

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2016-16
April 18, 2016

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Announcement 2016-12, page 589.

This Announcement is issued pursuant to § 521(b) of Pub. L. 106-170, the Ticket to Work and Work Incentives Improvement Act of 1999, which requires the Secretary of the Treasury to report annually to the public concerning advance pricing agreements (APAs) and the Advance Pricing and Mutual Agreement Program (APMA Program), formerly known as the Advance Pricing Agreement Program (APA Program). The first report covered calendar years 1991 through 1999. Subsequent reports covered each calendar year 2000 through 2014 separately. This seventeenth report describes the experience, structure, and activities of the APMA Program during calendar year 2015. It does not provide guidance regarding the application of the arm's length standard.

Rev. Proc. 2016-23, page 581.

This revenue procedure provides the depreciation deduction limitations for owners of passenger automobiles (including trucks and vans) first placed in service during calendar year 2016 and amounts to be included in income by lessees of passenger automobiles first leased during calendar year 2016. This revenue procedure also provides revised tables of depreciation limitations and lessee inclusion amounts for passenger automobiles first placed in service or first leased during 2015 and to which the 50 percent additional first year depreciation deduction applies.

EXCISE TAX

REG-103380-05, page 614.

The proposed regulations provide guidance on the manufacturers tax on tires and the retail tax on tractors, trucks, and trailers under sections 4051, 4052, 4071 and 4072 of the Code. These proposed regulations would also replace most of the temporary section 145 regulations and reflect statutory changes and court decisions.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

Actions Relating to Decisions of the Tax Court

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, “acquiescence in result only” indicates disagreement or concern with some or all of those reasons. “Nonac-

quiescence” signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a “nonacquiescence” indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Actions on Decisions published in the weekly Internal Revenue Bulletin are consolidated semiannually and appear in the first Bulletin for July and the Cumulative Bulletin for the first half of the year. A semiannual consolidation also appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner does NOT ACQUIESCE in the following decision:

**Cosentino v. Commissioner,
T.C. Memo. 2014-186,¹**

¹ Nonacquiescence relating to the holding that an amount the taxpayers received, to settle a claim that they incurred additional income tax liability because of the tax professional's advice that they enter into an abusive tax shelter, is excludible from their gross income as a restoration of lost capital.

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

(Also: Part I, §§ 280F; 1.280F-7.)

Rev. Proc. 2016-23

SECTION 1. PURPOSE

This revenue procedure provides: (1) limitations on depreciation deductions for owners of passenger automobiles first placed in service by the taxpayer during calendar year 2016, including separate tables of limitations on depreciation deductions for trucks and vans; (2) amounts that must be included in income by lessees of passenger automobiles first leased by the taxpayer during calendar year 2016, including a separate table of inclusion amounts for lessees of trucks and vans; and (3) revised tables of depreciation limitations and lessee inclusion amounts for passenger automobiles that were first placed in service or first leased by the taxpayer, respectively, during 2015 and to which the 50-percent additional first year depreciation deduction under § 168(k)(1)(A) of the Internal Revenue Code applies as extended by § 143(a) of the Protecting Americans from Tax Hikes Act of 2015 (the Act), enacted as part of the Consolidated Appropriations Act, 2016, Division Q, Pub. L. No. 114-113, 129 Stat. 2242 (December 18, 2015). The tables detailing these depreciation limitations and lessee inclusion amounts reflect the automobile price inflation adjustments required by § 280F(d)(7).

SECTION 2. BACKGROUND

.01 For owners of passenger automobiles, § 280F(a) imposes dollar limitations on the depreciation deduction for the year the taxpayer places the passenger automobile in service and for each succeeding year. For passenger automobiles placed in service after 1988, § 280F(d)(7) requires the Internal Revenue Service to increase the amounts allowable as depreciation deductions by a price inflation adjustment amount. The method of calculating this price inflation amount for trucks and vans placed in service in or after calendar year 2003 uses a different CPI “automobile component” (the “new trucks” component) than that used in the price inflation

amount calculation for other passenger automobiles (the “new cars” component), resulting in somewhat higher depreciation deductions for trucks and vans. This change reflects the higher rate of price inflation for trucks and vans since 1988.

.02 Section 168(k)(1) provides that, in the case of qualified property, the depreciation deduction allowed under § 167(a) for the taxable year in which the property is placed in service includes an allowance equal to 50 percent of the property’s adjusted basis (hereinafter, referred to as “§ 168(k) additional first year depreciation deduction”). Prior to the Act, § 168(k)(1) did not apply to property generally placed in service after December 31, 2014. Section 143(b) of the Act extended the § 168(k) additional first year depreciation deduction to qualified property (as defined in § 168(k)(2) after the amendments made by § 143(b)(1) of the Act) placed in service by the taxpayer after December 31, 2015, and generally before January 1, 2020. The § 168(k) additional first year depreciation deduction percentage is 50 percent for qualified property placed in service during calendar year 2016. Section 168(k)(2)(F)(i) and (iii), as amended by § 143(b)(1) of the Act, increase the first year depreciation allowed under § 280F(a)(1)(A)(i) by \$8,000 for passenger automobiles placed in service by the taxpayer before January 1, 2018, and to which the § 168(k) additional first year depreciation deduction applies.

.03 Tables 1 through 4 of this revenue procedure provide depreciation limitations for passenger automobiles placed in service during calendar year 2016. Table 1 (passenger automobiles that are not trucks or vans) and Table 2 (trucks and vans) provide depreciation limitations for passenger automobiles for which the § 168(k) additional first year depreciation deduction, as amended by § 143(b) of the Act, applies. Table 3 (passenger automobiles that are not trucks or vans) and Table 4 (trucks and vans) provide depreciation limitations for passenger automobiles for which the § 168(k) additional first year depreciation deduction, as amended by § 143(b) of the Act, does not apply. The § 168(k) additional first year depreciation

deduction, as amended by § 143(b) of the Act, does not apply for 2016 if the taxpayer: (1) acquired the passenger automobile used; (2) did not use the passenger automobile during 2016 more than 50 percent for business purposes; (3) elected out of the § 168(k) additional first year depreciation deduction pursuant to § 168(k)(7), as added by § 143(b)(6)(D) of the Act; or (4) elected to increase the alternative minimum tax (AMT) credit limitation under § 53, instead of claiming the § 168(k) additional first year depreciation deduction, for qualified property placed in service during 2016 pursuant to § 168(k)(4), as amended by § 143(b)(3) of the Act.

.04 Section 280F(c) requires a reduction in the deduction allowed to the lessee of a leased passenger automobile. The reduction must be substantially equivalent to the limitations on the depreciation deductions imposed on owners of passenger automobiles. Under § 1.280F-7(a) of the Income Tax Regulations, this reduction requires a lessee to include in gross income an amount determined by applying a formula to the amount obtained from a table. Table 5 applies to lessees of passenger automobiles that are not trucks and vans and Table 6 applies to lessees of trucks and vans. Each table shows inclusion amounts for a range of fair market values for each taxable year after the passenger automobile is first leased.

.05 Section 143(a) of the Act extended the 50-percent additional first year depreciation deduction under § 168(k) to qualified property (as defined in § 168(k)(2)) acquired by the taxpayer after December 31, 2007, and before January 1, 2016, if no written binding contract for the acquisition of the property existed before January 1, 2008, and if the taxpayer places the property in service generally before January 1, 2016. Section 168(k)(2)(F)(i) increases the first year depreciation allowed under § 280F(a)(1)(A)(i) by \$8,000 for passenger automobiles to which the § 168(k) additional first year depreciation deduction applies. Accordingly, Tables 7 and 8 of this revenue procedure update Rev. Proc. 2015-19, 2015-8 I.R.B. 656, by providing revised depreciation limitations for passenger automobiles placed in service during calendar year 2015 for

which the § 168(k) additional first year depreciation deduction, as extended by § 143(a) of the Act, applies. This revenue procedure also updates the lease inclusion amounts in Tables 3 and 4 of Rev. Proc. 2015–19 for passenger automobiles first leased by the taxpayer in calendar year 2015.

SECTION 3. SCOPE

.01 The limitations on depreciation deductions in section 4.01(2) of this revenue procedure apply to passenger automobiles (other than leased passenger automobiles) that are placed in service by the taxpayer in calendar year 2016, and continue to apply for each taxable year that the passenger automobile remains in service.

.02 The tables in section 4.02 of this revenue procedure apply to leased passenger automobiles for which the lease term begins during calendar year 2016. Lessees of these passenger automobiles must use these tables to determine the inclusion amount for each taxable year during which the passenger automobile is leased. See Rev. Proc. 2011–21, 2011–12 I.R.B. 560, for passenger automobiles first leased during calendar year 2011; Rev. Proc. 2012–23, 2012–14 I.R.B. 712, for passenger automobiles first leased during calendar year 2012; Rev. Proc. 2013–21, 2013–12 I.R.B. 660, for passenger automobiles first leased during calendar year 2013; Rev. Proc. 2014–21, 2014–11 I.R.B. 641, as amplified and modified by section 4.03 of Rev. Proc. 2015–19, 2015–8 I.R.B. 656, for passenger automobiles first leased during calendar year

2014; and Rev. Proc. 2015–19, as amplified and modified by section 4.03 of this revenue procedure, for passenger automobiles first leased during calendar year 2015.

SECTION 4. APPLICATION

.01 *Limitations on Depreciation Deductions for Certain Automobiles.*

(1) *Amount of the inflation adjustment.*

(a) *Passenger automobiles (other than trucks or vans).* Under § 280F(d)(7)(B)(i), the automobile price inflation adjustment for any calendar year is the percentage (if any) by which the CPI automobile component for October of the preceding calendar year exceeds the CPI automobile component for October 1987. Section 280F(d)(7)(B)(ii) defines the term “CPI automobile component” as the automobile component of the Consumer Price Index for all Urban Consumers published by the Department of Labor. The new car component of the CPI was 115.2 for October 1987 and 143.516 for October 2015. The October 2015 index exceeded the October 1987 index by 28.316. Therefore, the automobile price inflation adjustment for 2016 for passenger automobiles (other than trucks and vans) is 24.6 percent ($28.316/115.2 \times 100\%$). The dollar limitations in § 280F(a) are multiplied by a factor of 0.246, and the resulting increases, after rounding to the nearest \$100, are added to the 1988 limitations to give the depreciation limitations applicable to passenger automobiles (other than trucks and vans) for calendar year 2016. This adjustment applies to all passenger

automobiles (other than trucks and vans) that are first placed in service in calendar year 2016.

(b) *Trucks and vans.* To determine the dollar limitations for trucks and vans first placed in service during calendar year 2016, the Service uses the new truck component of the CPI instead of the new car component. The new truck component of the CPI was 112.4 for October 1987 and 155.035 for October 2015. The October 2015 index exceeded the October 1987 index by 42.635. Therefore, the automobile price inflation adjustment for 2016 for trucks and vans is 37.9 percent ($42.635/112.4 \times 100\%$). The dollar limitations in § 280F(a) are multiplied by a factor of 0.379, and the resulting increases, after rounding to the nearest \$100, are added to the 1988 limitations to give the depreciation limitations for trucks and vans. This adjustment applies to all trucks and vans that are first placed in service in calendar year 2016.

(2) *Amount of the limitation.* Tables 1 through 4 contain the dollar amount of the depreciation limitation for each taxable year for passenger automobiles a taxpayer places in service in calendar year 2016. Use Table 1 for a passenger automobile (other than a truck or van), and Table 2 for a truck or van, placed in service in calendar year 2016 for which the § 168(k) additional first year depreciation deduction applies. Use Table 3 for a passenger automobile (other than a truck or van), and Table 4 for a truck or van, placed in service in calendar year 2016 for which the § 168(k) additional first year depreciation deduction does not apply.

| REV. PROC. 2016–23 TABLE 1 DEPRECIATION LIMITATIONS FOR PASSENGER AUTOMOBILES (THAT ARE NOT TRUCKS OR VANS) PLACED IN SERVICE IN CALENDAR YEAR 2016 FOR WHICH THE § 168(k) ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION APPLIES | |
|--|---------------|
| <i>Tax Year</i> | <i>Amount</i> |
| 1st Tax Year | \$ 11,160 |
| 2nd Tax Year | \$ 5,100 |
| 3rd Tax Year | \$ 3,050 |
| Each Succeeding Year | \$ 1,875 |

REV. PROC. 2016-23 TABLE 2
DEPRECIATION LIMITATIONS FOR TRUCKS AND VANS PLACED IN SERVICE IN CALENDAR YEAR 2016
FOR WHICH THE § 168(k) ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION APPLIES

| <i>Tax Year</i> | <i>Amount</i> |
|----------------------|---------------|
| 1st Tax Year | \$ 11,560 |
| 2nd Tax Year | \$ 5,700 |
| 3rd Tax Year | \$ 3,350 |
| Each Succeeding Year | \$ 2,075 |

REV. PROC. 2016-23 TABLE 3
DEPRECIATION LIMITATIONS FOR PASSENGER AUTOMOBILES (THAT ARE NOT TRUCKS OR VANS)
PLACED IN SERVICE IN CALENDAR YEAR 2016 FOR WHICH THE § 168(k) ADDITIONAL FIRST YEAR DE-
PRECIATION DEDUCTION DOES NOT APPLY

| <i>Tax Year</i> | <i>Amount</i> |
|----------------------|---------------|
| 1st Tax Year | \$ 3,160 |
| 2nd Tax Year | \$ 5,100 |
| 3rd Tax Year | \$ 3,050 |
| Each Succeeding Year | \$ 1,875 |

REV. PROC. 2016-23 TABLE 4
DEPRECIATION LIMITATIONS FOR TRUCKS AND VANS PLACED IN SERVICE IN CALENDAR YEAR 2016
FOR WHICH THE § 168(k) ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION DOES NOT APPLY

| <i>Tax Year</i> | <i>Amount</i> |
|----------------------|---------------|
| 1st Tax Year | \$ 3,560 |
| 2nd Tax Year | \$ 5,700 |
| 3rd Tax Year | \$ 3,350 |
| Each Succeeding Year | \$ 2,075 |

.02 Inclusions in Income of Lessees of Passenger Automobiles.

A taxpayer must follow the procedures in § 1.280F-7(a) for determining the in-

clusion amounts for passenger automobiles first leased in calendar year 2016. In applying these procedures, lessees of passenger automobiles other than trucks and vans should use Table 5 of this revenue

procedure, while lessees of trucks and vans should use Table 6 of this revenue procedure.

REV. PROC. 2016-23 TABLE 5
DOLLAR AMOUNTS FOR PASSENGER AUTOMOBILES (THAT ARE NOT TRUCKS OR VANS) WITH A LEASE
TERM BEGINNING IN CALENDAR YEAR 2016

| Fair Market Value of Passenger Automobile | | Tax Year During Lease | | | | |
|--|----------|-----------------------|-----------------|-----------------|-----------------|-------------------------|
| | | 1 st | 2 nd | 3 rd | 4 th | 5 th & later |
| Over | Not Over | | | | | |
| \$19,000 | \$19,500 | 6 | 13 | 20 | 23 | 27 |
| 19,500 | 20,000 | 7 | 15 | 23 | 27 | 30 |
| 20,000 | 20,500 | 8 | 17 | 26 | 30 | 35 |
| 20,500 | 21,000 | 9 | 19 | 29 | 33 | 39 |

REV. PROC. 2016-23 TABLE 5
DOLLAR AMOUNTS FOR PASSENGER AUTOMOBILES (THAT ARE NOT TRUCKS OR VANS) WITH A LEASE
TERM BEGINNING IN CALENDAR YEAR 2016

| Fair Market Value of Passenger Automobile | | Tax Year During Lease | | | | |
|--|----------|-----------------------|-----------------|-----------------|-----------------|-------------------------|
| | | 1 st | 2 nd | 3 rd | 4 th | 5 th & later |
| Over | Not Over | | | | | |
| 21,000 | 21,500 | 10 | 21 | 31 | 38 | 42 |
| 21,500 | 22,000 | 11 | 23 | 34 | 41 | 47 |
| 22,000 | 23,000 | 12 | 26 | 39 | 46 | 53 |
| 23,000 | 24,000 | 14 | 30 | 44 | 54 | 60 |
| 24,000 | 25,000 | 16 | 34 | 50 | 60 | 69 |
| 25,000 | 26,000 | 17 | 38 | 56 | 67 | 78 |
| 26,000 | 27,000 | 19 | 42 | 62 | 74 | 85 |
| 27,000 | 28,000 | 21 | 46 | 68 | 81 | 93 |
| 28,000 | 29,000 | 23 | 50 | 73 | 89 | 101 |
| 29,000 | 30,000 | 25 | 53 | 80 | 95 | 110 |
| 30,000 | 31,000 | 26 | 58 | 85 | 102 | 118 |
| 31,000 | 32,000 | 28 | 62 | 91 | 109 | 126 |
| 32,000 | 33,000 | 30 | 65 | 98 | 116 | 134 |
| 33,000 | 34,000 | 32 | 69 | 103 | 123 | 142 |
| 34,000 | 35,000 | 34 | 73 | 109 | 130 | 150 |
| 35,000 | 36,000 | 35 | 77 | 115 | 137 | 158 |
| 36,000 | 37,000 | 37 | 81 | 121 | 144 | 166 |
| 37,000 | 38,000 | 39 | 85 | 127 | 151 | 174 |
| 38,000 | 39,000 | 41 | 89 | 132 | 158 | 183 |
| 39,000 | 40,000 | 42 | 93 | 138 | 166 | 190 |
| 40,000 | 41,000 | 44 | 97 | 144 | 172 | 199 |
| 41,000 | 42,000 | 46 | 101 | 150 | 179 | 207 |
| 42,000 | 43,000 | 48 | 105 | 155 | 187 | 215 |
| 43,000 | 44,000 | 50 | 109 | 161 | 193 | 223 |
| 44,000 | 45,000 | 51 | 113 | 167 | 201 | 231 |
| 45,000 | 46,000 | 53 | 117 | 173 | 207 | 239 |
| 46,000 | 47,000 | 55 | 121 | 179 | 214 | 247 |
| 47,000 | 48,000 | 57 | 124 | 185 | 222 | 255 |
| 48,000 | 49,000 | 59 | 128 | 191 | 228 | 264 |
| 49,000 | 50,000 | 60 | 133 | 196 | 236 | 271 |
| 50,000 | 51,000 | 62 | 136 | 203 | 242 | 280 |
| 51,000 | 52,000 | 64 | 140 | 209 | 249 | 288 |
| 52,000 | 53,000 | 66 | 144 | 214 | 257 | 295 |
| 53,000 | 54,000 | 68 | 148 | 220 | 263 | 304 |
| 54,000 | 55,000 | 69 | 152 | 226 | 271 | 312 |
| 55,000 | 56,000 | 71 | 156 | 232 | 277 | 320 |
| 56,000 | 57,000 | 73 | 160 | 238 | 284 | 328 |
| 57,000 | 58,000 | 75 | 164 | 243 | 292 | 336 |
| 58,000 | 59,000 | 77 | 168 | 249 | 298 | 345 |
| 59,000 | 60,000 | 78 | 172 | 255 | 306 | 352 |
| 60,000 | 62,000 | 81 | 178 | 264 | 316 | 364 |

REV. PROC. 2016-23 TABLE 5
DOLLAR AMOUNTS FOR PASSENGER AUTOMOBILES (THAT ARE NOT TRUCKS OR VANS) WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2016

| Fair Market Value of Passenger Automobile | | Tax Year During Lease | | | | |
|---|----------|-----------------------|-----------------|-----------------|-----------------|-------------------------|
| | | 1 st | 2 nd | 3 rd | 4 th | 5 th & later |
| Over | Not Over | | | | | |
| 62,000 | 64,000 | 85 | 185 | 276 | 330 | 381 |
| 64,000 | 66,000 | 88 | 194 | 287 | 344 | 397 |
| 66,000 | 68,000 | 92 | 201 | 299 | 358 | 413 |
| 68,000 | 70,000 | 95 | 209 | 311 | 372 | 430 |
| 70,000 | 72,000 | 99 | 217 | 322 | 387 | 445 |
| 72,000 | 74,000 | 102 | 225 | 334 | 400 | 462 |
| 74,000 | 76,000 | 106 | 233 | 346 | 414 | 478 |
| 76,000 | 78,000 | 110 | 241 | 357 | 428 | 494 |
| 78,000 | 80,000 | 113 | 249 | 369 | 442 | 510 |
| 80,000 | 85,000 | 120 | 262 | 390 | 467 | 538 |
| 85,000 | 90,000 | 128 | 282 | 419 | 502 | 579 |
| 90,000 | 95,000 | 137 | 302 | 448 | 537 | 620 |
| 95,000 | 100,000 | 146 | 322 | 477 | 572 | 660 |
| 100,000 | 110,000 | 160 | 351 | 521 | 625 | 721 |
| 110,000 | 120,000 | 178 | 390 | 580 | 695 | 801 |
| 120,000 | 130,000 | 196 | 430 | 638 | 765 | 882 |
| 130,000 | 140,000 | 214 | 469 | 697 | 835 | 963 |
| 140,000 | 150,000 | 232 | 508 | 755 | 906 | 1,044 |
| 150,000 | 160,000 | 249 | 548 | 814 | 975 | 1,126 |
| 160,000 | 170,000 | 267 | 588 | 872 | 1,045 | 1,207 |
| 170,000 | 180,000 | 285 | 627 | 930 | 1,116 | 1,288 |
| 180,000 | 190,000 | 303 | 666 | 989 | 1,186 | 1,368 |
| 190,000 | 200,000 | 321 | 706 | 1,047 | 1,256 | 1,449 |
| 200,000 | 210,000 | 339 | 745 | 1,106 | 1,326 | 1,530 |
| 210,000 | 220,000 | 357 | 784 | 1,165 | 1,396 | 1,611 |
| 220,000 | 230,000 | 375 | 824 | 1,223 | 1,466 | 1,692 |
| 230,000 | 240,000 | 393 | 863 | 1,281 | 1,537 | 1,773 |
| 240,000 | and over | 411 | 902 | 1,340 | 1,607 | 1,854 |

REV. PROC. 2016-23 TABLE 6
DOLLAR AMOUNTS FOR TRUCKS AND VANS WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2016

| Fair Market Value of Truck or Van | | Tax Year During Lease | | | | |
|-----------------------------------|----------|-----------------------|-----------------|-----------------|-----------------|-------------------------|
| | | 1 st | 2 nd | 3 rd | 4 th | 5 th & later |
| Over | Not Over | | | | | |
| \$19,500 | \$20,000 | 3 | 8 | 12 | 14 | 16 |
| 20,000 | 20,500 | 4 | 10 | 15 | 17 | 20 |
| 20,500 | 21,000 | 5 | 12 | 17 | 21 | 25 |
| 21,000 | 21,500 | 6 | 14 | 20 | 25 | 28 |
| 21,500 | 22,000 | 7 | 16 | 23 | 28 | 32 |

REV. PROC. 2016-23 TABLE 6
DOLLAR AMOUNTS FOR TRUCKS AND VANS WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2016

| Fair Market Value of Truck or Van | | Tax Year During Lease | | | | |
|--------------------------------------|----------|-----------------------|-----------------|-----------------|-----------------|-------------------------|
| | | 1 st | 2 nd | 3 rd | 4 th | 5 th & later |
| Over | Not Over | | | | | |
| 22,000 | 23,000 | 8 | 19 | 28 | 33 | 38 |
| 23,000 | 24,000 | 10 | 23 | 33 | 41 | 46 |
| 24,000 | 25,000 | 12 | 26 | 40 | 47 | 55 |
| 25,000 | 26,000 | 14 | 30 | 46 | 54 | 63 |
| 26,000 | 27,000 | 16 | 34 | 51 | 62 | 70 |
| 27,000 | 28,000 | 17 | 38 | 58 | 68 | 79 |
| 28,000 | 29,000 | 19 | 42 | 63 | 76 | 86 |
| 29,000 | 30,000 | 21 | 46 | 69 | 82 | 95 |
| 30,000 | 31,000 | 23 | 50 | 75 | 89 | 103 |
| 31,000 | 32,000 | 25 | 54 | 80 | 97 | 111 |
| 32,000 | 33,000 | 26 | 58 | 86 | 104 | 119 |
| 33,000 | 34,000 | 28 | 62 | 92 | 111 | 127 |
| 34,000 | 35,000 | 30 | 66 | 98 | 117 | 136 |
| 35,000 | 36,000 | 32 | 70 | 104 | 124 | 143 |
| 36,000 | 37,000 | 34 | 73 | 110 | 132 | 151 |
| 37,000 | 38,000 | 35 | 78 | 115 | 139 | 160 |
| 38,000 | 39,000 | 37 | 82 | 121 | 146 | 167 |
| 39,000 | 40,000 | 39 | 85 | 128 | 152 | 176 |
| 40,000 | 41,000 | 41 | 89 | 133 | 160 | 184 |
| 41,000 | 42,000 | 42 | 94 | 139 | 166 | 192 |
| 42,000 | 43,000 | 44 | 97 | 145 | 174 | 200 |
| 43,000 | 44,000 | 46 | 101 | 151 | 181 | 208 |
| 44,000 | 45,000 | 48 | 105 | 157 | 187 | 217 |
| 45,000 | 46,000 | 50 | 109 | 162 | 195 | 224 |
| 46,000 | 47,000 | 51 | 113 | 169 | 201 | 233 |
| 47,000 | 48,000 | 53 | 117 | 174 | 209 | 240 |
| 48,000 | 49,000 | 55 | 121 | 180 | 216 | 248 |
| 49,000 | 50,000 | 57 | 125 | 186 | 222 | 257 |
| 50,000 | 51,000 | 59 | 129 | 191 | 230 | 265 |
| 51,000 | 52,000 | 60 | 133 | 197 | 237 | 273 |
| 52,000 | 53,000 | 62 | 137 | 203 | 244 | 281 |
| 53,000 | 54,000 | 64 | 141 | 209 | 250 | 290 |
| 54,000 | 55,000 | 66 | 144 | 216 | 257 | 298 |
| 55,000 | 56,000 | 68 | 148 | 221 | 265 | 305 |
| 56,000 | 57,000 | 69 | 153 | 226 | 272 | 314 |
| 57,000 | 58,000 | 71 | 156 | 233 | 279 | 321 |
| 58,000 | 59,000 | 73 | 160 | 239 | 285 | 330 |
| 59,000 | 60,000 | 75 | 164 | 244 | 293 | 338 |
| 60,000 | 62,000 | 77 | 170 | 253 | 304 | 350 |
| 62,000 | 64,000 | 81 | 178 | 265 | 317 | 366 |
| 64,000 | 66,000 | 85 | 186 | 276 | 331 | 383 |
| 66,000 | 68,000 | 88 | 194 | 288 | 345 | 399 |

REV. PROC. 2016-23 TABLE 6
DOLLAR AMOUNTS FOR TRUCKS AND VANS WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2016

| Fair Market Value of Truck or Van | | Tax Year During Lease | | | | |
|--------------------------------------|----------|-----------------------|-----------------|-----------------|-----------------|-------------------------|
| | | 1 st | 2 nd | 3 rd | 4 th | 5 th & later |
| Over | Not Over | | | | | |
| 68,000 | 70,000 | 92 | 202 | 299 | 360 | 414 |
| 70,000 | 72,000 | 95 | 210 | 311 | 374 | 431 |
| 72,000 | 74,000 | 99 | 217 | 324 | 387 | 447 |
| 74,000 | 76,000 | 102 | 226 | 335 | 401 | 463 |
| 76,000 | 78,000 | 106 | 233 | 347 | 415 | 480 |
| 78,000 | 80,000 | 110 | 241 | 358 | 430 | 495 |
| 80,000 | 85,000 | 116 | 255 | 379 | 454 | 524 |
| 85,000 | 90,000 | 125 | 274 | 409 | 489 | 564 |
| 90,000 | 95,000 | 134 | 294 | 437 | 525 | 605 |
| 95,000 | 100,000 | 143 | 314 | 466 | 560 | 645 |
| 100,000 | 110,000 | 156 | 344 | 510 | 612 | 706 |
| 110,000 | 120,000 | 174 | 383 | 569 | 682 | 787 |
| 120,000 | 130,000 | 192 | 422 | 628 | 752 | 868 |
| 130,000 | 140,000 | 210 | 462 | 685 | 823 | 949 |
| 140,000 | 150,000 | 228 | 501 | 744 | 893 | 1,030 |
| 150,000 | 160,000 | 246 | 540 | 803 | 963 | 1,111 |
| 160,000 | 170,000 | 264 | 580 | 861 | 1,033 | 1,192 |
| 170,000 | 180,000 | 282 | 619 | 920 | 1,102 | 1,274 |
| 180,000 | 190,000 | 300 | 658 | 979 | 1,172 | 1,354 |
| 190,000 | 200,000 | 318 | 698 | 1,036 | 1,243 | 1,435 |
| 200,000 | 210,000 | 335 | 738 | 1,095 | 1,313 | 1,516 |
| 210,000 | 220,000 | 353 | 777 | 1,154 | 1,383 | 1,597 |
| 220,000 | 230,000 | 371 | 816 | 1,212 | 1,454 | 1,678 |
| 230,000 | 240,000 | 389 | 856 | 1,270 | 1,524 | 1,759 |
| 240,000 | and over | 407 | 895 | 1,329 | 1,594 | 1,839 |

.03 Revised Amounts for Passenger Automobiles Placed in Service During 2015.

(1) *Calculation of the Revised Amount.* The revised depreciation limits provided in this section 4.03 were calculated by increasing the existing limitations on the first year allowance in Rev. Proc. 2015-19 by \$8,000 as provided in § 168(k)(2)(F)(i).

(2) *Amount of the Revised Limitation.* For passenger automobiles (that are not trucks or vans) placed in service by the taxpayer in calendar year 2015 for which the § 168(k) additional first year depreciation deduction applies, Table 7 of this revenue procedure contains the revised dollar amount of the depreciation limitations for each taxable year. For trucks or vans placed in service by the taxpayer in calendar year 2015 for which the § 168(k)

additional first year depreciation deduction applies, Table 8 of this revenue procedure contains the revised dollar amount of the depreciation limitations for each taxable year. If the § 168(k) additional first year depreciation deduction does not apply to a passenger automobile placed in service by the taxpayer in calendar year 2015, the depreciation limitations for each taxable year in Tables 1 and 2 of Rev. Proc. 2015-19 apply.

REV. PROC. 2016–23 TABLE 7
 DEPRECIATION LIMITATIONS FOR PASSENGER AUTOMOBILES (THAT ARE NOT TRUCKS OR VANS)
 PLACED IN SERVICE IN CALENDAR YEAR 2015 FOR WHICH THE § 168(k) ADDITIONAL FIRST YEAR DE-
 PRECIATION DEDUCTION APPLIES

| <i>Tax Year</i> | <i>Amount</i> |
|----------------------|---------------|
| 1st Tax Year | \$ 11,160 |
| 2nd Tax Year | \$ 5,100 |
| 3rd Tax Year | \$ 3,050 |
| Each Succeeding Year | \$ 1,875 |

REV. PROC. 2016–23 TABLE 8
 DEPRECIATION LIMITATIONS FOR TRUCKS AND VANS PLACED IN SERVICE IN CALENDAR YEAR 2015
 FOR WHICH THE § 168(k) ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION APPLIES

| <i>Tax Year</i> | <i>Amount</i> |
|----------------------|---------------|
| 1st Tax Year | \$11,460 |
| 2nd Tax Year | \$ 5,600 |
| 3rd Tax Year | \$ 3,350 |
| Each Succeeding Year | \$ 1,975 |

(3) *Modification to lease inclusion amounts for 2015.* The lease inclusion amounts in Tables 3 and 4 of Rev. Proc. 2015–19 are modified by striking the first three lines of inclusion amounts in Table 3 and the first two lines of inclusion amounts in Table 4. Consequently, Table 3 of Rev. Proc. 2015–19 applies to passenger automobiles (other than trucks and vans) that are first leased by the taxpayer in calendar year 2015 with a fair market value over \$19,000, and Table 4 of Rev. Proc. 2015–19 applies to trucks and vans that are first leased by the taxpayer in calendar year 2015 with a fair market value over \$19,500.

SECTION 5. EFFECTIVE DATE

This revenue procedure, with the exception of section 4.03, applies to passenger automobiles that a taxpayer first places in service or first leases during calendar year 2016. Section 4.03 of this revenue procedure applies to passenger automobiles that a taxpayer first places in service or first leases during calendar year 2015.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2015–19 is amplified and modified.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Bernard P. Harvey of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Harvey at (202) 317-7005 (not a toll-free number).

Part IV. Items of General Interest

Announcement 2016–12

ANNOUNCEMENT AND REPORT
CONCERNING
ADVANCE PRICING AGREEMENTS

March 31, 2016

This Announcement is issued pursuant to § 521(b) of Pub. L. 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999, which requires the Secretary of the Treasury to report annually to the public concerning advance pricing agreements (APAs) and the Advance Pricing and Mutual Agreement Program (APMA Program), formerly known as the Advance Pricing Agreement Program (APA Program). The first report covered calendar years 1991 through 1999. Subsequent reports covered each calendar year 2000 through 2014 separately. This seventeenth report describes the experience, structure, and activities of the APMA Program during calendar year 2015. It does not provide guidance regarding the application of the arm’s length standard.

Part I of this report includes information on the structure, composition, and operation of the APMA Program; Part II presents statistical data; and Part III includes general descriptions of various elements of the APAs executed in 2015, including types of transactions covered, transfer pricing methods used, and completion time.

Hareesh Dhawale
Director, Advance Pricing and Mutual Agreement Program

Part I. The APMA Program – Structure, Composition, and Operation

[Pub. L. 106–170 § 521(b)(2)(A)]

In February of 2012, the former APA Program was moved from the Office of Chief Counsel to the Office of Transfer Pricing Operations within the Large Business and International Division of the IRS and combined with the United States Competent Authority staff responsible for transfer pricing cases, thereby forming the APMA Program.

After the formation of the APMA Program, the team that developed the IRS position in a bilateral or multilateral case and finalized the APA with the taxpayer also became responsible for discussing the case and obtaining an agreement with the treaty partner. This compression of functions into a single APA team has helped to eliminate inefficiencies and has decreased the amount of time it takes to reach resolution once a case is set for discussion with the treaty partner.

As of December 31, 2015, the APMA Program was comprised of 62 team leaders, 21 economists, and 10 senior managers organized into 10 groups (7 team leader groups and 3 economist groups). Each team leader group has responsibility for cases involving certain countries with one of the economist groups also taking responsibility of a country. Because of the large volume of cases with certain treaty partners, some countries are the responsibility of more than one group. The APMA Program's main office is located in Washington, DC, and it also has a significant presence in San Francisco and the Los Angeles area.

On August 31, 2015, new revenue procedures governing MAP and APA applications were published in 2015–35 I.R.B. 236 and 263, respectively. Revenue Procedure (Rev. Proc.) 2015–41 provides guidance and instructions on filing APA requests as well as guidance and information on the administration of APAs. Rev. Proc. 2015–41 updates and supersedes Rev. Proc. 2006–9, 2006–1 C.B. 278, as modified by Rev. Proc. 2008–31, 2008–1 C.B. 1133, which is also superseded. Rev. Proc. 2015–40 provides procedures and guidance on requesting assistance from the U.S. Competent Authority where the taxpayer believes that the actions of the United States or a treaty country result or will result in the taxpayer being subject to taxation not in accordance with the applicable U.S. tax treaty. Rev. Proc. 2015–40 updates and supersedes Rev. Proc. 2006–54, 2006–2 C.B. 1035. These revenue procedures reflect the changes in APMA's structure and were informed by the cumulative experience of more than 20 years of APA practice in the United States.

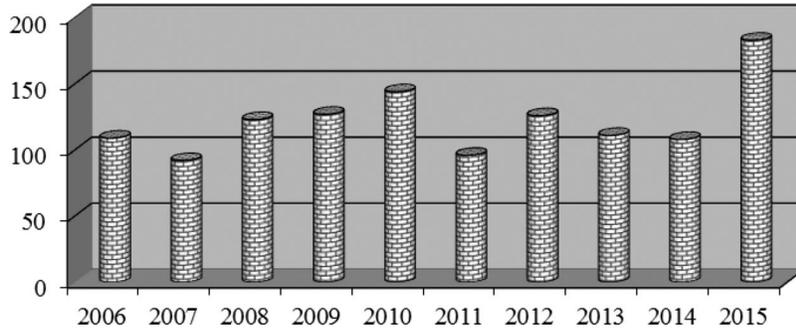
The model APA agreement, which was last significantly revised in 2009, is currently under review for future changes and appears in this report as Appendix 1. A list of primary APMA contacts is included as Appendix 2.

Part II. APMA Program Statistical Data
[Pub. L. 106-170 § 521(b)(2)(C)(i-viii)]

Table 1: APA Applications Filed
§ 521(b)(2)(C)(i)

| | Unilateral | Bilateral | Multilateral | Total |
|------------------------------|------------|-----------|--------------|-------------|
| Filed 1991-1999 ¹ | | | | 401 |
| Filed 2000-2014 | 490 | 1067 | 6 | 1563 |
| Filed in 2015 | 52 | 127 | 4 | 183 |
| Total Filed 1991-2015 | | | | 2147 |

Applications Filed
2006-2015



The table above illustrates the number of applications filed per year; however, the table does not include situations in which the taxpayer has paid a user fee but has not yet submitted a substantially complete APA request. As of December 31, 2015, APMA had received 14 user fee filings in addition to the 183 complete APA applications.

Bilateral APAs
Filed by Country 2015

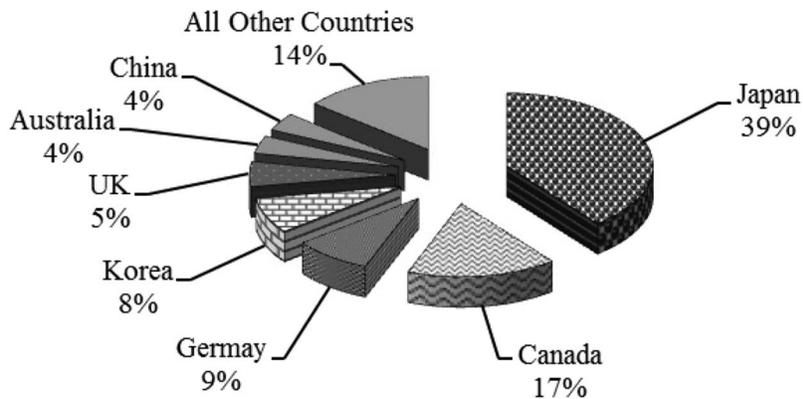
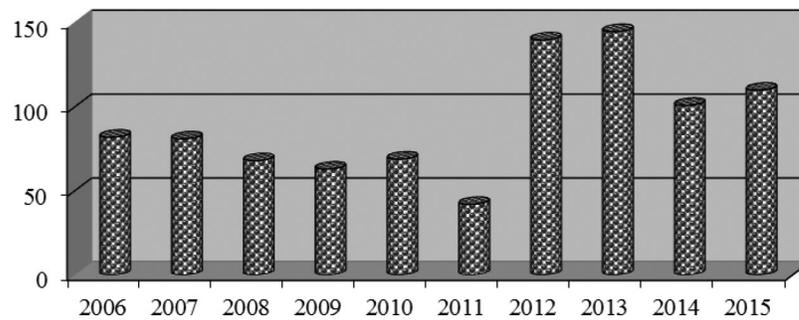


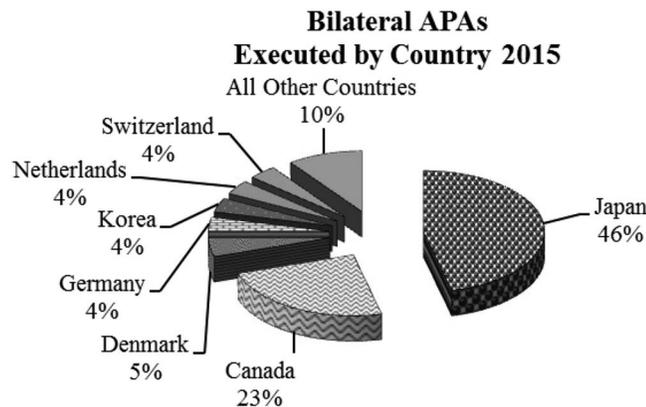
Table 2: Executed and Pending APAs
§ 521(b)(2)(C)(ii-vi)

| | Unilateral | Bilateral | Multilateral | Total |
|----------------------------------|------------|------------|--------------|-------------|
| Total Executed 1991–2014 | 509 | 878 | 14 | 1401 |
| Total Executed in 2015 | 30 | 80 | 0 | 110 |
| Total Executed 1991–2015 | 539 | 958 | 14 | 1511 |
| Total Pending | 85 | 316 | 9 | 410 |
| <i>Renewals Executed in 2015</i> | <i>18</i> | <i>48</i> | <i>0</i> | <i>66</i> |
| <i>Renewals Pending</i> | <i>40</i> | <i>146</i> | <i>2</i> | <i>188</i> |

APAs Executed
2006-2015

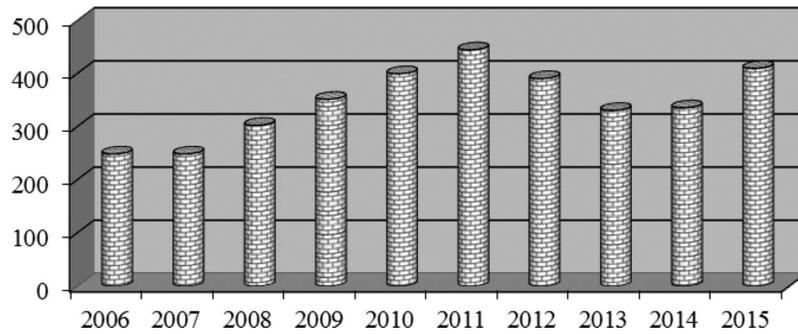


Of the 110 agreements executed in 2015, 44 of the agreements (40 percent) were new APAs (*i.e.*, not a renewal of a prior APA). This was a decrease from the 53 (52 percent) new APAs executed in 2014.



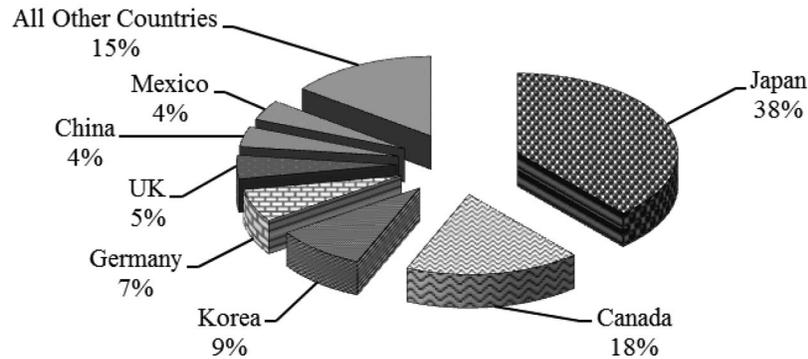
As the chart above illustrates, nearly three quarters of the total number of bilateral APAs executed in 2015 involved the United States entering into mutual agreements with Japan or Canada. A notable milestone achieved by APMA in 2015 was the execution of the first bilateral APA between the United States and Italy.

**Pending APAs
2006-2015**



The number of pending APAs rose in 2015 due largely to the record numbers of APA requests received during the fourth quarter. Japan and Canada continued to account for more than half of the pending bilateral APAs in 2015.

**Bilateral APAs
Pending by Country 2015**



**Table 3: APAs Revoked or Cancelled and Applications Withdrawn
§ 521(b)(2)(C)(vii)**

| | Unilateral | Bilateral | Multilateral | Total |
|---|------------|-----------|--------------|------------|
| Revoked or Cancelled in 2015 | 0 | 0 | 0 | 0 |
| Total Revoked or Cancelled 1991–2015 | | | | 11 |
| Applications Withdrawn in 2015 | 4 | 6 | 0 | 10 |
| Total Applications Withdrawn 1991–2015 | | | | 200 |

**Table 4: APAs Finalized or Renewed² by Industry
§ 521(b)(2)(C)(viii)**

| Industry | |
|------------------------------------|----|
| Manufacturing | 44 |
| Wholesale/Retail Trade | 39 |
| Services | 12 |
| Management | 7 |
| Finance, Insurance and Real Estate | 4 |
| All Other Industries | 4 |

²APAs finalized or renewed are the same as APAs executed.

**APAs by Industry
Finalized or Renewed 2015**

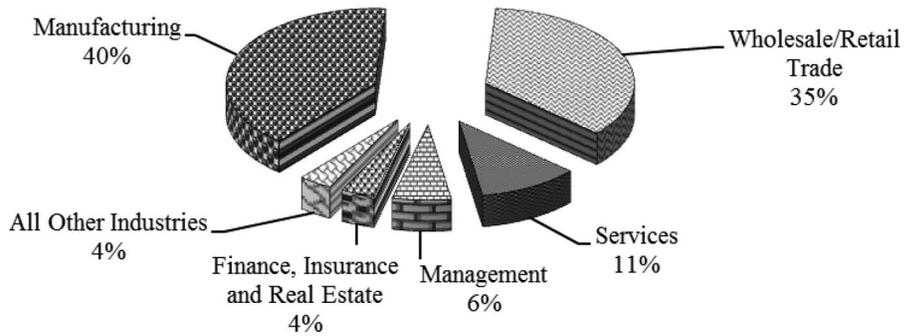


Table 4a: Manufacturing APAs Finalized or Renewed

| Manufacturing | |
|--|----|
| Computer and Electronic Products | 10 |
| Chemical | 9 |
| Transportation Equipment | 7 |
| Miscellaneous Manufacturing ³ | 5 |
| All Other Types of Manufacturing | 13 |

**Manufacturing APAs
Finalized or Renewed 2015**

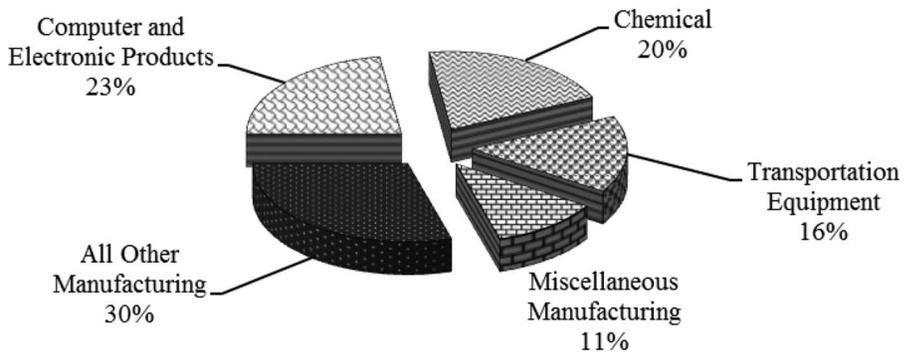
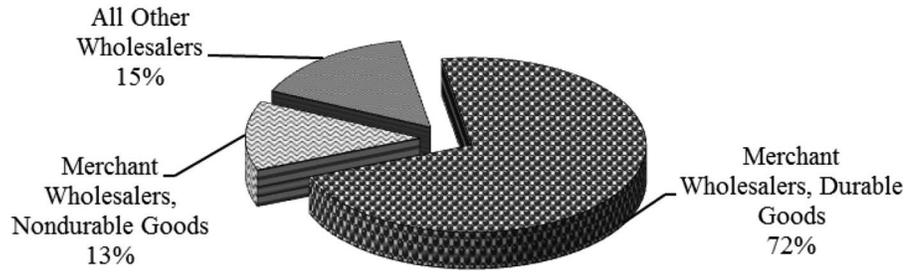


Table 4b: Wholesale/Retail Trade APAs Finalized or Renewed

| Wholesale/Retail Trade | |
|---|----|
| Merchant Wholesalers, Durable Goods | 28 |
| Merchant Wholesalers, Nondurable Goods | 5 |
| All Other Types of Other Wholesale/Retail Trade | 6 |

³Miscellaneous Manufacturing is NAICS code 339.

**Wholesale/Retail Trade APAs
Finalized or Renewed 2015**



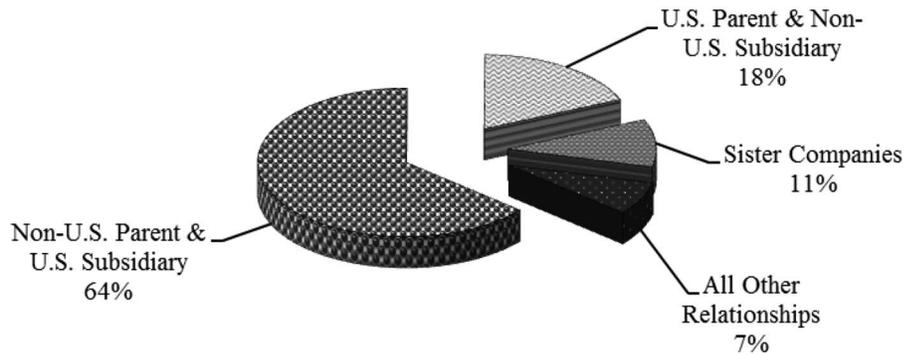
Part III. General Descriptions of APAs Executed in 2015

[Pub. L. 106-170 § 521(b)(2)(D) and (E)]

Nature of the Relationships

§ 521(b)(2)(D)(i)

Relationships between Controlled Parties 2015



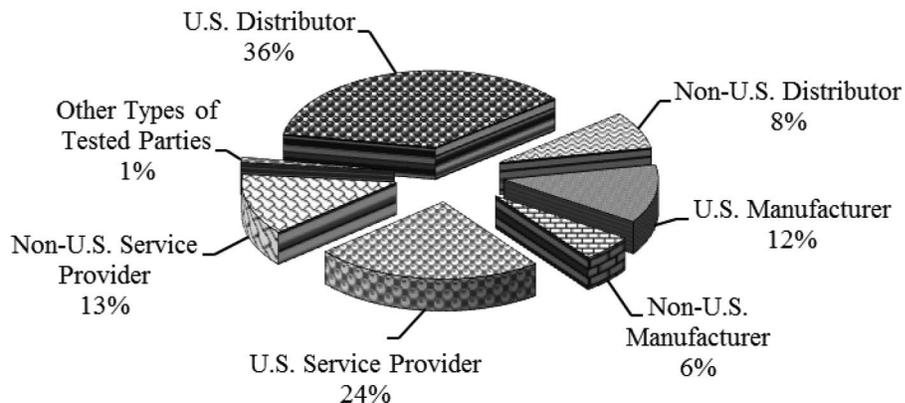
As in prior years, more than half of the APAs executed in 2015 involved transactions between non-U.S. parents and U.S. subsidiaries.

Covered Transactions, Functions and Risks, and Tested Parties

§ 521(b)(2)(D)(ii-iii)

In the majority of APAs, the covered transactions involve numerous business functions and risks. For instance, with respect to functions, APAs involving manufactured products typically involve a controlled group that conducts research and development (R&D), engages in product design and engineering, manufactures the product, markets and distributes the product, and performs support functions such as legal, finance, and human resources services. Regarding risks, the controlled group may assume a variety of risks including market risks, R&D risks, financial risks, credit and collection risks, product liability risks, and general business risks. In the APA evaluation process a significant amount of time and effort is devoted to understanding how the functions and risks are allocated amongst the controlled group of companies that are party to the covered transactions. Generally, for methods requiring selection of a tested party, the tested party that is chosen will be the least complex of the controlled taxpayers that does not make nonroutine contributions.

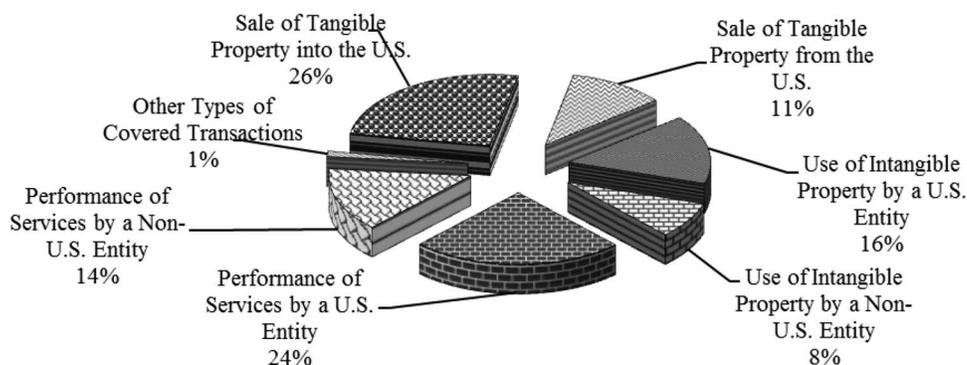
Types of Tested Parties 2015



Consistent with prior years, more than half of the tested parties of the APAs executed in 2015⁴ fell into one of two categories, *i.e.*, U.S. distributors and U.S. service providers. Combined, these two types of tested parties represent 60 percent of the total.

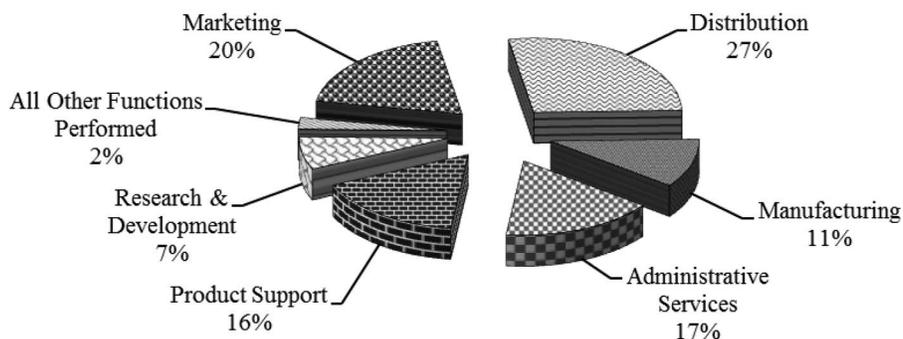
⁴Not all APAs executed in 2015 involved a tested party.

Types of Covered Transactions 2015



Although 75 percent of covered transactions⁵ involve tangible goods and services transactions, the IRS also has successfully completed numerous APAs involving transfers of intangibles. While complex transactions involving intangibles may be more challenging and represent a smaller percentage of the covered transactions in 2015 (24 percent), the IRS continues to seek opportunities to work with taxpayers and treaty partners to provide prospective certainty for such transactions wherever appropriate.

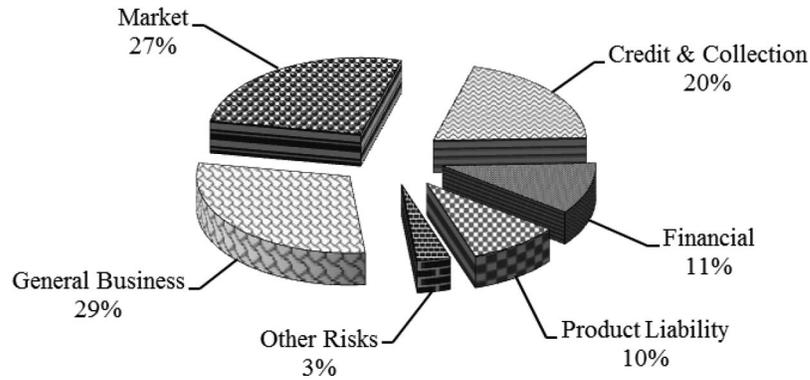
Tested Party Functions 2015



More than 60 percent of the tested parties in the APAs executed in 2015 involved distribution or related functions, *i.e.*, marketing and product support.

⁵APAs often cover more than one type of transaction.

Tested Party Risks 2015

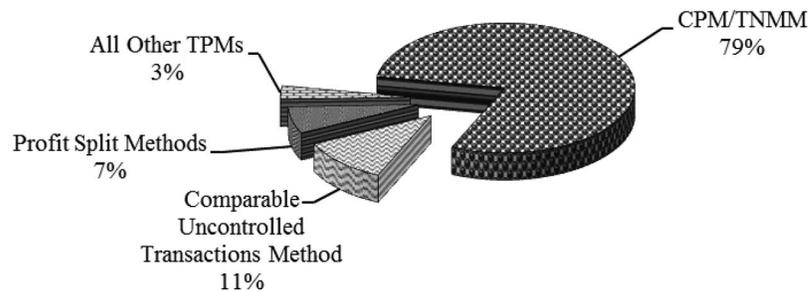


The majority of tested parties bear multiple risks. The chart above illustrates all of the risks borne by the tested parties for APAs executed in 2015.

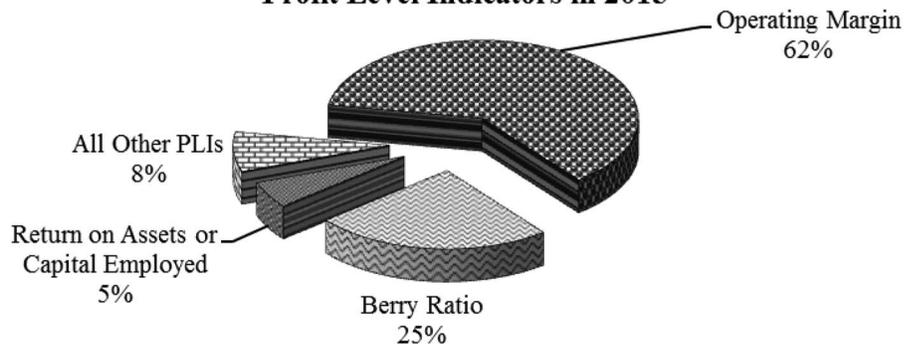
Transfer Pricing Methods Used § 521(b)(2)(D)(iv)

As shown on the following graphs, and consistent with prior years, the primary transfer pricing method (TPM) used for transfers of both tangible and intangible property in APAs executed in 2015 was the comparable profits method/transactional net margin method (CPM/TNMM).

Tangible and Intangible Property Transfer Pricing Methods 2015



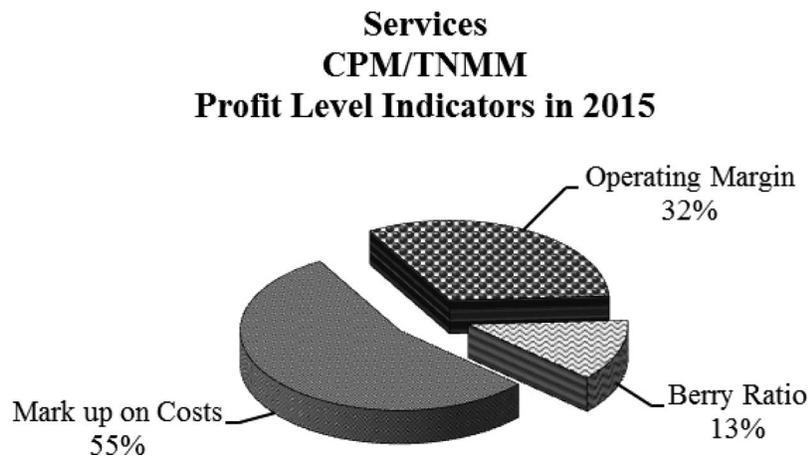
Tangible and Intangible Property CPM/TNMM Profit Level Indicators in 2015



In controlled transactions using the CPM/TNMM, operating margin continues to be the most common profit level indicator (PLI) used to benchmark results for transfers of tangible and intangible property. As used here, “operating margin” means the ratio of operating profits to sales⁶ and “Berry Ratio” means the ratio of gross profit to operating expenses.⁷



For services transactions, the majority of cases applied the CPM/TNMM or the services cost method. The services cost method evaluates the amount charged for certain services with reference to the total services costs.⁸



When the CPM/TNMM is used to benchmark services transactions, mark up on costs is the most frequently used PLI.

Sources of Comparables, Comparables Selection Criteria, and Nature of Adjustments to Comparables or Tested Party Data

§ 521(b)(2)(D)(v–vii)

For the APAs executed in 2015 that used external comparables data in the analysis, the most widely used data source for comparables was Standard and Poor’s Compustat/Capital IQ database. Other sources were also used in appropriate cases (*e.g.*, where the tested party was not the U.S. entity or transaction-based methods were applied). Other commonly used sources include the databases listed in Table 5.

⁶See Treas. Reg. § 1.482–5(b)(4)(ii)(A).

⁷See Treas. Reg. § 1.482–5(b)(4)(ii)(B).

⁸See Treas. Reg. § 1.482–9(b).

Table 5: Commonly Used Sources of Comparable Data

| | |
|--|---------------|
| Avention (formerly known as OneSource) | Mergent |
| Bloomberg | Orbis |
| Disclosure | Recap |
| Global Vantage | RoyaltySource |
| ktMINE | RoyaltyStat |
| LoanConnector | Worldscope |

In making comparability adjustments, the standard balance sheet adjustments identified in Treas. Reg. § 1.482-1(d) and § 1.482-5(c), including adjustments for differing amounts of payables, receivables, and inventory, were made in the majority of cases. Where appropriate, adjustments for different accounting practices were made to convert from LIFO to FIFO inventory accounting, and a small number of cases also involved the accounting reclassification of expenses, *e.g.*, from COGS to operating expenses.

Ranges, Targets, and Adjustment Mechanisms

§ 521(b)(2)(D)(viii-ix)

The majority of transactions covered in APAs target an interquartile range as described in Treas. Reg. § 1.482-1(e)(2)(iii)(C). Where the transaction involves a royalty payment for the use of intangible property, both specific royalty rates and ranges have been used. In some cases where the covered transaction is the payment of a royalty based solely on external royalty agreements, a secondary method, *e.g.*, a test of the post-royalty operating margin, has also been used. The testing periods of the APAs executed in 2015 were either: (1) a single year, (2) the term of the APA only, or (3) the term of the APA plus rollback years.

APAs executed in 2015 include a number of mechanisms for making adjustments to tested party results when the results fall outside the range or do not match the point required by the APA. The following are examples of the mechanisms used: an adjustment bringing the tested party's results to the closer edge of the range applied to the results of a single year; an adjustment to the closer edge of the range applied to the results over the APA term; an adjustment to the specified point or royalty rate; or an adjustment to the median of the range for a single year.

Critical Assumptions

§ 521(b)(2)(D)(v)

The model APA used by the IRS (included as Appendix 1 of this report) includes a standard critical assumption that there will be no material changes to the taxpayer's business or to its tax or financial accounting practices during the APA term. Each of the APAs executed in 2015 included this standard critical assumption. A few bilateral cases have included critical assumptions tied to either the taxpayer's profitability in a certain year or over the term of the APA, or to the amount of non-covered transactions as a percentage of the taxpayer's revenue. Pursuant to § 7.06(3) of Rev. Proc. 2015-41, 2015 I.R.B. 263, APMA will cancel an APA in the event of a failure of a critical assumption unless the parties agree to revise the APA.

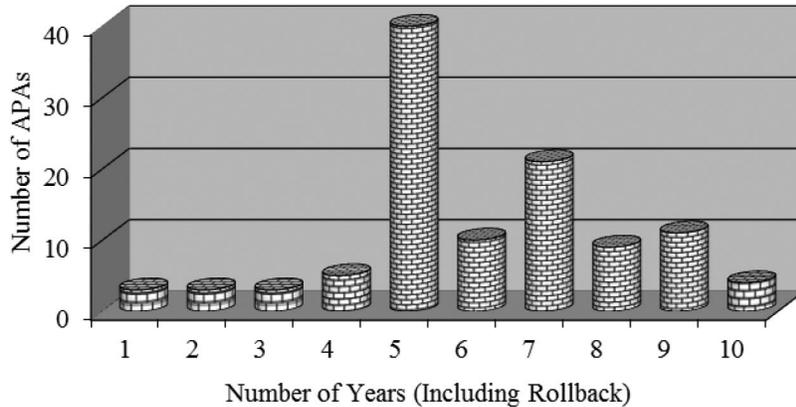
Term Lengths of APAs Executed in 2015

§ 521(b)(2)(D)(x)

Table 6: Term Lengths (Including Rollback Years)

| Term Length (years) | Number of APAs |
|---------------------|----------------|
| 1 | ≤3 |
| 2 | ≤3 |
| 3 | ≤3 |
| 4 | 5 |
| 5 | 40 |
| 6 | 10 |
| 7 | 21 |
| 8 | 9 |
| 9 | 11 |
| 10 | 4 |
| >10 | 7 |
| Average | 7 years |

Term Length of APAs in 2015

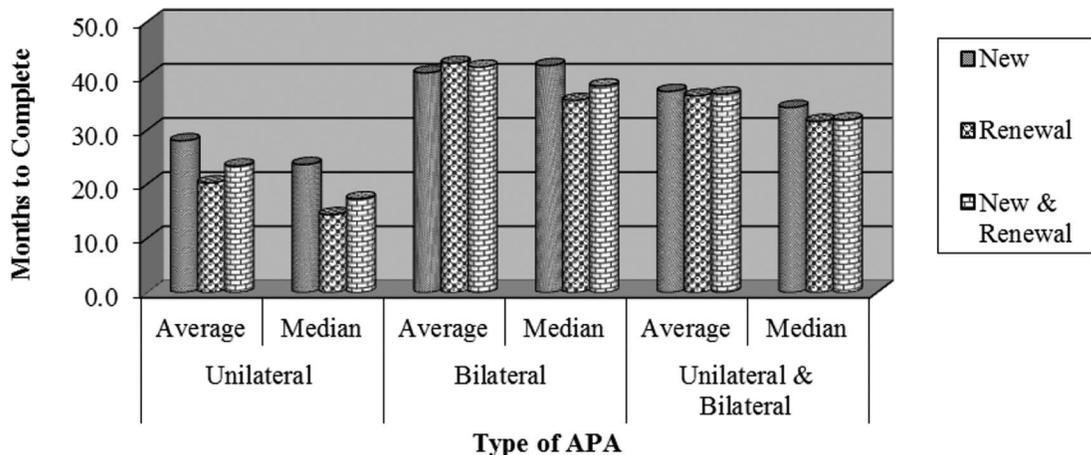


As described in § 3.03(1) of Rev. Proc. 2015–41, taxpayers should request an APA term that would cover at least 5 prospective years, although the appropriate APA term is decided on a case-by-case basis. Taxpayers may also request that the APA be “rolled back” to cover one or more earlier taxable years. Of the APAs executed in 2015, only 24 (22 percent) included rollback years. For those APAs with terms of greater than 5 years, a substantial number of those were submitted as a request for a 5-year term, and the additional years were agreed to between the taxpayer and the IRS (or, in the case of a bilateral APA, between the IRS and the foreign government upon the taxpayer’s request) to ensure a reasonable amount of prospectivity in the APA term.

Amount of Time Taken to Complete New and Renewal APAs § 521(b)(2)(E)

Table 7: Months to Complete New and Renewal APAs in 2014
§ 521(b)(2)(E)

| | Unilateral | | Bilateral | | Unilateral & Bilateral | |
|--------------------------|-------------|-------------|-------------|-------------|------------------------|-------------|
| | Average | Median | Average | Median | Average | Median |
| New | 28.0 | 23.7 | 40.6 | 41.9 | 37.2 | 34.2 |
| Renewal | 20.2 | 14.4 | 42.4 | 35.5 | 36.3 | 31.6 |
| New & Renewal | 23.4 | 17.3 | 41.7 | 38.2 | 36.7 | 31.9 |



The median time required to complete APAs executed in 2015 decreased from 2014 (31.9 months in 2015 compared to 35.3 in 2014).

Efforts to Ensure Compliance with APAs § 521(b)(2)(F)

As described in § 7.02 (1) of Rev. Proc. 2015–41, APA taxpayers are required to file annual reports to demonstrate compliance with the terms and conditions of the APA. The filing and review of annual reports is a critical part of the APA process. Through

annual report review, the APMA Program monitors taxpayer compliance with APAs on a contemporaneous basis. Annual report review also provides current information on the success or problems associated with the various TPMs adopted in the APA process.

Each report received by the APMA Program is assigned to a designated APMA team leader. Whenever possible, annual report reviews are assigned to the team leader who worked the case, or another staff member who is already familiar with the relevant facts and terms of the APA. Other team leaders and economists may assist the assigned staff member as well. The annual report is also sent to the field personnel with exam jurisdiction over the taxpayer. The field personnel conduct a compliance review and coordinate with APMA personnel to resolve any questions or problems that might arise.

Nature of Documentation Required in Annual Report

§ 521(b)(2)(D)(xi)

APAs executed in 2015 required taxpayers to provide various documents with their annual reports, depending on the specific facts of the case. While not every annual report will include each of the documents listed below the documents listed below are required where the facts demonstrate a need for such documentation.

| | |
|------------|---|
| 1. | Statement identifying all material differences between Taxpayer’s business operations during APA year and description of Taxpayer’s business operations contained in Taxpayer’s request for APA. If there have been no such material differences, a statement to that effect. |
| 2. | Statement of all material changes in the Taxpayer’s accounting methods and classifications, and methods of estimation, from those described or used in Taxpayer’s request for the APA. If there has been no material change in accounting methods and classifications or methods of estimation, a statement to that effect. |
| 3. | Description of any failure to meet critical assumptions. If there has been none, a statement to that effect. |
| 4. | Copy of the APA. |
| 5. | Financial analysis demonstrating Taxpayer’s compliance with TPM. |
| 6. | Organizational chart. |
| 7. | Any change to the taxpayer notice information in section 14 of the APA. |
| 8. | The amount, reason for, and financial analysis of any compensating adjustment, for the APA year, including but not limited to: the amounts paid or received by each affected entity; the character (such as capital or ordinary expense) and country source of the funds transferred, and the specific line item(s) of any affected U.S. tax return; and any change to any entity classification for federal income tax purposes of any member of Taxpayer’s group that is relevant to the APA. |
| 9. | The amounts, description, reason for, and financial analysis of any book-tax difference relevant to the TPM for the APA year, as reflected on Schedule M–1 or Schedule M–3 of the U.S. return for the APA year. |
| 10. | Financial statements and any necessary account detail to show compliance with the TPM, with a copy of the opinion from an independent certified public accountant or other documentation required by paragraph 5(f) of the APA. |
| 11. | Where required by paragraph 5(f) of the APA, certified public accountant’s opinion that financial statements present fairly the financial position of Taxpayer and the results of its operations, in accordance with a foreign GAAP. |
| 12. | Where applicable, financial statements as prepared in accordance with a foreign GAAP. |
| 13. | Various work papers. |
| 14. | Where applicable, a review of the financial statements by a certified public accountant. |

Approaches for Sharing of Currency or Other Risks

§ 521(b)(2)(D)(xii)

In appropriate cases, APAs may provide specific approaches for dealing with currency risk, such as adjustment mechanisms and/or critical assumptions.

**APPENDIX 1– Model APA (based on Rev. Proc. 2006–9)
[§ 521(b)(2)(B)]**

ADVANCE PRICING AGREEMENT
between
[Insert Taxpayer’s Name]
and
THE INTERNAL REVENUE SERVICE

PARTIES

The Parties to this Advance Pricing Agreement (APA) are the Internal Revenue Service (IRS) and [Insert Taxpayer’s Name], EIN _____.

RECITALS

[Insert Taxpayer Name] is the common parent of an affiliated group filing consolidated U.S. tax returns (collectively referred to as “Taxpayer”), and is entering into this APA on behalf of itself and other members of its consolidated group.

Taxpayer’s principal place of business is [City, State]. [Insert general description of taxpayer and other relevant parties].

This APA contains the Parties’ agreement on the best method for determining arm’s-length prices of the Covered Transactions under I.R.C. section 482, the Treasury Regulations thereunder, and any applicable tax treaties.

{If renewal, add} [Taxpayer and IRS previously entered into an APA covering taxable years ending ____ to _____, executed on _____.]

AGREEMENT

The Parties agree as follows:

1. *Covered Transactions.* This APA applies to the Covered Transactions, as defined in Appendix A.
2. *Transfer Pricing Method.* Appendix A sets forth the Transfer Pricing Method (TPM) for the Covered Transactions.
3. *Term.* This APA applies to the APA Term, as defined in Appendix A.
4. *Operation.*
 - a. Revenue Procedure 2006–9 governs the interpretation, legal effect, and administration of this APA.
 - b. Nonfactual oral and written representations, within the meaning of sections 10.04 and 10.05 of Revenue Procedure 2006–9 (including any proposals to use particular TPMs), made in conjunction with the APA Request constitute statements made in compromise negotiations within the meaning of Rule 408 of the Federal Rules of Evidence.
5. *Compliance.*
 - a. Taxpayer must report its taxable income in an amount that is consistent with Appendix A and all other requirements of this APA on its timely filed U.S. Return. However, if Taxpayer’s timely filed U.S. Return for any taxable year covered by this APA (APA Year) is filed prior to, or no later than 60 days after, the effective date of this APA, then Taxpayer must report its taxable income for that APA Year in an amount that is consistent with Appendix A and all other requirements of this APA either on the original U.S. Return or on an amended U.S. Return filed no later than 120 days after the effective date of this APA, or through such other means as may be specified herein.
 - b. {Use or edit the following when U.S. Group or Foreign Group contains more than one member.} [This APA addresses the arm’s-length nature of prices charged or received in the aggregate between Taxpayer and Foreign Participants with respect to the Covered Transactions. Except as explicitly provided, this APA does not address and does not bind the IRS with respect to prices charged or received, or the relative amounts of income or loss realized, by particular legal entities that are members of U.S. Group or that are members of Foreign Group.]
 - c. For each APA Year, if Taxpayer complies with the terms and conditions of this APA, then the IRS will not make or propose any allocation or adjustment under I.R.C. section 482 to the amounts charged in the aggregate between Taxpayer and Foreign Participant[s] with respect to the Covered Transactions.
 - d. If Taxpayer does not comply with the terms and conditions of this APA, then the IRS may:

i. enforce the terms and conditions of this APA and make or propose allocations or adjustments under I.R.C. section 482 consistent with this APA;

ii. cancel or revoke this APA under section 11.06 of Revenue Procedure 2006–9; or

iii. revise this APA, if the Parties agree.

e. Taxpayer must timely file an Annual Report (an original and four copies) for each APA Year in accordance with Appendix C and section 11.01 of Revenue Procedure 2006–9. Taxpayer must file the Annual Report for all APA Years through the APA Year ending [insert year] by [insert date]. Taxpayer must file the Annual Report for each subsequent APA Year by [insert month and day] immediately following the close of that APA Year. (If any date falls on a weekend or holiday, the Annual Report shall be due on the next date that is not a weekend or holiday.) The IRS may request additional information reasonably necessary to clarify or complete the Annual Report. Taxpayer will provide such requested information within 30 days. Additional time may be allowed for good cause.

f. The IRS will determine whether Taxpayer has complied with this APA based on Taxpayer’s U.S. Returns, the Financial Statements, and other APA Records, for the APA Term and any other year necessary to verify compliance. For Taxpayer to comply with this APA, *{use the following or an alternative}* an independent certified public accountant must render an opinion that Taxpayer’s Financial Statements present fairly, in all material respects, Taxpayer’s financial position under U.S. GAAP.

g. In accordance with section 11.04 of Revenue Procedure 2006–9, Taxpayer will (1) maintain the APA Records, and (2) make them available to the IRS in connection with an examination under section 11.03. Compliance with this subparagraph constitutes compliance with the record-maintenance provisions of I.R.C. sections 6038A and 6038C for the Covered Transactions for any taxable year during the APA Term.

h. The True Taxable Income within the meaning of Treasury Regulations sections 1.482–1(a)(1) and (i)(9) of a member of an affiliated group filing a U.S. consolidated return will be determined under the I.R.C. section 1502 Treasury Regulations.

i. *{Optional for US Parent Signatories}* To the extent that Taxpayer’s compliance with this APA depends on certain acts of Foreign Group members, Taxpayer will ensure that each Foreign Group member will perform such acts.

6. *Critical Assumptions.* This APA’s critical assumptions, within the meaning of Revenue Procedure 2006–9, section 4.05, appear in Appendix B. If any critical assumption has not been met, then Revenue Procedure 2006–9, section 11.06, governs.

7. *Disclosure.* This APA, and any background information related to this APA or the APA Request, are: (1) considered “return information” under I.R.C. section 6103(b)(2)(C); and (2) not subject to public inspection as a “written determination” under I.R.C. section 6110(b)(1). Section 521(b) of Pub. L. 106–170 provides that the Secretary of the Treasury must prepare a report for public disclosure that includes certain specifically designated information concerning all APAs, including this APA, in a form that does not reveal taxpayers’ identities, trade secrets, and proprietary or confidential business or financial information.

8. *Disputes.* If a dispute arises concerning the interpretation of this APA, the Parties will seek a resolution by the Director of the Advance Pricing and Mutual Agreement Program, to the extent reasonably practicable, before seeking alternative remedies.

9. *Materiality.* In this APA the terms “material” and “materially” will be interpreted consistently with the definition of “material facts” in Revenue Procedure 2006–9, section 11.06(4).

10. *Section Captions.* This APA’s section captions, which appear in *italics*, are for convenience and reference only. The captions do not affect in any way the interpretation or application of this APA.

11. *Terms and Definitions.* Unless otherwise specified, terms in the plural include the singular and vice versa. Appendix D contains definitions for capitalized terms not elsewhere defined in this APA.

12. *Entire Agreement and Severability.* This APA is the complete statement of the Parties’ agreement. The Parties will sever, delete, or reform any invalid or unenforceable provision in this APA to approximate the Parties’ intent as nearly as possible.

13. *Successor in Interest.* This APA binds, and inures to the benefit of, any successor in interest to Taxpayer.

14. *Notice.* Any notices required by this APA or Revenue Procedure 2006–9 must be in writing. Taxpayer will send notices to the IRS at the address and in the manner set forth in Revenue Procedure 2006–9, section 4.11. The IRS will send notices to:

| |
|--|
| Taxpayer Corporation Attn: Jane Doe, Sr. Vice President (Taxes) 1000 Any Road Any City, USA 10000 (phone: _____) |
|--|

15. *Effective Date and Counterparts.* This APA is effective starting on the date, or later date of the dates, upon which all Parties execute this APA. The Parties may execute this APA in counterparts, with each counterpart constituting an original.

WITNESS,

The Parties have executed this APA on the dates below.

[Taxpayer Name in all caps]

By: _____ Date: _____, 201__

Jane Doe
Sr. Vice President (Taxes)

IRS

By: _____ Date: _____, 201__

Hareesh Dhawale
Director, Advance Pricing and Mutual Agreement Program

APPENDIX A

COVERED TRANSACTIONS AND TRANSFER PRICING METHOD (TPM)

1. Covered Transactions.

[Define the Covered Transactions.]

2. APA Term.

This APA applies to Taxpayer's taxable years ending _____ through _____ (APA Term).

3. TPM.

{Note: If appropriate, adapt language from the following examples.}

[The Tested Party is _____.]

● CUP Method

The TPM is the comparable uncontrolled price (CUP) method. The Arm's Length Range of the price charged for _____ is between _____ and _____ per unit.

● CUT Method

The TPM is the CUT Method. The Arm's Length Range of the royalty charged for the license of _____ is between ____% and ____% of [Taxpayer's, Foreign Participants', or other specified party's] Net Sales Revenue. [Insert definition of net sales revenue or other royalty base.]

● Resale Price Method (RPM)

The TPM is the resale price method (RPM). The Tested Party's Gross Margin for any APA Year is defined as follows: the Tested Party's gross profit divided by its sales revenue (as those terms are defined in Treasury Regulations sections 1.482-5(d)(1) and (2)) for that APA Year. The Arm's Length Range is between ____% and ____%, and the Median of the Arm's Length Range is ____%.

● Cost Plus Method

The TPM is the cost plus method. The Tested Party's Cost Plus Markup is defined as follows for any APA Year: the Tested Party's ratio of gross profit to production costs (as those terms are defined in Treasury Regulations sections 1.482-3(d)(1) and (2)) for that APA Year. The Arm's Length Range is between ____% and ____%, and the Median of the Arm's Length Range is ____%.

● CPM with Berry Ratio PLI

The TPM is the comparable profits method (CPM). The profit level indicator is a Berry Ratio. The Tested Party's Berry Ratio is defined as follows for any APA Year: the Tested Party's gross profit divided by its operating expenses (as those terms are defined in Treasury Regulations sections 1.482-5(d)(2) and (3)) for that APA Year. The Arm's Length Range is between ____ and ____, and the Median of the Arm's Length Range is ____.

● CPM using an Operating Margin PLI

The TPM is the comparable profits method (CPM). The profit level indicator is an operating margin. The Tested Party's Operating Margin is defined as follows for any APA Year: the Tested Party's operating profit divided by its sales revenue (as those terms are defined in Treasury Regulations section 1.482-5(d)(1) and (4)) for that APA Year. The Arm's Length Range is between ____% and ____%, and the Median of the Arm's Length Range is ____%.

● CPM using a Three-year Rolling Average Operating Margin PLI

The TPM is the comparable profits method (CPM). The profit level indicator is an operating margin. The Tested Party's Three-Year Rolling Average operating margin is defined as follows for any APA Year: the sum of the Tested Party's operating profit (within the meaning of Treasury Regulation section 1.482-5(d)(4) for that APA Year and the two preceding years, divided by the sum of its sales revenue (within the meaning of Treasury Regulation section 1.482-5(d)(1)) for that APA Year and the two preceding years. The Arm's Length Range is between ____% and ____%, and the Median of the Arm's Length Range is ____%.

● Residual Profit Split Method

The TPM is the residual profit split method. *[Insert description of routine profit level determinations and residual profit-split mechanism].*

[Insert additional provisions as needed.]

4. Application of TPM.

For any APA Year, if the results of Taxpayer's actual transactions produce a [price per unit, royalty rate for the Covered Transactions] [or] [Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin for the Tested Party] within the Arm's Length Range, then the amounts reported on Taxpayer's U.S. Return must clearly reflect such results.

For any APA year, if the results of Taxpayer's actual transactions produce a [price per unit, royalty rate] [or] [Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin for the Tested Party] outside the Arm's Length Range, then amounts reported on Taxpayer's U.S. Return must clearly reflect an adjustment that brings the [price per unit, royalty rate] [or] [Tested Party's Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin] to the Median.

For purposes of this Appendix A, the "results of Taxpayer's actual transactions" means the results reflected in Taxpayer's and Tested Party's books and records as computed under U.S. GAAP *[insert another relevant accounting standard if applicable]*, with the following adjustments:

(a) [The fair value of stock-based compensation as disclosed in the Tested Party's audited financial statements shall be treated as an operating expense]; and

(b) To the extent that the results in any prior APA Year are relevant (for example, to compute a multi-year average), such results shall be adjusted to reflect the amount of any adjustment made for that prior APA Year under this Appendix A.

5. APA Revenue Procedure Treatment

If Taxpayer makes an adjustment under paragraph 4 of this Appendix A (a "primary adjustment"), Taxpayer and its related foreign entity may elect APA Revenue Procedure Treatment in accordance with section 11.02(3) of Revenue Procedure 2006-9 and avoid the possible adverse tax consequences of a secondary adjustment that would otherwise follow the primary adjustment.

[Insert additional provisions as needed.]

APPENDIX B
CRITICAL ASSUMPTIONS

This APA's critical assumptions are:

1. The business activities, functions performed, risks assumed, assets employed, and financial and tax accounting methods and classifications [and methods of estimation] of Taxpayer in relation to the Covered Transactions will remain materially the same as described or used in Taxpayer's APA Request. A mere change in business results will not be a material change.

[Insert additional provisions as needed.]

APPENDIX C

APA RECORDS AND ANNUAL REPORT

APA RECORDS

The APA Records will consist of all documents listed below for inclusion in the Annual Report, as well as all documents, notes, work papers, records, or other writings that support the information provided in such documents.

ANNUAL REPORT

The Annual Report (and each of the four copies required by paragraph 5(e) of this APA) will include:

1. Two copies of a properly completed APA Annual Report Summary in the form of Appendix E to this APA, one copy of the form bound with, and one copy provided separately from, the rest of the Annual Report.
2. A table of contents, organized as follows:
3. Statements that fully identify, describe, analyze, and explain:
 - a. All material differences between the U.S. Group's business operations (including functions, risks assumed, markets, contractual terms, economic conditions, property, services, and assets employed) during the APA Year from the business operations described in the APA Request. If there have been no material differences, the Annual Report will include a statement to that effect.
 - b. All material differences between the U.S. Group's accounting methods and classifications, and methods of estimation used during the APA Year, from those described or used in the APA Request. If any change was made to conform to changes in U.S. GAAP (or other relevant accounting standards) Taxpayer will specifically identify the change. If there has been no material change in accounting methods and classifications or methods of estimation, the Annual Report will include a statement to that effect.
 - c. Any change to the Taxpayer notice information in paragraph 14 of this APA.
 - d. Any failure to meet any critical assumption. If there has been no failure, the Annual Report will include a statement to that effect.
 - e. Whether or not material information submitted while the APA Request was pending is discovered to be false, incorrect, or incomplete.
 - f. Any change to any entity classification for federal income tax purposes (including any change that causes an entity to be disregarded for federal income tax purposes) of any Worldwide Group member that is a party to the Covered Transactions or is otherwise relevant to the TPM.
 - g. The amount, reason for, and financial analysis of (1) any primary adjustments made under Appendix A for the APA Year; and (2) any (a) secondary adjustments that follow such primary adjustments or (b) accounts receivable that Taxpayer establishes, in lieu of secondary adjustments, by electing APA Revenue Procedure Treatment pursuant to paragraph 5 of Appendix A and Revenue Procedure 2006-9, section 11.02(3), for the APA Year, including but not limited to:
 - i. the amounts due or owed, and paid or received by each affected entity;
 - ii. the character (such as capital, ordinary, income, expense) and country source of the funds transferred, and the specific affected line item(s) of any affected U.S. Return;
 - iii. the date(s) and means by which the payments are or will be made; and
 - iv. whether or not APA Revenue Procedure was elected pursuant to paragraph 5 of Appendix A and Revenue Procedure 2006-9, section 11.02(3).
 - h. The amounts, description, reason for, and financial analysis of any book-tax difference relevant to the TPM for the APA Year, as reflected on Schedule M-1 or Schedule M-3 of the U.S. Return for the APA Year.
 - i. Whether Taxpayer contemplates requesting, or has requested, to renew, modify, or cancel the APA.
4. The Financial Statements, and any necessary account detail to show compliance with the TPM, including consolidating financial statements, segmented financial data, records from the general ledger, or similar information if the assets, liabilities, income, or expenses relevant to showing compliance with the TPM are a subset of the assets, liabilities, income, or expenses presented in the Financial Statements.
5. *{Use the following or the alternative prescribed by paragraph 5(f) of this APA:}* A copy of the independent certified public accountant's opinion required by paragraph 5(f) of this APA.

6. A financial analysis that reflects Taxpayer's TPM calculations for the APA Year. The calculations must reconcile with and reference the information required under item 4 above in sufficient account detail to allow the IRS to determine whether Taxpayer has complied with the TPM.

7. An organizational chart for the Worldwide Group, revised annually to reflect all ownership or structural changes of entities that are parties to the Covered Transactions or are otherwise relevant to the TPM.

8. A copy of the APA and any amendment.

9. A penalty of perjury statement, executed in accordance with Revenue Procedure 2006-9, section 11.01(6) and (7).

APPENDIX D
DEFINITIONS

The following definitions control for all purposes of this APA. The definitions appear alphabetically below:

| Term | Definition |
|-------------------------------|--|
| Annual Report | A report within the meaning of Revenue Procedure 2006–9, section 11.01. |
| APA | This Advance Pricing Agreement, which is an “advance pricing agreement” within the meaning of Revenue Procedure 2006–9, section 2.04. |
| APA Records | The records specified in Appendix C. |
| APA Request | Taxpayer’s request for this APA dated _____, including any amendments or supplemental or additional information thereto. |
| APA Year | This term is defined in paragraph 5(a) of this APA. |
| Covered Transaction(s) | This term is defined in Appendix A. |
| Financial Statements | Financial statements prepared in accordance with U.S. GAAP and stated in U.S. dollars. |
| Foreign Group | Worldwide Group members that are not U.S. persons. |
| Foreign Participants | [name the foreign entities involved in Covered Transactions]. |
| I.R.C. | The Internal Revenue Code of 1986, 26 U.S.C., as amended. |
| Pub. L. 106–170 | The Ticket to Work and Work Incentives Improvement Act of 1999. |
| Revenue Procedure 2006–9 | Rev. Proc. 2006–9, 2006–1 C.B. 278. |
| Transfer Pricing Method (TPM) | A transfer pricing method within the meaning of Treasury Regulation section 1.482–1(b) and Revenue Procedure 2006–9, section 2.04. |
| U.S. GAAP | U.S. generally-accepted accounting principles. |
| U.S. Group | Worldwide Group members that are U.S. persons. |
| U.S. Return | For each taxable year, the “returns with respect to income taxes under subtitle A” that Taxpayer must “make” in accordance with I.R.C. section 6012. { <i>Or substitute for partnership: For each taxable year, the “return” that Taxpayer must “make” in accordance with I.R.C. section 6031.</i> } |
| Worldwide Group | Taxpayer and all organizations, trades, businesses, entities, or branches (whether or not incorporated, organized in the United States, or affiliated) owned or controlled directly or indirectly by the same interests. |

APPENDIX E

APA ANNUAL REPORT SUMMARY FORM

The APA Annual Report Summary on the next page is a required APA Record. The APA Team Leader supplies some of the information requested on the form. Taxpayer is to supply the remaining information requested by the form and submit the form as part of its Annual Report.

| | | |
|----------------------------------|--|--|
| APA Annual Report SUMMARY | Department of the Treasury— Internal Revenue Service Large Business and International Division Transfer Pricing Operations Advance Pricing and Mutual Agreement Program | APA No. _____ Team Leader _____ Economist _____ Intl Examiner _____ |
|----------------------------------|--|--|

| | |
|------------------------|---|
| APA Information | Taxpayer Name: _____ Taxpayer EIN: _____ NAICS: _____ APA Term: Taxable years ending _____ to _____ Original APA <input type="checkbox"/> Renewal APA <input type="checkbox"/> Annual Report due dates: _____, 201__ for all APA Years through APA Year ending in 200__; for each APA Year thereafter, on _____ [month and day] immediately following the close of the APA Year Principal foreign country(ies) involved in covered transaction(s): _____ Type of APA: <input type="checkbox"/> unilateral <input type="checkbox"/> bilateral with _____ Tested party is <input type="checkbox"/> US <input type="checkbox"/> foreign <input type="checkbox"/> both Approximate dollar volume of covered transactions (on an annual basis) involving tangible goods and services: <input type="checkbox"/> N/A <input type="checkbox"/> <\$50 million <input type="checkbox"/> \$50–100 million <input type="checkbox"/> \$100–250 million <input type="checkbox"/> \$250–500 million <input type="checkbox"/> >\$500 million APA tests on (check all that apply): <input type="checkbox"/> annual basis <input type="checkbox"/> multi-year basis <input type="checkbox"/> term basis APA provides (check all that apply) a: <input type="checkbox"/> range <input type="checkbox"/> point <input type="checkbox"/> floor only <input type="checkbox"/> ceiling only <input type="checkbox"/> other _____ APA provides for adjustment (check all that apply) to: <input type="checkbox"/> nearest edge <input type="checkbox"/> median <input type="checkbox"/> other point |
|------------------------|---|

APA Annual Report Information
 (to be completed by the Taxpayer)

APA date executed: _____, 201__
 This APA Annual Report Summary is for APA Year(s) ending in 200__ and was filed on _____, 201__
 Check here if Annual Report was filed after original due date but in accordance with extension.
 Has this APA been amended or changed? yes no Effective Date: _____
 Has Taxpayer complied with all APA terms and conditions? yes no
 Were all the critical assumptions met? yes no
 Has a Primary Compensating Adjustment been made in any APA Year covered by this Annual Report?
 yes no If yes, which year(s): 200__
 Have any necessary Secondary Compensating Adjustments been made? yes no
 Did Taxpayer elect APA Revenue Procedure treatment? yes no
 Any change to the entity classification of a party to the APA? yes no
 Taxpayer notice information contained in the APA remains unchanged? yes no
 Taxpayer's current US principal place of business: (City, State) _____

APA Annual Report Checklist of Key Contents
 (to be completed by the Taxpayer)

Financial analysis reflecting TPM calculations yes no
 Financial statements showing compliance with TPM(s) yes no
 Schedule M-1 or M-3 book-tax differences yes no
 Current organizational chart of relevant portion of world-wide group yes no
 Attach copy of APA yes no
 Other APA records and documents included:

Contact Information

| Authorized Representative | Phone Number | Affiliation and Address |
|---------------------------|--------------|-------------------------|
| | | |

APPENDIX 2 – APMA Contacts

| APMA LEADERSHIP | | |
|--|------------------|--------------|
| Director | Dhawale, Hareesh | 202-515-4306 |
| Assistant Director | McComber, Donna | 202-515-4341 |
| Assistant Director | Rock, Peter | 415-547-3776 |
| Assistant Director | Wiltshire, Nancy | 202-515-4729 |
| ECONOMISTS | | |
| Senior Manager | Kwiat, Russell | 202-515-4309 |
| Senior Manager | Larson, Charles | 312-292-3663 |
| Senior Manager | Lee, Ho Jin | 213-833-1166 |
| AUSTRALIA, AUSTRIA, CANADA, KAZAKHSTAN, NETHERLANDS, NEW ZEALAND | | |
| Senior Manager | Cohen, Judith | 202-515-4312 |
| INDONESIA, JAPAN, SOUTH AFRICA & THAILAND | | |
| Senior Manager (Acting) | Rock, Peter | 415-547-3776 |
| CANADA, INDIA, ITALY & LUXEMBOURG | | |
| Senior Manager | Mader, Burton | 202-515-4319 |
| DENMARK, INDIA, IRELAND, NORWAY, SWEDEN, SWITZERLAND & UK | | |
| Senior Manager (Acting) | McComber, Donna | 202-515-4341 |
| ARGENTINA, CARIBBEAN, CHINA, GERMANY, MEXICO, PORTUGAL, PUERTO RICO, SPAIN VENEZUELA & EASTERN EUROPE | | |
| Senior Manager | Spring, Gregory | 202-515-4340 |
| BELGIUM, CANADA, FRANCE, GREECE, HUNGARY & INDIA | | |
| Senior Manager | Fouts, Patricia | 202-515-4740 |
| GUAM, JAPAN, KOREA, MOROCCO & PHILIPPINES | | |
| Senior Manager | Bracken, Dennis | 310-414-3617 |
| ISRAEL | | |
| Senior Manager | Kwiat, Russell | 202-515-4309 |

**Notice of Proposed Rulemaking
Excise Tax; Tractors, Trailers, Trucks, and Tires; Definition of Highway Vehicle**

REG-103380-05

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the excise taxes imposed on the sale of highway tractors, trailers, trucks, and tires; the use of heavy vehicles on the highway; and the definition of highway vehicle related to these and other taxes. These proposed reg-

ulations reflect legislative changes and court decisions regarding these topics. These proposed regulations affect manufacturers, producers, importers, dealers, retailers, and users of certain highway tractors, trailers, trucks, and tires.

DATES: Written and electronic comments and requests for a public hearing must be received by June 29, 2016.

ADDRESSES: Send submissions to: CC: PA:LPD:PR (REG-103380-05), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to: CC:PA:LPD:PR Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-103380-05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent

electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-1103380-05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Celia Gabrysh, at (202) 317-6855; concerning submissions of comments or a request for a hearing Regina Johnson at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information

should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by May 31, 2016. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in these proposed regulations are in §48.4051-1(e)(8), describing the certificate the seller of an incomplete chassis cab must have to substantiate a tax-free sale; §48.4051-1(f)(3)(ii), describing the record of gross vehicle weight (GVW) a seller of a truck, trailer, or tractor must maintain to substantiate taxable and nontaxable sales; §48.4051-1(f)(4)(ii), describing the record of gross combination weight (GCW) a seller of a tractor must maintain to substantiate taxable and nontaxable sales; §48.4052-1(c), describing the certificate a seller of a truck, trailer, or tractor for resale or long term leasing must have to substantiate a tax-free sale; §48.4052-2(b), describing the certificate a seller of a trailer must have to avoid the four percent price markup for resale within six months; §48.4073-1(c), describing the certificate a taxable tire manufacturer must have to make a tax-free sale to the Department of Defense or the Coast Guard; §48.4221-

7(c), describing the certificate a manufacturer must have to make a tax-free sale of a taxable tire when sold for use or in connection with the sale of another article manufactured by the purchaser and sold by the purchaser in a sale that meets the requirements of section 4221(e)(2); and §48.4221-8(c), describing the certificate a taxable tire manufacturer must have to make a tax-free sale of taxable tires for intercity, local and school buses. This information is required to obtain a tax benefit and meet a taxpayer's recordkeeping obligations under section 6001. This information will be used by the IRS to substantiate claims for tax benefits. The likely recordkeepers are businesses.

Estimated total annual reporting and/or recordkeeping burden: 750 hours.

Estimated average annual burden hours per respondent and/or recordkeeper varies from .10 hour to .40 hours, depending on individual circumstances, with an estimated average of .25 hours.

Estimated number respondents and/or recordkeepers: 3,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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).

Tractors, Trailers, and Trucks

Before April 1, 1983, section 4061 imposed a tax on the manufacturer's sale of certain highway-type tractors, chassis, and bodies for highway-type trailers and trucks, and related parts and accessories

for these articles. The Highway Revenue Act of 1982, Pub. L. 97-424 (96 Stat. 2097) (the 1982 Act), changed this tax to a 12 percent tax under section 4051(a)(1) on the first retail sale of certain highway-type tractors and chassis and bodies for highway-type trailers and trucks. In addition, the 1982 Act replaced the tax on the manufacturer's sale of related parts and accessories with a tax on the installation of parts and accessories on a vehicle containing a taxable article within six months after the vehicle was first placed in service (unless the aggregate price of the parts and the cost of installation was less than \$200). Section 4051(a)(5) provides that the sale of a truck, truck trailer, or semitrailer is to be considered as the sale of a chassis and of a body.

Under the 1982 Act, a chassis or body suitable for use with (1) a truck with a GVW of 33,000 pounds or less or (2) a trailer with a GVW of 26,000 pounds or less is generally exempt from tax. All tractors of the kind chiefly used for highway transportation in connection with trailers and semitrailers were taxable under the 1982 Act regardless of their GVW.

On April 4, 1983, temporary regulations were published in the **Federal Register** (48 FR 14361; TD 7882) to implement this new retail tax. Subsequent amendments to these regulations were published in the **Federal Register** on September 13, 1985 (50 FR 37350; TD 8050); May 12, 1988 (53 FR 16867; TD 8200); and July 1, 1998 (63 FR 35799; TD 8774). Collectively, these regulations are referred to in this preamble as "the temporary regulations."

One provision in the temporary regulations provided that tax was not imposed on tractors, chassis, and bodies when they were sold for resale or long-term lease if the buyer was registered by the IRS. Section 1434(b)(2) of the Taxpayer Relief Act of 1997, Pub. L. 105-34 (111 Stat. 788) (the 1997 Act), provided that IRS registration could not be a prerequisite for these tax-free sales. Subsequently, the temporary regulations were amended to reflect this statutory provision on March 31, 2000 (65 FR 17149; TD 8879). The 1997 Act also increased from \$200 to \$1,000 the aggregate dollar value of parts and accessories that may be installed on

section 4051 articles without incurring a tax liability.

Section 11112 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA), Pub. L. 109–59 (119 Stat. 1144), added new section 4051(a)(4), that provides an exemption for small tractors from the tax on tractors.

Tires

Before January 1, 1984, section 4071 imposed a tax on the manufacturer's sale of highway and nonhighway tires, tubes, and tread rubber. Effective that date, the 1982 Act repealed most of these taxes but retained a tax on certain heavy highway-type tires based on the weight of the tires.

Section 869 of the American Jobs Creation Act of 2004, Pub. L. 108–357 (118 Stat. 1418) (2004 Act), changed section 4071 from a tax based on the weight of a tire to a tax based on the maximum rated load capacity of a tire in excess of 3,500 pounds. A special rate of tax was provided for super single tires. A super single tire was defined as a single tire greater than 13 inches in cross-section width designed to replace two tires in a dual fitment.

Section 1364(a) of the Energy Policy Act of 2005, Pub. L. 109–58 (119 Stat. 594), amended the definition of a super single tire to exclude any tire designed for steering.

Definition of Highway Vehicle

Generally, section 4051 imposes a tax only on components of highway vehicles. Similarly, the tax imposed by section 4481 on the use of certain heavy vehicles applies only to highway vehicles. Sections 6421 and 6427 allow a credit or payment related to the tax imposed on fuel (including gasoline or diesel fuel) in many cases if the fuel is used other than as a fuel in a highway vehicle.

Existing regulations define *highway vehicle* with exceptions provided for (1) certain specially-designed mobile machinery for nontransportation functions, (2) certain vehicles specially designed for off-highway transportation, and (3) certain trailers and semitrailers specially designed to perform nontransportation functions off the public highway. Section 851 of the

2004 Act generally codified the regulatory exception for item (1) and codified, with substantial changes, the regulatory definitions of items (2) and (3).

Reason for these regulations

Many of the existing regulations relating to tractors, trailers, trucks, and tires do not reflect current law. These proposed regulations reflect changes to the Internal Revenue Code since 1982, address several court decisions, remove numerous obsolete regulations, and also afford the public the opportunity to comment on those provisions of the temporary regulations that are restated and unchanged.

Explanation of Provisions

Definition of Highway Vehicle

Proposed §48.0–5 defines a *highway vehicle* as any self-propelled vehicle, or any truck trailer or semitrailer, designed to perform a function of transporting a load over public highways. This proposed section also provides exceptions for specified mobile machinery, off-highway vehicles, and non-transportation trailers and semitrailers for purposes of the tax on the sale of heavy vehicles (section 4051), the highway use tax (section 4481), and the credits and payments allowed for certain nontaxable uses (sections 6421 and 6427). The exception for mobile machinery restates section 4053(8) (as added by the 2004 Act) and the exceptions for off-highway vehicles and non-transportation trailers and semitrailers restate section 7701(a)(48)(A) and (B) (as added by the 2004 Act). Also, Notice 2005–4, 2005–1 C.B. 289, announced that existing regulations regarding certain vehicles specially designed for off-highway transportation would be revised so that they will not apply to calendar quarters beginning after October 22, 2004. These proposed regulations make that change.

The proposed regulations provide two examples that illustrate the definition of highway vehicle. The first example concerns the off-highway vehicle exception and characterizes an asphalt semitrailer similar to the trailers and semitrailers described in *Flow Boy, Inc. v. United States*, 83-1 U.S.T.C. ¶16,395, *aff'd*, 54 A.F.T.R.2d 84-6545, 84-1 U.S.T.C.

¶16,418 (10th Cir. 1984), and *Gateway Equip. Corp. v. United States*, 247 F. Supp. 2d 299 (W.D.N.Y. 2003), as a highway vehicle. Relying on the then-existing regulations, the *Flow Boy* and *Gateway* courts held that the asphalt trailers and semitrailers in question were not highway vehicles. In 2004, Congress added section 7701(a)(48) to the Code, which provides a statutory definition of the term “off-highway vehicles.” Under section 7701(a)(48)(A), a vehicle is not treated as a highway vehicle if such vehicle is specially designed for the primary function of transporting a particular type of load over the public highway and because of this special design, such vehicle's capability to transport a load over the public highway is substantially limited or impaired. The enactment of section 7701(a)(48) effectively disqualified an asphalt semitrailer similar to the ones described in *Flow Boy* and *Gateway* from the off-highway exception because its special design does not substantially limit or impair its capability to transport a load over a public highway. The example in the proposed regulations illustrates the analysis of whether a vehicle is a highway vehicle under section 7701(a)(48).

The second example concerns the mobile machinery exception and reflects the decision in *Florida Power & Light Co. v. United States*, 375 F.3d 1119 (Fed. Cir. 2004), which holds that a vehicle that can perform more than one transportation function is not specially designed to serve “only” as a mobile carriage and mount. See also *Schlumberger Technology Corp. and Subsidiaries v. United States*, 55 Fed. Cl. 203 (2003).

Retail Tax on Tractors, Trailers, and Trucks

The proposed regulations reorganize and partially restate the temporary regulations that address the retail tax on tractors, trailers, and trucks. Proposed §48.4051–1(e) revises the definitions of *tractor* and *truck* and provides a model certificate for a seller to establish the tax status of an incomplete chassis cab. If the buyer of an incomplete chassis cab certifies to the seller that the buyer will not complete the incomplete chassis cab as a taxable tractor, the seller may treat the sale of the

incomplete chassis cab as the sale of a truck or small tractor. Consequently, no tax is imposed on the sale of an incomplete chassis cab when accompanied by a qualifying certificate. In the absence of this certificate, the seller must treat the sale of an incomplete chassis cab as the sale of a taxable tractor. This rule generally restates §145.4051-1(e)(1) and is consistent with the interpretation of the existing rule in *Freightliner of Grand Rapids, Inc. v. United States*, 351 F. Supp. 2d 718, 723 (2004).

Consistent with the temporary regulations, the proposed regulations define the terms tractor and truck by reference to the primary design of a vehicle. For purposes of determining whether a vehicle is “primarily designed” as a tractor or a truck, proposed §48.4051-1(g) also includes an example and reflects Rev. Rul. 2004-80 (2004-2 CB 164), which applied the primarily designed test to determine whether a vehicle was a tractor or a truck.

The definition of *truck trailer* in proposed §48.4051-1(e)(4)(ii) would include any manufactured home on a frame that has axles and wheels. This definition classifies a manufactured home of the type at issue in *Horton Homes, Inc. v. United States*, 357 F.3d 1209 (11th Cir. 2004), as a truck trailer because all of its load and weight is carried on its own chassis and it is designed to be towed. A consequence of this characterization is that the vehicle that tows this manufactured home is a tractor as defined in section 4051(a)(1)(E). Thus, under the proposed regulations, *toters*, as the vehicles that tow these manufactured homes are known in the industry, would be taxable as tractors. While this result is different from the decision in *Horton Homes*, which held that toters are not taxable tractors, that decision expressly noted that “Congress did not define ‘trailers or semitrailers,’ [in the statute] nor has the Treasury promulgated regulations defining those terms” and thus applied a dictionary definition of the term “trailer” to determine whether toters are taxable. *Id.* at 1212 n.6. These proposed regulations fill in the regulatory gap faced by the Eleventh Circuit by providing a definition of “trailer” that will clarify the determination of whether a vehicle is a taxable tractor.

Proposed §48.4051-1(f) provides exclusions from the tax imposed by section 4051 for certain trucks and trailers that are below a certain GVW and tractors that are below a certain GVW and a certain GCW. Proposed §48.4051-1(f) defines GVW and GCW and also provides the related recordkeeping requirements to support these exclusions.

Proposed §48.4051-2 modifies the temporary regulations to reflect the statutory increase in the aggregate dollar value of parts and accessories that may be installed on a taxable article without incurring a tax liability.

Proposed §48.4052-1 supplements the existing definition of *taxable sale* to include the resale of an unused article that had been previously sold tax-free.

Chassis Characterization

The proposed regulations provide that if a chassis is a component part of a highway vehicle, the taxability of the chassis is determined independent of, and without regard to, the body that is installed on the chassis. Likewise, if a body is a component part of a highway vehicle, the taxability of the body is determined independent of, and without regard to, the chassis on which the body is installed. This proposed rule is contrary to the result in Rev. Rul. 69-205 (1969-1 CB 277), which holds that an otherwise taxable chassis is not taxable if a motorhome body is installed on the chassis. This revenue ruling predates and is inconsistent with the language in section 4051(a)(1), which lists a chassis and a body as separate taxable articles. This revenue ruling will be obsolete after publication of the final regulations.

Taxable Tires

Effective January 1, 2005, section 4071 imposes a tax on taxable tires for each ten pounds of the maximum rated load capacity that exceeds 3,500 pounds. The proposed regulations reflect this change and remove references in existing regulations to tread rubber, inner tubes, and the determination of a tire’s weight. The proposed regulations also define *rated load capacity* and *super single tire*, and address multiple load ratings and the

consequences of tampering with a tire’s maximum load rating. The proposed regulations also provide rules under section 4073 for making tax-free sales of tires for the exclusive use of the Department of Defense and the Coast Guard. In addition, the proposed regulations provide model certificates to support these sales, as well as sales of tires by manufacturers for use on or in connection with the sale of another article manufactured by the purchaser and sold by the purchaser in a sale that meets the requirements of section 4221(e)(2) and sales of taxable tires to be used on intercity, local, and school buses (section 4221(e)(3)).

Proposed Applicability Date

The regulations generally are proposed to apply on and after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Availability of IRS documents

The IRS revenue rulings and the notice cited in this preamble are published in the Internal Revenue Cumulative Bulletin and are available at www.irs.gov.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory flexibility 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. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the time required to secure and maintain the required information is minimal (estimated at an average of 15 minutes) and taxpayers would ordinarily already collect and retain much of this information for other business purposes such as accounting, insurance, and marketing. Also, truck manufacturers presently provide the GVW and gross combined weight to truck dealers for purposes

unrelated to federal excise tax. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been 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 comments that are submitted timely to the IRS as prescribed in this preamble under the “Addresses” heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be available at www.regulations.gov or upon request. 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 Celia Gabrysh, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 41, 48, and 145 are 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 * * *

§41.4482(a)–1 [Amended]

Par. 2. Section 41.4482(a)–1(a)(2) is amended by removing the language “§48.4061(a)–1(d)” and adding “§48.0–5” in its place.

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Par. 3. The authority citation for part 48 is amended by adding entries in numerical order to read in part as follows:

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

Section 48.4051–1 also issued under 26 U.S.C. 4051(a).

Section 48.4051–2 also issued under 26 U.S.C. 4051(b).

* * * * *

Section 48.4052–2 also issued under 26 U.S.C. 4052(b).

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Section 48.4071–3 also issued under 26 U.S.C. 4071(b).

* * * * *

§48.0–1 [Amended]

Par. 4. Section 48.0–1, fourth sentence, is amended by removing the language “highway-type tires” and adding “taxable tires” in its place.

§48.0–2 [Amended]

Par. 5. In §48.0–2, paragraph (b)(5), first sentence, is amended by removing the language “In the case of a lease,” and adding “Except as provided in §48.4052–1(e), in the case of a lease,” in its place.

Par. 6. Section 48.0–4 is added to subpart A to read as follows:

§48.0–4 Highway vehicle and mobile machinery.

(a) *Overview.* (1) The definitions of *highway vehicle* and *mobile machinery* in this section apply for purposes of this part and part 41 of this chapter. See §41.4482(a)–1(a)(2) of this chapter.

(2) The taxes imposed by sections 4051 and 4481 do not apply to mobile machinery (as defined in paragraph (b)(3)(iii) of this section), and the tax imposed by section 4071 does not apply to tires of a type used exclusively on such mobile machinery. In addition, for pur-

poses of determining whether use of a vehicle qualifies as *off-highway business use* under section 6421(e)(2)(C) (relating to uses in mobile machinery), mobile machinery (as defined in this section) satisfies the design-based test of section 6421(e)(2)(C)(iii). To qualify as off-highway business use, however, the use of the vehicle must also satisfy the use-based test of section 6421(e)(2)(C)(iv).

(b) *Highway vehicle*—(1) *In general.* Except as otherwise provided in paragraph (b)(3) of this section, *highway vehicle* means any self-propelled vehicle, or any truck trailer or semitrailer, designed to perform a function of transporting a load over public highways.

(2) *Explanation.* (i) A vehicle consists of a chassis, or a chassis and a body if the vehicle has a body, but does not include the vehicle’s load.

(ii) Except as otherwise provided in paragraph (b)(3) of this section, in determining whether a vehicle is a highway vehicle, it is immaterial whether—

(A) The vehicle can perform functions other than transporting a load over the public highways;

(B) The vehicle is designed to perform a highway transportation function for only a particular kind of load, such as passengers, furnishings and personal effects (as in a house, office, or utility trailer), a special type of cargo, goods, supplies, or materials, or machinery or equipment specially designed to perform some off-highway task unrelated to highway transportation; and

(C) In the case of a vehicle specially designed to transport machinery or equipment, such machinery or equipment is permanently mounted on the vehicle.

(iii) Examples of vehicles that are designed to perform a function of transporting a load over the public highways are passenger automobiles, motorcycles, buses, motor homes, and highway-type trucks, truck tractors, trailers, and semitrailers.

(iv) Examples of vehicles that are not designed to perform a function of transporting a load over the public highways are farm tractors, bulldozers, road graders, and forklifts.

(v) The term *public highway* includes any road (whether a federal highway, state highway, city street, or otherwise) in the

United States that is not a private roadway.

(vi) The term *transport* includes tow.

(3) *Exceptions*—(i) *Certain vehicles specially designed for off-highway transportation*—(A) *In general.* The term *highway vehicle* does not include a vehicle if the vehicle is specially designed for the primary function of transporting a particular type of load other than over a public highway and because of this special design such vehicle’s capability to transport a load over a public highway is substantially limited or impaired.

(B) *Determination of vehicle’s design.* For purposes of paragraph (c)(3)(i)(A) of this section, a vehicle’s design is determined solely on the basis of its physical characteristics.

(C) *Determination of substantial limitation or impairment.* For purposes of paragraph (c)(3)(i)(A) of this section, in determining whether substantial limitation or impairment exists, account may be taken of factors such as the size of the vehicle, whether the vehicle is subject to the licensing, safety, and other requirements applicable to highway vehicles, and whether the vehicle 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 the vehicle is permitted to transport over the public highway.

(ii) *Nontransportation truck trailers and semitrailers.* The term *highway vehicle* does not include a truck trailer or semitrailer if it is specially designed to function only as an enclosed stationary shelter for the carrying on of an off-highway function at an off-highway site.

(iii) *Mobile machinery.* The term *highway vehicle* does not include any vehicle that consists of a chassis—

(A) To which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways;

(B) That has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment

involved, whether or not such machinery or equipment is in operation; and

(C) That, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

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

Example 1; Off-highway transportation. (1) *Facts.* (i) A tri-axle semitrailer that is used in highway construction, maintenance, and repair work also hauls highway construction and repair materials to job sites. The semitrailer’s floor is equipped with a continuous rubber belt attached to a steel slatted roller chain that carries payload to the rear tailgate at a controllable discharge rate. The semitrailer has insulated double sidewalls and a baffled hopper. This equipment enables the semitrailer to transport and unload hot-mix asphalt, asphalt-related materials, and low-slump concrete for highway construction and repair. When used as an asphalt transporter, the semitrailer unloads the asphalt at the job site through the rear tailgate into a trailing asphalt paving machine. The semitrailer is designed to perform a function of transporting a load over public highways.

(ii) A highway tractor tows the semitrailer at normal highway speeds. The semitrailer complies with all federal and state regulations governing highway use, may be legally operated on the public highways when loaded within legal weight limits (80,000 pounds), and does not exceed state maximum highway length, width, or height limitations. Loaded to its capacity with asphalt, the combined weight of the semitrailer, the asphalt, and the tractor exceeds 100,000 pounds. Special state permits may be purchased to operate the tractor/semitrailer combination above the legal weight limit on public highways.

(2) *Analysis.* For purposes of the exception provided by paragraph (b)(3)(i) of this section for vehicles specially designed for off-highway transportation, paragraph (b)(3)(i)(B) of this section provides that a vehicle’s design is determined solely on the basis of its physical characteristics. The physical characteristics of this semitrailer include insulated double sidewalls, a baffled hopper, and an unloading mechanism on the floor of the trailer that moves hot road building materials to the back of the trailer and delivers these materials into a paving machine at controlled rates. Examples of the type of machinery or equipment that contribute to the highway transportation function are unloading equipment and machinery that contribute to the preservation of the cargo. The semitrailer’s conveyor discharge system and insulated walls are designed to contribute to the highway transportation functions of unloading (discharge conveyor system) and preserving (insulated sidewalls) the load. This equipment is not designed for the job-site function of applying asphalt or low-slump concrete.

(3) *Conclusion.* The semitrailer is not a vehicle described in paragraph (b)(3)(i)(A) of this section. The semitrailer’s physical characteristics, such as sidewalls, a hopper, and the unloading mechanism, demonstrate that this semitrailer is capable of transporting asphalt or low-slump concrete over a public highway without substantial limitation or impairment.

Example 2; Mobile machinery. (1) *Facts.* A chassis manufacturer built a truck chassis with a reinforced chassis frame, a heavy-duty engine, and a structure to accommodate the manufacturer’s mounting of drilling equipment on the chassis and the use of that drilling equipment off the highways. The manufacturer also bolted a pintle-type trailer hitch to a beam that is welded to, and operates as a rear cross member of, the chassis frame rails. The truck is designed to perform a function of transporting a load over public highways.

(2) *Analysis.* This chassis can perform two functions. First, the chassis serves as a mobile carriage and mount for the drilling equipment installed on its bed. Second, the chassis can tow a trailer because it has a pintle-type trailer hitch. These dual capabilities demonstrate that the chassis was not specially designed to serve only as a mobile carriage and mount for its machinery.

(3) *Conclusion.* The chassis fails to meet the test in paragraph (c)(3)(iii) of this section for treatment as mobile machinery because the chassis is not specially designed to serve only as a mobile carriage and mount for the drilling equipment. A similar conclusion would apply if the manufacturer reinforced the chassis to make the chassis capable of towing a trailer, but the manufacturer did not install the pintle hook.

(d) *Effective/applicability date.* This section applies on and after the date of publication of these regulations in the **Federal Register** as final regulations.

Par. 7. Section 48.4041–8 is amended as follows:

1. Paragraph (b)(2)(ii), first sentence, is amended by removing the language “A self-propelled” and adding “Before January 1, 2005, a self-propelled” in its place.

2. Paragraph (b)(2)(iv) is added.

The addition reads as follows:

§48.4041–8 Definitions.

* * * * *

(b) * * *

(2) * * *

(iv) *Off-highway transportation vehicles after December 31, 2004.* For a description of certain vehicles that are not treated as highway vehicles after December 31, 2004, see §48.0–5(b)(3).

* * * * *

Par. 8. The heading for subpart H is revised to read as follows:

SUBPART H—MOTOR VEHICLES,
TIRES, AND TAXABLE FUEL

Par. 9. New §§48.4051–0, 48.4051–1, and 48.4051–2 are added to subpart H to read as follows:

§48.4051-0 Overview; Heavy trucks, tractors, and trailers sold at retail.

Sections 48.4051–1, 48.4051–2, and 48.4052–1 provide guidance under sections 4051 and 4052 relating to the tax on the first retail sale of certain truck and trailer chassis and bodies and certain tractors. This guidance includes rules relating to the imposition of tax, liability for tax, exclusions, and definitions. For rules under sections 4051 and 4052 on the treatment of leases, uses treated as sales, and the determination of price for which an article is sold, see §145.4052–1 of this chapter.

§48.4051-1 Imposition of tax; Heavy trucks, tractors, and trailers sold at retail.

(a) *Imposition of tax.* Section 4051 imposes a tax on the first retail sale of the following articles (including in each case parts or accessories sold on or in connection with the article or with the sale of the article):

(1) Automobile truck chassis and bodies.

(2) Truck trailer and semitrailer chassis and bodies.

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

(b) *Tax base and rate of tax.* The tax is the applicable percentage of the price for which the article is sold. The applicable percentage is prescribed in section 4051(a)(1). For rules for the determination of price, see paragraph (d)(4) of this section and §145.4052–1(d) of this chapter.

(v) *Model Certificate.*

Certificate

(To support the tax-free sale of a chassis or body that is to be used as a component part of a non-highway vehicle)

The undersigned buyer of a chassis or body listed in section 4051 (“Buyer”) hereby certifies the following under penalties of perjury:

1. _____

Seller’s name, address, and employer identification number

(c) *Liability for tax—(1) In general.* Except as provided in paragraph (c)(2) of this section, the person that makes the first retail sale (as defined in §48.4052–1(a)) of a taxable article listed in paragraph (a) of this section is liable for the tax imposed by section 4051. This person is referred to as the *retailer* in this section and §48.4051–2.

(2) *Exceptions; cross references.* For cases in which a person other than the retailer is liable for the tax imposed under paragraph (a) of this section, see §§48.4051–1(d)(2)(ii) and (iii) (relating to chassis and bodies sold for use as a component part of a highway vehicle) and §48.4051–1(e)(6)(ii) (relating to certain chassis completed as tractors).

(d) *Special rules—(1) Separate taxation of chassis and body.* If a chassis is a component part of a highway vehicle, the taxability of the chassis is determined independently of, and without regard to, the body that is installed on the chassis. If a body is a component part of a highway vehicle, the taxability of the body is determined independently of, and without regard to, the chassis on which the body is installed.

(2) *Chassis and bodies sold for use as a component part of a highway vehicle—*

(i) *In general.* A chassis or body listed in paragraph (a) of this section is taxable under section 4051 only if such chassis or body is sold for use as a component part of a highway vehicle that 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. A chassis or body that is not listed in paragraph (a) of this section (for example, a chassis or body of a passenger automobile) is not taxable under section 4051 even though such chassis or body is used as a component part of a highway vehicle.

(ii) *Retailer; conditions for avoidance of liability.* The retailer is not liable for tax

on a chassis or body if, at the time of the first retail sale, the retailer—

(A) Has obtained from the buyer a certificate described in paragraph (d)(2)(iv) of this section stating, among other things, that the buyer will use the chassis or body as a component part of a vehicle that is not a highway vehicle;

(B) Has no reason to believe that any information in the certificate is false; and

(C) Has not received a notification from the IRS under paragraph (d)(2)(iv) of this section with respect to the buyer or the type of chassis or body.

(iii) *Liability of buyer.* If a buyer that provides a certificate described in paragraph (d)(2)(iv) of this section uses the chassis or body to which the certificate relates as a component part of a highway vehicle, the buyer is liable for the tax imposed on the first retail sale of such chassis or body.

(iv) *Form of certificate.* The certificate described in this paragraph (d)(2)(iv) consists of a statement that is signed under penalties of perjury by a person with authority to bind the buyer, is in substantially the same form as the model certificate in paragraph (d)(2)(v) of this section, and includes all the information necessary to complete the model certificate. The IRS may withdraw the right of a buyer to provide a certificate under this section if the buyer uses the chassis or body to which a certificate relates other than as stated in the certificate. The IRS may notify any retailer that the buyer’s right to provide a certificate has been withdrawn. The IRS may also notify a retailer that sales of a specified type or types of chassis or bodies may not be made tax-free under this paragraph (d)(2) until further notification. The certificate may be included as part of any business records used to document a sale.

2. _____

Buyer's name, address, and employer identification number

3. _____

Date and location of sale to Buyer

4. The article(s) listed below will not be used as a component part of a highway vehicle. If the article is a chassis, Buyer has listed the chassis Vehicle Identification Number. If the article is a body, Buyer has listed the body's identification number.

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| | |

5. Buyer understands that it must be prepared to establish, by evidence satisfactory to an examining agent, how Buyer used the article.

6. Buyer has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn.

7. Buyer understands that if it uses a chassis or body listed in this certificate as a component part of a highway vehicle, Buyer is liable for the tax imposed by section 4051 of the Internal Revenue Code.

8. Buyer understands that Buyer may be liable for the section 6701 penalty (relating to aiding and abetting an understatement of tax liability) if this is an erroneous certification.

9. Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making any fraudulent use of this statement to a fine or imprisonment, or both, together with the costs of prosecution.

Printed or typed name of person signing this certificate

Title of person signing

Signature and date signed

(3) *Sale of a completed unit.* A sale of an automobile truck, truck trailer, or semitrailer is considered a sale of a chassis and of a body listed in paragraph (a) of this section.

(4) *Equipment installed on chassis or bodies.* For purposes of section 4051, the sale price of a chassis or body includes any amount paid for equipment or machinery that is installed on and is an integral part of the chassis or body. Equipment or machinery is an integral part of a chassis or body if the equipment or machinery contributes to the highway transportation function of the chassis or body. Examples of machinery or equipment that contributes to the highway transportation function of a chassis or body are loading and unloading equipment; towing winch-

es; and all other machinery or equipment that contributes to the maintenance or safety of the vehicle, the preservation of cargo (other than refrigeration units), or the comfort or convenience of the driver or passengers.

(5) *Vehicle use.* In determining whether a tractor, a truck body or chassis, or a truck trailer or semitrailer chassis or body is subject to the tax imposed by section 4051, the use (whether commercial, personal, recreational, or otherwise) of an article is immaterial.

(e) *Explanation of terms and exclusions; tractors, trucks, trailers—*(1) *Tractor.* The term *tractor* means a highway vehicle primarily designed to tow a vehicle, such as a truck trailer or semitrailer. A vehicle equipped with air brakes and/or a

towing package will be presumed to be a tractor unless it is established, based on all the vehicle's characteristics, that the vehicle is not primarily designed to tow a vehicle. However, a vehicle that is not equipped with air brakes and/or a towing package is a tractor if the vehicle is primarily designed to tow a vehicle.

(2) *Truck.* The term *truck* means a highway vehicle 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) *Primarily designed.* The term *primarily* means principally or of first importance. *Primarily* does not mean exclusively. The function for which a vehicle is primarily designed is evidenced by phys-

ical characteristics such as the vehicle's capacity to tow a vehicle, carry cargo, and operate (including brake) safely when towing or carrying cargo. Towing capacity depends on the vehicle's gross vehicle weight (GVW) rating and gross combination weight (GCW) rating and whether the vehicle is configured to tow a trailer or semitrailer. Cargo carrying capacity depends on the vehicle's GVW rating and the configuration of the vehicle's bed or platform. If a vehicle is capable of more than one function, such as towing a vehicle and carrying cargo on the same chassis as the engine, the physical characteristics of the vehicle determine the purpose for which the vehicle is primarily designed. A vehicle that can both carry cargo on its chassis and tow a trailer is either a truck or tractor depending on which function is of greater importance.

(4) *Trailer*—(i) *In general.* The term *trailer* means a non-self-propelled vehicle hauled, towed, or drawn by a separate truck or tractor. A trailer consists of a chassis and a body. A chassis is the frame that supports the trailer's suspension, axles, wheels, tires, and brakes. A body is the structure usually installed on the trailer chassis to accommodate the intended load of the trailer. In some instances, the body may itself constitute all or part of the intended load.

(ii) *Truck trailer.* The term *truck trailer* means a trailer that carries all of its weight and the weight of its load on its own chassis.

(iii) *Semitrailer.* The term *semitrailer* means a trailer, the front end of which is designed to be attached to, and rest upon, the vehicle that tows it. A portion of the

semitrailer's weight and load also rests upon the towing vehicle.

(5) *Incomplete chassis cab; classification as a truck.* An incomplete chassis cab is classified as a truck at the time of its sale if, at such time—

(i) The incomplete chassis cab is not equipped with any of the features listed in paragraph (e)(7) of this section; and

(ii) The seller—

(A) Has obtained from the buyer a certificate described in paragraph (e)(8) of this section stating, among other things, that the buyer will equip the incomplete chassis cab as a truck;

(B) Has no reason to believe that any information in the certificate is false; and

(C) Has not received a notification under paragraph (e)(8) of this section with respect to the buyer.

(6) *Incomplete chassis cab; classification as a tractor*—(i) *In general.* An incomplete chassis cab is classified as a tractor at the time of its sale if, at such time—

(A) The incomplete chassis cab is equipped with any of the features listed in paragraph (e)(7) of this section; or

(B) The seller fails to satisfy one or more of the conditions set forth in paragraph (e)(5)(ii) of this section.

(ii) *Completion as a tractor.* If no tax is imposed under section 4051(a)(1) on the sale of an incomplete chassis cab classified as a truck under paragraph (e)(5) of this section and the purchaser completes the incomplete chassis cab as a taxable tractor, the purchaser is liable for tax under section 4051(a)(1) on the purchaser's sale or use of the taxable tractor.

(7) *Incomplete chassis cab; features.* The features referred to in paragraphs (e)(5)(i) and (e)(6)(i)(A) of this section are the following:

(i) A device for supplying air or hydraulic pressure or electric or other power from the incomplete chassis cab to the brake system of a towed vehicle.

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

(iii) A control linking the brake system of the incomplete chassis cab to the brake system of a towed vehicle.

(iv) A control in the incomplete chassis cab for operating a towed vehicle's brakes independently of the incomplete chassis cab's brakes.

(v) Any other equipment designed to establish or enhance the incomplete chassis cab's use as a tractor.

(8) *Incomplete chassis cab; certificate*—(i) *In general.* The certificate described in this paragraph (e)(8) consists of a statement that is signed under penalties of perjury by a person with authority to bind the buyer, is in substantially the same form as the model certificate in paragraph (e)(8)(ii) of this section, and includes all the information necessary to complete the model certificate. The IRS may withdraw the right of a buyer of vehicles to provide a certificate under this section if the buyer uses the vehicles to which a certificate relates other than as stated in the certificate. The IRS may notify any seller that the buyer's right to provide a certificate has been withdrawn. The certificate may be included as part of any business records normally used to document a sale.

(ii) *Model Certificate.*

Certificate

(To support the completion of an incomplete chassis cab as a truck)

The undersigned buyer of articles listed in section 4051 ("Buyer") hereby certifies the following under penalties of perjury:

1. _____

Seller's name, address, and employer identification number

2. _____

Buyer's name, address, and employer identification number

3. _____

Date and location of sale to Buyer

4. Buyer certifies that Buyer will complete these incomplete chassis cabs listed below as trucks:

| | |
|------|------|
| VIN: | VIN: |

5. Buyer has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn.

6. Buyer understands that if Buyer completes an incomplete chassis cab listed in this certificate as a taxable tractor described in section 4051(a)(1)(E) and then uses it or sells it, Buyer may be liable for the tax imposed by section 4051 on this sale or use. See 26 CFR 48.4051-1(e)(6)(ii) and 145.4052-1(c).

7. Buyer understands that Buyer may be liable for the section 6701 penalty (relating to aiding and abetting an understatement of tax liability) if this is an erroneous certification.

8. Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making any fraudulent use of this statement to a fine or imprisonment, or both, together with the costs of prosecution.

_____ Printed or typed name of person signing
this certificate

_____ Title of person signing

_____ Signature and date signed

(f) *Exclusions*—(1) *In general.* Tax is not imposed by section 4051 on the first retail sale of the following articles:

(i) Automobile truck chassis or bodies that have practical and commercial fitness for use with a vehicle that has a GVW of 33,000 pounds or less.

(ii) Truck trailer and semitrailer chassis or bodies that have practical and commercial fitness for use with a truck trailer or semitrailer that has a GVW of 26,000 pounds or less.

(iii) Tractors that have—

(A) A GVW of 19,500 pounds or less; and

(B) A GCW of 33,000 pounds or less.

(2) *Practical and commercial fitness.* A chassis 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. A truck chassis that has practical and commercial fitness for use with a vehicle having a GVW of

33,000 pounds or less is not subject to the tax imposed by section 4051 regardless of the body actually mounted on the chassis.

A truck trailer or semitrailer chassis that has practical and commercial fitness for use with a vehicle having a GVW of 26,000 pounds or less is not subject to tax regardless of the body actually mounted on the chassis. A taxable chassis or body, as the case may be, remains subject to tax—

(i) Even if an exempt body is mounted on a taxable chassis or a taxable body is mounted on an exempt chassis; and

(ii) The resulting vehicle is a highway vehicle.

(3) *Gross vehicle weight.* (i) The term *gross vehicle weight* means the maximum total weight of a loaded vehicle. Except as otherwise provided in this paragraph (f)(3), the maximum total weight is the GVW rating of the article as specified by the manufacturer on the Manufacturer's Statement of Origin (or comparable document) or by the retailer of the completed article on a comparable document. In determining the GVW, the following rules apply:

(A) The GVW rating must take into account, among other things, the strength of the chassis frame, the axle capacity and placement, and, if an article is specially equipped to the buyer's specifications, those specifications.

(B) The manufacturer or retailer of an article listed in paragraph (a) of this section must specify the article's GVW rating at the time the article requires no additional manufacture other than—

(1) The addition of readily attachable articles, such as tire or rim assemblies or minor accessories;

(2) The performance of minor finishing operations, such as painting; or

(3) In the case of a chassis, the addition of a body.

(C) If the IRS finds that a GVW rating by the manufacturer or a later seller is unreasonable in light of the facts and circumstances in a particular case, that GVW rating will not be used for purposes of section 4051.

(D) The IRS may exclude from a GVW rating any readily attachable parts to the extent the IRS finds that the use of such parts in computing the GVW rating results in an inaccurate GVW rating.

(E) If the following or similar ratings are inconsistent, the highest of these ratings is the GVW rating:

(1) The rating indicated in a label or identifying device affixed to an article.

(2) The rating set forth in sales invoice or warranty agreement.

(3) The advertised rating for that article (or identical articles).

(ii) The retailer must keep a record of the GVW rating for each chassis, body, or vehicle it sells. For this purpose, a record of the serial number of each such article is treated as a record of the GVW rating of the article if such rating is indicated by the serial number. The GVW rating must be retained as part of the retailer's records for each of its chassis, bodies, or vehicles.

(4) *Gross combination weight.* (i) The term *gross combination weight* means the GVW of the tractor plus the GVW of any trailer or semitrailer that the tractor may safely tow. Unless a particular rating is unreasonable in light of the facts and circumstances in a particular case, the IRS will consider the GCW of a tractor to be the highest GCW rating specified on any of the following documents:

(A) The Manufacturer's Statement of Origin (or comparable document) or a comparable document of a seller of the completed tractor.

(B) A label or identifying device affixed to the completed tractor by the manufacturer or the seller.

(C) A sales invoice or warranty agreement.

(D) An advertisement for the tractor (or identical tractors).

(ii) The retailer must keep a record of the GCW rating for each tractor it sells. The GCW rating must be retained as part of the retailer's records for each of its tractors.

(g) *Example.* The following example illustrates the application of paragraphs (e)(1), (2), (3), and (4) of this section:

Example. (1) *Facts.* (i) A vehicle has the capacity to tow truck trailers and semitrailers (trailers) that have a GVW of 20,000 pounds. The vehicle has a standard chassis cab (4-door with crew cab), accommodating five passengers, and is outfitted with certain luxury features. The cab has an electric trailer brake control that connects to the brakes of a towed trailer and to a hook up for trailer lights. The vehicle has two storage boxes behind the cab that can accommodate incidental items such as small tools and vehicle repair equipment.

(ii) The vehicle has a GVW rating of 23,000 pounds and a GCW rating of 43,000 pounds. The vehicle is equipped with hydraulic disc brakes with a four wheel automatic braking system, a 300 horsepower engine, and a six-speed automatic transmission. The front axle of the vehicle has an 8,000 pound rating and the rear axle has a 15,000 pound rating.

(iii) The vehicle has three types of hitching devices: a removable ball gooseneck hitch, a fifth wheel hitch, and a heavy duty trailer receiver hitch. The vehicle's platform, which is approximately 139 inches long, is designed with a rectangular well to accommodate the gooseneck and fifth wheel hitches (bed hitches). This platform slopes at the rear of the rectangular well and has tie down hooks. Optional removable steel stake rails can be placed around the platform.

(2) *Analysis.* (i) Some characteristics of the vehicle such as its chassis cab with a GVW rating of 23,000 pounds, a 300 horsepower engine, a front axle with an 8,000 pound rating, and a rear axle with a 15,000 pound rating are consistent with either a cargo carrying or a towing function. In this case, however, the vehicle also has a GCW rating of 43,000 pounds and its engine, brakes, transmission, axle ratings, electric trailer brake control, trailer hook up lights, and hitches enable it to tow a trailer that has a GVW rating of 20,000 pounds.

(ii) When the vehicle's bed hitches are used to tow, the cargo carrying capacity of the vehicle is limited to the storage boxes behind the cab and is minimal in comparison to the GVW rating of the towed truck trailer or semitrailer. Neither the steel stake bed rails nor the tie down hooks significantly increase cargo carrying capacity when either of the bed hitches is used. Even if neither of the vehicle's two bed hitches is used, the design of the vehicle significantly reduces its cargo carrying capacity when compared to the cargo carrying capacity of a pickup truck body or a flatbed truck body installed on a comparable chassis. The significant reduction in cargo carrying capacity resulting from the vehicle's platform with its rectangular well and sloping platform at the rear of the rectangular well is evidence that the vehicle is not primarily designed to carry cargo. By accommodating the bed hitches, however, this platform configuration increases the vehicle's towing capacity and, in conjunction with the other features described above, makes it possible to safely tow a trailer with a GVW rating of 20,000 pounds.

(3) *Conclusion.* The vehicle's physical characteristics, which maximize towing capacity at the expense of carrying capacity, establish that the vehicle is primarily designed to tow a vehicle, such as a truck trailer or semitrailer, rather than to carry cargo on its chassis. Thus, the vehicle is a tractor.

(h) *Effective/applicability date.* This section applies on and after the date of publication of these regulations in the **Federal Register** as final regulations.

§48.4051-2 Imposition of tax; parts and accessories.

(a) *Parts or accessories sold on or in connection with the sale of chassis, bodies, and tractors—(1) In general.* (i) The tax imposed by section 4051 applies to parts or accessories sold on or in connection with, or with the sale of, any article specified in §48.4051-1(a). The tax applies whether or not the parts or accessories are separately billed by the retailer.

(ii) If a taxable chassis or body is sold by the retailer without parts or accessories that are considered equipment essential for the operation or appearance of the taxable article, the sale of these parts or accessories by the retailer to the buyer 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, whether at the same time or on a different date.

(iii) Parts and accessories that are spares or replacements are not subject to the tax described in paragraph (a)(1)(i) of this section.

(2) *Example.* The following example illustrates the application of this paragraph (a):

Example. X buys from Retailer a chassis in a sale subject to the tax imposed by section 4051. At the time of the sale, bumpers were not attached to the chassis; rather, they had been ordered from Retailer and delivered to X at a later date. For purposes of the tax imposed by section 4051, the price of the chassis includes the price of the bumpers, regardless of when the Retailer delivered the bumpers or billed X for the bumpers.

(b) *Parts or accessories not sold on or in connection with the sale of chassis, bodies, and tractors—(1) In general.* Section 4051(b)(1) imposes a tax on the installation of a part or accessory on a taxable article specified in §48.4051-1(a) within six months after the article was first placed in service. However, the tax imposed by section 4051(b)(1) does not apply if—

(i) The part or accessory is a replacement part or accessory; or

(ii) The aggregate price of non-replacement parts and accessories (and their installation) for any vehicle does not exceed \$1,000.

(2) *Application and rate of tax.* The tax is the applicable percentage of the price of

the part or accessory and its installation. The applicable percentage is prescribed in section 4051(b)(1).

(3) *Liability for tax.* The owner, lessee, or operator of the vehicle on which the parts or accessories are installed is liable for this tax. The owner(s) of the trade or business that installs the parts or accessories is secondarily liable for this tax.

(4) *Definitions*—(i) *First placed in service.* For purposes of this section, a vehicle is *first 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.

(ii) *Replacement part.* The term *replacement part* means an item that is substantially similar to and intended to take the place of a vehicle part that has worn out or broken down, regardless of when it is ordered.

(5) *Example.* The following example illustrates the application of this paragraph (b). Assume that during the periods described, the rate of tax is 12 percent of the price of the part or accessory and its installation.

Example. X bought a vehicle in a sale that was subject to the tax imposed by section 4051 and first placed it in service on September 1, 2013. On October 1, 2013, X purchases and has installed non-replacement parts at a cost of \$750. On November 1, 2013, X purchases and has installed additional non-replacement parts at a cost of \$450. On December 1, 2013, X purchases and has installed additional non-replacement parts and accessories at a cost of \$900. Although the price of each separate purchase and installation is less than \$1,000, the aggregate price exceeds the \$1,000 limit on November 1, 2013. Accordingly, on November 1, 2013, X is liable for tax of \$144 (12 percent x (\$750 + \$450)) on account of the installations on October 1, and November 1, 2013. On December 1, 2013, X is liable for a tax of \$108 (12 percent x \$900) on account of the installation on that date. To report its liability X must file Form 720, Quarterly Federal Excise Tax Return, for the fourth calendar quarter of 2013 by January 31, 2014.

(c) *Effective/applicability date.* This section applies on and after the date of publication of these regulations in the **Federal Register** as final regulations.

Par. 10. Section 48.4052-1 is revised to read as follows:

§48.4052-1 Definition; first retail sale.

(a) *In general.* For purposes of the tax imposed by section 4051, *first retail sale* means a taxable sale defined in paragraph (b) of this section.

(b) *Taxable sale; in general.* A sale of an article described in §48.4051-1(a) is a taxable sale except in the following cases:

(1) The sale is an exempt sale. A sale is an exempt sale if—

(i) The sale is a tax-free sale under section 4221;

(ii) The sale is of a used article that had previously been sold tax-free under section 4221; or

(iii) The article is sold for resale or leasing in a long-term lease and, at the time of sale, the seller—

(A) Has obtained from the buyer a certificate described in paragraph (d) of this section stating, among other things, that the buyer will either resell the vehicle or lease it in a long-term lease;

(B) Has no reason to believe that any information in the certificate is false; and

(C) Has not received a notification from the IRS under paragraph (d)(1) of this section with respect to the buyer.

(2) There has been a prior sale of the article that is not an exempt sale. The previous sentence does not apply if the prior sale is described in paragraph (c)(1) of this section.

(c) *Special rule for trailers and semitrailers*—(1) *In general.* A sale is described in this paragraph (c)(1) if the sale—

(i) Is a sale of a chassis or body of a truck trailer or semitrailer (“trailer or semitrailer”);

(ii) Is not an exempt sale; and

(iii) Occurs less than six months after the first sale of the trailer or semitrailer that is not an exempt sale.

(2) *Credit.* In the case of a sale described in paragraph (c)(1) of this section, any tax paid by the prior seller on account of its sale (and not at any time refunded to or credited against any other liability of the prior seller) is treated as a payment on behalf of the person (the subsequent seller) liable for the tax on the sale described in paragraph (c)(1) of this section.

The subsequent seller may claim such payment as a credit against its liability for tax on the sale described in paragraph (c)(1) of this section if the following conditions are met:

(i) The claim is made on Form 720, “Quarterly Federal Excise Tax Return” (or such other form as the IRS may designate) in accordance with the instructions for that form.

(ii) The subsequent seller has not been repaid any portion of the tax by the prior seller and has not provided the prior seller with a written consent to the allowance of a credit or refund.

(iii) The subsequent seller has records substantiating the amount of tax paid by the prior seller on its sale of the truck trailer or semitrailer.

(d) *Certificate*—(1) *In general.* The certificate referred to in paragraph (b)(1)(iii) of this section is a statement that is signed under penalties of perjury by a person with authority to bind the buyer, is in substantially the same form as the model certificate provided in paragraph (d)(3) of this section, and contains all information necessary to complete the model certificate. The IRS may withdraw the right of a buyer of vehicles to provide a certificate under this section if the buyer uses the vehicles to which a certificate relates other than as stated in the certificate. The IRS may notify any seller that the buyer’s right to provide a certificate has been withdrawn. The certificate may be included as part of any business records normally used to document a sale.

(2) *Effect of use other than as stated in certificate.* If a buyer that provides a certificate described in paragraph (b)(1)(iii)(A) of this section uses or leases (in a short term lease) an article listed in the certificate, the sale of such article to the buyer is treated as the first retail sale of the article and the buyer is liable for the tax imposed on such sale. If the conditions of paragraph (b)(1)(iii)(A), (B), and (C) of this section are satisfied, the seller will not be liable for the tax imposed on such sale.

(3) *Model certificate.*

Certificate

(To support nontaxable sale of articles listed in section 4051 for resale or long term lease under section 4052 of the Internal Revenue Code)

The undersigned buyer of articles listed in section 4051 (“Buyer”) hereby certifies the following under penalties of perjury:

1. _____

Seller’s name, address, and employer identification number

2. _____

Buyer’s name, address, and employer identification number

3. _____
Date and location of sale to Buyer

4. The articles listed below will be either resold by Buyer or leased on a long term basis by Buyer. If the article is a chassis, Buyer has listed the chassis Vehicle Identification Number. If the article is a body, Buyer has listed the body’s identification number.

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| | |

5. Buyer understands that it must be prepared to establish, by evidence satisfactory to an examining agent, how each article bought under this certificate was used.

6. Buyer has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn.

7. Buyer understands that if it uses or leases (in a short term lease) an article listed in this certificate, Buyer will be liable for the tax imposed by section 4051(a)(1) on the article. See 26 CFR 48.4051–1 and 145.4052–1(c).

8. Buyer understands that Buyer may be liable for the section 6701 penalty (relating to aiding and abetting an understatement of tax liability) if this is an erroneous certification.

9. Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making any fraudulent use of this statement to a fine or imprisonment, or both, together with the costs of prosecution.

Printed or typed name of person signing this certificate

Title of person signing

Signature and date signed

(e) *No installment payment of tax.* If a lease is a taxable sale under §145.4052–1(b) of this chapter or 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.

(f) *Effective/applicability date.* This section applies on and after the date of publication of these regulations in the **Federal Register** as final regulations.

Par. 11. Section 48.4061(a)–1 is amended as follows:

1. Paragraph (d)(2)(ii), first sentence, is amended by removing the language “A self-propelled” and adding “Before January 1, 2005, a self-propelled” in its place.

2. Paragraph (d)(2)(iv) is added. The addition reads as follows:

§48.4061(a)-1 *Imposition of tax; exclusion for light-duty trucks, etc.*

* * * * *
(d) * * *
(2) * * *

(iv) *Off-highway transportation vehicles after October 21, 2004.* For a description of certain vehicles that are not treated as highway vehicles after October 21, 2004, see §48.0-5(b)(3).

* * * * *

Subpart H [Amended]

Par. 12. Subpart H is amended by revising the undesignated center heading reading “Tires, Tubes, and Tread Rubber” to read “Tires”.

Par. 13. Section 48.4071-1 is revised to read as follows:

§48.4071-1 *Tires; imposition of tax.*

(a) *In general.* (1) Tax is imposed by section 4071 on the sale by the manufacturer of a taxable tire with a maximum rated load capacity greater than 3,500 pounds.

(2) See §48.4072-1(b) for the definition of the term *taxable tire*.

(b) *Tax base and computation of tax.* The tax base is equal to the number of 10-pound increments, rounded down to the nearest ten pounds, by which the maximum rated load capacity exceeds 3,500 pounds. The tax is determined by multiplying this tax base by the rate of tax specified in section 4071(a). Thus, for example, a taxable tire with a maximum rated load capacity of 4,005 pounds is treated as having a maximum rated load capacity of 4,000 pounds and a tax base of 50 ((4000 - 3,500) ÷ 10). The tax imposed on the tire is the rate of tax under section 4071(a) times 50.

(c) *Liability for tax.* The manufacturer of a taxable tire is liable for the tax imposed by section 4071.

(d) *Effective/applicability date.* This section applies on and after the date of publication of these regulations in the **Federal Register** as final regulations.

Par. 14. Section 48.4071-2 is revised to read as follows:

§48.4071-2 *Determination of maximum rated load capacity.*

(a) *In general.* For purposes of the tax imposed by section 4071, the maximum

rated load capacity is the maximum rated load rating inscribed on a taxable tire’s sidewall provided the inscription meets the standards prescribed by the National Highway Traffic Safety Administration in its regulations. If a taxable tire has multiple maximum load ratings, the taxable tire’s highest maximum load rating is the taxable tire’s maximum rated load capacity for purposes of the tax.

(b) *Tampering.* In the event of any tampering with, or the appearance of tampering with, the inscription of a taxable tire’s maximum rated load capacity as described in paragraph (a) of this section, the tire’s maximum rated load capacity is the maximum rated load capacity of a comparable tire.

(c) *Effective/applicability date.* This section applies on and after the date of publication of these regulations in the **Federal Register** as final regulations.

Par. 15. Section 48.4071-3 is amended by:

1. Revising the section heading and paragraph (a).
2. Revising paragraph (c)(1).
3. Adding paragraph (e).
4. Removing the undesignated authority citation at the end of the section.

The revisions and addition read as follows:

§48.4071-3 *Imposition of tax on tires delivered to manufacturer’s retail outlet.*

(a) *General rule.* If a tire manufacturer delivers a taxable tire it manufactured to one of its retail outlets, the manufacturer is liable for the tax imposed by section 4071 on this tire in the same manner as if the tire had been sold upon delivery to the retail outlet. The amount of tax is computed under §48.4071-1.

* * * * *
(c) * * *

(1) *Delivery.* (i) *Delivery options.* A manufacturer of taxable tires may, at its option, treat either of the following events as constituting delivery to a retail outlet:

(A) Delivery of taxable tires to a common carrier (or, where the taxable tires are transported by the manufacturer, the placing of the taxable tires into the manufacturer’s highway vehicle) for shipment from the plant in which the taxable tires are manufactured, or from a regional distribution center of taxable tires, to a retail

outlet or to a location in the immediate vicinity of a retail outlet primarily for future delivery to the retail outlet.

(B) Arrival of the taxable tires at the retail outlet, or, where shipment is to a location in the immediate vicinity of a retail outlet primarily for future delivery to the retail outlet, the arrival of the taxable tires at such location.

(ii) *Delivery election.* A manufacturer that has elected to treat one of the events listed in paragraph (c)(1)(i)(A) or (B) of this section as constituting delivery to a retail outlet may not use a different criterion for a later return period unless the manufacturer obtains permission from the IRS in advance.

* * * * *

(e) *Effective/applicability date.* This section applies on and after the date of publication of these regulations in the **Federal Register** as final regulations.

§48.4071-4 [Removed]

Par. 16. Section 48.4071-4 is removed.

Par. 17. Section 48.4072-1 is amended by:

1. Revising paragraphs (b), (c), and (d).
2. Amending paragraph (e) by removing the second, third, and fourth sentences.
3. Revising paragraphs (f), (g), and (h).
4. Removing the undesignated authority citation at the end of the section.

The revisions and addition read as follows:

§48.4072-1 *Definitions.*

* * * * *

(b) *Taxable tire*—(1) *In general.* The term *taxable tire* means a tire—

- (i) Of the type used on highway vehicles;
- (ii) That is wholly or in part made of rubber; and
- (iii) That is marked pursuant to federal regulations for for highway use.

(2) *Recapped and retreaded tires.* The term *taxable tire* includes a used tire that is recapped or retreaded (whether from shoulder-to-shoulder or bead-to-bead) only if—

- (i) The used tire had not previously been sold in the United States;

(ii) The used tire is recapped or re-treaded outside the United States; and

(iii) When imported into the United States, the recapped or retreaded tire meets the requirements of section (b)(1) of this section.

(c) *Tires of the type used on highway vehicles.* The term *tires of the type used on highway vehicles* means tires (other than tires of a type used exclusively on mobile machinery (within the meaning of §48.0–5(c))) of the type used on—

(1) Highway vehicles; or

(2) Vehicles of the type used in connection with highway vehicles.

(d) *Rated load capacity.* The term *rated load capacity* means the maximum load a tire is rated to carry at a specified inflation pressure.

* * * * *

(f) *Super single tire.* The term *super single tire* means a single tire greater than 13 inches in cross section width designed to replace two tires in a dual fitment. The term does not include any tire designed for steering or an all position tire.

(g) *Examples.* The following examples illustrate the application of this section.

Example 1. (1) *Facts.* (i) A foreign tire manufacturer manufactures a tire that meets the Federal Motor Vehicle Safety Standard for truck tires prescribed by the DOT. The tire is not of a type used exclusively on mobile machinery (within the meaning of §48.0–5(c)). This tire is partially made of rubber. The foreign manufacturer marks this tire for highway use pursuant to DOT regulations. The foreign manufacturer sells the tire for use in the foreign country.

(ii) After use in the foreign country, a tire importer buys the tire and imports it into the United States. At the time of importation, the tread on this tire’s casing meets the criteria for minimal tread on trucks used in interstate commerce as prescribed by the DOT.

(2) *Analysis.* The imported tire is a taxable tire because the tire is of the type used on a highway

vehicle and is not of a type used exclusively on mobile machinery, the tire is wholly or in part made of rubber, and the tire is marked pursuant to federal regulations for highway use.

Example 2. (1) *Facts.* A tire manufacturer pays the tax imposed by section 4071(a) when it sells a tire that is (1) of the type used on highway vehicles; (2) wholly or in part made of rubber; and (3) marked pursuant to federal regulations for highway use. The tire does not have any design features to indicate that it is a tire of a type used exclusively on mobile machinery (within the meaning of §48.0–5(b)(3)(iii)). The purchaser of this tire puts the tire on mobile machinery described in §48.0–5(b)(3)(iii).

(2) *Analysis.* A tire that is “of the type used on highway vehicles” and “not of a type used exclusively on mobile machinery” retains those characteristics regardless of how the tire is actually used. Therefore, the characterization of a tire as a taxable tire is not changed because the tire is actually used on a vehicle that is mobile machinery.

(h) *Effective/applicability date.* This section applies on and after the date of publication of these regulations in the **Federal Register** as final regulations.

§48.4073 [Removed]

Par. 18. Reserved § 48.4073 is removed.

Par. 19. Section 48.4073–1 is revised to read as follows:

§48.4073–1 Exemption for tires sold for the exclusive use of the Department of Defense or the Coast Guard.

(a) *In general.* Tax is not imposed by section 4071 on the sale of a taxable tire if—

(1) The manufacturer of the taxable tire meets the registration requirements of section 4222; and

(2) The sale of the taxable tire is to the Department of Defense or the Coast Guard for the exclusive use of the Department of Defense or the Coast Guard,

(b) *Sales for resale.* A manufacturer may sell a taxable tire tax-free under section 4073 and this section only if the sale is directly made to either the Department of Defense or the Coast Guard for such agency’s exclusive use. Accordingly, a sale may not be made taxfree to a dealer for resale to the Department of Defense or the Coast Guard for its exclusive use, even though it is known at the time of sale by the manufacturer that the article will be so resold.

(c) *Certificate—(1) Effect of certificate.* A manufacturer will not be liable for tax on the sale of a taxable tire if, at the time of the sale, the manufacturer has obtained from the buyer an unexpired certificate described in paragraph (c)(2) of this section and has no reason to believe any information in the certificate is false. A buyer that provides an erroneous certificate described in paragraph (c)(2) of this section is liable for any tax imposed on the sale to which the certificate relates.

(2) *Form of certificate.* The certificate described in this paragraph (c)(2) is a statement by the Department of Defense or the Coast Guard that is signed under penalties of perjury by a person with authority to bind the Department of Defense or the Coast Guard, is in substantially the same form as the model certificate provided in paragraph (c)(3) of this section, and contains all information necessary to complete the model certificate. A new certificate or notice that the current certificate is invalid must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale.

(3) *Model Certificate.*

Certificate

(To support the tax-free sales of tires to the Department of Defense or the Coast Guard under section 4073 of the Internal Revenue Code)

The undersigned buyer of taxable tires (“Buyer”) hereby certifies the following under penalties of perjury:

1. _____

Manufacturer’s name, address, and employer identification number

2. _____

Buyer’s name, address, and employer identification number

3. _____

Date and location of sale to Buyer

4. The tire(s) to which this certificate applies will be for the exclusive use of Buyer (that is, the Department of Defense or the Coast Guard).

5. This certificate applies to Buyer's purchases from Manufacturer as follows (complete as applicable):

a. A single purchase on invoice or delivery ticket number _____.

b. All purchases between _____ (effective date) and _____ (expiration date), a period not exceeding 12 calendar quarters after the effective date, under account or order number(s) _____. If this certificate applies only to Buyer's purchases for certain locations, check here _____ and list the locations.

6. Buyer will provide a new certificate to the Manufacturer if any information in this certificate changes.

7. Buyer understands that Buyer may be liable for the section 6701 penalty (relating to aiding and abetting an understatement of tax liability) if this is an erroneous certification.

8. Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making any fraudulent use of this statement to a fine or imprisonment, or both, together with the costs of prosecution.

Printed or typed name of person signing this certificate

Title of person signing

Signature and date signed

(d) *Effective/applicability date.* This section applies on and after the date of publication of these regulations in the **Federal Register** as final regulations.

Par. 20. Section 48.4073-2 is revised to read as follows:

§48.4073-2 *American National Red Cross.*

(a) For the exemption allowed to the American National Red Cross from the tax imposed by section 4071, see the Secretary's Authorization, 1979-1 C.B. 478 (See §601.601(d)(2)(ii)(b) of this chapter.)

(b) *Effective/applicability date.* This section applies on and after the date of publication of these regulations in the **Federal Register** as final regulations.

§§48.4073-3 and 48.4073-4 [Removed]

Par. 21. Sections 48.4073-3 and 48.4073-4 are removed.

§48.4081-1 [Amended]

Par. 22. Section 48.4081-1(b) is amended by removing the language

“§48.4061(a)-1(d)” in the definition of *Diesel-powered highway vehicle* and adding “§48.0-5” in its place.

Par. 23. Section 48.4221-7 is amended by:

1. Revising the section heading and paragraph (a).

2. Removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

3. Revising redesignated paragraph (b)(2).

4. Adding new paragraph (c).

The revisions and addition read as follows:

§48.4221-7 *Tax-free sale of tires for use on other articles.*

(a) *In general.* Under section 4221(e)(2), tax is not imposed by section 4071 on the sale of a taxable tire if—

(1) The taxable tire is sold for use by the purchaser for sale on or in connection with the sale of another article manufactured or produced by the purchaser;

(2) The other article is to be sold by the purchaser—

(i) In a tax-free sale for export, for use as supplies for vessels or aircraft, to a state or local government for its exclusive use, or to a nonprofit educational organization for its exclusive use; or

(ii) For any of such purposes in a sale that would be tax-free but for the fact that the other article is not subject to tax under section 4051 or 4064;

(3) The registration requirements of section 4222 and the regulations thereunder are met; and

(4) The proof, described in paragraph (b) of this section, of the disposition of the other article, is timely received by the manufacturer.

(b) * * *

(2) *Required information*—(i) *In general.* The information referred to in paragraph (b)(1) of this section is a statement that is signed under penalties of perjury by a person with authority to bind the purchaser, is in substantially the same form as the model certificate provided in paragraph (b)(2)(ii) of this section, and contains all information necessary to complete the model certificate. For purchasers that are not

required to be registered under section 4222, the IRS may withdraw the right of a purchaser of a taxable tire to provide a certificate under this section if the purchaser uses

the tire to which a certificate relates other than as stated in the certificate. The IRS may notify any manufacturer to whom such purchaser has provided a certificate that the

purchaser's right to provide a certificate has been withdrawn. The certificate may be included as part of any business records normally used to document a sale.

(ii) *Model certificate.*

Certificate

(To support the nontaxable sale of taxable tires by the manufacturer when sold for use on or in connection with the sale of another article manufactured or produced by the buyer and sold by the buyer in a sale that meets the requirements of section 4221(e)(2)) The undersigned buyer of taxable tires ("Buyer") hereby certifies the following under penalties of perjury:

1. _____

Manufacturer's name, address, employer identification number, and registration number

2. _____

Buyer's name, address, employer identification number, and registration number (if required)

3. _____

Date and location of sale to Buyer

4. The taxable tire(s) listed below, by its (their) United States Department of Transportation identification number(s), are covered by this certificate

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| | |

5. The taxable tire(s) listed in this certificate that were purchased or shipped on the date specified in entry 3 have been used on or in connection with the sale of _____ (describe product sold by Buyer) by Buyer and such sale was— (*complete line (i), (ii), (iii), or (iv), whichever is applicable*)

(i) for export by _____ (Name of carrier) to _____ (Name of foreign country or possession) and was so exported on _____, ____ (Date). (A copy of the bill of lading or other proof of exportation is attached.)

(ii) for use as supplies on _____ (Name of vessel or aircraft) that is registered in _____ (Name of country in which vessel or aircraft is registered).

(iii) to _____ (Name of state or local government).

(iv) to _____ (Name and address of the nonprofit educational organization).

6. Buyer understands that it must be prepared to establish, by evidence satisfactory to an examining agent, how each tire bought under this certificate was used..

7. Check here ____ if Buyer is not required to be registered with the Internal Revenue Service because Buyer is a state or local government, a foreign person buying for export, or the United States.

8. Buyer understands that Buyer may be liable for the section 6701 penalty (relating to aiding and abetting an understatement of tax liability) if this is an erroneous certification.

9. Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making any fraudulent use of this statement to a fine or imprisonment, or both, together with the costs of prosecution.

Printed or typed name of person signing this certificate

Title of person signing

Signature and date signed

(c) *Effective/applicability date.* This section applies on and after the date of publication of these regulations in the **Federal Register** as final regulations.

Par. 24. Section 48.4221-8 is amended by:

1. Revising the section heading and paragraph (a).
 2. Removing the second paragraph (b), *Registration requirements for tires, tubes, and tread rubber; vendees purchasing tax-free.*
 3. Revising paragraphs (c) and (d).
 4. Removing paragraphs (e) and (f).
- The revisions read as follows:

§48.4221-8 Tax-free sales of tires used on intercity, local, and school buses.

(a) *In general.* Under section 4221(e)(3), tax is not imposed by section 4071 on the sale of a taxable tire for use by the buyer on or in connection with a qualified bus, as defined in paragraph (b) of this section, if—

(3) *Model certificate.*

Certificate

(To support the nontaxable sale of taxable tires used on intercity, local, and school buses)

The undersigned buyer of taxable tires (“Buyer”) hereby certifies the following under penalties of perjury:

1. _____

Manufacturer’s name, address, employer identification number, and registration number

2. _____

Buyer’s name, address, employer identification number, and registration number

3. _____
Date and location of sale to Buyer

4. The taxable tire(s) listed below, by its (their) United States Department of Transportation identification number(s), will be used on intercity, local, and school buses.

| | |
|--|--|
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| | |

(1) The registration requirements of section 4222 and the regulations thereunder are met;

(2) At the time of sale, the manufacturer of the taxable tire—

(i) Possesses a certificate (in the form described in paragraph (c)(2) of this section) from the buyer of a taxable tire, in which, among other things, the buyer certifies that the buyer will use the taxable tire on or in connection with a qualified bus;

(ii) Has no reason to believe that any information in the certificate described in paragraph (c) of this section is false; and

(iii) Has not received a notification from the IRS under paragraph (c)(2) of this section with respect to the buyer.

* * * * *

(c) *Certificate—(1) Effect of certificate.* A manufacturer will not be liable for tax on the sale of a taxable tire if the conditions of paragraph (a)(2) of this section are satisfied. In such a case, a buyer that provides an erroneous certificate de-

scribed in paragraph (c)(2) of this section is liable for any tax imposed on the sale to which the certificate relates.

(2) *In general.* The certificate referred to in paragraph (a)(2) of this section is a statement that is signed under penalties of perjury by a person with authority to bind the buyer, is in substantially the same form as the model certificate provided in paragraph (c)(3) of this section, and contains all information necessary to complete the model certificate. For purchasers that are not required to be registered under section 4222, the IRS may withdraw the right of a buyer of a taxable tire to provide a certificate under this section if the buyer uses the tires to which a certificate relates other than as stated in the certificate. The IRS may notify any manufacturer to whom the buyer has provided a certificate that the buyer’s right to provide a certificate has been withdrawn. The certificate may be included as part of any business records normally used to document a sale.

5. Buyer understands that it must be prepared to establish, by evidence satisfactory to an examining agent, how each tire bought under this certificate was used.

6. Check here if Buyer is not required to be registered with the Internal Revenue Service because Purchaser is a state or local government or the United States.

7. Buyer understands that Buyer may be liable for the section 6701 penalty (relating to aiding and abetting an understatement of tax liability) if this is an erroneous certification.

8. Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making any fraudulent use of this statement to a fine or imprisonment, or both, together with the costs of prosecution.

Printed or typed name of person signing this certificate

Title of person signing

Signature and date signed

(d) *Effective/applicability date.* This section applies on and after the date of publication of these regulations in the **Federal Register** as final regulations.

§48.6416(c)-1 [Removed]

Par. 25. Section 48.6416(c)-1 is removed.

Par. 26. For each section listed in the tables, remove the language in the “Remove” column from wherever it appears in the paragraph and add in its place the language in the “Add” column as set forth below:

| Section | Remove | Add |
|---|-------------------------------|---------------|
| §48.4071-3(b) Second sentence | tires or tubes | taxable tires |
| Fourth sentence | tires or inner tubes | taxable tires |
| Fifth sentence | tires | taxable tires |
| Sixth sentence | taxable tires and inner tubes | taxable tires |
| §48.4071-3(c)(1) Introductory text | tires or inner tubes | taxable tires |
| §48.4071-3(c)(1)(i) §48.4071-3(c)(2)(i) Second sentence | tires or inner tubes | taxable tires |
| | tires or tubes | taxable tires |
| | tires and inner tubes | taxable tires |
| | tires and inner tubes | taxable tires |
| Third sentence | tires or inner tubes | taxable tires |
| Fourth sentence | Tires and inner tubes | Taxable tires |
| Seventh sentence | tires and tubes | taxable tires |
| | tires and inner tubes | taxable tires |
| | tires and tubes | taxable tires |
| Eighth sentence | tires or tubes | taxable tires |
| | tires and inner tubes | taxable tires |
| §48.4071-3(c)(2)(ii) First sentence (Example) Third sentence (Example) Fourth sentence (Example) | tire or inner tube | taxable tires |
| | tires and tubes | taxable tires |
| | tires and inner tubes | taxable tires |
| | tires or inner tubes | taxable tires |

| Section | Remove | Add |
|---|--|------------------------|
| | tires and tubes | |
| §48.4071-3(c)(3)(i) | tire or inner tube | taxable tire |
| §48.4071-3(c)(3)(ii) | tire or inner tube | taxable tire |
| §48.4071-3(d)(1) | tires and inner tubes | taxable tires |
| First sentence | | |
| Second sentence | tires or inner tubes | taxable tires |
| §48.4071-3(d)(2) | tires and inner tubes | taxable tires |
| §48.4071-3(d)(3)(i) | tire or inner tube | taxable tire |
| First sentence | | |
| Second sentence | tire or inner tube | taxable tire |
| §48.4071-3(d)(3)(ii) Third sentence (Example) | tires and tubes (each of the two times it appears) | taxable tires |
| Fourth sentence (Example) | tires or inner tubes | taxable tires |
| §48.4 §48.4081-1(b) | 48.4061(a)-1(d) | 48.0-5 of this chapter |
| Redesignated §48.4221-7 (b)(1) | tire or inner tube | taxable tire |
| Second sentence | tire or inner tube | taxable tire |
| Third sentence | tire or inner tube | taxable tire |
| §48.6421-4(c) | 48.4061(a)-1(d) | 48.0-5 |

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

Par. 27. The authority citation for part 145 is amended by adding the following entry in numerical order to read in part as follows:

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

Section 145.4052-1 also issued under 26 U.S.C. 4052.

Par. 28. Section 145.4051-1 is revised to read as follows:

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

(a) For rules relating to the imposition of the tax imposed by section 4051 and related rules on the tax base, liability for tax, explanation of terms, and exclusions,

see §48.4051-1 through §48.4052-2 of this chapter.

(b) This section applies on and after the date on which these regulations are published as final regulations in the **Federal Register**.

Par. 29. Section 145.4052-1 is amended by:

1. Revising paragraph (a).
2. Adding two sentences after the first sentence in paragraph (d)(1).
3. Removing the last sentence in paragraph (d)(8)(iii).
4. Revising paragraph (g).

The revisions read as follows:

§145.4052-1 Special rules and definitions.

(a) *First retail sale.* For the definition of first retail sale, see §48.4052-1 of this chapter.

(d) *** (1) ***. Total consideration paid for a chassis or body includes charges for equipment installed on the chassis or body. See §48.4051-1(d)(4). **

(g) *Effective/applicability date.* This section applies on and after the date of publication of these regulations in the **Federal Register** as final regulations.

§145.4061-1 [Removed]

Par. 30. Section 145.4061-1 is removed.

Par. 31. For each section listed in the tables, remove the language in the “Remove” column and add in its place the language in the “Add” column as set forth below:

| | | |
|-----------------------------------|----------------------------------|--------------------------------|
| §145.4052–1(b)(1) First sentence | §145.4051–1 | §48.4051–1 of this chapter |
| Second sentence | paragraph (a)(2) of this section | §48.4052–1(b) of this chapter |
| §145.4052–1(b)(2) | §145.4051–1 | §48.4051–1 of this chapter |
| | paragraph (a)(2) of this section | §48.4052–1(b) of this chapter |
| §145.4052–1(c)(1) | §145.4051–1 | §48.4051–1 of this chapter |
| §145.4052–1(c)(5)(ii) | 4216(a), 4216(f) | 4052(b)(1)(A) and (B), 4216(a) |
| §145.4052–1(d)(1) Fourth sentence | Installatioin | installation |

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on March 30, 2016, 8:45 a.m., and published in the issue of the Federal Register for March 31, 2016, 81 F.R. 18544)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with modified, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with amplified and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the sub-

stance of a prior ruling, a combination of terms is used. For example, modified and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.

ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel’s Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.

PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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Internal Revenue Service

Washington, DC 20224

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