for the taxable year. However, the maximum amount of elective deferrals Participant E may make for the balance of the calendar year is $600 (the $5,000 applicable dollar catch-up limit for 2006, reduced by the $4,400 ($1,000 plus $3,400) of elective deferrals previously treated as catch-up contributions during the taxable year).

Example 6. (i) The facts are the same as in *Example 5,* except that Participant E exceeded the section 401(a)(30) limit for 2005 by $1,300 prior to October 31, 2005, and made $600 of elective deferrals in the period November 1, 2005, through December 31, 2005 (which were catch-up contributions for 2005). Thus, Participant E made $16,600 of elective deferrals for the plan year ending October 31, 2006.

(ii) Once Participant E's elective deferrals for the calendar year 2006 exceed $15,000, subsequent elective deferrals are treated as catch-up contributions as they are deferred, provided that such elective deferrals do not exceed the applicable dollar catch-up limit for the taxable year. Since the $1,000 in elective deferrals made after Participant E reaches the section 402(g) limit for calendar year 2006 does not exceed the applicable dollar catch-up limit for 2006, the entire $1,000 is a catch-up contribution. Pursuant to paragraph (d)(2)(i) of this section, $1,000 is subtracted from Participant E's elective deferrals in determining Participant E's actual deferral ratio for the plan year ending October 31, 2006. In addition, the $600 of catch-up contributions from the period November 1, 2005 to December 31, 2005 are subtracted from Participant E's elective deferrals in determining Participant E's ADR. Thus, the total elective deferrals taken into account in determining Participant E's ADR for the plan year ending October 31, 2006, is $15,000 ($16,600 in elective deferrals for the current plan year, less $1,600 in catch-up contributions).

(iii) The ADP test is run for Plan R (after excluding the $1,600 in elective deferrals in excess of the section 401(a)(30) limit), but Plan R needs to take corrective action in order to pass the ADP test. After applying the rules of section 401(k)(8)(C) to allocate the total excess contributions determined under section 401(k)(8)(C), the maximum deferrals that may be retained by any highly compensated employee under Plan R (the ADP limit) is $14,800.

(iv) Under paragraph (d)(2)(ii) of this section, elective deferrals that exceed the section 401(a)(30) limit under Plan R are also subtracted from Participant E's elective deferrals under Plan R for purposes of applying the rules of 401(k)(8). Accordingly, for purposes of correcting the failed ADP test, Participant E is treated as having contributed $15,000 of elective deferrals in Plan R. The amount of elective deferrals that would have to be distributed to Participant E in order to satisfy section 401(k)(8)(C) is $200 ($15,000 minus $14,800), which is less than the excess of the applicable dollar catch-up limit ($5,000) over the elective deferrals previously treated as catch-up contributions under Plan R for the taxable year ($1,000). Under paragraph (d)(2)(iii) of this section, Plan R must retain Participant E's $200 in elective deferrals and is not treated as failing to satisfy section 401(k)(8) merely because the elective deferrals are not distributed to Participant E.

(v) Even though Participant E's elective deferrals for calendar year 2006 have exceeded the section 401(a)(30) limit, Participant E can continue to make elective deferrals during the last two months of the calendar year, since Participant E's catch-up contributions for the taxable year 2006 have not exceeded the applicable dollar catch-up limit for the taxable year. However, the maximum amount of elective deferrals Participant E may make for the balance of the calendar year is $3,800 (the $5,000 applicable dollar catch-up limit for 2006, reduced by $1,200 ($1,000 plus $200) in elective deferrals previously treated as catch-up contributions during taxable year 2006).

Example 7. (i) Participant F, who is 58 years old, is a highly compensated employee who earns $100,000. Participant F participates in a section 401(k) plan, Plan S, for the first six months of the year and then transfers to another section 401(k) plan, Plan T, sponsored by the same employer, for the second six months of the year. Plan S limits highly compensated employees' elective deferrals to 6% of compensation for the period of participation, but permits catch-up eligible participants to defer amounts in excess of 6% during the plan year, up to the applicable dollar catch-up limit for the year. Plan T limits highly compensated employee's elective deferrals to 8% of compensation for the period of participation, but permits catch-up eligible participants to defer amounts in excess of 8% during the plan year, up to the applicable dollar catch-up limit for the year. Participant F, who earned $50,000 in the first six months of the year, defers $5,000 under Plan S. Participant F also deferred $5,000 under Plan T.

(ii) Under paragraph (f)(2) of this section, the employer-provided limit for Participant F is $7,000, the sum of the employer-provided limit for Plan S ($3,000) and the employer-provided limit for Plan T ($4,000). Participant F's elective deferrals for the year are $10,000. Therefore, the amount of Participant F's elective deferrals in excess of the employer-provided limit is $3,000. Under paragraph (f)(3) of this section, the $3,000 in excess of the employer-provided limit is treated as an elective deferral in excess of that limit under both Plans S and T for purposes of applying the catch-up contribution limit under paragraph (c)(1) of this section.

(iii) Since the amount of Participant F's elective deferrals in excess of the employer-provided limit ($3,000) does not exceed the applicable dollar catch-up limit for the taxable year, the entire $3,000 of Participant F's elective deferrals are treated as catch-up contributions. In determining Participant F's actual deferral ratio, the entire $3,000 of catch-up contributions is subtracted from Participant F's elective deferrals for the plan year under paragraph (d)(2)(i) of this section. Accordingly, Participant F's actual deferral ratio is 7% ($7,000/$100,000) for both Plans S and T.

(iv) In accordance with paragraph (f)(3) of this section, it is determined that $2,000 of the excess over the employer-provided limit was made under Plan S and $1,000 of the excess over the employer-provided limit was made under Plan T. This determination is not inconsistent with the manner in which the elective deferrals were actually made. Therefore, under paragraph (d)(2)(ii) of this section, for purposes of applying the rules of section 401(k)(8), Participant F is treated as having elective deferrals of $3,000 ($5,000–$2,000) in Plan S and $4,000 ($5,000–$1,000) in Plan T.

(v) If, after applying the ADP test of section 401(k)(3), Plan S or Plan T were to require correction under section 401(k)(8), the maximum amount of elective deferrals in excess of the ADP limit that could be treated as catch-up contributions for Participant F under the Plan could not exceed $2,000, the applicable dollar catch-up limit of $5,000, reduced by the $3,000 in excess of the employer-provided limit previously treated as catch-up contributions for the taxable year.

(j) *Effective date and transition rule*— (1) *Effective date.* Section 414(v) and this section apply to contributions in taxable years beginning on or after January 1, 2002.

(2) *Transition rule for collectively bargained employees.* An applicable employer plan will not fail to satisfy the requirements of paragraph (e) of this section merely because employees eligible to make elective deferrals who are included in a unit of employees covered by a collective bargaining agreement in effect on January 1, 2002, are not permitted to make catch-up contributions until the first plan year beginning after the termination of such agreement.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[REG–143219–01]

RIN 1545–BA27

Gasoline Tax Claims Under Section 6416(a)(4)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document invites comments from the public on issues that the IRS may address in proposed regulations relating to claims for credits or refunds of the gasoline tax. All materials submitted will be available for public inspection and copying.

DATES: Written and electronic comments must be received by January 22, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–143219–01), room

5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–143219–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may send submissions electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or directly to the IRS Internet site at http://www.irs.gov/tax__regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning submissions, the Regulations Unit, (202) 622–7180; concerning the proposals, Frank Boland, (202) 622–3130 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: Under section 6416(b)(2), the person that paid the gasoline tax imposed by section 4081 to the government may receive a credit or refund of the amount of the tax if the gasoline is, by any person, exported, used or sold for use as supplies for vessels or aircraft, sold to a state or local government for its exclusive use, sold to a nonprofit educational organization for its exclusive use, or used or sold for use in the production of special fuels (exempt purposes).

Section 6102 of the Technical and Miscellaneous Revenue Act of 1988 (the 1988 Act) (Public Law 100–647, 102 Stat. 3342) added section 6416(a)(4) to the Internal Revenue Code. Under section 6416(a)(4)(A), a wholesale distributor (described in section 6416(a)(4)(B)) that buys gasoline on which the tax imposed by section 4081 has been paid and sells the gasoline to its ultimate purchaser for an exempt purpose is treated as the person (and the only person) that paid the tax to the government and thus is the person eligible to claim a credit or refund of that tax.

Section 6416(a)(4)(B), as added by the 1988 Act, provides that the term wholesale distributor includes any person that sells gasoline to producers, retailers, or to users that purchase in bulk quantities and accept delivery into bulk storage tanks. For this purpose, the term producer includes a refiner, blender, or wholesale distributor of gasoline, or a dealer selling gasoline exclusively to producers of gasoline. The term wholesale distributor does not include any person that is an importer, refiner, or blender of gasoline, or is a dealer selling gasoline exclusively to producers. Section 905 of the Taxpayer Relief Act of 1997 (Public Law 105–34, 111 Stat. 788) amended section 6416(a)(4)(B) of the Code by providing that the term wholesale distributor also includes any person that makes retail sales of gasoline at 10 or more retail motor fuel outlets.

Notice 89–29 (1989–1 C.B. 669) provides rules for implementing section 6416(a)(4), as added by the 1988 Act. These include rules that allow claims by the person that actually paid the tax to the government instead of claims by the wholesale distributor if (1) tax is not included in the price of the gasoline bought by the wholesale distributor or (2) the sale by the wholesale distributor is charged on an oil company credit card issued to an exempt person.

In response to questions that have arisen concerning the application of the rules in Notice 89–29, the IRS is considering proposing regulations under section 6416(a)(4) that, when finalized, would replace the guidance provided by Notice 89–29. The IRS invites comments from the public on issues that should be addressed in the regulations, including issues relating to refund claims by persons other than the wholesale distributor.

Paul Kugler,

Associate Chief Counsel (Passthroughs and Special Industries).

[FR Doc. 01–26571 Filed 10–22–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK18

Finality of Decisions

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the adjudication regulation concerning finality of the decisions made by the Department of Veterans Affairs (VA). The intended effect of this amendment is to present the existing regulation in ''plain language''.

DATES: Comments must be received on or before December 24, 2001.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC, 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AK18''. All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Bob White, Team Leader, Plain Language Regulations Project, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC, 20420, telephone (202) 273–7228. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: VA proposes to rewrite 38 CFR 3.104 in plain language. This regulation explains how a decision made by one VA field office affects other field offices as well as the VA Insurance Center. There is also a discussion of the circumstances under which VA may change a decision. The current regulation is located in subpart A of part 3. We propose to create new § 3.2120 to restate the current regulation. The new section would be located in subpart D, Universal Adjudication Rules that Apply to Benefit Claims Governed by part 3 of This Title.

Paragraph (a) of proposed new § 3.2120 informs claimants that when a Veterans Service Center makes a decision, the claimant is informed and given appeal rights. That decision is then binding on all other Veterans Service Centers. There are three exceptions to this general rule. The specific conditions under which a decision can be changed, based on the same evidence, are listed in paragraphs (a)(1) through (a)(3). Paragraphs (a)(1) and (a)(2) are restatements of the exceptions currently found in § 3.104(a). Paragraph (a)(3) incorporates new § 3.2600, Review of benefit claims decisions.

Proposed paragraph (b) of new § 3.2120 lists types of VA decisions that are made by both Veterans Service Centers and the VA Insurance Center. For clarity, we have added some examples of ''domestic relations'' issues. It explains that a decision by one Center is binding on the other Centers, as long as the facts of the case have not changed, and the instructions and criteria used to make the decision have not changed. The only exception is if VA determines the decision was based on a clear and unmistakable error, since VA will revise such decisions. This is a restatement of § 3.104(b).

This rulemaking reflects VA's goal of making government more responsive, accessible, and comprehensible to the public. The Plain Language Regulations Project was developed as a long-term comprehensive project to reorganize and rewrite in plain language the