



May 1, 2026

Regulatory Alert: Temporary Rule Issued for IRC §6435 Dyed Fuel Refunds

From EMA

Friday, May 1, 2026 – Today, the Treasury Department and the IRS issued a temporary regulation, together with a notice of proposed rulemaking, implementing new Internal Revenue Code §6435. The temporary rule addresses a narrow and specific transaction -- clear (undyed) diesel fuel or kerosene on which the §4081 federal excise tax has been paid, that is subsequently indelibly dyed at a terminal and removed for a nontaxable use. Section 6435, created by last year's One Big, Beautiful Bill, establishes a new statutory refund mechanism for the tax paid on that fuel, applicable to eligible dyed fuel removed on or after December 31, 2025.

What the temporary rule is **not** about -- the §6435 temporary rule does *not* govern refunds of federal excise tax on tax-paid gasoline and diesel sold to tax-exempt entities such as state and local governments, nonprofit educational organizations, or the federal government. Those refunds continue to be claimed under the existing ultimate-vendor and ultimate-purchaser provisions (IRC §§6416, 6420, 6421, 6427) using Form 8849 Schedules 1, 2, 3, and 6, and are unaffected by §6435 itself. EMA flags this distinction at the outset because the §6435 framework introduces filing mechanics on a new Form 8849 schedule, and members should not confuse §6435 procedures with the routine refund channels they already use for tax-exempt sales.

The temporary regulations are effective immediately and remain in place pending issuance of final regulations (no later than three years from issuance). The IRS has revised Form 8849 (Claim for Refund of Excise Taxes) to incorporate new Schedule 5 (Sections 4081(e) and 6435 Claims), released in March 2026. Schedule 5 contains two distinct claim categories: §4081(e) second-tax claims; and §6435 dyed-fuel refund claims (the new mechanism). Filers must submit separate schedules for each claim type and may not combine claim categories on a single Schedule 5.

To substantiate a §6435 claim, the claimant must demonstrate that: indelibly dyed diesel fuel or kerosene was removed from a terminal; the §4081 tax was previously paid on that fuel and has not been credited or refunded; and the fuel qualifies for a nontaxable use under §4082(a).

Required documentation includes a First Taxpayer's Report and, where applicable, a Statement of Subsequent Seller, along with records sufficient to establish the chain of title and prior tax payment. A penalty of up to 200% of the

excessive amount may apply to improper claims under applicable excise tax penalty provisions.

Structural Limitation (appropriations constraint) – Although §6435 provides that “a person” may claim a refund, the statute does not include the customary language (found in §§6420, 6421, and 6427) treating such payments as refunds of overpayments of tax. As a result, §6435 payments must be made from the general refund appropriation under 31 U.S.C. §1324, in conjunction with IRC §6402. Treasury has concluded that, absent a statutory correction, this framework limits refund payments to the person treated as having paid the §4081 tax to the IRS. Treasury and the IRS initially identified this issue in early 2026 administrative guidance and suspended claim processing pending clarification. The May 1 temporary regulations confirm that this limitation cannot be resolved through regulation alone.

The practical effect is that, under current guidance, §6435 refunds may only be claimed by the original §4081 taxpayer (typically the position holder), not by downstream marketers that economically bear the tax.

Implications for EMA Marketers -- The temporary regulation creates a disconnect between economic burden and legal entitlement:

- Position holder as claimant. The original §4081 taxpayer must file the §6435 claim on Form 8849, Schedule 5.
- Contractual recovery required. Downstream marketers must rely on contractual arrangements with position holders to obtain the economic benefit of the refund.
- Contract gaps likely. Many existing supply agreements do not address §6435-type refunds, creating potential exposure for marketers.

Broader Context: Form 8849 Processing Delays on Tax-Exempt Sales -- The §6435 limitation arises in the context of broader, well-documented Form 8849 processing problems that EMA marketers have experienced. Most notably, marketers have reported significant and persistent delays in IRS processing of Form 8849 refund claims for excise tax-paid sales of gasoline and diesel to tax-exempt entities — including state and local governments, nonprofit educational institutions, and qualified federal-use customers. These delays are independent of the §6435 issue, but they compound member cash-flow pressure because marketers typically extend tax-exempt pricing at the point of sale and then wait months — sometimes substantially longer — to recover the federal tax through Form 8849.

Common member-reported issues across the Form 8849 schedules include:

- IRS processing times that materially exceed published targets, particularly on Schedule 2 ultimate-vendor claims tied to tax-exempt sales;
- Documentation friction, especially with chain-of-title substantiation, exemption certificates, and First Taxpayer’s Report attachments;
- Mismatches between the party that economically bears the tax and the party legally entitled to claim the refund (a structural issue now reinforced by §6435); and
- Cash-flow strain on marketers who finance the federal excise tax on tax-exempt deliveries while awaiting refund processing.

The §6435 rollout brings increased visibility to these issues and underscores the need for both a targeted statutory fix on §6435 and broader administrative reform of Form 8849 refund processing — particularly for tax-exempt sales claims that affect the daily operations of EMA marketers.

Recommended Action Items for EMA Marketers

- Identify qualifying §6435 transactions. Review Q1 2026 and forward transactions involving clear diesel or kerosene that was subsequently dyed at a terminal for nontaxable use. Identify the position holder for each transaction.
- Distinguish §6435 from tax-exempt sales refunds. Continue filing Schedule 1, 2, 3, or 6 claims, as applicable, for tax-exempt sales of gasoline and diesel to state and local governments, nonprofit educational institutions, and other qualified buyers. Do not migrate those claims to Schedule 5.
- Review and update supply contracts. Confirm that supply agreements include provisions addressing tax refund pass-throughs, including §6435 refunds. Where absent, raise with counterparties promptly.
- Avoid improper §6435 filings. Do not file §6435 claims as a downstream party under current guidance. Improper filings risk rejection and potential penalty exposure.
- Confirm Form 637 registrations. Ensure that all relevant registrations (e.g., “UV” for ultimate vendor claims) are current and in good standing — particularly for marketers making tax-exempt sales subject to Schedule 2 claims.
- Document Form 8849 processing experience. Track filing dates, refund receipt dates, and any IRS correspondence on pending claims — especially Schedule 2 claims for tax-exempt sales — and submit specific examples to EMA to support comments and Hill outreach.
- Provide member input to EMA. Submit specific examples of §6435 transactions, refund delays, and contractual challenges to support EMA’s regulatory comments and legislative outreach.

EMA Next Steps — EMA will submit formal comments on the proposed §6435 regulations, including documentation of member impacts; recommendations for administrative approaches within existing constraints, including potential “on behalf of” filing structures; and advocacy for a technical statutory correction to align §6435 with established refund provisions.

EMA will also continue engagement with Congress, Treasury, and the IRS to address the broader Form 8849 refund-processing delays affecting tax-exempt sales claims and to pursue improvements to the federal excise tax refund framework as a whole.

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