

1513-0095

26 U.S.C.

§ 4181. Imposition of tax

There is hereby imposed upon the sale by the manufacturer, producer, or importer of the following articles a tax equivalent to the specified percent of the price for which so sold:

Articles taxable at 10 percent--

Pistols.
Revolvers.

Articles taxable at 11 percent--

Firearms (other than pistols and revolvers).
Shells, and cartridges.

(Aug. 16, 1954, ch. 736, 68A Stat. 490.)

§ 4221. Certain tax-free sales

(a) General rule

Under regulations prescribed by the Secretary, no tax shall be imposed under this chapter (other than under section 4121, 4081, or 4091) on the sale by the manufacturer (or under subchapter A or C of chapter 31 on the first retail sale) of an article -

- (1) for use by the purchaser for further manufacture, or for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture,
- (2) for export, or for resale by the purchaser to a second purchaser for export,
- (3) for use by the purchaser as supplies for vessels or aircraft,
- (4) to a State or local government for the exclusive use of a State or local government, or
- (5) to a nonprofit educational organization for its exclusive use, but only if such exportation or use is to occur before any other use.

Paragraphs (4) and (5) shall not apply to the tax imposed by section 4064. In the case of taxes imposed by section 4051, (FOOTNOTE 1) or 4071, paragraphs (4) and (5) shall not apply on and after October 1, 2005. In the case of the tax imposed by section 4131, paragraphs (3), (4), and (5) shall not apply and paragraph (2) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe. In the case of taxes imposed by subchapter A of chapter 31, paragraphs (1), (3), (4), and (5) shall not apply.

(FOOTNOTE 1) So in original. The comma probably should not appear.

(b) Proof of resale for further manufacture; proof of export

Where an article has been sold free of tax under subsection (a) -

- (1) for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture, or
- (2) for export, or for resale by the purchaser to a second purchaser for export, subsection (a) shall cease to apply in respect of such sale of such article unless, within the 6-month period which begins on the date

of the sale by the manufacturer (or, if earlier, on the date of shipment by the manufacturer), the manufacturer receives proof that the article has been exported or resold for use in further manufacture.

(c) Manufacturer relieved from liability in certain cases

In the case of any article sold free of tax under this section (other than a sale to which subsection (b) applies), and in the case of any article sold free of tax under section 4001(c), 4001(d), or 4053(6), if the manufacturer in good faith accepts a certification by the purchaser that the article will be used in accordance with the applicable provisions of law, no tax shall thereafter be imposed under this chapter in respect of such sale by such manufacturer.

(d) Definitions

For purposes of this section -

(1) Manufacturer

The term "manufacturer" includes a producer or importer of an article, and, in the case of taxes imposed by subchapter A or C of chapter 31, includes the retailer with respect to the first retail sale.

(2) Export

The term "export" includes shipment to a possession of the United States; and the term "exported" includes shipped to a possession of the United States.

(3) Supplies for vessels or aircraft

The term "supplies for vessels or aircraft" means fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or vessels actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. For purposes of the preceding sentence, the term "vessels" includes civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and the term "vessels of war of the United States or of any foreign nation" includes aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof.

(4) State or local government

The term "State or local government" means any State, any political subdivision thereof, or the District of Columbia.

(5) Nonprofit educational organization

The term "nonprofit educational organization" means an educational organization described in section 170(b)(1)(A)(ii) which is exempt from income tax under section 501(a). The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

(6) Use in further manufacture

An article shall be treated as sold for use in further manufacture if -
(A) such article is sold for use by the purchaser as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him; or
(B) in the case of gasoline taxable under section 4081, such gasoline is sold for use by the purchaser, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him.

(7) Qualified bus

(A) In general

The term "qualified bus" means -

- (i) an intercity or local bus, and
- (ii) a school bus.

(B) Intercity or local bus

The term "intercity or local bus" means any automobile bus which is used predominantly in furnishing (for compensation) passenger land transportation available to the general public if -

- (i) such transportation is scheduled and along regular routes, or
- (ii) the seating capacity of such bus is at least 20 adults (not including the driver).

(C) School bus

The term "school bus" means any automobile bus substantially all the use of which is in transporting students and employees of schools. For purposes of the preceding sentence, the term "school" means an educational organization 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 its educational activities are carried on.

(e) Special rules

(1) Reciprocity required in case of civil aircraft

In the case of articles sold for use as supplies for aircraft, the privileges granted under subsection (a)(3) in respect of civil aircraft employed in foreign trade or trade between the United States and any of its possessions, in respect of aircraft registered in a foreign country, shall be allowed only if the Secretary of the Treasury has been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of the Treasury is advised by the Secretary of Commerce that he has found that a foreign country has discontinued or will discontinue the allowance of such privileges, the privileges granted under subsection (a)(3) shall not apply thereafter in respect of civil aircraft registered in that foreign country and employed in foreign trade or trade between the United States and any of its possessions.

(2) Tires

(A) Tax-free sales

Under regulations prescribed by the Secretary, no tax shall be imposed under section 4071 on the sale by the manufacturer of a tire if -

- (i) such tire is sold for use by the purchaser for sale on or in connection with the sale of another article manufactured or produced by such purchaser; and
- (ii) such other article is to be sold by such purchaser in a sale which either will satisfy the requirements of paragraph (2), (3), (4), or (5) of subsection (a) for a tax-free sale, or would satisfy such requirements but for the fact that such other article is not subject to tax under this chapter.

(B) Proof

Where a tire has been sold free of tax under this paragraph, this paragraph shall cease to apply unless, within the 6-month period which begins on the date of the sale by him (or, if earlier on the date of the shipment by him), the manufacturer of such tire receives proof that the other article referred to in clause (ii) of subparagraph (A) has been sold in a manner which satisfies the requirements of such clause (ii) (including in the case of a sale for export, proof of export of such other article).

(C) Subsection (a)(1) does not apply

Paragraph (1) of subsection (a) shall not apply with respect to the tax imposed under section 4071 on the sale of a tire.

(3) Tires used on intercity, local, and school buses

Under regulations prescribed by the Secretary, the tax imposed by section 4071 shall not apply in the case of tires sold for use by the purchaser on or in connection with a qualified bus.

§ 4222. Registration

(a) General rule

Except as provided in subsection (b), section 4221 shall not apply with respect to the sale of any article unless the manufacturer, the first purchaser, and the second purchaser (if any) are all registered under this section. Registration under this section shall be made at such time, in such manner and form, and subject to such terms and conditions, as the Secretary may by regulations prescribe. A registration under this section may be used only in accordance with regulations prescribed under this section.

(b) Exceptions

(1) Purchases by State and local governments

Subsection (a) shall not apply to any State or local government in connection with the purchase by it of any article if such State or local government complies with such regulations relating to the use of exemption certificates in lieu of registration as the Secretary shall prescribe to carry out the purpose of this paragraph.

(2) Under regulations

Subject to such regulations as the Secretary may prescribe for the purpose of this paragraph, the Secretary may relieve the purchaser or the second purchaser, or both, from the requirement of registering under this section.

(3) Certain purchases and sales by the United States

Subsection (a) shall apply to purchases and sales by the United States only to the extent provided by regulations prescribed by the Secretary.

((4) Repealed. Pub. L. 89-44, title II, § 208(e), June 21, 1965, 79 Stat. 141)

(5) Supplies for vessels or aircraft

Subsection (a) shall not apply to a sale of an article for use by the purchaser as supplies for any vessel or aircraft if such purchaser complies with such regulations relating to the use of exemption certificates in lieu of registration as the Secretary shall prescribe to carry out the purpose of this paragraph.

(c) Denial, revocation, or suspension of registration

Under regulations prescribed by the Secretary, the registration of any person under this section may be denied, revoked, or suspended if the Secretary determines -

(1) that such person has used such registration to avoid the payment of any tax imposed by this chapter, or to postpone or in any manner to interfere with the collection of any such tax, or

(2) that such denial, revocation, or suspension is necessary to protect the revenue. The denial, revocation, or suspension under this subsection shall be in addition to any penalty provided by law for any act or failure to act.

(d) Registration in the case of certain other exemptions

The provisions of this section may be extended to, and made applicable with respect to, the exemptions provided by sections 4001(c), 4001(d), 4053(6), 4064(b)(1)(C), 4101, and 4182(b), and the exemptions authorized

under section 4293 in respect of the taxes imposed by this chapter, to the extent provided by regulations prescribed by the Secretary.

(e) Definitions

Terms used in this section which are defined in section 4221(d) shall have the meaning given to them by section 4221(d).

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Sec. 53.140 Registration.

(a) General rule. Except as provided in Sec. 53.141, tax-free sales under section 4221 of the Code may be made only if the manufacturer, first purchaser, and second purchaser, as the case may be, have registered as required by this section. To secure a Certificate of Registry, the applicant must furnish the information required in paragraph (b) of this section.

(b) Information to be submitted. Except as provided in Sec. 53.141, any person who is eligible to sell or purchase articles free of a tax imposed by section 4181 of the Code and who has not registered with the Commissioner of the Internal Revenue Service prior to January 1, 1991 or with TTB in accordance with the provisions of this section shall, prior to making a tax-free sale or purchase, file TTB Form 5300.28, in duplicate, executed in accordance with the instructions contained on the reverse of TTB Form 5300.28. The person who receives an approved Certificate of Registry shall be considered to be registered for purposes of selling or purchasing articles tax free as provided in this section. In the case of a nonprofit educational organization, information shall be furnished showing that the organization is an educational organization described in section 170(b)(1)(A)(ii) of the Code that is exempt from income tax under section 501(a) of the Code, or is a school operated as an activity of an organization described in section 501(c)(3) that is exempt from income tax under section 501(a).

(c) Evidence required in support of tax-free sales. See Sec. 53.131(c)(1) for evidence required in support of tax-free sales to purchasers who are required to be registered.

(d) Failure to register. If either the seller or purchaser is not registered as required by this section of the regulations, tax-free sales may not be made, except as indicated in Sec. 53.141.

(e) Cross references. (1) For exceptions to the requirement for registration, see section 4222(b) of the Code and Sec. 53.141.

(2) For revocation or suspension of registration, see Sec. 53.142.

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by ATF-447, 66 FR 19088, Apr. 13, 2001]

Sec. 53.141 Exceptions to the requirement for registration.

(a) State and local governments. (1) A State or local government purchasing articles direct from the manufacturer for its exclusive use may, but is not required to, register as provided in Sec. 53.140. To establish the right to sell articles tax free to a State or local government that is not registered, the manufacturer must obtain from an authorized official of the State or local government and retain in the manufacturer's possession either a properly executed exemption certificate, or a purchase order that contains the same information required to be furnished in an exemption certificate. See Sec. 53.135(c) for the information necessary to substantiate a tax-free sale under such circumstances.

(2) Each State requesting registration will be assigned one Certificate of Registry. The registration number shown on this certificate may be used by all agencies, boards, and commissions of the State that are authorized by the State to make purchases for the

exclusive use of the State. However, the registration number assigned to a State may not be used by any political subdivision of that State, such as a county or municipality. Each political subdivision of a State desiring to obtain a Certificate of Registry must obtain a separate registration number.

(b) Sales or resales to foreign purchasers for export. Persons whose principal place of business is not within the United States may, but are not required to, register in order to purchase articles tax free for export. To establish the right to sell articles tax free for export to a purchaser who is not registered and who is located in a foreign country or a possession of the United States, the manufacturer must obtain the evidence required by Sec. 53.133(b).

(c) United States. The registration requirements of the regulations in this part do not apply to purchases and sales by the United States or any of its agencies or instrumentalities. The evidence required in support of such tax-free purchases and sales is a notation on the purchase order or other document furnished to the seller clearly indicating that the article or articles are being purchased tax free as authorized by chapter 32 of the Code.

(d) Supplies for vessels and aircraft. An article subject to an excise tax imposed by chapter 32 of the Code may be sold tax free by the manufacturer under the provisions of Sec. 53.134 for use by the purchaser as supplies for a vessel or aircraft if both the manufacturer and the purchaser are registered under the provisions of Sec. 53.140. The article also may be sold tax free for such use even though neither the manufacturer nor the purchaser is so registered if the provisions of paragraph (d) of Sec. 53.134 are satisfied.

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-312, 56 FR 31084, July 9, 1991]

Sec. 53.142 Denial, revocation or suspension of registration.

(a) The appropriate TTB officer is authorized to deny, revoke or temporarily suspend, upon written notice, the registration of any person and the right of such person to sell or purchase articles tax free under section 4221 of the Code in any case in which he finds that:

- (1) The registrant is not a bona fide manufacturer, or a purchaser reselling direct to manufacturers or exporters;
- (2) The registrant is for some other reason not eligible under these regulations to retain a Certificate of Registry; or
- (3) The registrant has used his registration to avoid payment of the tax imposed by section 4181 of the Code, or to postpone or interfere in any manner with the collection of such tax;
- (4) Such denial, revocation, or suspension is necessary to protect the revenue; or
- (5) The registrant failed to comply with the requirements of paragraph (c) of Sec. 53.140, relating to the evidence required to support a tax-free sale.

(b) The denial, revocation, or suspension of registration is in addition to any other penalty that may apply under the law for any act or failure to act.

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-365, 60 FR 33671, June 28, 1995]