1983-1 C.B. 274; T.D. 7882;
*1983 IRB LEXIS 599, **

Treasury Decision 7882

TITLE 26-INTERNAL REVENUE.-CHAPTER 1, SUBCHAPTER D, PART 48-MANUFACTURERS AND RETAILERS EXCISE TAXES; PART 145-TEMPORARY EXCISE TAX REGULATIONS UNDER THE HIGHWAY REVENUE ACT OF 1982.)

1983-1 C.B. 274; T.D. 7882; 1983 IRB LEXIS 599

January 1983

[*1]

SUBJECT MATTER: Section 4061.-Imposition of Tax

APPLICABLE SECTIONS:

26 CFR 145.4061-1: Application to manufactures tax. (Also Section 4051; 145.4051-1)

TEXT:

Floor Stocks Credits or Refunds and Consumer Credits or Refunds with Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks.

AGENCY:

Internal Revenue Service, Treasury.

ACTION:

Temporary regulations.

SUMMARY:

This document provides temporary regulations relating to floor stocks credits or refunds and consumer credits or refunds with respect to excise taxes on certain tax-repealed articles. In addition, this document provides temporary regulations relating to the excise tax on the sale of heavy trucks. Changes in the applicable tax law were made by the Highway Revenue Act of 1982 (Title V of the Surface Transportation Assistance Act of 1982). These regulations affect all manufacturers, producers, importers, dealers, retailers, and consumers of certain articles and will provide them with the guidance needed to comply with the law.

DATES:

The regulations relating to floor stocks credits or refunds for trucks, truck trailers, truck parts and accessories, and lubricating oil apply to articles sold to a dealer before January 7, 1983, and held by a dealer for sale on the **[*2]** first moment of January 7, 1983. The regulations relating to consumer credits or refunds for trucks and truck trailers apply to vehicles sold to an ultimate purchaser after December 2, 1982, and before January 7, 1983. The regulations relating to the retail tax on heavy trucks are effective for sales made on and after April 1, 1983. The regulations relating to floor stock credits or refunds for tires apply to tires sold to a dealer before January 1, 1984, and held by a dealer for sale on the first moment of January 1, 1984.

FOR FURTHER INFORMATION CONTACT:

Neil W. Zyskind of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. (Attention: CC:LR:T) (202-566-4336) (not a toll-free call).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains temporary regulations under Part 145 relating to floor stocks and consumer credits or refunds with respect to certain tax-repealed articles as provided in sections 522 and 523 of the Highway Revenue Act of 1982 (Act) (Pub. L. 97-424). In addition this document contains temporary regulations relating to the retail tax on heavy trucks as provided in **[*3]** section 512 of the Act. The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject.

IN GENERAL

Section 4061 (a) (1) of the Internal Revenue Code of 1954 (Code), which does not apply after March 31, 1983, imposed a 10 percent tax on the sale by a manufacturer, producer, or importer of truck chassis and bodies, truck trailer and semitrailer chassis and bodies, and highway tractors used in combination with a trailer or semitrailer. Section 4061 (a) (2) of the Code excluded from the 10 percent tax, truck bodies and chassis suitable for use with a vehicle having a gross vehicle weight of 10,000 pounds or less and trailer and semitrailer chassis and bodies suitable for use with a trailer or semitrailer having a gross vehicle weight of 10,000 pounds or less. Section 512 (a) (1) of the Act increased the threshold weight for exemption from tax to 33,000 pounds or less for truck chassis and bodies and 26,000 pounds or less for truck trailer and semitrailer chassis and bodies to be effective for articles sold on or after January 7, 1983. Sections 512 (a) (2) and 512 (b) of the Act converted the 10 percent manufacturer's tax into **[*4]** a 12 percent retail tax, imposed by new Code section 4051, effective April 1, 1983. However, articles that are taxable under the new retail tax and for which the 10 percent manufacturer's tax has been paid, are taxable at the rate of only 2 percent.

Prior to the Act there was a tax imposed under section 4061 (b) of the Code upon parts and accessories for any of the articles enumerated in section 4061 (a) (1) of the Code. Section 512 (a) (2) of the Act repealed this tax effective for parts and accessories sold on or after January 7, 1983. New section 4051 (b) (1) of the Code provides that where an owner, lessee, or operator installs parts and accessories on a vehicle taxable under the 12 percent retail tax and such installation occurs within 6

months after the vehicle is placed in service, the tax will be imposed on the price of such part and accessory and its installation. In addition to the owner, operator, or lessee of the vehicle, the owner of the trade or business installing the part or accessory is liable for the tax. The tax does not apply if the part or accessory installed is a replacement part or accessory or if the aggregate price of the parts and accessories (and their installation) **[*5]** does not exceed $200.

TREASURY DECISION 7753

This document revokes T.D. 7753, 46 FR 2998 [1981-1 C.B. 501], January 13, 1981, which would have required a truck manufacturer to pay excise tax on truck parts purchased from a supplier if at the time of purchase the truck manufacturer does not intend to use the parts for one of the exempt purposes specified in section 4221 of the Code. T.D. 7753 was to be effective January 1, 1983, however, because of the repeal of the excise tax on truck parts by section 512 of the Act, T.D. 7753 is no longer necessary.

FLOOR STOCKS AND CONSUMER CREDITS OR REFUNDS

Section 145.1-1 of the temporary regulations provides rules relating to floor stocks credits or refunds with respect to the excise tax on tax-repealed articles (*i.e.*, certain trucks, truck trailers, truck parts and accessories, and lubricating oil) which were held by a dealer for sale on the first moment of January 7, 1983.

Section 145.1-2 provides rules relating to consumer credits or refunds with respect to tax under section 4061 (a) (1) on certain trucks and truck trailers which were sold to an ultimate purchaser after December 2, 1982, and before January 7, 1983.

Section 145.1-3 provides rules **[*6]** for determining the amount of tax paid with respect to a tax-repealed article for purposes of claiming floor stocks credits or refunds and consumer credits or refunds.

Section 145.1-4 provides rules relating to the treatment of demonstrator vehicles as new vehicles held by a dealer for purposes of the floor stocks provisions or as new vehicles sold to consumers for purposes of the consumer refund provisions.

Section 145.1-5 provides rules relating to credits or refunds for manufacturers who paid tax on certain articles under section 4061 (a) (1) of the Code by reason of section 4218 (a) of the Code, relating to certain uses by the manufacturer treated as sales.

Section 145.1-6 provides rules in determining floor stocks and consumer credits or refunds for leases and installment sales.

Section 145.1-7 provides rules with respect to floor stocks credits or refunds in the case of tires, inner tubes, and tread rubber on which a tax was imposed by section 4071 (a) of the Code as in effect on December 31, 1983, and which will not be subject to a tax under section 4071 (a) of the Code effective January 1, 1984. There is no floor stocks credits or refunds for those tires on which the tax was reduced **[*7]** on January 1, 1984.

RETAIL SALES TAX ON HEAVY TRUCKS

Sections 145.4051-1 and 145.4052-1 provide rules relating to the 12 percent tax on heavy trucks and trailers sold at retail imposed by section 4051 (a) (1) of the Code. Furthermore, the regulations provide rules for the 12 percent tax on separate purchases of parts and accessories installed on heavy trucks and trailers under section 4051 (a) (1) of the Code where such installation took place within six months after the truck or trailer was placed in service.

Section 145.4051-1 (e) (1) and (2) provides rules for determining whether a vehicle is a tractor or a truck. The regulations contain primary design test for determining taxability of the vehicle. In addition, the regulation explains the treatment of the sale of an incomplete chassis cab.

Section.145.4051-1 (e) (3) provides that in determining the gross vehicle weight rating of a vehicle, the strength of the chassis frame and the axle capacity and placement must be taken into account. Spring, brake, rim and tire capacities are not determinative of the gross vehicle weight rating because of the flexibility in changing such parts on the vehicle. For example, a change from light to heavy **[*8]** duty springs results in a dramatic increase in the gross vehicle weight rating of a vehicle.

Section 145.4052-1 (d) (2) (iii) defines the term "fair market value at retail of tires" as the lowest established price for which the vehicle retailer would sell tires in the ordinary course of trade. The regulations define the term "lowest established price."

NEED FOR TEMPORARY REGULATIONS

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

SPECIAL ANALYSIS

No general notice of proposed rulemaking is required by 5 U.S.C. 553 (b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that these temporary regulations are not subject to Executive Order 12291.

DRAFTING INFORMATION

The principal author of these regulations is Neil W. Zyskind of the Legislation and Regulations **[*9]** Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations both on matters of substance and style.

* * *

Adoption of amendments to the regulations

Title 26 CFR Parts 48 and 145 are amended as follows:

Paragraph 1. Section 48.4221-2 is amended by removing the last sentence of paragraph (a) (1).

Par. 2. Section 48.4222 (c)-1 is amended by removing "(a) In General." and by deleting paragraph (b).

Par. 3. Part 145 is amended as follows:

(a) The title, table of contents, and regulations contained therein are deleted.

(b) A new title, table of contents, and new sections are added to read as set forth below.

PART 145-TEMPORARY EXCISE TAX REGULATIONS UNDER THE HIGHWAY REVENUE ACT OF 1982 (PUB. L. 97-424).

Sec.

145.1-1 Credit or refund in respect of floor stocks of certain trucks, truck trailers, truck parts and accessories, and lubricating oil.

145.1-2 Credit or refund in respect of certain consumer purchases of trucks and truck trailers.

145.1-3 Methods of determining amount of tax paid on each article.

145.1-4 Demonstrator vehicles.

145.1-5 Credit or refund in respect **[*10]** of use by manufacturer.

145.1-6 Leases and installment or conditional sales entered into before January 7, 1983.

145.1-7 Credit or refund in respect of floor stocks of tires, inner tubes, and tread rubber.

145.4051-1 Imposition of tax on trucks and trailers sold at retail.

145.4052-1 Definitions and special rules.

145.4061-1 Application to manufacturers tax.

145.9000-1 Paperwork Reduction Act.

Authority. Sections 4051 (96 Stat. 2174,26 U.S.C. 4051), 4052 (96 Stat. 2175,26 U.S.C.

4052), 7805 (68A Stat. 917, 26 U.S.C. 7805), and sections 522 and 523 of the Highway Revenue Act of 1982 (Pub. L. 97-424, 96 Stat. 2185, 2186).

§ 145.1-1 Credit or refund in respect of floor stocks of certain trucks, truck trailers, truck parts and accessories, and lubricating oil.

(a) *In general*-(1) *Credit or refund.* A manufacturer, producer, or importer (manufacturer) who has paid a tax imposed under section 4061 (a) (1), relating to trucks and truck trailers, section 4061 (b), relating to truck parts and accessories, or section 4091, relating to lubricating oil, with respect to a tax-repealed article (as defined in paragraph (b) (2) of this section) which is held by a dealer as floor stocks (as defined in paragraph **[*11]** (b) (1) of this section) is entitled to a credit or refund of that tax to the extent and subject to the conditions provided by section 522 (a) of the Highway Revenue Act of 1982 (Act) and this section. See paragraphs (b) (1) through (5) of this section for definitions.

(2) *Computation of the amount of floor stocks credits or refunds.* The amount of floor stocks credit or refund which may be claimed by the manufacturer under section 522 (a) of the Act may not exceed the amount of tax paid by the manufacturer on its sale of the article. For example, X, a dealer, has on hand as floor stocks inventory an article which had a manufacturer's price of $10 on which the tax under section 4061 (b) of 8 percent or $.80 was paid, or a total cost to the dealer of $10.80. The amount of floor stocks credit or refund which may be claimed by the manufacturer with respect to such article is the $.80 tax paid on the manufacturer's sale of the article (8/108 of the tax included price of $10.80). For special provisions with respect to the determination of the tax paid by a manufacturer on an article, see § 145.1-3. No interest is allowable with respect to any amount of tax credited or refunded under section 522 (a) of the Act. In **[*12]** applying the floor stocks credit or refund provisions, the time the manufacturer paid the tax with respect to the article held as floor stocks is not relevant. Thus, the period of limitations provided in section 6511 of the Internal Revenue Code does not apply.

(3) *Limitation.* (i) No credit or refund is allowable under section 522 (a) of the Act for an amount paid as tax which may be credited or refunded under any provision of law other than section 522 (a) of the Act.

(ii) The amount which may be credited or refunded for floor stocks and for price readjustments on an article may not in the aggregate exceed the tax paid in respect of such article. A credit or refund will be allowed with respect to a price readjustment of an article on which a floor stocks credit or refund is allowed only if the amount of the floor stocks credit or refund is computed by taking into account such price redjustment as a reduction thereto (see paragraph (e) of § 145.1-3). The manufacturer shall keep readily available for inspection sufficient records to enable examining internal revenue officers to ascertain the correctness of any claim for credit or refund for a price readjustment of an article on which a **[*13]** floor stocks credit or refund is claimed.

(iii) If a claim for credit or refund is made pursuant to section 6416 (relating in part to returned sales, sales for export or for exempt use, sales to States, etc.) with respect to a tax imposed by sections 4061 (a) (1), 4061 (b), or 4091, and if the claim is made with respect to articles sold by the claimant before January 7, 1983, the claim shall not be allowed unless the claimant can establish that the tax was imposed and that no refund or credit under section 522 (a) of the Act was allowed with respect to the articles. See,

however, paragraph (a) (3) (ii) of this section relating to price readjustments.

(4) *Other provisions applicable.* All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4061 (a) (1), 4061 (b), and 4091 shall, insofar as applicable and not inconsistent with section 522 (a) of the Act, apply in respect of the credits and refunds provided for in section 522 (a) of the Act to the same extent as if the credits and refunds were overpayments of the taxes. For provisions relating to the imposition of the taxes, see Part 48 (Manufacturers and Retailers Excise Taxes) of this chapter. **[*14]** For provisions under which timely mailing is treated as timely filing, and for provisions applicable to the time for performance of acts when the last day falls on Saturday, Sunday, or a legal holiday, see §§ 301.7502-1 and 301.7503-1 (Regulations on Procedure and Administration), respectively, of this chapter.

(b) *Definitions.* For purposes of this section-

(1) *Floor stocks.* The term "floor stocks" means a tax-repealed article which has been sold by the manufacturer and is held by a dealer on the first moment of January 7, 1983, and which is intended for sale by the dealer and has not been sold by the dealer prior to January 7, 1983, and except as provided in § 145.1-4, has not been used.

(2) *Tax-repealed article.* The term "tax-repealed article" means-

(i) Automobile truck chassis and bodies, suitable for use with a vehicle which has a gross vehicle weight of 33,000 pounds or less, for which a tax was imposed by section 4061 (a) (1) on the sale before January 7, 1983;

(ii) Truck trailer and semitrailer chassis and bodies, suitable for use with a trailer or semitrailer which has a gross vehicle weight of 26,000 pounds or less, for which a tax was imposed by section 4061 (a) (1) on the sale before **[*15]** January 7, 1983;

(iii) Parts and accessories for which a tax was imposed under section 4061 (b) (1) on the sale before January 7, 1983; and

(iv) Lubricating oil for which a tax was imposed under section 4091 on the sale before January 7, 1983.

(3) *Tax paid.* A tax is considered paid if it was paid or was offset by an allowable credit on the return on which it was reported.

(4) *Dealer.* The term "dealer" includes a wholesaler, jobber, distributor, or retailer.

(5) *Held by a dealer.* An article is considered as "held by a dealer" if title thereto has passed to the dealer (whether or not delivery has been made) and if, for purposes of consumption, title to such article, or possession, or right to possession thereof has not at any time been transferred prior to January 7, 1983, to any person other than a dealer. The determination as to the time title passes or possession or right to possession is obtained for purposes of consumption shall be made under applicable local law. The term includes floor samples, demonstrators (see § 145.1-2 (b) (2) for special rule under which a dealer is treated as the ultimate purchaser of a demonstrator), and articles undergoing repair (whether or not on the dealer's premises), **[*16]** if they are to be sold as new articles rather than as used articles. The term also includes articles purchased tax-paid by a manufacturer or a sales subsidiary and which on the inventory date the manufacturer or a sales subsidiary is holding for resale as such, since with respect to such articles the manufacturer or a sales subsidiary is a dealer.

(c) *Participation of dealers.* No amount of credit or refund under section 522 (a) of the Act may be claimed by a manufacturer ("claimant") with respect to articles held by a dealer as floor stocks unless-

(1) The amount claimed is based on a request submitted by the dealer and received by the claimant or its authorized agent before July 1, 1983;

(2) The amount claimed is paid by the claimant to the dealer, or the dealer's written consent to allowance of the credit or refund has been received by the claimant, on or before October 1, 1983. See paragraph (e) (2) of this section for a sample written consent; and

(3) The request by the dealer is supported by an inventory statement signed by the dealer or by the dealer's **[*17]** authorized representative. The statement shall declare it is made under penalties of perjury and shall set forth the following information:

(i) The name and address of the dealer and of the claimant (except, if unknown to the dealer, the name and address of the claimant may be inserted by any person in the chain of distribution);

(ii) The identification numbers of the articles, such as their serial, stock, model, type, or class numbers, or some other suitable means of identification;

(iii) A brief description of the articles, such as their common names or designations;

(iv) The quantities of the articles held by the dealer as floor stocks;

(v) The gross vehicle weight rating of the vehicle, if applicable, unless such rating is indicated in the serial number of the article as shown on the inventory statement;

(vi) The employer's identification number of the dealer;

(vii) A statement that no other request with respect to any article included in such inventory statement has been made; and

(viii) Such other information or computations as requested by the manufacturer.

A dealer may submit his request either directly to the claimant or through another dealer in the chain of distribution. Where a dealer addresses **[*18]** his request to the person whom, from markings on the article, the dealer presumes to be the claimant, the request may be treated as made to the actual claimant if the actual claimant accepts the dealer's request. Payments may be made directly to the dealer or to the dealer's authorized agent or representative by the claimant or by the claimant's authorized agent or representative. Where a claimant pays a dealer through the claimant's agent or representative, the evidence must show that the dealer actually received the payment. Where a dealer authorizes the claimant to pay him through the dealer's agent or representative, evidence showing receipt of the payment by the agent or representative will be accepted as proof of actual payment to the dealer. Payment shall be made, at the claimant's option, in cash, by check, or by credit to the dealer's account as maintained by the claimant. The amount of the payment which may be made by crediting such account may not exceed the undisputed debit balance due at the time the credit is made. However, payment may be made, at the dealer's option (with the concurrence of the claimant), in merchandise. The date on which any act described in this paragraph **[*19]** (c) is performed by an agent or representative on behalf of a claimant or dealer shall be deemed to be the date on which the act is performed by the principal. For provisions relating to the record of dealer's inventories to be kept by the claimant, see paragraph (e) (1) of this section. For provisions permitting a dealer to include an article, with respect to which the dealer, is eligible for reimbursement as a consumer of trucks and trailers, in its floor stocks inventory, see § 145.1-2 (d).

(d) *Procedure for claiming credit or refund*-(1) *In general.* Each claim for credit or refund under section 522 (a) of the Act shall be filed by the manufacturer, before October 1, 1983, in the manner and subject to the conditions stated in this Act, this section, and § 301.6402-2 of the Regulations on Procedure and Administration. Either credit or refund, or a combination thereof, may be claimed.

(2) *Supporting evidence to be submitted by the manufacturer.* No credit or refund shall be allowed unless a statement, signed by the claimant, is submitted in support of the claim for credit or refund. The statement shall describe in general terms the articles covered by the claim, shall set forth the method **[*20]** of computation of the amount claimed (including a description of the procedure used), and shall state that-

(i) The claimant paid the tax for which the credit or refund is claimed;

(ii) The total amount claimed represents payments requested by dealers before July 1, 1983;

(iii) The total amount claimed either was paid by the claimant to the dealers or the claimant received the written consent of the dealers to the allowance of the amount claimed;

(iv) The claimant has in his possession, and available for inspection by internal revenue officers, the evidence (including inventories and written consents) required by paragraph (e) (1) of this section;

(v) No other claim for credit or refund under section 522 (a) of the Act has been or will be made by the claimant with respect to any amount covered by the claim; and

(vi) The amount and date of filing of each previous or concurrent claim for credit or refund under section 522 (a) of the Act and whether or not any future claims are expected to be filed.

A claim for refund may be filed before the dealer has been reimbursed or the consent is obtained under paragraph (d) (2) (iii) of this section, however, in such a case, no refund will be made to the claimant **[*21]** unless the dealer is reimbursed or the dealer's consent is received on or before October 1, 1983, and a statement to that effect is submitted to support the claim on or before October 1, 1983. No credit may be claimed if the dealer has not been reimbursed or the dealer's consent has not been obtained on or before October 1, 1983. Since the credit must be claimed before October 1, 1983, the credit may not be taken on Form 720 if it is filed after September 30, 1983.

(e) *Supporting evidence to be retained in the manufacturer's record*-(1) *In general.* Every person filing a claim for credit or refund under section 522 (a) of the Act must retain the dealers' inventory statements required by paragraph (c) (3) of this section to the extent that the articles in the inventory statements are covered by the claim. In addition, the claimant must retain separate records of such articles held by each dealer showing-

(i) The name and address of the dealer;

(ii) The quantities of each article held by the dealer as floor stocks;

(iii) The amount of tax considered as paid with respect to each article held by the dealer;

(iv) The total amount of reimbursement due the dealer;

(v) The date on which the claimant received **[*22]** a request (described in paragraph (c) of this section) from the dealer, unless payment is made to the dealer before July 1, 1983; and

(vi) The date and amount of each payment to a dealer or the date of the receipt of written consent by the claimant from a dealer.

In addition, the claimant must retain any such written consent as part of his records.

(2) *Sample written consent.* No particular form is prescribed or required for the written consent of the dealer. However, the following is an example of an acceptable consent statement by a dealer:

CONSENT STATEMENT OF DEALER

(For use by dealer in requesting manufacturer, producer, or importer to obtain credit or refund with respect to floor stocks under section 522 (a) of the Highway Revenue Act of 1982.)

I hereby consent to the allowance to the manufacturer, producer, or importer of the floor stocks credit or refund of the excise tax imposed by section [4061 (b)] of the Internal Revenue Code of 1954 with respect to [parts and accessories] in my inventory on the first moment of January 7.1983, that are eligible for such credit or refund.

(Name)

By

(Signature of Officer)

(Title)

(Date)

(f) *Special rules where the presumed manufacturer is the agent of* **[*23]** *the actual manufacturer.* For purposes of this section, if a manufacturer sells articles tax-paid to a second manufacturer for resale by the second manufacturer under its own brand name or other identification, the second manufacturer may perform any acts and keep any records which are a prerequisite to the first manufacturer filing a claim for floor stocks credit or refund with respect to such articles. If such a procedure is followed, the claim filed by the first manufacturer shall include a statement indicating the name and address of the second manufacturer and the amount of its claim which relates to articles sold to the second manufacturer. If by reason of the provisions of paragraph (k) (3) of § 145.1-3 tax paid by the first manufacturer is included in the "total tax" of the second manufacturer, for purposes of determining the amount of tax paid on a particular article, the tax paid by the first manufacturer on articles included in floor stocks in respect of which requests are addressed by dealers to the second manufacturer shall be that proportion of the tax paid with respect to all such floor stocks which-

(1) The tax paid by the first manufacturer on articles sold by the second **[*24]** manufacturer during the second manufacturer's representative period bears to

(2) The total of

(i) The amount described in paragraph (f) (1) of this section, and

(ii) The amount of total tax paid by the second manufacturer for the representative period, determined without regard to the provisions of paragraph (k) (3) of § 145.1-3.

If the second manufacturer makes its computation of tax paid on a particular article on the basis of a product line (see paragraphs (g) and (h) (2) of § 145.1-3), the computation under the preceding sentence shall be made on the basis of tax paid on a product line.

§ 145.1-2 Credit or refund in respect of certain consumer purchases of trucks and truck trailers.

(a) *Credit or refund*-(1) *In general.* A manufacturer, producer, or importer (manufacturer) who has paid a tax imposed under section 4061 (a) (1) with respect to a tax-repealed article (as defined in paragraphs (b) (2) (i) and (ii) of § 145.1-1) which was sold to an ultimate purchaser after December 2, 1982, and before January 7, 1983, is entitled to a

credit or refund for the tax paid to the extent and subject to the conditions provided by section 522 (b) of the Highway Revenue Act of 1982 **[*25]** (Act) and by this section.

(2) *Computation of the amount of consumer purchase credit or refund.* The amount of credit or refund which may be claimed by the manufacturer under section 522 (b) of the Act may not exceed the tax paid by the manufacturer on its sale of the article. No interest is allowable with respect to any amount of tax credited or refunded under section 522 (b) of the Act. In applying the consumer purchase credit or refund provisions, the time the manufacturer paid the tax with respect to the sale of the article is not relevant. Thus, the period of limitations provided in section 6511 of the Code does not apply.

(3) *Limitation.* No credit or refund is allowable under section 522 (b) of the Act for an amount paid as tax which may be credited or refunded under any provision of law other than section 522 (b) of the Act.

(4) *Relationship between credit or refund for consumer purchases and credit or refund for price readjustments.* The principles of § 145.1-1 (a) (3), relating to the relationship between credits or refunds for floor stocks and credits or refunds for price readjustments, apply to credits or refunds for consumer purchases and price readjustments.

(5) *Other provisions* **[*26]** *applicable.* All provisions of law, including penalties, applicable with respect to the tax imposed by section 4061 (a) (1) shall, insofar as applicable and not inconsistent with section 522 (b) of the Act, apply in respect of the credits and refunds provided for in section 522 (b) of the Act to the same extent as if the credits and refunds were overpayments of the tax. For provisions relating to the imposition of the taxes, see Part 48 (Manufacturers and Retailers Excise Taxes) of this chapter. For provisions under which timely mailing is treated as timely filing, and for provisions applicable to the time for performance of acts when the last day falls on Saturday, Sunday, or legal holiday, see respectively §§ 301.7502-1 and 301.7503-1 (Regulations on Procedure and Administration), of this chapter.

(b) *Definitions.* For purposes of this section-

(1) *Sale.* A sale of a tax-repealed article to an ultimate purchaser takes place when either title, possession, or the right to possession passes to the purchaser, as determined under local law.

(2) *Ultimate purchaser.* The term "ultimate purchaser" means a consumer of a new tax-repealed article. The term includes a dealer with respect to a demonstrator **[*27]** (unless sold or held for sale as a new article) or any other articles owned by the dealer and used in the dealer's business and a lessor with respect to leased articles, with the exception of a lease by a manufacturer which is covered under leases in § 145.1-6 (a).

(3) *Tax paid.* A tax is considered paid if it was paid or was offset by an allowable credit on the return on which it was reported.

(c) *Procedure for claiming credit for refund-*

(1) *In general.* Each claim for credit or refund under section 522 (b) of the Act shall be filed by the manufacturer ("claimant") before October 1, 1983, in the manner and subject to the conditions stated in the Act, in this section, and in § 301.6402-2 of this chapter (Regulations on Procedure and Administration). Either credit or refund, or a combination thereof, may be claimed.

(2) *Conditions.* No amount of credit or refund under section 522 (b) of the Act may be claimed unless-

(i) The claim is filed by the claimant before October 1, 1983;

(ii) The claim is based upon information submitted to the claimant before July 1, 1983, by the persons who sold the articles covered by the claim to the ultimate purchasers of the articles;

(iii) On or before October 1, 1983, **[*28]** the ultimate purchasers of the articles are reimbursed for the tax paid; and

(iv) The requirements of paragraphs (c) (3) and (4) of this section are satisfied.

Reimbursement to the ultimate purchaser for the tax paid may be made either in cash or by check, provided it is made as a separate payment. A reduction or discount in the price for which the article is sold or a credit to the ultimate purchaser's account will not qualify as reimbursement. Nothing in this section precludes a payment to an ultimate purchaser in an amount larger than the excise tax reduction, to effect a greater price reduction, but any credit or refund to the manufacturer will be limited to the amount of the tax reduction.

(3) *Supporting evidence to be submitted by the manufacturer.* No credit or refund shall be allowed under section 522 (b) of the Act unless a statement, signed by the claimant, is submitted in support of the claim for credit or refund. The statement shall describe in general terms the articles covered by the claim, shall set forth the method of computation of the amount claimed (including a description of the procedure used), and shall state that-

(i) The claimant paid the tax for which the credit or **[*29]** refund is claimed;

(ii) The claim is based on information submitted to the claimant before July 1, 1983, by the persons who sold the articles covered by the claim to the ultimate purchasers;

(iii) The ultimate purchasers of the articles have been reimbursed for the total amount claimed;

(iv) The claimant has in his or her possession and available for inspection by internal revenue officers the evidence required by paragraph (c) (4) of this section;

(v) No other claim for credit or refund under section 522 (b) of the Act has been or will be made by the claimant with respect to any amount covered by the claim; and

(vi) The amount and date of filing of each previous or concurrent claim for credit or refund under section 522 (b) of the Act and whether or not any future claims are expected to be filed.

A claim for refund may be filed before the ultimate purchaser has been reimbursed under paragraph (c) (2) (iii) of this section, however, in such a case, no refund will be made to the claimant unless the ultimate purchaser is reimbursed on or before October 1, 1983, and a statement to that effect is submitted to support the claim on or before October 1, 1983. No credit may be claimed if the ultimate **[*30]** purchaser has not been reimbursed before the claim is filed. In addition, since the credit must be claimed before October 1, 1983, the credit may not be taken on Form 720 if it is filed after September 30, 1983.

(4) *Supporting evidence to be retained in the manufacturer's records.* Every manufacturer filing a claim for credit or refund under section 522 (b) of the Act must retain a record of each article covered by the claim showing-

(i) The name and address of the ultimate purchaser of the article;

(ii) The name and address of the dealer or other person from whom the ultimate purchaser purchased the article;

(iii) The date of sale to the ultimate purchaser;

(iv) The number of the invoice or sales slip on which the sale to the ultimate purchaser was recorded, except in the case of a reimbursement to the ultimate purchaser made directly by the manufacturer or in the case of a dealer who does not use numbered invoices in the ordinary course of his business.

(v) The serial or identification number of the tax-repealed article, and

(vi) The date and amount of the reimbursement.

If reimbursement to the ultimate purchaser is made in cash directly by the manufacturer, or if reimbursement is made either in **[*31]** cash or by check by a person other than the manufacturer, the manufacturer must retain in his records a receipt or statement or a copy thereof signed by the ultimate purchaser setting forth the date and amount of reimbursement. If reimbursement to the ultimate purchaser is made by check directly from the manufacturer, the manufacturer must retain the cancelled check in his records. In addition to the evidence which must be retained in the records of the manufacturer, if reimbursement is made in cash to the ultimate purchaser by a person other than the manufacturer, that person must also retain in his records a receipt or statement or a copy thereof signed by the ultimate purchaser setting forth the date and amount of reimbursement. If reimbursement is made by the check of a person other than the manufacturer, that person should retain the cancelled check in his records.

(d) *Treatment as floor stocks if a dealer is the consumer.* If a dealer is eligible for reimbursement as the ultimate purchaser of a tax-repealed article, the dealer may, with the consent of the manufacturer, choose to include the article in the dealer's floor stocks inventory rather than request separate reimbursement **[*32]** under the provisions of this section. If the article is included in the floor stocks inventory of the dealer, the provisions of § 145.1-1 apply with respect to that article except that the records required to be retained by the manufacturer under § 145.1-1 (e) (2) shall also indicate the date on which the article was sold to the dealer.

§ 145.1-3 Methods of determining amount of tax paid on each article.

(a) *General rule.* For purposes of the credits or refunds described in §§ 145.1-1, 145.1-2. and 145.1-7. (relating, respectively, to credits or refunds for floor stocks and for certain sales made to ultimate purchasers) the tax paid on each article must be separately computed except that the special procedures set forth in this section may be used in making such computation provided such method, under the circumstances, is reasonable. The methods described in paragraphs (g) and (h) of this section will generally not be considered reasonable for trucks and truck trailers and semitrailers other than items deductible in computing the tax such as tires and delivery expenses. Any combination of the procedures set forth in this section may be used or any other method which the manufacturer can demonstrate **[*33]** is reasonable. Prior approval of the Internal Revenue Service for the method of computation need not be obtained and should not be requested.

(b) *Selling price.* For the purpose of determining the price of an article on which the tax paid is to be computed, the average of the gross selling prices of identical articles sold during a representative period may be used.

(c) *Section 4216 (a) exclusions.* For the purpose of determining the price of an article on which the tax paid is to be computed, the average of the exclusions authorized by section 4216 (a) for transportation, delivery, insurance, installation, etc., for a reasonable

category of articles during a representative period may be used.

(d) *Section 4216 (e) exclusions.* For the purpose of determining the price of an article on which the tax paid is to be computed, the average of the exclusions authorized by section 4216 (e) for local advertising charges for a reasonable category of articles during a representative period may be used.

(e) *Price readjustments.* In determining the price on which the tax paid is to be computed there must be taken into account any price readjustments with respect to which the manufacturer has filed a claim **[*34]** for credit or refund under section 6416 (b). Other price readjustments which have been, or are reasonably expected to be made with respect to the article may, at the option of the manufacturer, be taken into account in computing the price of the article. Price readjustments which cannot be attributed to specific articles as of the first moment of January 7, 1983 (as, for example, a price-readjustment of a flat dollar amount which is made to dealers who meet a sales quota) may be taken into account on the basis of an average of such adjustments(computed over a representative period) for a reasonable category of articles. On the other hand, price readjustments related to specific items (as, for example, an automatic rebate of a specified percentage of the price of each unit sold to a dealer) may not be averaged, and in such a case only the actual price readjustment attributable to a particular article may be taken into account in computing the tax on that article. Where, because of the facts in a case, a price readjustment can be attributed to specific articles for purposes of consumer refunds but cannot be attributed to specific articles for purposes of floor stocks credit or refund **[*35]** (as, for example, in the case of a price readjustment made with respect to truck chassis sold by a dealer to a fleet operator), such price readjustment may be averaged for purposes of both consumer credits or refunds and floor stocks credit or refund.

(f) *Section 6416 (c) credits.* The average of the credits authorized by section 6416 (c) for tax paid on tires or inner tubes may be averaged for a reasonable category of articles during a representative period. Such credits shall be subtracted from the gross excise tax to arrive at the net excise tax paid.

(g) *Product line method.* Where a manufacturer computes its tax on the basis of product lines and its records are maintained by product lines, the manufacturer may determine the amount of tax paid on a particular article by dividing the total tax paid for a representative period in respect of the product line which includes the article by the total number of articles in the product line sold tax-paid during the representative period (reduced by the number of articles in the product line which were returned to the manufacturer during the representative period). The resulting tax shall be rounded to the nearest tenth of one cent.

(h) *Manufacturer's* **[*36]** *tax rate method.* (1) Where a manufacturer has an established price list for all articles sold by it, the manufacturer may determine the amount of tax paid on a particular article by multiplying (A) the price of such article on the established price list, by (B) the average rate of tax paid (hereinafter referred to as the "manufacturer's tax rate") by it based on the prices (on such established price list) of all articles sold by it tax-paid during a representative period. The manufacturer's tax rate is computed by dividing the total tax paid in respect of all articles sold during the representative period by the total of the prices, computed by multiplying the number of each item sold by the price for such item on one particular established price list (herein referred to in this section as "the established price list"), for all articles sold tax-paid during the representative period (reduced by the prices on the established price list of such articles returned to the

manufacturer during the representative period). It is immaterial whether the established price list is a price list used at some time during the representative period, or at some later date, but only one such price list **[*37]** may be used and, once chosen by the manufacturer, it must be used both in computing the manufacturer's tax rate and the prices of the floor stocks to which such tax rate is to be applied. The manufacturer's tax rate shall be computed to the nearest thousandth of a percent.

(2) Where a manufacturer sells more than one product line and its records are sufficient to permit the computation of a separate manufacturer's tax rate for one or more of such product lines, it may use a separate manufacturer's tax rate for each of such product lines.

(i) *Representative period.* For purposes of applying the averaging provisions of this section, a period will be considered representative if-

(1) It covers at least four consecutive calendar quarters ending within a period of six calendar months immediately preceding January 7, 1983, or any other period of time which the taxpayer can demonstrate constitutes a representative period for the particular category, and

(2) The number of articles in the category involved sold by the manufacturer during such period either equals or exceeds the number of articles in such category to which the averaged amount is to be applied, or can be demonstrated by the taxpayer **[*38]** to be a representative quantity.

(j) *Reasonable category.* For purposes of this section, examples of a "reasonable category of articles" are articles which are identified by a common stock or class number or which are of the same model, class, or line. For the purpose of averaging the section 4216 (a) exclusions, another example of a "reasonable category of articles" is articles which are shipped in the same container. Where a manufacturer sells articles bearing its own trademark and also sells articles as private brands, separate computations shall be made under this section.

(k) *Total tax paid.* (1) Where a manufacturer computes the tax paid on a particular article by the method set forth in paragraph (h) (1) of this section, the term "total tax paid" means the tax reported on the manufacturer's excise tax returns for the representative period, reduced by the amount of all credits claimed on those returns and further reduced by the amount of any refunds claimed and not disallowed in respect of the representative period.

(2) Where a manufacturer computes the tax paid on a particular article by one of the methods set forth in paragraph (g) or (h) (2) of this section, the term "total tax **[*39]** paid" means the tax in respect of the product line which was reported on the manufacturer's excise tax returns for the representative period, reduced by the amount of all credits claimed in respect of the product line on those returns and further reduced by the amount of any refunds claimed in respect of the product line for the representative period and not disallowed.

(3) Where a second manufacturer sells articles manufactured by a first manufacturer-

(i) The second manufacturer shall include such articles in the computations described in paragraphs (g) and (h) of this section, and

(ii) The total tax described in paragraphs (k) (1) and (2) of this section of the second manufacturer also includes the tax paid by the first manufacturer (determined by this section in respect of the first manufacturer's representative period) on such articles sold by the second manufacturer during its representative period, if the first manufacturer is willing to obtain a credit or refund of such tax to the extent it has been paid by the first manufacturer in respect of floor stocks held by dealers and agrees to the second manufacturer acting as its agent in receiving requests from dealers in the matter.

For **[*40]** purposes of determining which of the articles of the first manufacturer were sold by the second manufacturer during the representative period, a first-in, first-out method may be used.

(1) *Limitation upon use of averaging in case of consumer purchases.* The averaging methods provided under this section are not permitted unless the manufacturer demonstrates that the refunds made to consumers are not less than the aggregate of the taxes that had been passed on to consumers on account of consumer purchases made after December 2, 1982, and before January 7, 1983. For this purpose, the aggregate taxes passed on to consumers shall be deemed not to include tax paid with respect to an article sold to a person who, after diligent effort, cannot be located in order to make reimbursement. A manufacturer shall be considered to have made a diligent effort to locate a purchaser if, prior to October 1, 1983, he has mailed two separate notifications to the purchaser's last known address to inform the purchaser of his or her right to receive reimbursement of the tax and each such notification has either not been returned, or has been returned without a forwarding address. However, if such notifications **[*41]** are not sent to the purchaser, a manufacturer may nevertheless establish that, based upon the facts and circumstances of the particular case, a diligent effort has been made to make reimbursement to a purchaser. A manufacturer, who chooses to employ an averaging method permitted by this section and is unable to locate all purchasers who are eligible to receive reimbursement, shall retain in his records for inspection by examining internal revenue officers evidence of his effort to locate any purchaser to whom reimbursement has not been made on or before October 1, 1983.

§ 145.1-4 Demonstrator vehicles.

(a) *In general.* The floor stocks and consumer purchase refunds and credits provided under §§ 145.1-1 and 145.1-2, for tax-repealed articles for which a tax was imposed under section 4061 (a) (1), are available only in the case of "new" vehicles which are held by a dealer for sale on the first moment of January 7, 1983, or are sold to an ultimate purchaser during the applicable period prescribed in § 145.1-2 (a) (1). Under this section, certain "demonstrator" vehicles may be considered to be new vehicles. For purposes of this

section, a demonstrator vehicle is a vehicle used by a dealer or **[*42]** its employees for a period of time and then sold. For purposes of §§ 145.1-1 and 145.1-2, a demonstrator vehicle will be considered to be a new vehicle if, on the first moment of January 7, 1983, (in the case of floor stocks) or on the date sold to the ultimate purchaser (if that date is earlier) it was covered by the manufacturer's warranty and more than 50 percent of the time and mileage under the warranty was then unexpired.

(b) *Definitions.* For purposes of this section-

(1) The terms "floor stocks," "tax-repealed article," and "held by a dealer," have the same meaning as is provided for such terms by paragraphs (b) (1), (b) (2) (i), (b) (2) (ii), and (b) (5) of § 145.1-1.

(2) The term "ultimate purchaser" has the same meaning as is provided for that term by § 145.1-2 (b) (2).

(c) *Extension of manufacturer's warranty.* For purposes of determining if more than 50 percent of the time and mileage under a warranty is unexpired under paragraph (a) of this section the total time and mileage provided under the manufacturer's warranty shall only include the original time and mileage warranty.

(d) *Resale of vehicle.* In no case will the resale of a vehicle to an ultimate purchaser be considered to be **[*43]** a sale of a new vehicle. A vehicle held for resale by a dealer on the first moment of January 7, 1983, will not be considered a new vehicle for purposes of the floor stocks credit or refund provisions. For example, a retail sale of a vehicle, made after an earlier sale to an ultimate purchaser, is not considered to be a sale of a new article, even though more than 50 percent of the time and mileage provided under the manufacturer's warranty may be unexpired on the date the vehicle is sold. For purposes of this paragraph (d), the term "resale" does not include the first sale at retail of an article unless the manufacturer has previously used the article in a manner whereby such use is considered a sale under section 4218. See § 145.1-5 for rules relating to certain uses by a manufacturer.

(e) *Treatment of dealer as ultimate purchaser of a vehicle.* If a demonstrator vehicle does not qualify for treatment as a new vehicle under the provisions of paragraph (a) of this section on the first moment of January 7, 1983, in the case of floor stocks, or, if earlier, on the date sold to an ultimate purchaser, the dealer is considered to be the consumer of such vehicle and is eligible for reimbursement **[*44]** of the excise tax as a consumer, provided the dealer purchased the vehicle during the applicable period prescribed in § 145.1-2 (a) (1).

§ 145.1-5 Credit or refund in respect of use by manufacturer.

Where, under the provisions of section 4218 (a), a manufacturer, producer, or importer paid a tax on an article under section 4061 (a) (as in effect on January 6, 1983) and such

tax was imposed on such article after December 2, 1982, on account of its use of a tax-repealed article (as defined by § 145.1-1 (b) (2) (i) and (ii)), such tax is deemed to be an overpayment of tax under section 522 (c) of the Highway Revenue Act of 1982. Thus, the manufacturer, producer, or importer is entitled to a refund or credit of the tax paid with respect to any such article first used by such person after December 2, 1982, and before January 7, 1983. Claim for credit or refund of any tax deemed to be an overpayment of tax under section 522 (c) of the Highway Revenue Act of 1982 and this section must be made in accordance with the provisions of section 301.6402-2 of the regulations.

§ 145.1-6 Leases and installment or conditional sales entered into before January 7, 1983.

(a) *In general.* For purposes of Part 145 **[*45]** if a tax-repealed article is sold by a manufacturer in a taxable transaction entered into before January 7, 1983, under a contract for the sale of an article where it is provided that the price shall be paid by installment, payments made before January 7, 1983, with respect to the article sold are treated as payments made with respect to an article purchased on or after the date, unles the vendor establishes that the amount of payments made or payable on or after the date, with respect to such article, has been reduced by an amount equal to the aggregate amount of the tax applicable with respect to the remaining payments. If the vendor does not establish that the payments have been so reduced, they will be treated as payments made in respect of an article sold on or after January 7, 1983. Similar rules shall apply where a lease is treated as a sale under section 4217 (a).

(b) *Methods of reimbursement and records to be retained.* The requirement that the payments made on and after January 7, 1983, must be reduced by the amount of the tax reduction will be met if the manufacturer reimburses its purchaser or lessee in cash by the amount of such tax, makes a reduction for the tax in the **[*46]** amounts due as remaining payments, or reduces one or more of the remaining payments by the aggregate amount of such tax. A manufacturer shall retain in its records for inspection by internal revenue examining officers sufficient evidence of the reimbursement or the reimbursement obligation. Until such time as the reimbursement is made or is a binding obligation of the manufacturer under applicable local law and is made known to its purchaser or lessee, the manufacturer shall continue to report the payments and pay the tax (which, except for the amendment made by sections 522 (a) and (b) of the Highway Revenue Act of 1982, would be due) with respect to the payments made after January 6, 1983.

§ 145.1-7 Credit or refund in respect of floor stocks of tires, inner tubes, and tread rubber.

(a) *In general.* A manufacturer, producer, or importer (manufacturer) who has paid a tax imposed under section 4071 (a) (relating to tires, inner tubes, and tread rubber) with respect to a tax-repealed article (as defined in paragraph (b) (2) of this section) which is held by a dealer as floor stocks (as defined in paragraph (b) (1) of this section) is entitled to a credit or refund of that tax to the extent **[*47]** and subject to the conditions provided by sections 522 (a) and 523 (b) of the Highway Revenue Act of 1982 (Act) and this section.

(b) *Definitions*-(1) *Floor stocks.* The term "floor stocks" means a tax-repealed article which

has been sold by the manufacturer and is held by a dealer on the first moment of January 1, 1984, and which is intended for sale by the dealer and has not been sold by the dealer prior to January 1, 1984, and has not been used.

(2) *Tax-repealed article.* The term "tax-repealed article" means tires, inner tubes, and tread rubber on which a tax was imposed by section 4071 (a) on the sale before January 1, 1984. However, the term does not include tires that are of a type subject to tax under section 4071 (a) on and after January 1, 1984.

(c) *Other provisions applicable.* Except to the extent inconsistent with this section, the principles of §§ 145.1-1, 145.1-3, 145.1-5, and 145.1-6 shall apply to this section. In applying such sections to this section, "1984" shall be substituted for "1983" each time it appears in such sections.

Par. 4. There is added in its appropriate place the following new sections.

§ 145.4051-1 Imposition of tax on heavy trucks and trailers sold at retail.

(a) **[*48]** *Imposition of tax*-(1) *In general.* Section 4051 (a) (1) imposes a tax on the first retail sale (as defined in § 145.4052-1 (a)) of the following articles (including in each case parts or accessories therefor sold on or in connection therewith or with the sale thereof):

(i) Automobile truck chassis and bodies;

(ii) Truck trailer and semitrailer chassis and bodies; and

(iii) Tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.

A sale of an automobile truck, truck trailer or semitrailer, shall be considered to be a sale of a chassis and of a body enumerated in this paragraph (a) (1).

(2) *Special rule applicable to chassis and bodies.* A chassis or body enumerated in paragraph (a) (1) of this section is taxable under section 4051 (a) (1) only if such chassis or body is sold for use as a component part of a highway vehicle (as defined in paragraph (d) of § 48.4061 (a)-1 (Regulations on Manufacturers and Retailers Excise Taxes)), which is an automobile truck, truck trailer or semitrailer, or a tractor of the kind chiefly used for highway transportation in combination with a trailer or semitrailer. Furthermore, a chassis or body which is not enumerated **[*49]** in paragraph (a) (1) of this section is not taxable under section 4051 (a) (1) even though such chassis or body is used as a component part of a highway vehicle (e.g., a chassis or body of a passenger automobile). See paragraphs (e) (1) and (e) (2) of this section for the definitions of a tractor and truck. See paragraphs (e) (1) through (5) of § 145.4052-1 for other provisions applicable to this section. See paragraph (f) of this section, relating to tax-free sales of non-highway vehicles.

(3) *Parts or accessories sold on or in connection with chassis, bodies, etc.* The tax applies in respect of parts or accessories sold on or in connection with or with the sale of the vehicles specified in section 4051 (a) (1). Thus, for example, if at the time the article is sold by the retailer, the part or accessory has been ordered from the retailer, the part or accessory will be considered as sold in connection with and with the sale of the vehicle. The tax applies in such a case whether or not the parts or accessories are billed separately by the retailer. If a taxable chassis, body, or tractor is sold by the retailer, without parts or accessories which are considered equipment essential for the **[*50]** operation or appearance of the taxable article, the sale of such parts or accessories by the retailer to the purchaser of the taxable article will be considered, in the absence of evidence to the contrary, to have been made in connection with the sale of the taxable article even though they are shipped separately, at the same time or on a different date. For example, if a retailer sells to any person a chassis and the bumpers for such chassis, or sells a taxable tractor and the fifth wheel and attachments, the tax applies to such parts or accessories regardless of the method of billing or the time at which the shipments were made. Parts and accessories that are spares or replacements are not subject to tax.

(4) *Exclusions.* No tax is imposed by section 4051 (a) (1) on the sale of automobile truck chassis and bodies, suitable for use with a vehicle which has a gross vehicle weight of 33,000 pounds or less, or truck trailer and semitrailer chassis and bodies, suitable for use with a trailer or semitrailer which has a gross vehicle weight of 26,000 pounds or less. For purposes of this paragraph (a) (4) the term "suitable for use" means practical and commercial fitness for such use. A chassis **[*51]** or body possesses practical fitness for use with a vehicle if it performs its intended function up to a generally acceptable standard of efficiency with the vehicle, and a chassis or body possesses commercial fitness for use with a vehicle if it is generally available for use with the vehicle at a price that is reasonably competitive with other articles that may be used for the same purpose. Thus, a truck chassis which is suitable for use with a vehicle having a gross vehicle weight of 33,000 pounds or less, is not subject to the tax imposed by section 4051 (a) (1) regardless of the body actually mounted thereon. A truck trailer or semitrailer chassis suitable for use with a vehicle having a gross vehicle weight of 26,000 pounds or less, is not subject to tax regardless of the body actually mounted thereon. Where an exempt body is mounted on a taxable chassis, or a taxable body is mounted on an exempt chassis, the taxable chassis or body, as the case may be, nevertheless remains subject to such tax, if the resulting vehicle is a highway vehicle as defined in § 48.4061 (a)-1.

(b) *Rate of tax.* With respect to the articles enumerated in paragraph (a) (1) of this section, the rate of tax **[*52]** imposed by section 4051 (a) (1) is 12 percent of the price for which the article is sold on or after April 1, 1983. See paragraph (d) of this section relating to vehicles on which a 10 percent tax was imposed under section 4061 (a) (1).

(c) *Separate purchase of truck or trailer and parts and accessories therefor*-(1) *In general.* If the owner, lessee, or operator of any vehicle, which contains an article taxable under paragraph (a) (1) of this section, installs (or causes to be installed) any part or accessory on such vehicle, and such installation is not later than 6 months after the date such vehicle (as it contains such article) was first placed in service, section 4051 (b) (1) imposes a tax on such installation equal to 12 percent of the price of such part or accessory and its installation. For purposes of the tax imposed by section 4051 (b) (1) and this paragraph (c) (1) the term "parts and accessories" does not include those parts and accessories which were previously exempt from tax under sections 4061 (b) (1) and (2) as in effect prior to January 7, 1983. Thus, for example, articles of general use are exempt from tax.

See § 48.4061 (b)-2 (b). See paragraphs (d) (1) through (4) **[*53]** of § 145.4052-1 for determination of price.

(2) *Placed in service.* For purposes of paragraph (c) (1) of this section, a vehicle shall be considered placed in service on the date on which the owner of the vehicle took actual possession of the vehicle. This date can be established by the delivery ticket signed by the owner or other comparable document indicating delivery to and acceptance by the owner.

(3) *Exceptions.* The tax imposed by section 4051 (b) (1) and paragraph (c) (1) of this section shall not apply if-

(i) the part or accessory installed is a replacement part or accessory, or

(ii) The aggregate price of the pans and accessories (and their installation) described in paragraph (c) (1) of this section with respect to any vehicle does not exceed $200.

For purposes of paragraph (c) (3) (i) of this section, a part is a replacement part, regardless of when it is ordered, if its use with a vehicle is as a replacement for a part on such vehicle. For purposes of paragraph (c) (3) (ii) of this section, the term "aggregate price of parts and accessories (and their installation)" refers to all purchases and installation charges, not including replacement parts and accessories, made with respect **[*54]** to a vehicle within the 6 month period provided for in paragraph (c) (1) of this section. If the aggregate price of parts and accessories (and their installation) during the 6 month period exceeds $200, the tax imposed under section 4051 (b) (1) and paragraph (c) (1) of this section shall apply to the cost of all parts and accessories (and their installation) during such period. For example, a vehicle is purchased and placed in service on July 1, 1983. On August 1, 1983, the owner purchases and has installed parts and accessories at a cost of $150. On September 1, 1983, the owner purchases and has installed parts and accessories at a cost of $300. On September 1, 1983 a tax of $54 will be imposed (12 percent × $450). Any costs of additional parts and accessories installed with respect to the vehicle before January 1, 1984 (and the cost of installation) will also be subject to the 12 percent tax.

(d) *Transitional rule.* In the case of an article taxable under paragraph (a) (1) of this section, on which a tax was imposed under section 4061 (a) (1), the rate of tax set forth in paragraph (b) shall be applied by substituting "2 percent" for "12 percent." For example, if a manufacturer sells **[*55]** a tractor to a dealer on February 1, 1983, for $20,000 (which includes the Federal excise tax), for which a 10 percent tax was paid, and the dealer sells the tractor on April 10, 1983 for $25,000, a tax of 2 percent will be imposed on the $25,000 sales price. See paragraph (d) (1) through (4) of § 145.4052-1 relating to determination of price.

(e) *Definitions.* For purposes of this section-

(1) *Tractor.* (i) The term "tractor" means a highway vehicle primarily designed to tow

a vehicle, such as a trailer or semitrailer, but does not carry cargo on the same chassis as the engine. A vehicle equipped with air brakes and/or towing package will be presumed to be primarily designed as a tractor.(ii) An incomplete chassis cab shall be treated as a tractor if it is equipped with one or more of the following:

(A) A device for supplying pressure from the chassis cab to the brake system (air or hydraulic) of the towed vehicle;

(B) A mechanism for protecting the chassis cab brake system from the effects of a loss of pressure in the brake system of the towed vehicle;

(C) A control linking the brake system of the chassis to the brake system of the towed vehicle;

(D) A control in the cab for operating the towed **[*56]** vehicle's brakes independently of the chassis cab's brakes; or

(E) Any other equipment designed to make it suitable for use as a tractor.

An incomplete chassis cab which is not equipped with any of the devices set forth in paragraphs (e) (1) (ii) (A) through (E) of this section shall be treated as a truck if the purchaser certifies in writing that the vehicle will not be equipped for use as a tractor.

(2) *Truck.* The term "truck" refers to a highway vehicle that is primarily designed to transport its load on the same chassis as the engine even if it is also equipped to tow a vehicle, such as a trailer or semitrailer.

(3) *Gross vehicle weight.* (i) For purposes of this section the term "gross vehicle weight" means the maximum total weight of a loaded vehicle. Except as otherwise provided in paragraphs (e) (3) (ii) through (v) of this section, such maximum total weight shall be the gross vehicle weight rating of the article as specified by the manufacturer or established by the seller of the completed article, unless the Commissioner finds that such rating is unreasonable in light of the facts and circumstances in a particular case.(ii) A seller must specify or establish a weight rating for each **[*57]** chassis, body, or vehicle sold on or after April 1, 1983 if such article requires no additional manufacture other than (A) the addition of readily attachable articles, such as tire or rim assemblies or minor accessories, (B) the performance of minor finishing operations, such as painting, or (C) in the case of a chassis, the addition of a body. If an article is specially equipped to the purchaser's specifications, such specifications may be used to establish the gross vehicle weight of the article.(iii) A seller shall maintain a record of the gross vehicle weight rating of each truck, trailer and semitrailer sold and excluded from the tax imposed by section 405 (a) (1) by reason of sections 4051 (a) (2), (3) and paragraphs (e) (3) (i) through (v) of this section.

For this purpose, a record of the serial number of each such article shall be treated as a record of the gross vehicle weight rating of the article if such rating is indicated by the serial number.(iv) If (A) the seller's rating indicated in a label or identifying device affixed to an article, (B) the rating set forth in the sales invoice or warranty agreement, and (C) the advertised rating for that article (or two or more **[*58]** identical articles) are inconsistent, the highest of such ratings will be considered to be the seller's gross vehicle weight rating specified or established for purposes of the tax imposed by section 4051 (a) (1).(v) The seller's gross vehicle weight rating must take into account, among other things, the strength of the chassis frame and the axle capacity and placement. The Commissioner may exclude from the gross vehicle weight rating any readily attachable parts to the extent the Commissioner finds that the use of such parts in computing the gross vehicle weight rating is unreasonable.

(f) *Tax-free sales.* Tax-free sales under section 4051 and this section may be made only if the persons who are eligible to sell or purchase articles free of tax imposed by section 4051, have satisfied the provisions of section 4222 and the regulations thereunder, relating to registration. With respect to tax-free sales of a chassis or body for use as a component of a vehicle other than a highway vehicle, similar provisions to paragraphs (e) (2) (ii), (iii), and (iv) of § 48.4061 (a)-1 shall apply.

(g) *Effective date.* The provisions of this section shall be effective for articles sold on or after April **[*59]** 1, 1983.

§ 145.4052-1 Special rules and definitions.

(a) *First retail sale.* The term "first retail sale," means the first sale of an article after manufacture, production, or importation to a purchaser who intends to use the article. A sale to a purchaser who intends to resell it or lease it long-term is not a first retail sale. The fact that articles are sold in wholesale lots, or at wholesale prices, will not change the character of such sales as first retail sales if the purchaser is not engaged in the business of reselling such articles and acquires them for the purpose of using them rather than reselling them. If the first retail sale is an installment sale, or other form of sale under which the sale price is paid in installments, the tax arises at the time of the sale and is computed on the sales price and is not deferred by reason of the fact that the sales price is paid in installments.

(b) *Long-term lease treated as first retail sale-*

(1) *In general.* For purposes of this section and § 145.4051-1, the first long-term leasing of an article shall be considered the first retail sale of the article. A long-term lease includes a lease for more than half the useful life of the article (taking **[*60]** into account options to renew and extensions), or a lease, regardless of its term, with an option to purchase at less than fair market value. Useful life for purposes of the preceding sentence is the useful life of the article in the lessor's trade or business as determined under section 167.

(2) *Computation of tax.* When a long-term lease is treated as the first retail sale under paragraph (b) (1) of this section, the liability is incurred at the time the lease is made and not at the time each lease payment is received. The total tax shall be computed on a constructive sales price established by the Commissioner as if such article were sold at retail on the date the lease is made.

(c) *Use treated as sale*-(1) *In general.* If any person uses an article taxable under section 4051 (a) (1) before the first retail sale of such article then such person shall be liable for tax under section 4051 (a) (1) in the same manner as if such article were sold at retail. Furthermore, if a person purchases a vehicle for which no tax was imposed under section 4051 (a) (1) and thereafter converts such vehicle into an article which would have been taxable under section 4051 (a) (1) and uses it, such person **[*61]** shall be liable for the tax as if such article were sold at retail by such person unless such article is thereafter sold for resale. For example, a truck having a gross vehicle weight rating of 24,000 pounds is sold at retail. The purchaser adds a lift axle, thereby increasing the gross vehicle weight rating to 34,000 pounds. If the purchaser thereafter uses the vehicle the purchaser shall be liable for the tax as if such article were sold at retail.

(2) *Exemption for use in further manufacture.* The tax on the use of an article to which paragraph (c) (1) of this section applies shall not apply to use of the article by such person as material in the manufacture or production of, or as a component part of, another article to be manufactured or produced by the same user.

(3) *Time of application of tax.* In the case of taxable use of an article by the seller, the tax attaches at the time such use begins. If tax applies by reason of the sale of an article on or in connection with, or with the sale of another article, the tax attaches at the time of the sale of such other article.

(4) *Events subsequent to taxable use of article.* Liability for tax incurred on the use of an article is not extinguished **[*62]** or reduced because of any subsequent sale or lease of the article even if such sale or lease would have been exempt if the article had been sold or leased prior to use. If a seller of an article incurs liability for tax on his or her use of an article, and thereafter sells or leases the article in a transaction which otherwise would be subject to tax, liability for tax is not incurred on such sale or lease.

(5) *Computation of tax.* (i) Except as provided in paragraph (c) (5) (ii) of this section, the tax liability incurred on the use of an article shall be computed on the price at which such or similar articles are generally sold in the ordinary course of trade by retailers.

(ii) If the seller of an article regularly sells such articles at retail in arm's length transactions, tax liability on its use of any such article shall be computed on its lowest established retail price for such articles in effect at the time of the taxable use. In establishing such price, there shall be included and excluded, as applicable, the charges and readjustment specified in sections 4216 (a), 4216 (f), and 6416 (b) (1) as in effect at the time the tax liability on the use of the article is incurred. If **[*63]** the seller of an article does not regularly sell such articles at retail in arm's length transactions, a constructive price on which the tax shall be computed will be determined by the

Commissioner. This price will be established after considering the selling practices and price structures of sellers of similar articles.

(d) *Determination of price*-(1) *In general.* The price for which an article is sold includes the total consideration paid for the article whether that consideration is paid in money, services, or other forms. In addition, there shall be included any charge incident to placing the article in condition ready for use. Similar rules to section 4216 (a) and the regulations thereunder, relating to charges to be included in the price and excluded from the price, shall apply. For example, charges for transportation, delivery, insurance and installation (other than installation charges to which section 4051 (b) applies), and other expenses actually incurred in connection with the delivery of an article to a purchaser pursuant to a bona fide sale shall be excluded from the price in computing the tax.

(2) *Items excluded from price.* There shall be excluded from the price-

(i) The amount **[*64]** of tax imposed under sections 4051 (a) (1) and (b) (1);

(ii) If stated as a separate charge, the amount of any retail sales tax imposed by any state or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee; and

(iii) The fair market value (including any tax imposed by section 4071) at retail of any tires (not including any metal rim or rim base). For purposes of this paragraph (d) (2) (iii), fair market value at retail shall be determined by the lowest established price for which the vehicle retailer would sell such tires at retail in the ordinary course of trade. The lowest established price is the lowest price for which the vehicle retailer sells, or offers to sell, a single tire to an independent purchaser who would not ordinarily be expected to buy more than one. If the vehicle retailer has no lowest established price the Commissioner will accept any price provided, under the facts and circumstances, such price is not unreasonable. A price will not be considered unreasonable if it is no more than an amount equal to 50 percent of the manufacturer's suggested retail price.

(3) *Trade-ins.* If, in connection with **[*65]** the sale of an article subject to the tax imposed under section 4051 (a) (1) or (b) (1) on the price for which sold, a vendor receives from its vendee another article in exchange, the tax on the vendor's sale shall be computed on the basis of the full price of the article sold, unreduced by any amount allowed for the article received from the vendee. For example, where a vehicle costing $20,000 is purchased for $16,000 cash plus a used vehicle valued at $4,000, tax is $2,400 (12 percent × $20,000).

(4) *Sales not at arm's length.* For purposes of § 145.4051-1 and this section, a sale is considered to be made under circumstances otherwise than at "arm's length" if-

(i) One of the parties is controlled (in law or in fact) by the other, or there is common control, whether or not such control is actually exercised to influence the sale price, or

(ii) The sale is made pursuant to special arrangements between a seller and a purchaser.

In the case of an article sold otherwise than at arm's length, and sold at less than the fair market price, the tax imposed under section 4051 (a) (1) or (b) (1) shall be computed on the price for which similar articles are sold at retail in the ordinary course of trade, **[*66]** as determined by the Commissioner. Once such a price has been determined, no further adjustment of such price shall be made.

(e) *Other rules made applicable.* For purposes of § 145.4051-1 and this section, rules similar to the following-provisions shall apply:

(1) Section 48.0-2, relating to general definitions and attachment of tax;

(2) Paragraphs (a) (2) and (3) of § 48.4061 (a)-1;

(3) The exemptions provided by sections 4063 (a) and (d) and the regulations thereunder;

(4) Section 4216 (f) and the regulations thereunder, relating to the incorporation of used components; and

(5) Section 4221 and the regulations thereunder, relating to certain tax-free sales.

(f) *Effective date.* The provisions of this section shall be effective for articles sold on or after April 1, 1983.

Par. 5. There is added in its appropriate place the following new section.

§ 145.4061-1 Application to manufacturers tax.

The provisions of §§ 145.4051-1 (e) (1) and (2), relating to the definition of tractors and trucks, shall apply to section 4061 (a) (1) for sales made on or after January 7, 1983. However, an incomplete chassis cab will be treated as a truck chassis for sales made on or after January 7, 1983, and before April 1, 1983. **[*67]** For purposes of section 4061, gross vehicle weight shall be determined under §§ 48.4061 (a)-1 (f) (3) (i) through (iv) for

sales made on or after January 7, 1983, and before April 1, 1983.

Par. 6. There is added in the appropriate place the following new section.

§ 145.9000-1 Paperwork Reduction Act.

The regulations in this part (to the extent required) have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3507). Regulations §§ 145.1-1 through 145.1-7, 145.4051-1, 145.4052-1 and 145.4061-1 were assigned by OMB the Control number 1545-0745.

This Treasury decision is issued under the authority contained in sections 4051, 4052, 4061 and 7805 of the Internal Revenue Code of 1954 (96 Stat. 2174, 2175 and 2173; 68A Stat. 917; 26 U.S.C. 4051, 4052, 4061, and 7805) and sections 522 and 523 of the Highway Revenue Act of 1982 (Pub. L. 97-424, 96 Stat. 2185, 2186.)

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved March 28, 1983.

John E. Chapoton,

Assistant Secretary of the Treasury.

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