

Internal Revenue Service, Treasury

§ 48.4064-1

(f) *Effective date.* Section 4063(e) (relating to light-duty truck parts and accessories) applies to sales on or after December 1, 1978. Light-duty truck parts or accessories sold prior to that date are not exempt from tax under section 4061(b) by reason of section 4063(e).

[T.D. 7834, 47 FR 42344, Sept. 27, 1982]

§ 48.4063-3 Other tax-free sales.

For provisions relating to tax-free sales of articles referred to in section 4061, see:

(a) Section 4221, relating to certain tax-free sales;

(b) Section 4222, relating to registration; and

(c) Section 4223, relating to special rules pertaining to further manufacture;

and the regulations thereunder contained in Subpart N of this part.

[T.D. 7727, 28 FR 3633, Apr. 13, 1963. Redesignated by T.D. 7834, 47 FR 42344, Sept. 27, 1982]

§ 48.4064-1 Gas guzzler tax.

(a) *General rule*—(1) *In general.* Section 4064 imposes on the sale by the manufacturer of an automobile a tax determined in accordance with the tables in section 4064(a) (1) through (7), and in paragraph (a)(2) of this section. The tax is applicable to model types of 1980 and later model year automobiles that have a fuel economy level below the applicable tax-free fuel economy level. Paragraph (b) of this section defines the following terms: sale, manufacturer, automobile, model year, model type, fuel economy, and fuel. Paragraph (c) of this section contains rules relating to the determination of fuel economy. Paragraph (d) of this section contains a special rule for certain small manufacturers. Paragraph (e) of this section contains rules relating to the tax-free sales of emergency vehicles.

(2) *Tables.* (i) In the case of a 1980 model year automobile:

If the fuel economy of the model type in which the automobile falls is:

	<i>The tax is—</i>
Miles per gallon:	
At least 15	0
At least 14 but less than 15	\$200

The tax is—

At least 13 but less than 14	300
Less than 13	550

(ii) In the case of a 1981 model year automobile:

If the fuel economy of the model type in which the automobile falls is:

The tax is—

Miles per gallon:	
At least 17	0
At least 16 but less than 17	\$200
At least 15 but less than 16	350
At least 14 but less than 15	450
At least 13 but less than 14	550
Less than 13	650

(iii) In the case of a 1982 model year automobile:

If the fuel economy of the model type in which the automobile falls is:

The tax is—

Miles per gallon:	
At least 18.5	0
At least 17.5 but less than 18.5	\$200
At least 16.5 but less than 17.5	350
At least 15.5 but less than 16.5	450
At least 14.5 but less than 15.5	600
At least 13.5 but less than 14.5	750
At least 12.5 but less than 13.5	950
Less than 12.5	1,200

(iv) In the case of a 1983 model year automobile:

If the fuel economy of the model type in which the automobile falls is:

The tax is—

Miles per gallon:	
At least 19	0
At least 18 but less than 19	\$350
At least 17 but less than 18	500
At least 16 but less than 17	650
At least 15 but less than 16	800
At least 14 but less than 15	1,000
At least 13 but less than 14	1,250
Less than 13	1,550

(v) In the case of a 1984 model year automobile:

If the fuel economy of the model type in which the automobile falls is:

The tax is—

Miles per gallon:	
At least 19.5	0
At least 18.5 but less than 19.5	\$450
At least 17.5 but less than 18.5	600
At least 16.5 but less than 17.5	750

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	<i>The tax is—</i>
At least 15.5 but less than 16.5	950
At least 14.5 but less than 15.5	1,150
At least 13.5 but less than 14.5	1,450
At least 12.5 but less than 13.5	1,750
Less than 12.5	2,150

(vi) In the case of a 1985 model year automobile:

If the fuel economy of the model type in which the automobile falls is:

	<i>The tax is—</i>
Miles per gallon:	
At least 21	0
At least 20 but less than 21	\$500
At least 19 but less than 20	600
At least 18 but less than 19	800
At least 17 but less than 18	1,000
At least 16 but less than 17	1,200
At least 15 but less than 16	1,500
At least 14 but less than 15	1,800
At least 13 but less than 14	2,200
Less than 13	2,650

(vii) In the case of a 1986 or later model year automobile:

If the fuel economy of the model type in which the automobile falls is:

	<i>The tax is—</i>
Miles per gallon:	
At least 22.5	0
At least 21.5 but less than 22.5	\$500
At least 20.5 but less than 21.5	650
At least 19.5 but less than 20.5	850
At least 18.5 but less than 19.5	1,050
At least 17.5 but less than 18.5	1,300
At least 16.5 but less than 17.5	1,500
At least 15.5 but less than 16.5	1,850
At least 14.5 but less than 15.5	2,250
At least 13.5 but less than 14.5	2,700
At least 12.5 but less than 13.5	3,200
Less than 12.5	3,850

(3) *Liability for tax.* The tax imposed by section 4064 is payable by the manufacturer making the sale. An automobile sold before the time a determination of fuel economy is made for the model type (as defined in paragraph (b)(6) of this section) is subject to tax if it is subsequently determined that the fuel economy level of that model type of automobile is within the taxable range (see paragraph (a)(1) of this section).

(b) *Definitions*—(1) *Sale.* Sale includes the use (within the meaning of section 4218) or the first lease (within the meaning of section 4217(e)) of an automobile by the manufacturer.

(2) *Manufacturer.* The term “manufacturer” has the same meaning assigned to such term under § 48.0-2(a)(4). The term “manufacturer” includes a producer or importer. An importer is a person who imports an automobile whether or not in connection with a trade or business.

(3) *Automobile.* The term “automobile” means any four-wheeled vehicle—

(i) Propelled by an engine powered by fuel;

(ii) Manufactured primarily for use on public streets, roads, and highways (except any vehicle operated exclusively on a rail or rails);

(iii) Rated at 6,000 pounds gross vehicle weight or less; and

(iv) Requiring no further manufacturing operations to perform its intended function, other than the addition of readily attachable components, such as mirrors or tire and rim assemblies, or minor finishing operations, such as painting. For this purpose, gross vehicle weight means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle. An automobile does not include a nonpassenger automobile as defined in regulations in effect on November 9, 1978 (49 CFR 523.5 (1978)), which were prescribed by the Secretary of Transportation for section 501 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001). In addition, an automobile does not include the following: any vehicle sold for use and used primarily as an ambulance or combination ambulance-hearse; any vehicle sold for use and used by the United States or by a State or local government primarily for police or other law enforcement purposes; or any vehicle sold for use and used primarily for firefighting purposes.

(4) *Model year.* The term “model year” means the manufacturer’s annual production period (as determined by the Administrator of the Environmental Protection Agency) which includes January 1 of any particular calendar year. If the manufacturer has no annual production year, the model year is the calendar year.

(5) *Model type.* The term “model type” means a particular class of automobile, as determined by regulations

in effect on November 9, 1978 (40 CFR 600.002-79(a)(19) (1978)), which were prescribed by the Administrator of the Environmental Protection Agency.

(6) *Fuel economy.* The term “fuel economy” means the average number of miles traveled by an automobile per gallon of fuel consumed, rounded to the nearest .1 mile per gallon. The fuel economy for any model type is determined by the Environmental Protection Agency (as determined in accordance with the procedures provided in paragraph (c) of this section). For this purpose, the fuel economy is a combined (urban-highway weighted average) mileage figure estimated in connection with the determination (or redetermination) of general label value (fuel economy information displayed on a sticker that is affixed to new automobiles) mandated under section 506 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2006) and regulations thereunder (40 CFR Part 600).

(7) *Fuel.* The term “fuel” means gasoline and diesel fuel.

(c) *Determination of fuel economy.* For purposes of this section, the fuel economy for any model type is determined (or redetermined) in accordance with the testing and calculation procedures utilized by the Environmental Protection Agency Administrator for model year 1975 (weighted 55 percent urban cycle and 45 percent highway cycle), or any other procedures (yielding comparable results) established by the Administrator. The Environmental Protection Agency’s determination (or redetermination) of a model type’s fuel economy is made at the time the general label fuel economy value is calculated (or recalculated). This determination (or redetermination) is conclusive for purposes of this section. A redetermination of a model type’s fuel economy value shall be effective only with respect to those automobiles for which the manufacturer is required (or is permitted and chooses) under Environmental Protection Agency regulations to affix labels with the recalculated general label fuel economy value.

(d) *Special rule for small manufacturers*—(1) *In general.* A small manufacturer (as defined in subparagraph (2)(i)

of this paragraph) may apply for a determination that it is not feasible for that manufacturer to meet the statutory tax-free fuel economy level for the model year, with respect to all automobiles produced by that manufacturer, or with respect to a particular model type. For this purpose, the Commissioner (or his delegate) will make a determination of maximum feasible fuel economy level with respect to the automobiles that are the subject of the determination, but only after consultation with the Secretary of Energy, the Secretary of Transportation, and the Administrator of the Environmental Protection Agency (or their delegates) to obtain their views. A finding that it is not feasible for the manufacturer to meet the statutory tax-free fuel economy level will be made by the Internal Revenue Service if the maximum feasible fuel economy level (as defined in subparagraph (3)(i) of this paragraph) of the automobiles that are the subject of the determination is lower than the statutory tax-free fuel economy level for those automobiles. If it is determined that it is not feasible for a small manufacturer to meet the statutory tax-free fuel economy level, the Secretary (or his delegate) has the discretion to grant to the manufacturer the alternate rate schedule prescribed in paragraph (d)(3)(iii) of this section in lieu of the applicable statutory tax table prescribed in section 4064(a). The decision whether to grant the alternate rate schedule shall be based on the consideration set forth in paragraph (d)(3)(ii) of this section. If a small manufacturer for which an alternate rate schedule under this paragraph (d) is applicable sells an automobile to an importer, the alternate rate schedule applies to the sale by the importer of such automobile if such automobile is of the model year and type to which such alternate schedule applies.

(2) *Definitions*—(i) *Small manufacturer.* A small manufacturer is any manufacturer who produced (whether or not in the United States) fewer than 10,000 automobiles in the second model year preceding the affected model year (the model year for which the determination under this paragraph is being made), and who can reasonably be expected to produce (whether or not in

the United States) fewer than 10,000 automobiles in the affected model year.

(ii) *Manufacturer.* For purposes of this paragraph, the term “manufacturer” does not include a person who is only an importer, but does include a producer of automobiles outside the United States who is also an importer.

(iii) *Members of a controlled group.* For purposes of this paragraph, persons who are members of a controlled group of corporations (as defined in section 1563(a) of the Internal Revenue Code, except that “more than 50 percent” is substituted for “at least 80 percent” each place it appears in section 1563(a)) are treated as one manufacturer.

(3) *Basis for determination—(i) Maximum feasible fuel economy level.* For purposes of this paragraph, the maximum feasible fuel economy level is determined by taking into account the same factors used in determining the maximum feasible fuel economy level under section 502(e) of the Motor Vehicle Information and Cost Savings Act (as amended) and the regulations thereunder in effect on November 9, 1978. (Those regulations for small manufacturers are prescribed in 49 CFR Part 525 (1978).) In making this determination, the Commissioner (or his delegate) will consult with the National Highway Traffic Safety Administration of the Department of Transportation.

(ii) *Decision to grant alternate rate schedule.* In deciding whether to grant an alternate rate schedule, the Secretary (or his delegate) will consider whether the use (in the United States) of the automobile serves an important public policy (e.g., providing public transportation or transportation for the handicapped) that overrides the United States’ need to conserve energy. The manufacturer has the burden of demonstrating that the public policy consideration involved overrides the United States’ need to conserve energy. The Commissioner (or his delegate), after consultation with the Secretary of Energy, the Secretary of Transportation, and the Administrator of the Environmental Protection Agency (or their delegates), will review the information submitted by the manufacturer

and report findings and recommendations to the Secretary (or his delegate).

(iii) *Alternate rate schedule and tax.* If an alternate rate schedule is granted, the maximum feasible fuel economy level shall be deemed to be the statutory tax-free fuel economy level. Accordingly, a tax is imposed only on automobiles sold that fail to meet the deemed tax-free fuel economy level. The alternate rate schedule shall be determined by substituting the maximum feasible fuel economy level for the tax-free fuel economy level in the applicable statutory tax table set forth in section 4064(a), and by substituting for the miles per gallon amount prescribed in that applicable table an amount that is the tax-free level decreased by one mile per gallon increments, while keeping the same corresponding tax amount prescribed in the applicable table. The rule for determining an alternate rate schedule may be illustrated by the following example:

Example. Manufacturer X, a small manufacturer of automobiles specifically designed to accommodate disabled passengers, applied for a determination that it is not feasible for X to meet the statutory tax-free fuel economy level for a particular model type of X’s 1982 model year automobiles. It was determined that the maximum feasible fuel economy level for that model type was 15 miles per gallon. The Secretary decided to grant X an alternate rate schedule. The alternate rate schedule for the model type would be as follows:

If the fuel economy of the automobile is:

Miles per gallon:	<i>The tax is—</i>
At least 15	0
At least 14 but less than 15	\$200
At least 13 but less than 14	350
At least 12 but less than 13	450
At least 11 but less than 12	600
At least 10 but less than 11	750
At least 9 but less than 10	950
Less than 9	1,200

Thus, if X’s 1982 automobiles of that model year and type attain only 12 miles per gallon (because X fails to modify them to reach the maximum feasible fuel economy level before they are sold), the tax imposed upon the sale of each automobile is \$450 (instead of the \$1,200 tax (see the applicable statutory tax table set forth in section 4064(a)(3)), which would have been imposed had no alternate rate schedule been prescribed).

(4) *Duration of determination.* A determination under this paragraph does not apply to more than three model years.

(5) *Requirements for application.* Each application for a determination under this section must—

(i) Identify the model year or years, and particular model type or types for which a determination is requested;

(ii) (A) In the case of an application for model year 1980, be submitted not later than May 8, 1980;

(B) In case of an application for model year 1981, be submitted not later than 9 months before the beginning of that model year or March 10, 1980, whichever is later;

(C) In the case of an application for model year 1982 or any subsequent model year, be submitted not later than 9 months before that model year;

(iii) Be submitted in three copies to: Commissioner of Internal Revenue, Attention: Associate Chief Counsel (Technical), 1111 Constitution Avenue, NW., Washington, DC 20224;

(iv) Be written in the English language;

(v) Set forth the full name, address, and title of the official responsible for preparing the application;

(vi) State whether the applicant is a member of a controlled group of corporations (as defined in paragraph (d) (2) (iii) of this section);

(vii) State the total number of automobiles manufactured (whether or not in the United States) by the applicant (or the controlled group of corporations in the case where the applicant is a member of the group) in the second model year immediately preceding each affected model year and the total number of automobiles likely to be manufactured in the affected model year;

(viii) Set forth the same information required by an application pursuant to section 502 (c) of the Motor Vehicle Information and Cost Savings Act (as amended) and the regulations thereunder (see 49 CFR Part 525 (1978)) and state whether or not the applicant under this paragraph has also made an application pursuant to such Act; and

(ix) Set forth the reasons why an alternate rate schedule should be granted

under paragraph (d) (3) (ii) of this section.

(6) *Update of application.* A manufacturer making an application under this section must update the application when a material change of circumstances occurs or material information not available at the time of applying becomes available. The manufacturer must also furnish any further information that may be required by the Internal Revenue Service.

(7) *Processing of applications.* If a manufacturer's application is found not to contain the information required by this paragraph, the applicant will be informed of the areas of insufficiency. The application will not receive further consideration until the required information is submitted. Each applicant will be informed in writing whether an application has been granted or denied.

(e) *Tax-free sales of emergency vehicles—*(1) *In general.* The tax imposed by section 4064 (a) shall not apply to vehicles sold by a manufacturer for use and used (i) primarily as an ambulance or combination ambulance-hearse, (ii) by the United States or by a State or local government primarily for police or other law enforcement purposes, or (iii) primarily for fire-fighting purposes. A vehicle may be sold tax-free by the manufacturer under this paragraph only in those cases where the sale is made directly to a purchaser for an emergency use prescribed in this subparagraph. In order to effect a tax-free sale, the requirements of section 4222 and the regulations thereunder must be met.

(2) *Credit or refund.* Where tax is paid on the sale of a vehicle, but the vehicle is used or resold for an emergency use prescribed in subparagraph (1) of this paragraph, a claim for refund of the tax paid on such sale may be filed by the manufacturer on Form 8849 (or on such other form as the Commissioner may designate), or a credit may be taken on a subsequent return, in accordance with the provisions of sections 6402 (a) and 6416 (a) and § 48.6416 (a)-1.

[T.D. 8036, 50 FR 29960, July 23, 1985, as amended by T.D. 8659, 61 FR 10453, Mar. 14, 1996]

TIRES, TUBES, AND TREAD RUBBER

§ 48.4071-1 Imposition and rates of tax.

(a) *Imposition of tax*—(1) *Imposition of tax before January 1, 1984.* Section 4071 imposes a tax at the rates set forth in paragraph (b)(1) of this section on tires made wholly or in part of rubber, inner tubes (for tires) made wholly or in part of rubber and tread rubber which are sold by the manufacturer thereof before January 1, 1984.

(2) *Imposition of tax after December 31, 1983.* Section 4071 imposes a tax at the rates set forth in paragraph (b)(2) of this section on tires of the type used on highway vehicles and made wholly or in part of rubber which are sold by the manufacturer thereof after December 31, 1983.

(3) *Definitions.* For definitions of the terms “tires,” “inner tubes,” “tread rubber,” “rubber” and “manufacturer,” see § 48.4072-1 of the regulations.

(b) *Rates and computation of tax*—(1) *Rates of tax before January 1, 1984.*

(i) *Tires:*

(A) Of the type used on highway vehicles:

(1) For the period July 1, 1965 to December 31, 1980, inclusive—10 cents per pound.

(2) For the period January 1, 1981 to December 31, 1983, inclusive—9.75 cents per pound.

(B) Of the type used on other than highway vehicles:

(1) For the period July 1, 1965, to December 31, 1980, inclusive—5 cents per pound.

(2) For the period January 1, 1981 to December 31, 1983, inclusive—4.875 cents per pound.

(C) Laminated tires for the period July 1, 1965 to December 31, 1983, inclusive—1 cent per pound.

(ii) *Inner tubes:*

For the period July 1, 1965 to December 31, 1983, inclusive—10 cents per pound.

(iii) *Tread Rubber:*

For the period July 1, 1965 to December 31, 1983, inclusive—5 cents per pound.

(2) *Rates of tax on or after January 1, 1984.* Tires of the type used on highway vehicles:

(i) Tires weighing not more than 40 pounds—0 cents.

(ii) Tires weighing more than 40 pounds but not more than 70 pounds—15 cents for each pound in excess of 40 pounds.

(iii) Tires weighing more than 70 pounds but not more than 90 pounds—\$4.50 plus 30 cents for each pound in excess of 70 pounds.

(iv) Tires weighing more than 90 pounds—\$10.50 plus 50 cents for each pound in excess of 90 pounds.

(3) *Computation of tax.* The tax on tires, inner tubes, and tread rubber is computed by applying to the total weight (including a fractional part of a pound) of the article the rate in effect at the time the article is sold. See § 48.4071-2, relating to determination of weight.

(c) *Liability for tax.* The tax imposed by section 4071 is payable by the manufacturer when the manufacturer makes a sale of a taxable article, or as provided in section 4071 (b) and § 48.4071-3 for a manufacturer who sells at retail, when the manufacturer delivers a taxable article to a retail store, or to a retail outlet, of the manufacturer.

(d) *Recapped or retreaded tires.* The recapping or retreading of a tire, whether from shoulder-to-shoulder or bead-to-bead, does not constitute manufacture of a taxable tire. The tax on tires imposed by section 4071 does not apply to the sale of a recapped or retreaded tire, except that a used tire or carcass not previously sold in the United States that is recapped or retreaded from shoulder-to-shoulder or bead-to-bead in a foreign country and imported into the United States is subject to the tax imposed by section 4071 when such tire is sold or used by the importer. This paragraph (d) is effective for recapped and retreaded tires sold on or after January 1, 1984.

(Secs. 4071(b), 4071(c), 4073(c), and 7805, Internal Revenue Code of 1954. (80 Stat. 331, 26 U.S.C. 4071(b); 68A Stat. 482, 26 U.S.C. 4071(c); 70 Stat. 389, 26 U.S.C. 4073(c); 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7809, 47 FR 6005, Feb. 10, 1982, as amended by T.D. 8057, 50 FR 41491, Oct. 11, 1985; T.D. 8152, 52 FR 31618, Aug. 21, 1987]