Fund (LUST) tax, treatment of kerosene for use in aviation, credit card sales of taxable fuel to certain exempt entities, and diesel-water fuel emulsions. This notice also provides additional guidance relating to mechanical dye injection of diesel fuel and kerosene.

Notice 2005-4 provides guidance on certain excise tax provisions in the Code that were added or affected by the American Jobs Creation Act of 2004 (Pub. L. 108-

357) (AJCA).

Except as provided in sections 4 and 5, references to Code provisions in this notice are to the Code as in effect on October 1, 2005. References to regulations are to the Manufacturers and Retailers Excise Tax Regulations.

Section 2. LUST

(a) In general--(1) This section describes the changes made by § 1362 of the Energy Act to the LUST tax.

(2) Except as provided in paragraph (b) of this section, tax is imposed at the LUST financing rate of \$0.001 per gallon on removals, entries, and sales of gasoline, diesel fuel, and kerosene that are described as exempt transactions in §§ 48.4081-4(b) and (d) (relating to certain uses of gasoline blendstocks), 48.4082-1 (relating to dyed fuel), 48.4082-5 (relating to diesel fuel and kerosene in Alaska), 48.4082-7 (relating to kerosene used for feedstock purposes), and § 4 of Notice 2005-4 (relating to kerosene used in aircraft). Thus, for example, the LUST tax applies to removals of dyed diesel fuel for use as heating oil or use on a farm for farming purposes and to removals of kerosene for use in foreign trade or in military aircraft.

(3) Section 6430 of the Code provides that no refund, credit, or payment under §§ 6411-6430 shall be made for the LUST tax, except in the case of fuels destined for export.

(4) Under this notice, the position holder is liable for the LUST tax imposed on removals of kerosene directly into the fuel supply tank of an aircraft for a use exempt from tax under § 4041(c). See § 3(c)(1)(iii) of this notice. Thus, for example, for kerosene removed directly into the fuel tank of an aircraft for use in foreign trade or for

use in military aircraft, the position holder is liable for tax of \$0.001 per gallon. For kerosene removed directly into the fuel tank of an aircraft for use in commercial aviation other than foreign trade, the aircraft operator continues to be liable for tax of \$0.044 per gallon (the sum of the \$0.043-per-gallon rate under § 4081(a)(2)(C) and the \$0.001-per-gallon LUST tax). See § 4(d) of Notice 2005-4 (relating to § 4081(a)(4)).

(b) Removals for export--(1) In general. The LUST tax is not imposed on the removal, entry, or sale of diesel fuel or kerosene for export if--

(i) The conditions of § 48.4082-1 (relating to the exemption for dyed fuel) are met; and

(ii) The person otherwise liable for tax has an unexpired export certificate (described in paragraph (b)(2) of this section) from the buyer of the fuel and has no reason to believe any information in the certificate is false.

(2) Export certificate. The export certificate is a statement that is signed under penalties of perjury by a person with authority to bind the buyer and contains--

(i) The name, address, and employer identification number of the buyer;

(ii) The name, address, and employer identification number of the person otherwise liable for tax;

(iii) The number of gallons and type of fuel; and

(iv) A statement that the fuel is for export.

(c) Effective date. This section is effective October 1, 2005.

Section 3. TREATMENT OF KEROSENE FOR USE IN AVIATION

(a) Overview. This section describes the changes made by § 11161 of SAFETEA to the tax on kerosene used in aviation. Section 4 of Notice 2005-4 is

modified in accordance with these changes, as explained in this section.

(b) Kerosene for use in aviation. SAFETEA replaced the \$0.219-per-gallon tax on “aviation-grade kerosene” with rules taxing all “kerosene” at a rate of \$0.244 per gallon unless a reduced rate applies as described in paragraph (c) of this section. “Kerosene” has the meaning given to the term by § 48.4081-1(b).

(c) Reduced rates of tax on kerosene used in aviation--(1) In general--(i) For kerosene removed directly from a terminal into the fuel tank of an aircraft for use in noncommercial aviation, the rate of tax is \$0.219 per gallon. See section 4081(a)(2)(C)(ii), as added by SAFETEA. Except as provided in paragraph (c)(1)(ii) or (iii) of this section, a tax rate of \$0.219 per gallon also applies if kerosene is removed into any aircraft from a refueler truck, tanker, or tank wagon that is loaded with kerosene from a terminal that is located within an airport (without regard to whether the terminal is located within a secured area of an airport) and the other requirements of § 4081(a)(3)(A) and (B) are met. Section 4081(a)(3). The other requirements of § 4081(a)(3)(A) and (B) relate to the characteristics of the refueler trucks, tankers, and tank wagons, the fueling operations at the terminal, and the restriction against loading kerosene into vehicles registered for highway use at such terminal.

(ii) For kerosene removed directly into the fuel tank of an aircraft for use in commercial aviation, the rate of tax is \$0.044 per gallon and the rules relating to refueler trucks, tankers, and tank wagons at secured airport terminals were not affected by the SAFETEA changes. Thus, in the case of kerosene removed into an aircraft from a refueler truck, tanker or tank wagon, the \$0.044 rate applies only if the truck, tanker, or tank wagon is loaded at a terminal is located in a secured area of the airport. See

§ 4(d) of Notice 2005-4.

(iii) For kerosene removed directly into the fuel tank of an aircraft for a use exempt from tax under § 4041(c) (such as use in foreign trade or in an aircraft for the exclusive use of a state or local government), including removals from a qualifying refueler truck, tanker, or tank wagon loaded at a terminal located within a secured area of an airport, the rate of tax is \$0.001 per gallon.

(2) Secured airport terminals. The list of qualifying airport terminals located within secured areas of airports identified in § 4(d)(2)(ii) of Notice 2005-4 is modified by adding the following airport terminals: Los Angeles International Airport, T-95-CA-4812; and Federal Express Corporation Memphis Airport, T-62-TN-2220.

(3) Exigent circumstances--(i) Section 4081(a)(3)(A)(iv) provides that, except in the case of exigent circumstances identified by the Secretary in regulations, the rule treating refueler trucks, tankers, and tank wagons as part of a terminal located within an airport applies only if no vehicle registered for highway use is loaded with kerosene at the terminal. If, in such exigent circumstances, a highway vehicle is loaded with kerosene at a terminal located within an airport, tax is imposed on the removal at a rate of \$0.244 per gallon.

(ii) This notice identifies as an exigent circumstance the refueling of the off-airport storage tanks used exclusively by the governmental public safety agencies in Oahu. Accordingly, kerosene may be removed from the terminal located within Honolulu International Airport, T-91-HI-4570, into a vehicle registered for highway use for this purpose only without affecting the treatment of refueler trucks, tankers, and tank wagons as part of the terminal.

(iii) This notice identifies as an exigent circumstance the fuel shortages caused by Hurricane Katrina and its aftermath. Accordingly, kerosene may be removed at the following terminals into vehicles registered for highway use without affecting the treatment of refueler trucks, tankers, and tank wagons as part of the terminal. Effective September 2, 2005 and remaining in effect through November 1, 2005: Louis Armstrong New Orleans International Airport, T-72-LA-2356; Memphis International Airport, T-62-TN-2212; Dallas Love Field Airport, T-75-TX-2663; Dallas Fort Worth International Airport, T-75-TX-2673; and George Bush Intercontinental Airport, Houston, T-76-TX-2818. See IR-2005-95 (September 7, 2005). Effective October 1, 2005 and remaining in effect through November 1, 2005: Federal Express Corporation Memphis Airport, T-62-TN-2220.

(d) Full rate buyers. The registration requirement for full rate buyers in sections 4(f)(3) and (4) of Notice 2005-4 is not applicable after September 30, 2005.

(e) Claims for kerosene used in commercial aviation (other than foreign trade)--
(1) Before October 1, 2005, § 6427(l)(4)(B) provided that if an ultimate purchaser of aviation-grade kerosene used for a nontaxable use waived its right to an income tax credit or payment, in the form and manner prescribed by the Secretary, and assigned such right to the registered ultimate vendor, then the ultimate vendor, and not the ultimate purchaser, could claim a payment or income tax credit. Section 4(h) of Notice 2005-4 provides rules regarding the conditions to allowance of a credit or payment, the form of the claim, the content of the claim, and a model waiver. Before October 1, 2005, these rules were applicable with respect to aviation-grade kerosene used in domestic commercial aviation and aviation-grade kerosene used in foreign trade, for

export, for use in certain helicopter and fixed-wing air ambulance uses, for the exclusive use of a nonprofit educational organization, for use in an aircraft owned by an aircraft museum, for use in a military aircraft, and for other nontaxable uses such as use as heating oil.

(2) Effective October 1, 2005, the rules in § 4(h) of Notice 2005-4 are applicable only with respect to kerosene used in commercial aviation (as defined in § 4083(b)) and, even in the case of commercial aviation, the rules do not apply to kerosene used as supplies for vessels or aircraft within the meaning of § 4221(d)(3). Thus, after September 30, 2005, an aircraft operator may continue to claim a credit or payment for kerosene used in domestic commercial aviation or may waive such right to the ultimate vendor, but the operator may not claim a credit or payment under § 6427(l)(4)(B) for fuel used in foreign trade or other nontaxable uses.

(3) If an aircraft operator buys kerosene partly for use in commercial aviation and partly for use in noncommercial aviation, the following rules apply:

(i) The operator may identify, either at the time of the purchase or after the kerosene has been used, the amount of kerosene that will be (or has been) used in commercial aviation and either claim or waive the right to any credit or payment under paragraph (e)(2) of this notice with respect to such kerosene. The credit or payment related to the amount that will be (or has been) used in noncommercial aviation may be claimed under paragraph (f) of this section (relating to use in noncommercial aviation).

(ii) Alternatively, if the operator does not identify the amount of kerosene that will be (or has been) used in commercial aviation, the operator may provide a certificate under paragraph (f) of this section with respect to the kerosene (including the portion of

the kerosene that will (or may) be used in commercial aviation). In such a case, “for a nonexempt use in noncommercial aviation” should be checked on the certificate. To the extent the kerosene purchased under the certificate is used in commercial aviation, the certificate will be treated, in the case of kerosene taxed at a rate of \$0.244 per gallon, as a waiver of the right to claim a credit or payment under paragraph (e)(2) of this section with respect to \$0.025 of the tax imposed on such kerosene. The operator may claim the remainder of the income tax credit or payment (\$0.175 per gallon) with respect to such kerosene but may not waive the right to the credit or payment after providing a certificate with respect to the kerosene under paragraph (f) of this section.

(f) Claims for kerosene used in noncommercial aviation and foreign trade--(1) In general. Under § 6427(l)(5)(B), as added by SAFETEA, only the registered ultimate vendor may claim a credit or payment for kerosene used in foreign trade or used (other than by a state or local government) in noncommercial aviation. For claims related to kerosene used by states and local governments in noncommercial aviation, see § 4 of this notice. Noncommercial aviation means any use of an aircraft not described in § 4083(b). An ultimate vendor is a person that sells kerosene to an ultimate purchaser for use in noncommercial aviation or foreign trade.

(2) Conditions to allowance of credit or payment. A claim for an income tax credit or payment with respect to kerosene is allowable under § 6427(l)(5)(B) if--

- (i) Tax was imposed on the kerosene under § 4081;
- (ii) The claimant sold the kerosene to the ultimate purchaser for use in noncommercial aviation or foreign trade;
- (iii) The claimant is a registered ultimate vendor;

(iv) The ultimate purchaser has provided a Certificate of Ultimate Purchaser of Kerosene for Use in Foreign Trade or Use (Other than by State or Local Government) in Noncommercial Aviation to the ultimate vendor as provided in paragraph (f)(4) of this section; and

(v) The claimant has filed a timely claim for a credit or payment and the claim contains all the information required in paragraph (f)(3) of this section.

(3) Form of claim; content of claim. Rules similar to the rules in § 4(h)(4) and (5) of Notice 2005-4 are applicable to claims for credit or payment under § 6427(l)(5)(B), except that the claimant is not required to satisfy § 4(h)(5)(iv) of Notice 2005-4 (relating to possession of a waiver by the ultimate purchaser).

(4) Certificate--(i) In general. The certificate to be provided to the ultimate vendor for purposes of § 6427(l)(5)(B) consists of a statement that is signed under penalties of perjury by a person with authority to bind the buyer, is in substantially the same form as the model certificate in paragraph (f)(4)(ii) of this section and contains all of the information necessary to complete such model certificate. A new certificate must be given if any information in the current certificate changes. The claimant must have the certificate at the time the credit or payment is claimed under § 6427(l)(5)(B). The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earlier of the following dates:

(A) The date one year after the effective date of the certificate.

(B) The date a new certificate is provided.

(ii) Model certificate.

CERTIFICATE OF ULTIMATE PURCHASER OF KEROSENE FOR USE IN FOREIGN TRADE OR USE (OTHER THAN BY STATE OR LOCAL GOVERNMENT) IN NONCOMMERCIAL AVIATION

(To support vendor's claim for a credit or payment under § 6427(l)(5)(B) of the Internal Revenue Code.)

Name, address, and employer identification number of ultimate vendor

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

The kerosene to which this certificate relates is purchased (check one): ____ for use on a farm for farming purposes; ____ for use in foreign trade (reciprocal benefits required for foreign registered airlines); ____ for use in certain helicopter and fixed-wing air ambulance uses; ____ for the exclusive use of a nonprofit educational organization; ____ for use in an aircraft owned by an aircraft museum; ____ for use in military aircraft; or ____ for a nonexempt use in noncommercial aviation.

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

____ This is a single purchase certificate:

1. _____ Invoice or delivery ticket number
2. _____ Number of gallons

____ This is a certificate covering all purchases under a specified account or order number:

1. Effective date _____
2. Expiration date _____ (period not to exceed 1 year after the effective date)
3. Buyer account number _____

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

If Buyer uses the kerosene to which this certificate relates for a use other than the nontaxable use stated above, Buyer will be liable for 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

(iii) Transition rules. A Waiver for Use by Ultimate Purchasers of Aviation-Grade Kerosene Used in Nontaxable Uses executed before October 1, 2005, as described in § 4(h)(6) of Notice 2005-4, will be treated as a certificate described in this section, and a new certificate will not have to be given until such waiver expires. In addition, for kerosene sold for a nonexempt use in noncommercial aviation, the business records used to document sales occurring before November 1, 2005, will be treated as a certificate described in this section (unless the records clearly establish that the kerosene will be used on the highway).

(5) Registration. Claims under this paragraph (f) may be made only by a registered ultimate vendor. Registration rules similar to those in § 4(h)(7) of Notice 2005-4 are applicable to ultimate vendors of kerosene used in foreign trade or used (other than by a state or local government) in noncommercial aviation. A person that is registered under § 4101 under Activity Letter "UA" (Ultimate vendor that sells aviation-grade kerosene for a nontaxable use or any use in commercial aviation) is treated as registered for purposes of claims filed with respect to kerosene used in foreign trade or used (other than by a state or local government) in noncommercial aviation. In addition, for claims relating to sales before January 1, 2006, for a nonexempt use in noncommercial aviation, an ultimate vendor that has obtained a valid TIN will be treated as registered.

(g) Claims for kerosene used by states and local governments. For rules relating to claims by registered ultimate vendors of kerosene used in aviation by state and local

governments, see § 4 of this notice and § 48.6427-9.

(h) Effective date. Except as otherwise noted, this section is effective October 1, 2005, and applies to kerosene on which tax is imposed after September 30, 2005. A person making a claim for credit or payment under paragraph (e) or (f) of this section may use any reasonable method and assumptions to establish that tax was imposed after September 30, 2005, on the kerosene to which the claim relates.

Section 4. TAXABLE FUEL; CLAIMS BY CREDIT CARD ISSUERS

(a) Overview. This section describes the changes made by § 11163 of SAFETEA under which a person extending credit on a credit card (credit card issuer) may claim a credit, refund, or payment with respect to taxable fuel sold to a state or local government for its exclusive use or to a nonprofit educational organization for its exclusive use (exempt users). Section 7 of Notice 2005-4 is modified in accordance with these changes, as explained in this section.

(b) Identity of the claimant--(1) Gasoline--(i) Section 6416(b)(2) generally provides that the tax paid on gasoline is deemed to be an overpayment if the gasoline was sold to an exempt user. Section 6402(a) generally allows credits or refunds of overpayments to the person that made the overpayment (that is, the person that paid the tax to the government).

(ii) If gasoline is purchased with a credit card issued to an exempt user, § 6416(a)(4)(B) provides that the credit card issuer is treated as the person that paid the tax if prescribed conditions are met. Among other conditions, the credit card issuer must be registered by the Service.

(iii) If gasoline is purchased by an exempt user without the use of a credit card,

§ 6416(a)(4)(A) provides that the ultimate vendor of the gasoline is treated as the person (and the only person) that paid the tax, but only if the vendor is registered by the Service.

(iv) Guidance for claims made by ultimate vendors under § 6416(a)(4) and (b)(2) is set forth in § 7 of Notice 2005-4. The guidance set forth in § 7(a)(1)(ii) of Notice 2005-4 and § 2 of Notice 2005-24 (relating to oil company credit cards) does not apply to sales after December 31, 2005.

(v) If the conditions of § 6416(a)(4) are not met, a claim under § 6416 may not be made by the person that actually paid the tax to the government. Instead, the exempt user may make a claim under § 6421(c). For any particular transaction, a claim may not be made under § 6421(c) if the tax is credited or refunded under § 6416 to the credit card issuer or the ultimate vendor.

(2) Diesel fuel and kerosene--(i) If taxed diesel fuel or kerosene is purchased with a credit card issued to a state, § 6427(l)(6)(D) provides that the credit card issuer may, under prescribed conditions, claim a credit or payment related to the tax. Among other conditions, the credit card issuer must be registered by the Service.

(ii) If diesel fuel or kerosene is purchased by a state without the use of a credit card, § 6427(l)(6)(C) provides that the ultimate vendor of the diesel fuel or kerosene may claim a credit or payment related to the tax, but only if the vendor is registered by the Service and other prescribed conditions are met. Under § 6427(l)(6)(A), the state may not claim a credit or payment related to the tax paid on diesel fuel or kerosene purchased without the use of a credit card. Claims made by ultimate vendors under § 6427(l)(6)(A) are described in § 48.6427-9.

(iii) If diesel fuel or kerosene is purchased with a credit card issued to a state, but the credit card issuer is not registered by the Service (or does not meet certain other conditions), the credit card issuer must collect the amount of the tax and the state is the proper claimant under § 6427(l)(6)(D).

(c) Definitions.

State has the meaning given to the term by § 48.4081-1(b).

Nonprofit educational organization has the meaning given to the term in § 4221(d)(5).

(d) Registration--(1) In general. Application for registration is made on Form 637, Application for Registration (For Certain Excise Tax Activities), in accordance with the instructions for that form. Form 637 will be revised to include an activity letter for credit card issuers.

(2) Requirements. The Service will register an applicant as a credit card issuer only if the Service--

(i) Determines that the applicant is engaged in business as a credit card issuer and in that business extends credit to state and local governments or nonprofit educational organizations by means of a credit card used for the purchase of taxable fuel; and

(ii) Is satisfied with the filing, deposit, payment, reporting, and claim history for all federal taxes of the applicant and any related person (as defined in § 48.4101-1(b)(5)).

(3) Separate entity not required. Section 48.4101-1(a)(4) provides that each business unit that has, or is required to have, a separate employer identification number is treated as a separate person. The Service will not require a credit card issuer to form

a separate business entity for the issuance of credit cards to qualify for registration under § 4101 or to claim a refund, credit, or payment under § 6416(a)(4)(B) or 6427(l)(6)(D).

(4) Current UV and UP registrants. A person that is registered under § 4101 under Activity Letter “UV” or “UP” is treated as registered for purposes of claims under this section related to the tax on fuels that are purchased without the use of a credit card and will not have to be reregistered unless notified to do so by the Service.

(e) Conditions to allowance of a credit, refund or payment. A claim for credit, refund, or payment is allowable under § 6416(a)(4)(B) or § 6427(l)(6)(D) if--

(1) The claimant is a registered credit card issuer;

(2) The claim relates to the tax on taxable fuel sold to a state for its exclusive use or gasoline sold to a nonprofit educational organization for its exclusive use;

(3) The fuel was purchased with a credit card issued by the claimant;

(4) Tax was imposed on the fuel under § 4041 or 4081; and

(5) The claimant has filed a timely claim for credit, refund, or payment and the claim contains all of the information required in paragraph (g) of this section.

(f) Form of claim--(1) Gasoline claims. For taxes paid on gasoline, claims for credit or refund under § 6416(a)(4) are made on Form 8849, Claim for Refund of Excise Taxes.

(2) Diesel fuel or kerosene claims. For taxes imposed on diesel fuel or kerosene, claims for payment under § 6427(l)(6) are made on Form 8849, Claim for Refund of Excise Taxes, and claims for income tax credit under §§ 34 and 6427(l)(6) are made on Form 4136, Credit for Federal Tax Paid on Fuels.

(g) Content of claim. Each claim under § 6416(a)(4)(B) or § 6427(l)(6)(D) for a credit, refund, or payment must contain the following information with respect to the gasoline, diesel fuel or kerosene covered by the claim:

(1) The total number of gallons.

(2) The claimant's registration number.

(3) A statement that the claimant--

(i) Has not collected the amount of the tax from the person who purchased the taxable fuel; or

(ii) Has obtained written consent from the ultimate purchaser to the allowance of the credit or refund.

(4) A statement that the claimant--

(i) Has repaid or agreed to repay the amount of the tax to the ultimate vendor;

(ii) Has obtained the written consent of the ultimate vendor to the allowance of the credit or refund; or

(iii) Has otherwise made arrangements which directly or indirectly provide the ultimate vendor with reimbursement of such tax.

(5) A statement that the claimant has in its possession an unexpired certificate described in paragraph (h) of this section and has no reason to believe any information in the certificate is false.

(h) Certificate--(1) In general. The certificate to be provided to the credit card issuer consists of a statement that is signed under penalties of perjury by a person with authority to bind the state or nonprofit educational organization that purchased the fuel with the issuer's credit card, is in substantially the same form as the model certificate in

paragraph (h)(2) of this section, and contains all of the information necessary to complete such model certificate. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earlier of the following dates:

- (i) The date two years after the effective date of the certificate.
 - (ii) The date a new certificate is provided.
- (2) Model certificate.

CERTIFICATE OF BUYER OF TAXABLE FUEL FOR USE BY A STATE OR
NONPROFIT EDUCATIONAL ORGANIZATION

(To support credit card issuer's claim for a credit, refund, or payment under § 6416(a)(4)(B) or § 6427(l)(6)(D) of the Internal Revenue Code.)

Name, address, and employer identification number of credit card issuer.

The undersigned ultimate purchaser ("Buyer") hereby certifies the following under the penalties of perjury (check one):

Buyer will use the taxable fuel to which this certificate relates for the exclusive use of a state; or

Buyer will use the gasoline to which this certificate relates for the exclusive use of a nonprofit educational organization.

This certificate applies to all purchases made with the credit card identified below during the period specified:

1. Buyer's account number _____.
2. Effective date of certificate _____.
3. Expiration date of certificate _____ (period not to exceed 2 years after the effective date).

Buyer will provide a new certificate to the credit card issuer if any information in this certificate changes.

Buyer understands that by signing this certificate, Buyer gives up its right to claim a credit or payment for the taxable fuel purchased with the credit card to which this certificate relates.

Buyer acknowledges that it has not and will not claim any credit or payment for the taxable fuel purchased with the credit card to which this certificate relates.

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

(3) Current certificates held by credit card issuers. A certificate also meets the conditions of this paragraph (h) if it is similar to the certificate described in paragraph (h)(2) of this section and was obtained by the credit card issuer for purposes of processing a claim under § 6416 or 6427 as in effect before January 1, 2006. These certificates expire on the earlier of January 1, 2007, or the expiration date on the certificate.

(i) Effective date. This section is effective January 1, 2006, and applies to claims relating to fuel sold to its ultimate purchaser on or after that date.

Section 5. DIESEL-WATER FUEL EMULSIONS

This section describes the changes made by § 1343 of the Energy Act regarding diesel-water fuel emulsion. Effective January 1, 2006, the rate of tax imposed by § 4081 is reduced for diesel-water fuel emulsion that meets the requirements described in § 4081(a)(2)(D). These requirements include the registration under § 4101 of the person liable for tax on the removal or sale of the diesel-water fuel emulsion. Section 6427(m) provides that a credit or payment is allowable if a person uses diesel fuel taxed at the full rate to produce diesel-water fuel emulsion described in § 4081(a)(2)(D) that is

sold or used in such person's trade or business. The amount of the credit is equal to the excess of the tax imposed on the diesel fuel in the diesel-water fuel emulsion over the amount of tax that would have been imposed on a taxable removal of the diesel-water fuel emulsion. Under this Notice, each person that is claiming a credit or payment for a diesel-water fuel emulsion also must be registered by the Service. A person that is registered under Activity Letter "S" or "M" will be treated as being registered for purposes of applying §§ 4081(a)(2)(D) and 6427(m) to any removal, sale, or use occurring before January 1, 2007.

Section 6. DIESEL FUEL AND KEROSENE; DYE INJECTION

(a) Background. As amended by AJCA, § 4082(a) generally provides that the exemption for dyed diesel fuel and dyed kerosene will not apply unless, among other conditions, the fuel is indelibly dyed "by mechanical injection" in accordance with regulations that the Secretary shall prescribe. This requirement for mechanical injection is effective on the 180th day after the date on which these regulations are issued. Temporary regulations implementing this requirement were issued on April 26, 2005 (T.D. 9199; 70 FR 21332; 2005-19 I.R.B. 1003). Thus, the effective date of the temporary regulations is October 24, 2005.

(b) Transition rules. Treasury and the Service are concerned that many taxpayers, particularly those in areas affected by Hurricanes Katrina and Rita, may not be able to comply with the specific requirements of the temporary regulations by October 24. In addition, some of these requirements may be modified in final regulations. Accordingly, the following transition rules will apply between October 24, 2005, and the date that is 180 days after the date of publication of final regulations in

the Federal Register:

(1)(i) Any means of dyeing by mechanical injection will be deemed to meet the "mechanical injection" requirements of § 4082(a) if the dyeing system includes measures to resist tampering that are consistent with customary business security practices. Thus, mechanical injection systems at a terminal are not required to meet the specific requirements of § 48.4082-1T(d) and no penalty will be imposed under § 6715A(a)(2) for a failure to meet those specific requirements.

(ii) In the case of a malfunction of a system described in section (b)(1)(i) of this section, fuel dyed by manual dyeing will be deemed to meet the requirements of § 4082(a) if the interval between the first occurrence of manual dyeing and the last does not exceed 72 hours (excluding any Saturday, Sunday, or legal holiday that is within the interval) and the facility operator keeps adequate records describing the circumstances surrounding the malfunction. The Service may withdraw an operator's right to dye by manual dyeing if the Service cannot verify the accuracy of such dyeing.

(2) A mixture containing diesel fuel or kerosene will be treated as being dyed by mechanical injection if--

(i) The mixture consists of at least 80 percent diesel fuel or kerosene and the remaining portion is a liquid, such as biodiesel, ("other liquid") that is not diesel fuel or kerosene;

(ii) The diesel fuel or kerosene in the mixture was dyed by mechanical injection;

(iii) The diesel fuel or kerosene and the other liquid are combined at a facility that is not a terminal; and

(iv) The mixture meets the specifications of § 48.4082-1(b) (relating to dye type

and concentration) when it is removed from the facility where the diesel fuel or kerosene and the other liquid are combined.

Section 7. EFFECT ON OTHER DOCUMENTS

Notice 2005-4 is modified as described in this notice.

Section 8. PAPERWORK REDUCTION ACT

The Office of Management and Budget has waived application of the Paperwork Reduction Act with respect to the collections of information contained in this notice.

Section 9. DRAFTING INFORMATION

The principal authors of this notice are Deborah Karet, Taylor Cortright, Susan Athy, and William Blodgett of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, please contact Ms. Karet (concerning LUST and kerosene for use in aviation), Ms. Cortright (concerning credit cards), or Ms. Athy (concerning diesel water fuel emulsions) at (202) 622-3130. Mr. Blodgett (concerning dye injection) can be reached at (202) 622-3090. These are not toll-free calls.