

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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date: March 23, 2015

to: Barbara J. Fiebich
Director, Specialty Exam Policy and Quality, SB/SE Examination

from: Charles J. Langley, Jr.
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subject: Heavy Highway Vehicle Use Tax Suspension

This program manager technical assistance responds to your request for assistance on requirements related to the suspension of the excise tax imposed by § 4481 of the Internal Revenue Code (Code) on the use of heavy highway motor vehicles. This advice may not be used or cited as precedent.

ISSUES

1. Whether a buyer who purchases a used highway motor vehicle that had been used on public highways during the current taxable period, and for which the tax imposed by § 4481 had been suspended under § 4483(d), can continue to suspend the tax if the buyer does not have evidence, such as a seller's statement described in § 41.4483-3(f) of the Highway Use Tax Regulations, of the number of miles the vehicle was used on public highways between the beginning of the taxable period and the date of transfer.

2. Whether a buyer who purchases a used highway motor vehicle that had been used on public highways during the current taxable period and that the buyer expects to use primarily for farming purposes and to use on public highways for more than 5,000 miles but less than 7,500 miles for the entire taxable period, can suspend the tax pursuant to § 4483(d) if the vehicle was not registered (under the laws of the State or States in which the vehicle is required to be registered) as a highway motor vehicle used for farming purposes from the beginning of the taxable period until the date of transfer.

CONCLUSIONS

1. A buyer who purchases a used highway motor vehicle cannot continue to suspend tax on the vehicle under § 4483(d) if the tax is suspended as of the date of transfer but the buyer does not have evidence of the number of miles the vehicle was driven between the beginning of the current taxable period and the date of transfer.
2. A buyer who purchases a used highway motor vehicle that the buyer expects to use primarily for farming purposes and on public highways for more than 5,000 miles but less than 7,500 miles for the entire taxable period, cannot suspend the tax pursuant to § 4483(d)(5) if the vehicle was not registered with the State as a highway motor vehicle used for farming purposes from the beginning of the taxable period until the date of transfer.

FACTS

Situation 1-- A buyer purchases a used highway motor vehicle on November 1 and wants to file Form 2290 in accordance with the form's instructions for tax-suspended vehicles. The buyer has a written statement from the seller that the tax imposed on the use of the vehicle was suspended as of the date of transfer. However, the buyer does not have evidence as to the number of miles the vehicle was used on public highways from July 1 through November 1 and the seller's statement did not include such information.

Situation 2-- A buyer purchases a used highway motor vehicle on November 1 and expects to use it primarily for farming purposes and for a total of 6,000 miles on public highways for the entire taxable period. The buyer wants to file Form 2290 in accordance with the form's instructions for tax-suspended vehicles. However, the seller did not register the vehicle with the State as a highway motor vehicle used for farming purposes for the period between July 1 and November 1.

LAW

Section 4481(a) of the Code imposes a tax on the use of any highway motor vehicle which (together with the semitrailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) has a taxable gross weight of at least 55,000 pounds at the rate specified under § 4481(a).

Section 4482(c)(4) defines the term "taxable period" to mean any year beginning before July 1, 2017, and the period which begins on July 1, 2017, and ends at the close of September 30, 2017.

Section 4483(d)(1)(A) provides generally that if (i) it is reasonable to expect that the use of any highway motor vehicle on public highways during any taxable period will be less

than 5,000 miles, and (ii) the owner of such vehicle furnishes such information as the Secretary may by forms or regulations require with respect to the expected use of such vehicle, then the collection of the tax imposed by § 4481 with respect to the use of such vehicle shall be suspended during the taxable period.

Section 4483(d)(1)(B) provides that § 4483(d)(1)(A) ceases to apply with respect to any highway motor vehicle whenever the use of such vehicle on public highways during the taxable period exceeds 5,000 miles.

Section 4483(d)(2) provides that if (A) the collection of the tax imposed by § 4481 with respect to any highway motor vehicle is suspended under § 4483(d)(1), (B) such vehicle is not used during the taxable period on public highways for more than 5,000 miles, and (C) except as otherwise provided in regulations, the owner of such vehicle furnishes such information as the Secretary may require with respect to the use of such vehicle during the taxable period, then no tax shall be imposed by § 4481 on the use of such vehicle for the taxable period.

Section 4483(d)(3) provides that if (A) the tax imposed by § 4481 is paid with respect to any highway motor vehicle for any taxable period, and (B) the requirements of subparagraphs (B) and (C) of § 4483(d)(2) are met with respect to such taxable period, then the amount of such tax shall be credited or refunded (without interest) to the person who paid such tax.

Section 4483(d)(4) provides that under regulations prescribed by the Secretary, the owner of a highway motor vehicle with respect to which the collection of the tax imposed by § 4481 is suspended under paragraph (1) shall not be liable for the tax imposed by § 4481 (and the new owner shall be liable for such tax) with respect to such vehicle if (A) such vehicle is transferred to a new owner; (B) such suspension is in effect at the time of such transfer, and (C) the old owner furnishes such information as the Secretary by forms and regulations requires with respect to the transfer of such vehicle.

Section 4483(d)(5) provides an exemption for agricultural vehicles. In the case of an agricultural vehicle, paragraphs (1) and (2) of § 4483(d) shall be applied by substituting "7,500" for "5,000" each place it appears.

Section 6001 requires every person liable for any tax imposed by this title, or for the collection thereof, to keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

Under § 41.4481-2(a)(1)(i), a person generally is liable for the tax imposed by § 4481 with respect to the use of a highway motor vehicle in a taxable period if the vehicle is

registered in the person's name (A) at the time of the first use of the vehicle in the taxable period; (B) in the case of a vehicle under a suspension of tax described in § 41.4483-3(a), at the time the use on the public highways during the taxable period exceeds 5,000 miles (7,500 for agricultural vehicles); (C) at the time that an increase in the taxable gross weight of the vehicle results in additional tax liability; and (D) at the time of any use during the taxable period that is after the first use during the period, but only to the extent that the tax has not previously been paid.

Section 41.4481-2(b) provides that every person who, at any time in the taxable period, acquires and has registered in his name a secondhand highway motor vehicle shall obtain and keep as a part of his records evidence, which he believes to be true, showing whether there was or was not a taxable use of such vehicle at any time in such taxable period prior to the time when the vehicle was registered in his name. Such person shall also obtain and keep as evidence a statement from the transferor as to whether there was in effect, at the time the vehicle was acquired, a suspension under § 41.4481-3(a) of the tax imposed by § 4481(a). The evidence may take the form of a written statement, signed and dated by the person from whom the vehicle was acquired, showing whether there was or was not a prior taxable use of the vehicle and whether there was a suspension of tax in the taxable period. If the vehicle is acquired from a dealer in highway motor vehicles, the statement may be obtained from such dealer or from the person from whom the dealer acquired such vehicle. If evidence is not obtained showing whether there was or was not a prior taxable use of such vehicle and whether there was a suspension of tax in the taxable period, such person shall keep as a part of his records a written statement of the reason why he was unable to obtain such evidence.

Section 41.4483-3(a)(1) provides that liability for the tax imposed by § 4481(a) is suspended during a taxable period if it is reasonable to expect that the vehicle will be used for 5,000 or fewer miles on public highways during such taxable period and the owner furnishes in the time and manner required the information required under § 41.4483-3(a)(2).

Section 41.4483-3(a)(2) provides that the owner of a highway motor vehicle who reasonably expects that the vehicle will be used for 5,000 or fewer miles on public highways during a taxable period shall furnish on the first Form 2290 filed during the taxable period for such motor vehicle, such information as is required by the Form in order to support the suspension of tax under § 41.4483-3(a).

Section 41.4483-3(b) provides that if a highway motor vehicle on which the tax under § 4481(a) is suspended for a particular taxable period under paragraph (a)(1) of this section is used for more than 5,000 miles on public highways during such taxable period, the owner of the vehicle is liable for the tax for the entire taxable period in accordance with § 4481(a).

Section 41.4483-3(c) provides that if at the end of any taxable period during which the tax under § 4481(a) on a highway motor vehicle was suspended under § 41.4483-3(a)(1) the vehicle has not been used for more than 5,000 miles on public highways, the vehicle shall be exempt from the tax for that taxable period. The owner of the vehicle shall verify that the vehicle was used for less than 5,000 miles in such ended taxable period on the first Form 2290 filed for the next taxable period.

Section 41.4483-3(f) provides that if the tax imposed by § 4481(a) on a highway motor vehicle is suspended for any taxable period under § 41.4483-3(a) and the vehicle is transferred while the suspension is in effect, the transferor will not be liable for any tax on such vehicle for such taxable period if such transferor furnished a statement to the transferee on which is included the transferor's name, address and taxpayer identification number, the vehicle identification number, the date of transfer of the vehicle, the number of miles the vehicle has been used on the public highways during the taxable period, the odometer reading at the time of the transfer, and the name, address and taxpayer identification number of the transferee. The suspension from tax under paragraph (A) continues until the vehicle is used on the public highways for more than 5,000 miles during the taxable period (including use by the transferor for the portion of the taxable period prior to the transfer). If the transferor has furnished the statement required in § 41.4483-3(f), the transferee and not the transferor is liable for the entire tax under § 4481(a) for the taxable period in which the transfer was made. If the transferor has not furnished such statement to the transferee, then the transferor is also liable for the tax on the use of such vehicle for such taxable period to the extent that the tax or an installment payment of the tax has not been previously paid. See § 41.4483-3(b) relating to cessation of suspension from tax and § 41.6011(a)-1(a)(3) for a requirement that certain transferees described in § 41.4483-3(f) must file a return.

Section 41.4483-3(g) provides that in applying the provisions of § 41.4483-3 to an agricultural vehicle, "7,500" shall be substituted for "5,000" each place it appears in paragraphs (a) through (f) of § 41.4483-3.

Section 41.4483-3(g)(2)(i) provides that an agricultural vehicle is any vehicle (A) used (or expected to be used) for farming purposes, and (B) registered (under the laws of the State or State in which such vehicle is required to be registered) as a highway motor vehicle used for farming purposes. A highway motor vehicle is used primarily for farming purposes if more than one-half of such vehicle's use (determined on the basis of mileage) during the taxable period is for farming purposes. Further, the highway motor vehicle must be registered (under the laws of the State or States where such vehicle is required to be registered) as a highway motor vehicle used for farming purposes for the entire taxable period in order to qualify as an agricultural vehicle.

Section 41.6001-1(a) requires that every person in whose name a highway motor vehicle having a taxable gross weight of at least 55,000 pounds is registered or required to be registered at any time during the taxable period shall keep records sufficient to

enable the Commissioner to determine whether such person is liable for the tax and, if so, the amount thereof. Such records shall show with respect to each such vehicle:

- (1) A description of the vehicle (including serial number or manufacturer's number) in sufficient detail to permit positive identification of the vehicle.
- (2) The weight of the loads carried by the vehicle in such form as is required under the laws of any State in which the vehicle is registered or required to be registered, in order to permit verification of such vehicle's taxable gross weight.
- (3) The date on which such person acquired such vehicle and the name and address of the person from whom the vehicle was acquired.
- (4) The first month of each taxable period in which occurred a taxable use of each such vehicle while the vehicle was registered in the name of such person; information showing whether such vehicle was operated, while registered in the name of such person, in any prior month in such taxable period; and if such vehicle was so operated evidence establishing that such operation was not a taxable use.
- (5) The date of sale or other transfer to another of any such vehicle, together with the name and address of the person to whom transferred.
- (6) In the case of any such vehicle disposed of otherwise than by sale or other transfer (including disposition by theft or destruction), the date and method of disposition of the vehicle.
- (7) In the case of a secondhand highway motor vehicle acquired at any time in the taxable period, evidence showing whether there was a prior taxable use in such taxable period of the highway motor vehicle (see § 41.4481-2(b)) or whether there was a suspension of tax in effect (see § 41.4483-3).
- (8) A copy of each return, schedule, statement, or other document filed, pursuant to the regulations in this part or in accordance with the instructions applicable to any form prescribed thereunder, by the person required to keep such records.

Section 41.6001-1(c) requires that the owner of a highway motor vehicle who reasonable expects the vehicle to be exempt from the tax under § 4481 by reason of § 41.4483-3(c) for a given taxable period to keep records which indicate the reason that the use of the vehicle is not expected to exceed 5,000 miles on public highways.

Under § 41.6001-1(d), any person claiming refund, credit, or abatement of the tax, interest, additional amount, addition to the tax, or assessable penalty, shall keep a complete and detailed record with respect to the claim.

Section 6011(a)-1(a)(3) requires a transferee of a vehicle that receives a statement described in the first sentence of § 41.4483-3(f) to file a return with the statement attached.

ANALYSIS

Situation 1

The exemption from the tax imposed by § 4481 for vehicles used on public highways for 5,000 or less miles, provided under § 4483(d) and § 41.4483-3(f), requires that the vehicle not be used on public highways for more than 5,000 miles during the taxable period. In the case of a transfer of a used vehicle during the taxable period, § 41.4483-3(f) takes the use by the transferor and the transferee during the taxable period into account in determining whether the vehicle's mileage is within the exemption's limit. Section 41.4483-3(c) requires the owner of a vehicle to verify that the vehicle was used for 5,000 miles or less in such ended taxable period on the first Form 2290 filed for the next taxable period.

Under the fact pattern presented, the buyer purchased a secondhand highway motor vehicle and does not have evidence of the mileage of the vehicle during the months in the taxable period prior to the transfer of the vehicle. In such a situation, although the taxpayer has information concerning a prior suspension of the tax, a taxpayer does not have information to support a reasonable expectation that the vehicle will be used less than 5,000 miles during the taxable period. The taxpayer could not declare to have such a reasonable expectation on the Form 2290 in order to support a suspension of tax, as required under § 4483 and § 41.4483-3. Further, a taxpayer could not know, and would not know, at the end of the taxable period if the vehicle had been used for 5,000 miles or less on public highways during the period. Accordingly, the taxpayer could not verify on Form 2290 that the vehicle was, in fact, used for 5,000 miles or less in the ended taxable period, as required under § 4483 and § 41.4483-3(c).

Thus, if a taxpayer purchases a used vehicle during a taxable period for which the taxpayer cannot obtain evidence of the prior owner's mileage during the taxable period, the taxpayer may not continue the suspension of the tax on use of the vehicle under § 4483(d). Because the seller did not provide a statement that included the number of miles the vehicle had been used on a public highway as § 41.4483-3(f) requires, the seller and the buyer are jointly liable for the tax under the rules of § 41.4481-2(a)(1).

Situation 2

Section 41.4483-3(g)(2)(i) provides that an agricultural vehicle is any vehicle (A) used (or expected to be used) for farming purposes, and (B) registered (under the laws of the State or State in which such vehicle is required to be registered) as a highway motor vehicle used for farming purposes. The regulation states that a highway motor vehicle must be registered as a highway motor vehicle used for farming purposes "for the entire

taxable period” to qualify as an agricultural vehicle for purposes of the exemption from tax.

The plain meaning of the phrase “entire taxable period” is the full length of the taxable period for the tax imposed under § 4481. Section 4484(c)(4) defines the term taxable period to run from July 1 to June 30 of the following year. Accordingly, where a buyer purchases a used highway motor vehicle that has not been registered as a vehicle used for farming purposes from July 1 of the current taxable period, the taxpayer may not suspend tax on the vehicle under the rules of § 4483(d)(5) for the remainder of the period.

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Please call (202) 317-6855 if you have any further questions.