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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 41, 48, and 145

[REG-103829-99]

RIN 1545-AX10

Excise Taxes; Definition of Highway Vehicle

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed rules relating to the definition of a highway vehicle for purposes of various excise taxes. The regulations affect vehicle manufacturers, dealers, and lessors; tire manufacturers; sellers and buyers of certain motor fuels; and operators of heavy highway vehicles.

DATES: Written and electronic comments and requests for a public hearing must be received by September 4, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-103829-99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-103829-99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at www.irs.gov/regs.

FOR FURTHER INFORMATION CONTACT: Concerning submissions, Treena Garrett, (202) 622-7180; concerning the regulations, Bernard H. Weberman (202) 622-3130

(not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Highway Use Tax Regulations (26 CFR part 41), the Manufacturers and Retailers Excise Tax Regulations (26 CFR part 48), and the Temporary Excise Tax Regulations Under the Highway Revenue Act of 1982 (Pub. L. 97-424) (26 CFR part 145) relating to the definition of highway vehicle. The proposed definition of highway vehicle applies for purposes of sections 4041 and 4081 (fuel taxes), section 4051 (retail tax on heavy vehicles), section 4071 (tire tax), section 4481 (heavy vehicle use tax), and sections 6421 and 6427 (fuel tax credits and refunds).

The Highway Trust Fund (Fund) was established in 1956 and provides a source of financing for the interstate highway system and other federal-aid highway programs. In adopting a financing system for the Fund, the Congress expressed its intention to employ taxes "involving vehicles used on, or suitable for use on, highways." H. Rep. No. 84-2022, at 39 (1956). Even though the Fund was established for the construction of the highway system, it now functions, both through specific projects such as bridge rehabilitation and block grants to states, as a financial source for the construction and maintenance of almost all public roads. The taxes appropriated to the Fund are the taxes on fuel that is generally suitable for use in highway vehicles; the first retail sale of certain heavy vehicles, which Treasury regulations have limited to vehicles that are highway vehicles; the manufacturer's sale of tires of the type used on highway vehicles;

and the use of certain heavy highway vehicles.

For purposes of these taxes, Treasury regulations define a highway vehicle as any self-propelled vehicle or trailer or semitrailer designed to perform a function of transporting a load over the public highway, whether or not also designed to perform other functions. Excluded from the definition are certain types of vehicles, including certain specially designed mobile machinery vehicles (the mobile machinery exception) and certain vehicles specially designed for offhighway transportation.

The mobile machinery exception is intended to apply to vehicle chassis that serve solely as a permanent mount for jobsite machinery, such as jobsite cranes. In creating an exception for mobile machinery vehicles, the regulations assumed that vehicles that transport mobile machinery, like vehicles that are designed for offhighway transportation, would make minimal use of the public highway and thus would receive only minimal benefit from the construction and maintenance of the highway system. However, it has become apparent that the assumption that most mobile machinery vehicles would make minimal use of the public highway is incorrect. Mobile machinery vehicles generally are constructed using highway chassis that are modified only as necessary to accommodate the mounting of the jobsite machinery. These vehicles are subject to the same licensing, safety, and other nontax regulations as are other highway vehicles. Mobile machinery vehicles carry their load, typically heavy jobsite machinery, from jobsite to jobsite over the public highway, and their ability to use the public highway is in no way limited or impaired. Therefore, they derive the same benefit from, and cause the same type of damage to, the public highway as other

highway vehicles, and for tax purposes should be treated the same as other highway vehicles. Thus, these regulations propose to remove the mobile machinery exception.

After removal of the mobile machinery exception, mobile machinery vehicles will be subject to the retail tax on heavy vehicles unless the vehicles qualify under the exception for offhighway transportation vehicles. Also, these vehicles may be subject to the heavy vehicle use tax; and tax credits, refunds, and exemptions may not be available for the fuel they use. Amounts charged for the jobsite machinery, including amounts charged for mounting the machinery on the chassis or body, will continue to be excluded from the tax base.

Other exceptions from the definition of highway vehicle will continue to apply. Thus, a vehicle will continue to qualify for the offhighway transportation exception if it is specially designed for the primary function of transporting a particular type of load other than over the public highway and the special design substantially limits or impairs its capability to transport its load over the public highway. Similarly, trailers and semitrailers specially designed to function only as an enclosed stationary shelter for the carrying on of an offhighway function will continue to be excepted from tax. The exemption provided in section 4053(2) for vehicle bodies primarily designed to process, haul, spread, or load or unload feed, seed, or fertilizer for farms is unaffected by this change and will continue to apply. Credits or refunds for taxed fuel used on a farm for farming purposes are also unchanged.

Proposed Effective Date

These regulations are proposed to apply on and after the first day of the first

calendar quarter beginning after the day of publication of the final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Bernard H. Weberman, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 41

Excise taxes, Motor vehicles, Reporting and recordkeeping requirements.

26 CFR Parts 48 and 145

Excise taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, chapter I of 26 CFR is proposed to be amended as follows:

PART 41--EXCISE TAX ON USE OF CERTAIN HIGHWAY MOTOR VEHICLES

Paragraph 1. The authority citation for part 41 continues to read in part as follows:

Authority: 26 U.S.C. 7805; * * *

Par. 2. In §41.4482(a)-1, paragraph (a)(2) is amended by removing the language “§48.4061(a)-1(d)” and adding “§48.4051-1” in its place.

PART 48--MANUFACTURERS AND RETAILERS EXCISE TAXES

Par. 3. The authority citation for part 48 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 4. In §48.4041-8, paragraph (b) is amended as follows:

1. Paragraph (b)(1) is revised.
2. Paragraphs (b)(2) and (b)(3) are removed.
3. Paragraph (b)(4) is redesignated as paragraph (b)(2).

The revision reads as follows:

§48.4041-8 Definitions.

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(b) * * * (1) Definition. For the definition of highway vehicle, see §48.4051-1.

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Par. 5. In Subpart H, §48.4051-1 is added under the undesignated center heading "Motor Vehicles" to read as follows:

§48.4051-1 Heavy trucks and trailers; definition of highway vehicle.

(a) Highway vehicle--(1) In general. A highway vehicle is any self-propelled vehicle, or any trailer or semitrailer, that is capable of transporting a load over the public highway. In determining whether a vehicle is capable of transporting a load over the public highway, it is immaterial that the vehicle is capable of performing other functions, that the load is permanently mounted on the vehicle, or that the load is towed instead of carried.

(2) Exception--(i) Offhighway transportation vehicles. A vehicle is not treated as a highway vehicle if it is specially designed for the primary function of transporting a particular type of load other than over the public highway and because of this special design its capability to transport a load over the public highway is substantially limited or impaired. A vehicle's design is determined solely on the basis of its physical

characteristics. In determining whether substantial limitation or impairment exists, account may be taken of factors such as the size of the vehicle, whether it is subject to the licensing, safety, and other requirements applicable to highway vehicles, and whether it can transport a load at a sustained speed of at least 25 miles per hour. It is immaterial that a vehicle can transport a greater load off the public highway than it is permitted to transport over the public highway.

(ii) Nontransportation trailers and semitrailers. A trailer or semitrailer is not treated as a highway vehicle if it is specially designed to function only as an enclosed stationary shelter for the carrying on of an offhighway function at an offhighway site. For example, a trailer that is capable only of functioning as an office for an offhighway construction operation is not a highway vehicle.

(b) Public highway. Public highway means any road (whether a federal or state highway, city street, or otherwise) in the United States that is not a private roadway.

(c) Examples. The following examples illustrate the provisions of this section:

Example 1. Vehicle A consists of a truck chassis on which a telescoping boom-type crane that extends to a length of 130 feet has been permanently mounted. The vehicle is capable of transporting the crane over the public highway. Because Vehicle A is a self-propelled vehicle capable of transporting a load (the crane) over the public highway, it is a highway vehicle described in paragraph (a)(1) of this section. It is immaterial that the load is permanently mounted on the chassis.

Example 2. Vehicle B consists of a truck chassis on which a dump body has been installed. The vehicle's empty (tare) weight is 15,000 pounds and its gross vehicle weight rating is 46,000 pounds. It is capable of transporting a load over the public highway. Its drive train and suspension enable it to transport a load off road over soft, uneven terrain but do not limit its ability to transport its load at public highway speeds. Because Vehicle B is a self-propelled vehicle capable of transporting a load over the public highway, it is a highway vehicle. Although Vehicle B has some physical characteristics for transporting its load other than over the public highway (its drive

train and suspension), those characteristics are not of a magnitude, when compared with its physical characteristics for transporting the load over the public highway, to establish that it is specially designed for the primary function of transporting its load other than over the public highway. Therefore, Vehicle B is not a vehicle described in the exception provided in paragraph (a)(2)(i) of this section.

Example 3. Vehicle C consists of a truck chassis on which an oversize body designed to transport and apply liquid agricultural chemicals on farms has been installed. It is capable of transporting a load over the public highway. It is 132 inches in width, which is considerably in excess of standard highway vehicle width. For travel on uneven and soft terrain, it is equipped with oversize wheels with high-flotation tires, and nonstandard axles, brakes, and transmission. It has a special fuel and carburetor air filtration system that enable it to perform efficiently in an environment of dirt and dust. It is not able to maintain a speed of 25 miles per hour for more than one mile while fully loaded. Because Vehicle C is a self-propelled vehicle capable of transporting a load over the public highway, it is a highway vehicle described in paragraph (a)(1) of this section. However, its considerable physical characteristics for transporting its load other than over the public highway, when compared with its physical characteristics for transporting the load over the public highway, establish that it is specially designed for the primary function of transporting its load other than over the public highway. Further, the physical characteristics for transporting its load other than over the public highway substantially limit its capability to transport a load over the public highway. Therefore, Vehicle C is a vehicle described in the exception provided in paragraph (a)(2)(i) of this section and is not treated as a highway vehicle.

(d) Effective date. This section is applicable on and after the first day of the first calendar quarter beginning after the day of publication of the final regulations in the

Federal Register.

§48.4072-1 [Amended]

Par. 6. In §48.4072-1, paragraphs (c)(1)(i) and (c)(1)(ii) are amended by removing the language “§48.4061(a)-1(d)” and adding “§48.4051-1” in its place.

§48.4081-1 [Amended]

Par. 7. In §48.4081-1, paragraph (b), the definition of Diesel-powered highway vehicle is amended by removing the language “§48.4041-8(b)” and adding “§48.4051-

1" in its place.

Par. 8. In §48.6421-4, paragraph (c) is revised to read as follows:

§48.6421-4 Meaning of terms.

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(c) Highway vehicle. For the definition of highway vehicle, see §48.4051-1.

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

Par. 9. The authority citation for part 145 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

§145.4051-1 [Amended]

Par. 10. Section 145.4051-1 is amended as follows:

1. In paragraph (a)(2), first sentence, the language “(as defined in paragraph (d) of §48.4061(a)-1 (Regulations on Manufacturers and Retailers Excise Taxes))” is removed and “as defined in §48.4051-1 of this chapter” is added in its place.

2. In paragraph (a)(4), last sentence, the language “§48.4061(a)-1” is removed and “§48.4051-1 of this chapter” is added in its place.

3. Paragraph (d) is removed and reserved.

David A. Mader
Acting Deputy Commissioner of Internal Revenue