

50 FR 37350

FEDERAL REGISTER

26 CFR Parts 145 and 602

Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors; Reporting and Recordkeeping Requirements

[T.D. 8050]

50 FR 37350

September 13, 1985

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to the excise tax imposed on the retail sale of heavy trucks, truck trailers and semitrailers, and tractors. 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 manufacturers, producers, importers, dealers, and retailers of these vehicles and will provide them with the guidance needed to comply with the law.

DATES: These regulations are effective for heavy trucks, truck trailers and semitrailers, and tractors sold on or after April 1, 1983.

FOR FURTHER INFORMATION CONTACT: John Broadbent of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T (202-566-3287, not a toll-free call).

TEXT:

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Temporary Excise Tax Regulations (26 CFR Part 145) under section 4052 of the Internal Revenue Code of 1954 (Code) relating to the excise tax on the sale of heavy trucks, truck trailers and semitrailers, and tractors. These amendments conform the regulations to section 512 of the Highway Revenue Act of 1982 (Title V of the Surface Transportation Assistance Act of 1982) (Pub. L. 97-424). The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject.

Temporary regulation § 145.4052-1, relating to the excise tax on heavy trucks, truck trailers and

semitrailers, and tractors, was published in the Federal Register on April 4, 1983 (**T.D. 7882**) (48 FR 14361). These regulations generally provided that the sale of a heavy vehicle to a purchaser who intends to lease the vehicle long term is not a first retail sale.

Summary of Changes in Temporary Regulation

This document amends § 45.4052-1 (a), (b), and (f) by revising the rules relating to the definition of the first retail sale of a vehicle. Under the new rules, the distinction between long-term and short-term leasing has been eliminated.

If a lease is entered into by the manufacturer, producer, or importer of the vehicle, both the prior rules and the revised rules provide that the first retail sale occurs when the vehicle is leased. Under the revised rules, if a vehicle is sold by the manufacturer, producer, or importer, the sale is treated as the first retail sale unless either (a) the purchaser is not in the business of leasing and intends to resell the vehicle, or (b) the seller and the purchaser register under section 4222, and the purchaser certifies that it intends to resell the vehicle. If a vehicle is sold tax-free but is later leased by the purchaser, the leasing of the vehicle will be deemed to be the first retail sale.

No change has been made to the existing temporary regulations with respect to the event triggering liability for the tax. Under all circumstances, the entire tax is due at the time the first retail sale occurs.

These revised temporary rules apply to sales made on or after April 1, 1983, the effective date of section 4051, with specified transitional rules. In no case, under these transitional rules, will tax be imposed on a vehicle under both the existing temporary regulations and the revised temporary regulations.

In determining the tax base of a vehicle, the retail value of the tires on the vehicle is excluded under section 4052(b)(1)(B)(iii). Under both the existing and the revised regulations, this value is the lowest established price at which the retailer would sell the tires. The existing temporary regulations provide as a safe-harbor rule that if a vehicle retailer has no lowest established price for tires, a price is not unreasonable if it is no more than 50 percent of the tire manufacturer's suggested retail price. This rule permits the tax base to be affected by a price that has no bearing on the actual sales price of the tires and is subject to considerable variation among tire manufacturers. Accordingly, this safe-harbor rule is deleted in these revised temporary regulations, effective prospectively.

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 Analyses

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C Chapter 6) does not apply, and no regulatory flexibility analysis is required for this rule. The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis

is therefore not required.

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these regulations is John Broadbent of the Legislation and Regulations 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 on matters of both substance and style.

List of Subjects

26 CFR Part 145

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

26 CFR Part 145 and Part 602 are amended as follows:

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

Paragraph 1. The authority citation for Part 145 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 145.4052-1 also issued under 26 U.S.C. 4052(d).

Par. 2. Section 145.4052-1 is amended as follows:

(a) Paragraph (a) is revised to read as set forth below.

(b) Paragraph (b) is revised to read as set forth below.

(c) The last sentence of paragraph (d)(2)(iii) is amended by adding at the beginning thereof, "For vehicles sold on or after April 1, 1983, and before [the date 30 days after publication of this document in the Federal Register],".

(d) Paragraph (f) is revised to read as set forth below.

§ 145.4052-1 Special rules and definitions.

(a) *First retail sale* -- (1) *In general.* For purposes of § 145.4051-1, the term "first retail sale" means the first sale of an article after manufacture, production or importation. The sale of an article to a purchaser who is not engaged in the business of leasing and who intends to resell the article, is not a first retail sale. In addition, the sale of an article to a purchaser who is engaged in the business of leasing to any extent will not be considered a first retail sale if the purchaser and the seller are registered under § 48.4222(a)-1, and the seller in good faith accepts a proper certification, as provided in paragraph (a)(3) of this section, from the purchaser that the purchaser intends to resell the article. The first sale of an article following a tax-free sale of the article shall be considered the first retail sale of the article, unless the subsequent sale qualifies as a tax-free sale under either of the two preceding sentences or under section 4221. An intent to lease an article is not considered an intent to resell the article for purposes of this section. 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.

(2) *No installment payments of tax.* If the first retail sale is a lease, an installment sale, or another form of sale under which the sales price is paid in installments, then the liability for the entire tax arises at the time of the lease or installment sale. No portion of the tax is deferred by reason of the fact that the sales price is paid in installments.

(3) *Certificate.* A certificate signed by the purchaser, or an officer or employee authorized by the purchaser to sign the certificate, may be accepted by a seller in support of a tax-free sale to the purchaser. The certificates and proper records of invoices, orders, etc., relating to tax-free sales must be retained by the seller as provided in section 6001 and the regulations thereunder. The certificates shall be substantially in the following form:

Exemption Certificate

I hereby certify that I am (Title) of (Name of purchaser), that I am authorized to execute this certificate, and that the vehicles specified in the accompanying order, or on the reverse side hereof, (or all orders placed by the purchaser for the two year period commencing -- -- -- --) are purchased for resale and not for the purpose of leasing. I have filed Form 637 and have received registration number -- --

I understand that the fraudulent use of this certificate to secure exemption will subject me and all parties making such fraudulent use to a fine of not more than \$10,000, or to imprisonment for not more than 5 years, or both, together with costs of prosecution.

(Signature)

(Address)

(4) *Registration.* Section 4222 and the regulations thereunder shall apply to tax-free sales made under this section.

(b) *Lease treated as first retail sale* -- (1) *In general.* For purposes of this section and § 145.4051-1, the leasing of an article before the first retail sale (within the meaning of paragraph (a) of this section) of the article shall be considered the first retail sale of the article. This rule applies without regard to the term of the lease. Thus, if a manufacturer leases an article prior to sale, or if a purchaser purchases an article tax free under paragraph (a) (1) of this section or section 4221 and then leases it, the leasing of the article will be deemed to be the first retail sale.

(2) *Computation of tax.* When a lease is treated as the first retail sale under paragraph (b) (1) of this section, the 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.

* * * * *

(f) *Effective date* -- (1) *In general.* The provisions of this section shall be effective for articles sold or leased on or after April 1, 1983. However, if a sale to a lessor before November 12, 1985, would have been tax free under § 145.4052-1 of the temporary regulations contained in 26 CFR part 145 revised as of April 1, 1984, (the "prior regulations") and it was so treated by the parties, a subsequent sale or lease that was or would have been treated as the first retail sale of the vehicle under the prior regulations will be treated as the first retail sale for purposes of this section. For example, if a vehicle was sold to a purchaser who intended to lease it long term, the sale would have been tax free under the prior regulations. If such a sale was treated as tax free by the parties, and the purchaser later sells the vehicle or leases it long term, the sale or lease will be treated as the first retail sale of the vehicle.

(2) *Vehicle subject to tax only once.* In no case will tax be imposed on the first retail sale of a vehicle under both the prior regulations and this section. If, under the prior regulations, tax was properly paid on the first retail sale of a vehicle, and if the amount of the tax determined under the prior regulations is greater than the amount of tax that would be imposed upon the first retail sale of the vehicle as determined under this section, then the taxpayer shall be entitled to a refund of the difference. For example, if under the prior regulations a lessor treated a long-term lease of a vehicle as a first retail sale, and paid tax upon making the lease, the taxpayer may claim a refund of any excess of the tax paid under the prior regulations (based on a constructive sales price) over the tax that would be imposed under this section (based on the sales price charged the lessor by the manufacturer or other seller). No additional tax would be payable under this section by a manufacturer that treated the sale of the vehicle to a lessor as a tax-free sale under the prior regulations.

PART 602 -- REPORTING AND RECORDKEEPING REQUIREMENTS

Par. 3. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table:

"§ 145.4052-1 . . . 1545-0745"

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.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 30, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

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