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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

TD 9069

RIN 1545-BB06

Depreciation of Vans and Light Trucks

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the definition of passenger automobiles for purposes of section 280F(a). These temporary regulations affect certain taxpayers that use vans and light trucks in their trade or business.

DATES: These regulations are effective July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Bernard P. Harvey, (202) 622-3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 280F of the Internal Revenue Code of 1986 (Code).

Explanation of Provisions

Section 280F(a) limits annual depreciation deductions for passenger automobiles in order to discourage overspending on passenger automobiles purchased for use in business. For the 2003 taxable year, these limitations delay a portion of the otherwise

allowable depreciation deductions for passenger automobiles with a purchase price above \$15,300 (for passenger automobiles qualifying for additional first-year depreciation under section 168(k)(1), added by the Job Creation and Worker Assistance Act of 2002 (JCWAA), or under section 168(k)(4), added by Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA), the delay affects depreciation deductions for vehicles that cost more than \$17,500 or \$17,850, respectively). Passenger automobiles are defined in section 280F(d)(5)(A) as any 4-wheeled vehicle which is manufactured primarily for use on public streets, roads, and highways, and which is rated at 6,000 pounds unloaded gross vehicle weight (or, in the case of a truck or van, 6,000 pounds gross vehicle weight) or less. Section 280F(d)(5)(B) provides exceptions from this definition, and allows the Secretary to promulgate regulations to exclude trucks and vans from the definition of passenger automobiles.

While a basic automobile may be fully depreciated over five years under these rules, small business advocates have suggested that taxpayers with a valid business need for a van or light truck cannot fully depreciate a basic van or light truck within the standard five-year recovery period. Treasury and the IRS recognize that these vehicles generally cost more than other passenger automobiles and that even the most basic van or light truck may be subject to the section 280F(a) depreciation limits.

Some commenters on this issue suggested that the dollar limits on trucks and vans should be raised to reflect the higher cost of these vehicles. Although there is no general authority in section 280F to raise the dollar limits for specific types of vehicle, section 280F(d)(7) provides for adjustments to the dollar limits to reflect automobile price inflation

since 1988. Moreover, much of the disparity between the cost of vans and light trucks and the cost of other passenger automobiles is attributable to the higher rate of price inflation for vans and light trucks since 1988. Accordingly, the revenue procedure setting forth the inflation-adjusted dollar limits for vehicles placed in service in 2003 will respond to the suggestion by providing higher dollar limits for vans and light trucks to reflect this higher rate of price inflation.

In addition, as noted above, JCWAA and JGTRRA have provided temporary relief by substantially increasing the first-year depreciation limits for all new passenger automobiles, including vans and light trucks. Thus, a taxpayer electing the 50-percent additional first-year depreciation permitted by JGTRRA can recover the full cost of a new automobile costing nearly \$23,000 over the five-year recovery period. The revenue procedure described above would provide an even higher limit for new vans and light trucks.

Comments also suggested that Treasury and the IRS should exercise the regulatory authority in section 280F(d)(5)(B)(ii) to provide an exclusion from the section 280F(a) depreciation limitations for all trucks and vans or for vehicles that are used in a specified manner. Treasury and the IRS have concluded that a limited exclusion is appropriate so long as it is based on objective factors and does not provide an incentive to purchase a truck or van when a less-expensive automobile would be sufficient to fulfill the taxpayer's business needs. Accordingly, the temporary regulations exclude from the definition of passenger automobile any truck or van that is a qualified nonpersonal use vehicle as defined in §1.274-5T(k) of the Income Tax Regulations. Qualified nonpersonal use

vehicles include not only the trucks and vans listed in §1.274-5T(k)(2), but also trucks and vans described in §1.274-5T(k)(7) (relating to trucks and vans that have been specially modified, such as by installation of permanent shelving and painting the vehicle to display advertising or the company's name, so that they are not likely to be used more than a de minimis amount for personal purposes). These specially manufactured or modified vehicles do not provide significant elements of personal benefit, and a taxpayer is unlikely to purchase these vehicles unless motivated by a valid business purpose that could not be met with a less-expensive vehicle. We welcome comments on other options that provide administrable objective standards and are consistent with the statutory purpose.

The temporary regulations also strike from §1.280F-6T language relating to expired provisions of the Code.

Effective Date

The temporary regulations apply to property placed in service on or after July 7, 2003.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, this Treasury decision will be submitted to the Chief

Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.280F-6T also issued under 26 U.S.C. 280F. * * *

Par. 2. Section 1.280F-6T is amended as follows:

1. Paragraph (a)(1) is amended by removing the language “the amount of any credit allowable under section 38 to the employee or”.
2. Paragraph (c)(3)(iii) is revised.
3. Paragraph (d)(3) is amended by removing the language “investment tax credit or” and “the investment tax credit and”.
4. The authority citation at the end of the section is removed.

The revision reads as follows:

§1.280F-6T Special rules and definitions (temporary).

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(c) * * *

(3) * * *

(iii) Truck or van that is a qualified nonpersonal use vehicle as defined under §1.274-5T(k).

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Robert E. Wenzel,
Deputy Commissioner for Services and Enforcement.

Approved: June 27, 2003.

Pamela F. Olson,
Assistant Secretary of the Treasury.