

§ 48.4071-2 Determination of weight.

(a) *In general*—(1) *Tires*. (i) Metal rims or rim bases are not to be included in determining the total weight of a tire. However, the wire, staples, darts, clips, and other material or fastening devices which form a part of the tire or are required for its use must be included in determining the total weight of the tire. Studs are considered to be part of a tire and are to be included when determining the weight of a tire. In the case of a tubeless tire, the total weight includes the weight of the air valve and stem or any other mechanism that functions as a part of the tire and is used in connection with inflating the tire or maintaining its air pressure.

(ii) When tires are sold with metal rims or rim bases attached, the manufacturer must maintain records that will establish what portion of the total weight of the finished product represents the tire exclusive of the metal rim or rim base.

(2) *Inner tubes*. The total weight of an inner tube includes the weight of the air valve and stem or any other mechanism attached to the inner tube that is used in connection with inflating the tube or maintaining its air pressure.

(b) *Alternative method of determining weight of tires after December 31, 1983*. A manufacturer who has received permission from the Commissioner may, subject to such conditions as the Commissioner may prescribe, determine total weight of tires manufactured and sold by the manufacturer on the basis of the average weight for each type, size, grade, and classification. The average weights must be established in accordance with the method approved by the Commissioner and apply for such periods as the Commissioner may prescribe. The Commissioner may terminate the approval granted any manufacturer. In the case of the termination of the approval granted any manufacturer, the termination becomes effective 10 days from the date of the receipt by the manufacturer of the notice of termination. A manufacturer may effect termination, as of a specified date, of the privilege to determine total weight in accordance with provisions of this paragraph by giving no less than 10 days written notice of such intention to the Commissioner. The

termination of the approval given a manufacturer does not affect a manufacturer's tax liability for tires sold prior to the effective date of the notice of termination.

(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. 8152, 52 FR 31618, Aug. 21, 1987]

§ 48.4071-3 Imposition of tax on tires and tubes delivered to manufacturer's retail outlet.

(a) *General rule*. If, on or after October 1, 1966, a tire or inner tube is delivered by the manufacturer thereof to a retail outlet of the manufacturer, the manufacturer is liable for tax in respect of the tire or tube at the rate set forth in section 4071 in the same manner as if the tire or tube had been sold at the time it was delivered to the retail outlet. The amount of tax payable shall be computed in accordance with the provisions of paragraph (b)(2) of § 48.4071-1, and of § 48.4071-2.

(b) *Definition of retail outlet*. For purposes of this section, the term "retail outlet" includes the term "retail store." A retail outlet is a facility maintained by a manufacturer for selling tires or tubes at retail. A facility may be a retail outlet even though some sales are made at wholesale at such facility; see paragraph (d)(1) of this section. A facility may also be considered to a retail outlet for the purposes of this section notwithstanding that its main activity is in another area than selling tires or inner tubes. For example, if a manufacturer operates a facility for both automotive repair and the selling of tires at retail, the facility is considered a retail outlet for the purposes of this section even if the primary activity of the facility is automotive repair. No facility is considered a retail outlet for the purposes of this section if it is determined that less than 15 percent of the taxable tires and inner tubes removed from such facility are sold at retail by such facility. The determination described in the preceding sentence is made on the basis of the experience of a representative

period, of at least 12 consecutive calendar months during the 2-year period immediately preceding the first day included in the return period for which tax under section 4071(b) is reported. If a facility has not been in existence during such a 12-month period, the determination is made on the basis of the available experience of the manufacturer. See also paragraph (c)(3) of this section, relating to imposition of tax where a retail outlet is maintained as an adjunct to a production facility or distribution center.

(c) *Delivery*—(1) *In general.* A manufacturer of tires or inner tubes may, at its option, treat either of the following events as constituting delivery to a retail outlet:

(i) Delivery of tires or inner tubes to a common carrier (or, where the tires or tubes are transported by the manufacturer, the placing of the tires or tubes into the manufacturer's over-the-road vehicle) for shipment from the plant in which the tires or tubes are manufactured, or from a regional distribution center of tires and inner tubes, to a retail outlet or to a location in the immediate vicinity of a retail outlet primarily for future delivery to the retail outlet.

(ii) Arrival of the tires or tubes at the retail outlet, or, where shipment is to a location in the immediate vicinity of a retail outlet primarily for future delivery to the retail outlet, the arrival of the tires or tubes at such location.

In its excise tax return for the first return period beginning after September 30, 1966, a manufacturer of tires or inner tubes must elect to determine the date of delivery to retail outlets in accordance with one of the two subdivisions of this paragraph (c)(1) and must determine the dates of all deliveries made to all retail outlets in accordance with the subdivision which the manufacturer has elected to apply. The election may be made in a statement attached to the return for such period. Having elected to treat one of the events listed in subdivision (i) or (ii) of this paragraph (c)(1) as constituting delivery to a retail outlet for purposes of its return for the first return period after September 30, 1966, the manufacturer may not use a different criterion

for a subsequent return period unless permission of the district director is obtained in advance.

(2) *Deliveries made in the immediate vicinity of a retail outlet primarily for future delivery to the retail outlet.* (i) For purposes of this section, any delivery which is made in the immediate vicinity of a retail outlet primarily for future delivery to the retail outlet is deemed to be a delivery to the retail outlet. For the purpose of the preceding sentence, a location is considered to be in the immediate vicinity of a retail outlet if the distance between the location and the retail outlet is sufficiently small so that it is feasible to transport tires and inner tubes between the location and the retail outlet by means of dollies, fork lift trucks, pushcarts, and similar vehicles of the type normally used around the premises of factories and similar establishments, as opposed to highway motor vehicles. For the purpose of the preceding sentence, it is immaterial that a public thoroughfare must be used in order to transport tires or inner tubes to a retail outlet from another location. Tires and inner tubes delivered to a location in the immediate vicinity of a retail outlet are considered to be delivered to the location "primarily for future delivery" to the retail outlet if it is determined that a majority (by number) of the tires and tubes removed from the location are delivered to the retail outlet. The determination described in the preceding sentence is made on the basis of the experience of a representative period of at least 12 consecutive calendar months during the 2-year period immediately preceding the first day included in the return period for which tax under section 4071(b) is reported. If a facility has not been in existence during such a 12-month period, the determination is made on the basis of the available experience of the manufacturer. If it is determined that the majority of all tires and inner tubes removed from a given location are delivered to a retail outlet of the manufacturer in the immediate vicinity of the location, tax is imposed upon all tires and tubes delivered by the manufacturer to the location, even though all or part of the tires or tubes comprising a particular

shipment to the location may be intended for further transportation to a location other than the retail outlet. If it is determined that a majority of all tires and inner tubes removed from a given location are not delivered to a retail outlet of the manufacturer in the immediate vicinity of the location, tax is imposed upon the removal of a tire or inner tube from the location to the premises of the retail outlet. See also paragraph (d)(2) of this section, relating to sales by the manufacturer at facilities other than retail outlets.

(ii) The provisions of this paragraph (c)(2) may be illustrated by the following examples.

Example. A manufacturer of tires and tubes whose plant is located in City X operates two facilities in City Y; Warehouse A and Store Q. Store Q is a retail outlet within the meaning of paragraph (b) of this section, and Warehouse A is in the immediate vicinity of Store Q. During the 12-month period ending September 30, 1966, 60 percent of the tires and inner tubes removed from Warehouse A were delivered to Store Q. All tires or inner tubes delivered by the manufacturer to Warehouse A are subject to a tax under section 4071(b) and this section (unless, before such delivery, tax was imposed on the same tires and tubes).

(3) *Retail outlet maintained as adjunct of production or distribution facility.* If a retail outlet is maintained as an adjunct to and in the immediate vicinity of a facility which is not a retail outlet (as, for example, a production plant or a regional distribution center), delivery to the retail outlet is deemed to occur at the earlier of:

(i) The date when a tire or inner tube is removed from the general storage facilities in the facility which is not a retail outlet for transfer to the premises of the retail outlet, or

(ii) The date when a tire or inner tube is designated to be sold by or at the retail outlet.

(d) *Special rules—(1) Retail outlets which also sell at wholesale.* Tax applies to all shipments of tires and inner tubes delivered to a retail outlet as defined in paragraph (b)(2) of this section. Thus, for the purposes of section 4071(b) and this section, it is immaterial that all or part of the tires or inner tubes of a particular delivery to a retail outlet are intended for sale at wholesale. See also paragraph (d)(3) of this section.

(2) *Sales by manufacturer at facilities other than retail outlets.* Sales by the manufacturer of tires and inner tubes at facilities other than retail outlets are subject to tax under section 4071(a).

(3) *Deliveries of tires or tubes on which tax has been previously imposed.* (i) Tax is not imposed under section 4071(b) and this section on any tire or inner tube in respect of which there was previously imposed a tax under section 4071(a). Similarly, a tire or inner tube is taxed only once under section 4071(b) and this section.

(ii) The provisions of this paragraph (d)(3) may be illustrated by the following example:

Example. A manufacturer has two selling facilities, Store No. 1 and Store No. 2. Only retail sales are made at Store No. 2, which obtains its merchandise from Store No. 1. Assume that, although wholesaling and distribution activities are conducted at Store No. 1, the sale of tires and tubes at retail is conducted at Store No. 1 to the extent that Store No. 1 is a retail outlet within the meaning of paragraph (b) of this section, with the result that tax is imposed on deliveries by the manufacturer of tires and tubes to Store No. 1. Tax is not imposed on a delivery of tires or inner tubes from Store No. 1 to Store No. 2.

(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]

§ 48.4071-4 Original equipment tires on imported articles.

The tax imposed by section 4071(a) applies with respect to tires and inner tubes (other than bicycle tires and inner tubes) that are original equipment for an imported article upon which no tax is imposed under section 4061 if the article is sold on or after December 11, 1971. In such a case, the importer of the article is treated as the manufacturer and vendor of the tires and inner tubes with which the article is equipped. However, the tax imposed by section 4071(a) is not imposed with respect to tires and inner tubes if the imported article is an automobile bus chassis or an automobile bus body. Solely for purposes of this section, the provisions of section 4218 (relating to