

Drafting Information

The principal author of these regulations is Frank Boland, Office of Assistant 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 48

Excise taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 48 is amended as follows:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Paragraph 1. The authority citation for part 48 is amended by adding an entry in numerical order to read in part as follows:

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

Section 48.4082-5T also issued under 26 U.S.C. 4082. * * *

Par. 2. Section 48.4082-5T is added to read as follows:

§ 48.4082-5T Diesel fuel; Alaska (temporary).

(a) *Application.* This section applies to diesel fuel removed, entered, or sold in Alaska for ultimate sale or use in an exempt area of Alaska.

(b) Definitions.

Exempt area of Alaska means the area of Alaska in which the sulfur content requirements for diesel fuel (see section 211(i) of the Clean Air Act (42 U.S.C. 7545(i))) do not apply because the Administrator of the Environmental Protection Agency has granted an exemption under section 211(i)(4) of that Act.

Nontaxable use means a use described in section 4082(b).

Qualified dealer means any person that holds a qualified dealer license from the state of Alaska.

(c) *Tax-free removals and entries.* Notwithstanding § 48.4082-1, tax is not imposed by section 4081 on the removal or entry of any diesel fuel in an exempt area of Alaska if—

(1) The person that would be liable for tax under § 48.4081-2 or 48.4081-3 is a taxable fuel registrant and satisfies the requirements of paragraph (e) of this section;

(2) In the case of a removal from a terminal, the terminal is an approved terminal; and

(3) The owner of the diesel fuel immediately after the removal or entry holds the fuel for its own use in a nontaxable use or is a qualified dealer.

(d) *Sales after removals and entries—*
(1) *In general.* Paragraph (c) of this section does not apply with respect to diesel fuel that is subsequently sold by a qualified dealer unless—

(i) The fuel is sold in an exempt area of Alaska;

(ii) The buyer purchases the fuel for its own use in a nontaxable use or is a qualified dealer; and

(iii) The seller satisfies the requirements of paragraph (e) of this section.

(2) *Tax imposed at time of sale; liability for tax.* Notwithstanding §§ 48.4081-2 and 48.4081-3, in any case in which paragraph (c) of this section does not apply with respect to diesel fuel because of a subsequent sale by a qualified dealer, the tax with respect to that fuel is imposed at the time of the subsequent sale and the qualified dealer is liable for the tax.

(3) *Rate of tax.* For the rate of tax, see section 4081.

(e) *Evidence of tax-free transactions.* The requirements of section 4082(c)(2) (relating to certification) and this paragraph (e) are satisfied if the person otherwise liable for tax is able to show the district director satisfactory evidence of the exempt nature of the transaction and has no reason to believe that the evidence is false. Satisfactory evidence may include copies of qualified dealer licenses or exemption certificates obtained for state tax purposes.

(f) *Cross reference.* For the tax on previously untaxed diesel fuel that is used for a taxable purpose, see § 48.4082-4.

(g) *Effective date.* This section is applicable with respect to diesel fuel removed or entered after December 31, 1996.

Par. 3. Section 48.6715-2T is added to read as follows:

§ 48.6715-2T Application of section 6715(a)(3) to Alaska (temporary).

(a) *In general.* The penalty provided by section 6715(a)(3) for willful alteration of dyed fuel will not be assessed if the alteration occurs in an exempt area of Alaska.

(b) *Effective date.* This section is applicable as of October 1, 1996.

Approved: November 27, 1996.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

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26 CFR Part 301

[TD 8691]

RIN 1545-AU13

Sale of Seized Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the sale of seized property. The final regulations reflect changes concerning the setting of a minimum price for seized property by the Tax Reform Act of 1986. The regulations affect all sales of seized property.

EFFECTIVE DATE: December 17, 1996.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Kevin B. Connelly, (202) 622-3640 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to the sale of seized property under section 6335 of the Internal Revenue Code (Code). The Tax Reform Act of 1986 amended section 6335(e), relating to the manner and conditions of sale, to require the Secretary to determine whether it would be in the best interest of the United States to buy seized property at the minimum price set by the Secretary. On June 13, 1996, a notice of proposed rulemaking reflecting this change was published in the Federal Register (61 FR 30012). No comments responding to the notice of proposed rulemaking were received, and no public hearing was requested or held. The final regulations are adopted as proposed.

Explanation of Provisions

Section 1570 of the Tax Reform Act of 1986 amended section 6335(e) of the Code to require the Secretary to determine before the sale of seized property whether it would be in the best interest of the United States to purchase such property at the minimum price set by the Secretary. The best interest determination is to be based on criteria prescribed by the Secretary. If, at the sale, one or more persons offer at least the minimum price, the property shall be sold to the highest bidder. If no one offers at least the minimum price and the Secretary has determined that it would be in the best interest of the United States to purchase the property for the minimum price, the property

will be declared sold to the United States for the minimum price. If no one offers the minimum price and the Secretary has not determined that it would be in the best interest of the United States to purchase the property for the minimum price, the property shall be released to the owner of the property and the expense of the levy and sale shall be added to the amount of tax for the collection of which the United States made the levy. Any property released shall remain subject to any lien imposed by subchapter C of chapter 64 of subtitle F of the Code.

The regulations reflect the changes made by the Tax Reform Act of 1986. The regulations authorize district directors to make the required determination whether it would be in the best interest of the United States to purchase seized property for the minimum price. In addition, the regulations set forth factors the district director may consider when determining the best interest of the United States. The district director may consider all relevant facts and circumstances including for example: (1) marketability of the property; (2) cost of maintaining the property; (3) cost of repairing or restoring the property; (4) cost of transporting the property; (5) cost of safeguarding the property; (6) cost of potential toxic waste cleanup; and (7) other factors pertinent to the type of property.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 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) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was 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 Kevin B. Connelly, Office of Assistant Chief Counsel (General Litigation) CC:EL:GL, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6335-1 is amended as follows:

1. Paragraph (c)(3) is revised.
 2. Paragraphs (c)(4) through (c)(9) are redesignated as paragraphs (c)(5) through (c)(10), respectively.
 3. New paragraph (c)(4) is added.
- The addition and revision read as follows:

§ 301.6335-1 Sale of seized property.

* * * * *

(c) * * *

(3) *Determinations relating to minimum price*—(i) *Minimum price*. Before the sale of property seized by levy, the district director shall determine a minimum price, taking into account the expenses of levy and sale, for which the property shall be sold. The internal revenue officer conducting the sale may either announce the minimum price before the sale begins, or defer announcement of the minimum price until after the receipt of the highest bid, in which case, if the highest bid is greater than the minimum price, no announcement of the minimum price shall be made.

(ii) *Purchase by the United States*. Before the sale of property seized by levy, the district director shall determine whether the purchase of property by the United States at the minimum price would be in the best interest of the United States. In determining whether the purchase of property would be in the best interest of the United States, the district director may consider all relevant facts and circumstances including for example—

- (a) Marketability of the property;
- (b) Cost of maintaining the property;
- (c) Cost of repairing or restoring the property;
- (d) Cost of transporting the property;
- (e) Cost of safeguarding the property;
- (f) Cost of potential toxic waste cleanup; and
- (g) Other factors pertinent to the type of property.

(iii) *Effective date*. This paragraph (c)(3) applies to determinations relating to minimum price made on or after December 17, 1996.

(4) *Disposition of property at sale*—(i) *Sale to highest bidder at or above minimum price*. If one or more persons offer to buy the property for at least the amount of the minimum price, the property shall be sold to the highest bidder.

(ii) *Property deemed sold to United States at minimum price*. If no one offers at least the amount of the minimum price for the property and the Secretary has determined that it would be in the best interest of the United States to purchase the property for the minimum price, the property shall be declared to be sold to the United States for the minimum price.

(iii) *Release to owner*. If the property is not declared to be sold under paragraph (c)(4)(i) or (ii) of this section, the property shall be released to the owner of the property and the expense of the levy and sale shall be added to the amount of tax for the collection of which the United States made the levy. Any property released under this paragraph (c)(4)(iii) shall remain subject to any lien imposed by subchapter C of chapter 64 of subtitle F of the Internal Revenue Code.

(iv) *Effective date*. This paragraph (c)(4) applies to dispositions of property at sale made on or after December 17, 1996.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: November 19, 1996.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

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26 CFR Part 301

[TD 8695]

RIN 1545-AT48

Disclosure of Returns and Return Information To Procure Property or Services for Tax Administration Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the disclosure of returns and return information in connection with the procurement of property and services for tax administration purposes. The regulations authorize the Department of