

## § 48.4041-7

## 26 CFR Ch. I (4-1-06 Edition)

is liable for a tax under section 4041(a)(2)(B) on the quantity of special motor fuel so used at the appropriate rate set forth in paragraph (b)(2)(ii) of § 48.4041-1. If a person acquired any special motor fuel through a transaction for which no tax is imposed by reason of paragraph (b)(2)(ii)(C) of § 48.4041-1 and uses it in other than a nontaxable use, the person is liable for a tax under section 4041(a)(2)(B) on the quantity of fuel so used. See paragraph (b)(2)(ii)(D) of § 48.4041-1 for the applicable rate of tax. See section 6427(a) for credit or refund of tax where special motor fuel acquired in a transaction subject to tax at the rate set forth in paragraph (b)(2)(ii)(A) of § 48.4041-1 is used for a purpose described in paragraph (b)(2)(ii)(C) of § 48.4041-1 or in another nontaxable use.

(3) *Noncommercial aviation.* If a person acquires any liquid fuel by any means other than through a transaction subject to tax under section 4041(c)(1)(A) or section 4041(c)(2)(A) and uses it as fuel in an aircraft in noncommercial aviation, the person is liable for a tax under section 4041(c)(1)(B) or section 4041(c)(2)(B) on the quantity of the liquid fuel so used at the appropriate rate set forth in § 48.4041-1(b)(3).

(b) *Bulk purchases by users.* Taxpayers who purchase taxable liquid fuel in bulk delivered into storage tanks or other containers and use it for taxable or nontaxable purposes or in registered and nonregistered vehicles must maintain adequate records of all fuel used for each purpose to permit verification of the tax paid and of any credits, refunds, or exemptions claimed.

[T.D. 8066, 51 FR 15, Jan. 2, 1986]

### § 48.4041-7 Dual use of taxable liquid fuel.

Tax applies to all taxable liquid fuel sold for use or used as a fuel in the motor which is used to propel a diesel-powered vehicle or in the motor used to propel a motor vehicle, motorboat, or aircraft, even though the motor is also used for a purpose other than the propulsion of the vehicle, motorboat, or aircraft. Thus, if the motor of a diesel-powered highway vehicle or a motorboat operates special equipment by means of a power take-off or power transfer, tax applies to all taxable liq-

uid fuel sold for this use or so used, whether or not the special equipment is mounted on the vehicle or boat. For example, tax applies to diesel fuel sold to operate the mixing unit on a concrete mixer truck if the mixing unit is operated by means of a power take-off from the motor of the vehicle. Similarly, tax applies to all taxable liquid fuel sold for use or used in a motor propelling a fuel oil truck even though the same motor is used to operate the pump (whether or not mounted on the truck) for discharging the fuel into customers' storage tanks. However, tax does not apply to liquid fuel sold for use or used in a separate motor to operate special equipment (whether or not the equipment is mounted on the vehicle). If the taxable liquid fuel used in a separate motor is drawn from the same tank as the one which supplies fuel for the propulsion of the vehicle, a reasonable determination of the quantity of taxable liquid fuel used in such separate motor or during such period is acceptable for purposes of application of the tax. This determination must be based, however, on the operating experience of the person using the taxable liquid fuel, and the taxpayer must maintain records which support the allocation used. Devices to measure the number of miles the vehicle has traveled, such as hubometers, may be used in making a preliminary determination of the number of gallons of fuel used to propel the vehicle. In order to make a final determination of the number of gallons of fuel used to propel the vehicle, there must be added to this preliminary determination the amount of fuel consumed while idling or warming up the motor preparatory to propelling the vehicle.

[T.D. 8066, 51 FR 16, Jan. 2, 1986]

### § 48.4041-8 Definitions.

For purposes of the regulations in this subpart, unless otherwise expressly indicated:

(a) *Highway.* The term "highway" includes any road (whether a Federal highway, State highway, city street, rural road, or otherwise) in the United States which is not a private roadway.

(b) *Highway vehicle—(1) In general.* The term "highway vehicle" means

any self-propelled vehicle, or any trailer or semi-trailer, designed to perform a function of transporting a load over highways, whether or not also designed to perform other functions, but does not include a vehicle described in paragraph (b)(2) of this section. For purposes of this definition, 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. Therefore, in determining whether a vehicle is a "highway vehicle", it is immaterial that 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, except to the extent otherwise provided in paragraph (b)(2)(i) of this section, machinery or equipment specially designed to perform some off-highway task unrelated to highway transportation. In the case of specially designed machinery or equipment, it is also immaterial, except as provided in paragraph (b)(2)(i) of this section, that such machinery or equipment is permanently mounted on the vehicle. For purposes of paragraph (b) of this section, the term "transport" includes the term "tow". A vehicle which is not a highway vehicle within the meaning of this paragraph shall be treated as a non-highway vehicle for purposes of section 4041. Examples of vehicles that are designed to perform a function of transporting a load over the public highways are passenger automobiles, motorcycles, buses, and highway-type trucks, truck tractors, trailers, and semi-trailers.

(2) *Exceptions*—(i) *Certain specially designed mobile machinery for nontransportation functions.* A self-propelled vehicle, or trailer or semi-trailer, is not a highway vehicle if it (A) consists of a chassis 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 other operation similar to any one of the foregoing enumerated operations if the operation of the machinery or equipment is unrelated to transpor-

tation on or off the public highways, (B) the chassis 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) by reason of such special design, such chassis 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.

(ii) *Certain vehicles specially designed for off-highway transportation.* A self-propelled vehicle, or a trailer or semi-trailer, is not a highway vehicle if it is (A) specially designed for the primary function of transporting a particular type of load other than over the public highway in connection with a construction, manufacturing, processing, farming, mining, drilling, timbering, or other operation similar to any one of the foregoing enumerated operations, and (B) if by reason of such special design, the use of such vehicle to transport such load over the public highways is substantially limited or substantially impaired. For purposes of applying the rule of clause (b) of this paragraph (b)(2)(ii), account may be taken of whether the vehicle may travel at regular highway speeds, requires a special permit for highway use, is overweight, overheight or overwidth for regular use, and any other relevant considerations. Solely for purposes of determinations under this paragraph (b)(2)(ii), where there is affixed to the vehicle equipment used for loading, unloading, storing, vending, handling, processing, preserving, or otherwise caring for a load transported by the vehicle over the public highways, the functions are related to the transportation of a load over the public highways even though the functions may be performed off the public highways.

(iii) *Certain trailers and semi-trailers specially designed to perform nontransportation functions off the public highways.* A trailer or semi-trailer is not a

highway vehicle if it is specially designed to serve no purpose other than providing an enclosed stationary shelter for the carrying on of a function which is directly connected with and necessary to, and at the off-highway site of, a construction, manufacturing, processing, mining, drilling, farming, timbering, or other operation similar to any one of the foregoing enumerated operations, such as a trailer specially designed to serve as an office for such an operation.

(3) *Optional application.* For purposes of section 4041, if any rules existing immediately prior to January 13, 1977, would, if applicable, unequivocally resolve an issue involving the definition of a highway vehicle with respect to a period prior to such date, at the option of the taxpayer, such rules existing prior to such date shall be applied to resolve the issue for all periods prior to such date, and the rules of paragraph (b) (1) and (2) of this section, which define the term "highway vehicle", shall not apply with respect to such issue for all periods prior to such date.

(4) *Diesel-powered highway vehicle.* The term "diesel-powered highway vehicle" means any highway vehicle (within the meaning of paragraph (b)(1) of this section) which is also a motor vehicle (as defined in paragraph (c) of this section) and which uses diesel fuel (as defined in paragraph (e) of this section) for propulsion purposes.

(c) *Motor vehicles.* The term "motor vehicle" includes all types of vehicles propelled by motor that are designed for carrying or towing loads from one place to another, regardless of the type of load or material carried or towed and whether or not the vehicle is registered or required to be registered for highway use. Included are fork lift trucks used to carry loads at railroad stations, industrial plants, warehouses, etc. The term does not include farm tractors, trench diggers, power shovels, bulldozers, road graders or rollers, and similar equipment which does not carry or tow a load; nor does it include any vehicle which moves exclusively on rails. For periods prior to January 6, 1977, a vehicle which is designed for towing, but not carrying, loads shall not be considered to be a motor vehicle.

(d) *Taxable liquid fuel.* The term "taxable liquid fuel" (or "taxable liquid") means any liquid which is either—

(1) Diesel fuel as defined in paragraph (e) of this section,

(2) Special motor fuel as defined in paragraph (f) of this section, or

(3) Any liquid fuel used in an aircraft in "noncommercial aviation", as defined in paragraph (h) of this section.

(e) *Diesel fuel.* The term "diesel fuel" means any liquid (other than a product taxable as gasoline under the provisions of section 4081) which is sold for use or used as a fuel in a diesel-powered highway vehicle.

(f) *Special motor fuel.* (1) Except as provided in paragraph (f)(2) of this section, *special motor fuel* means any liquid fuel, including—

(i) Any liquefied petroleum gas (such as propane, butane, pentane, or mixtures of the same);

(ii) Liquefied natural gas; or

(iii) Benzol, benzene, naphtha, or any other liquid, whether a refined, partly refined, or unrefined product, 10 percent of which has been recovered when the thermometer reads 347 °F. (175 °C.) or 95 percent of which has been recovered when the thermometer reads 464 °F. (240 °C.) when subjected to distillation in accordance with the "Standard Method of Test for Distillation of Gasoline, Naptha, Kerosene, and Similar Petroleum Products" (A.S.T.M. designation: D86) of the American Society for Testing Materials, regardless of the trade name under which sold.

(2) The term "special motor fuel" does not include any product taxable under the provisions of section 4081, nor does it include "kerosene, gas oil, or fuel oil", as defined in paragraph (g) of this section.

(g) *Kerosene, gas oil, or fuel oil.* (1) The term "kerosene, gas, oil or fuel oil" means any product (i) 10 percent of which has not been recovered when the thermometer reads 347 °F. (175 °C.), and (ii) 95 percent of which has not been recovered when the thermometer reads 464 °F. (240 °C.), when subjected to distillation in accordance with the "Standard Method of Test for Distillation of Gasoline, Naptha, Kerosene, and Similar Petroleum Products"

(A.S.T.M. designation: D86) of the American Society for Testing Materials.

(2) Products designated as kerosene, gas, oil, or fuel oil which do not fall within the specifications of both paragraphs (g)(1) (i) and (ii) of this section are taxable as special motor fuel if sold or used as a fuel in a motor vehicle or motorboat.

(h) *Fuel used in the aircraft in non-commercial aviation.* The term “fuel used in an aircraft in noncommercial aviation” means any liquid (including any product taxable under section 4081) that is sold for use or used as a fuel in an aircraft in noncommercial aviation (as defined in paragraph (j) of this section).

(i) *Registered.* The term “registered”, when used with reference to a highway vehicle, means—

(1) Registered for highway use under the laws of any State, District of Columbia, or foreign country, or

(2) Required to be registered for highway use under the law of the State, District of Columbia, or foreign country in which it is operated or situated. Any highway vehicle which is operated under a dealer’s tag, license, or permit is considered to be registered. A highway vehicle is not considered to be “registered” solely because there has been issued a special permit for operation of the vehicle at particular times and under specified conditions. However, a highway vehicle which is required to be registered and which also has been issued a special permit for operation of the vehicle under specified conditions, such as carrying an oversized load, is still considered to be “registered”.

(j) *Noncommercial aviation.* The term “noncommercial aviation” means any use of an aircraft, other than in a business of transporting persons or property for compensation or hire by air. The term also includes any use of an aircraft, in a business described in the preceding sentence, which is properly allocable to any transportation exempt from taxes imposed by sections 4261 (transportation of persons) and 4271 (transportation of property) by reason of section 4281 (use of small aircraft on

nonestablished lines) or 4282 (transportation of members of affiliated group).

[T.D. 8066, 51 FR 17, Jan. 2, 1986, as amended by T.D. 8609, 60 FR 40081, Aug. 7, 1995]

#### § 48.4041-9 Exemption for farm use.

(a) *In general.* The tax imposed by section 4041 does not apply to diesel fuel or special motor fuel, or fuel used in noncommercial aviation, sold for use or used on a farm in the United States for farming purposes. The tax applies in the case of diesel fuel delivered into the fuel supply tank of a highway vehicle, or special motor fuel delivered into the fuel supply tank of a motor vehicle or motorboat, even if it is known that the liquid fuel is to be used on a farm for farming purposes. Credit or refund of the tax paid in such case may be claimed as provided by section 6427(c) upon proof that the taxable liquid was used on a farm for farming purposes. A tax-free sale of fuel delivered into the fuel supply tank of an aircraft in noncommercial aviation where such fuel is to be used on the farm for farming purposes may be made only if the requirements of § 48.4041-11 are met. The terms “used on a farm for farming purposes”, and related terms, have the same meaning for purposes of the exemption in section 4041(f) and the regulations in this section as these terms are defined in paragraphs (1), (2), and (3) of section 6420(c) and the regulations contained in § 48.6420-4.

(b) *Application of exemption.* The exemption referred to in paragraph (a) of this section does not apply with respect to diesel fuel or special motor fuel or fuel used in noncommercial aviation sold for use or used for non-farming purposes, or diesel fuel or special motor fuel or fuel used in non-commercial aviation sold for use or used off a farm, regardless of the nature of the use. Thus, if a vehicle, motorboat, or aircraft is used both on a farm and off the farm, or if it is used on a farm both for farming and non-farming purposes, the exemption applies only with respect to that portion of the diesel fuel or special motor fuel or fuel used in noncommercial aviation which is sold for use or used “on a farm for farming purposes”. For purposes of this exemption, it is immaterial