

States in any fiscal year, NHTSA may release less than the full grant amounts upon initial approval of the State's application and documentation and the remainder of the full grant amounts, up to the State's proportionate share of available funds, before the end of that fiscal year. Project approval, and the contractual obligation of the Federal government to provide grant funds, shall be limited to the amount of funds released.

(b) If any amounts authorized for grants under this part for a fiscal year are expected to remain unobligated in that fiscal year, the Administrator may transfer such amounts to the programs authorized under 23 U.S.C. 410 and 23 U.S.C. 411, to ensure to the extent possible that each State receives the maximum incentive funding for which it is eligible.

(c) If any amounts authorized for grants under 23 U.S.C. 410 and 23 U.S.C. 411 are transferred to the grant program under this part in a fiscal year, the Administrator shall distribute the transferred amounts so that each eligible State receives a proportionate share of these amounts, subject to the conditions specified in § 1345.4.

Issued on: September 25, 1998.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 98-26243 Filed 9-28-98; 12:12 pm]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8784]

RIN 1545-AV89

Substantiation of Business Expenses—Use of Mileage Allowances To Substantiate Automobile Expenses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary and final regulations relating to the use of mileage allowances to substantiate automobile business expenses. The regulations affect payors who make payments and employees who receive payments under reimbursement or other expense allowance arrangements for the business use of an automobile.

DATES: *Effective date:* These regulations are effective October 1, 1998.

Applicability date: These regulations apply to transportation expenses paid or incurred after December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Donna M. Crisalli, (202) 622-4920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Section 274(d) provides that a taxpayer is not allowed a deduction or credit for certain expenses unless the expense is substantiated. These substantiation requirements apply to the expenses of use of any listed property (defined in section 280F(d)(4)), which includes any passenger automobile and any other property used as a means of transportation. The Secretary may issue regulations that provide that some or all of the substantiation requirements will not apply to expenses that do not exceed a prescribed amount.

Section 1.274(d)-1 provides, in part, that the Commissioner may prescribe rules under which mileage allowances reimbursing ordinary and necessary expenses of local travel and transportation while traveling away from home will satisfy the substantiation requirements of § 1.274-5T(c), and the requirements of an adequate accounting to the employer for purposes of § 1.274-5T(f)(4). However, § 1.274(d)-1(a)(3) provides that such mileage allowances are available only to the owner of a vehicle.

New § 1.274(d)-1T applies these substantiation rules to mileage allowances for business use of an automobile after December 31, 1997, without the limitation in § 1.274(d)-1(a)(3) that a mileage allowance is available only to the owner of a vehicle. See Rev. Proc. 97-59 (1997-52 I.R.B. 24), for rules that implement these regulations. The regulations also adopt new § 1.62-2T(e)(2) to incorporate this new rule.

Special Analyses

It has been determined that these temporary and final regulations are 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) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary and final regulations will be submitted to the

Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Edwin B. Cleverdon and Donna M. Crisalli of the Office of the Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.274(d)-1 also issued under 26 U.S.C. 274(d).

Section 1.274(d)-1T also issued under 26 U.S.C. 274(d). * * *

Par. 2. In § 1.62-2, paragraph (m) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 1.62-2 Reimbursement and other expense allowance arrangements.

* * * * *

(m) * * * Paragraph (e)(2) of this section applies to payments made under reimbursement or other expense allowance arrangements received by an employee with respect to expenses paid or incurred on or before December 31, 1997. For payments with respect to expenses paid or incurred after December 31, 1997, see § 1.62-2T(e)(2).

Par. 3. Section 1.62-2T is added to read as follows:

§ 1.62-2T Reimbursement and other expense allowance arrangements (temporary).

(a) through (e)(1) [Reserved]. For further guidance, see § 1.62-2(a) through (e)(1).

(e)(2) *Expenses governed by section 274(d).* For further guidance, see § 1.62-2(e)(2) except that each reference to § 1.274(d)-1 is deemed to be a reference to § 1.274(d)-1T.

(e)(3) through (l) [Reserved]. For further guidance, see § 1.62-2(e)(3) through (l).

(m) *Effective dates.* Paragraph (e)(2) of this section applies to payments made under reimbursement or other expense

allowance arrangements received by an employee with respect to expenses paid or incurred after December 31, 1997. For payments with respect to expenses paid or incurred on or before December 31, 1997, see § 1.62-2(e)(2).

Par. 4. Section 1.274(d)-2 is amended by adding paragraph (b) to read as follows:

§ 1.274(d)-1 Substantiation requirements.

* * * * *

(b) *Effective date.* This section applies to allowances described in paragraph (a)(2) of this section for expenses paid or incurred on or before December 31, 1997. For allowances for expenses paid or incurred after December 31, 1997, see § 1.274(d)-1T.

Par. 5. Section 1.274(d)-1T is added to read as follows:

§ 1.274(d)-1T Substantiation requirements (temporary).

(a) (1) and (2) [Reserved]. For further guidance, see § 1.274(d)-1(a)(1).

(a)(3) [Reserved].

(b) *Effective date.* This section applies to allowances described in § 1.274(d)-1(a)(2) for expenses paid or incurred after December 31, 1997. For allowances for expenses paid or incurred on or before December 31, 1997, see § 1.274(d)-1(a).

Approved: September 14, 1998.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98-26226 Filed 9-30-98; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 53

[T.D. ATF-404; Ref: Notice No. 836]

RIN 1512-AB49

Firearms and Ammunition Excise Taxes, Parts and Accessories (97R-1457P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule amends regulations relating to the manufacturers excise tax on firearms and ammunition. Under 26 U.S.C. 4181, a tax is imposed on the sale by the manufacturer, importer or producer of firearms, shells,

and cartridges. The tax is 10 percent of the sale price for pistols and revolvers, 11 percent for firearms (other than pistols and revolvers), and 11 percent for shells and cartridges. Current regulations provide that no tax is imposed by section 4181 on the sale of parts or accessories of firearms, pistols, revolvers, shells, and cartridges when sold separately or when sold with a complete firearm. This final rule amends the regulations to clarify which parts and accessories must be included in the sale price when calculating the tax on firearms.

DATES: Effective November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Marsha D. Baker, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, N.W., Washington, D.C. 20226 (202-927-8476).

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) is responsible for collecting the firearms and ammunition excise tax imposed by section 4181. The Pittman-Robertson Wildlife Restoration Act, 16 U.S.C. 669 et seq., requires that an amount equal to all of the revenue collected under section 4181 be deposited into the Federal Aid to Wildlife Restoration Fund. This Fund is apportioned to the States for hunter safety programs, maintenance of public target ranges, and wildlife and wetlands conservation.

The current regulation provides that no tax is imposed by section on the sale of parts or accessories of firearms, pistols, revolvers, shells, and cartridges when sold separately or when sold with a complete firearm. This regulation was at issue in *Auto-Ordnance Corp. v. United States*, 822 F.2d 1566 (Fed. Cir. 1987). In this case a manufacturer of firearms sued to recover excise taxes paid on sights and compensator units sold with rifles it manufactured. The manufacturer claimed that these parts were nontaxable accessories that should not be included in the taxable sale price of the rifles. The Internal Revenue Service (IRS), the agency responsible for administering the tax on firearms at that time, contended that the sights and compensator units were component parts of the rifles that must be included in the taxable sale price.

The court noted that the position of the IRS that all component parts of a "commercially complete" firearm must be included in the sale price was a concept that was not found in the regulations. Since the regulations did not specify which parts are component

parts of a firearm nor define the term "accessories," the court found that it was appropriate to look beyond the language of the regulation. The court discussed several dictionary definitions of the term "accessories" as well as tariff and customs classification cases. The court held that the sights and compensator units were nontaxable accessories since they were readily removable and of secondary or subordinate importance to the function of the firearm.

Since taking over the administration of the firearms and ammunition excise tax from the IRS in 1991, ATF has issued numerous rulings on parts and accessories. ATF has found it increasingly difficult to apply the regulation on parts and accessories as interpreted by the court in *Auto-Ordnance*. For example, the "secondary or subordinate importance" test is difficult to apply to parts that are essential for the safe operation of the firearm. Arguably, such parts are essential to the function of the firearm and should be included in the taxable sale price. However, if such parts are not needed to fire the firearm, it is possible that a Federal court, applying the rationale of *Auto-Ordnance*, would hold that such parts are nontaxable accessories.

Notice of Proposed Rulemaking

On August 29, 1996, ATF published in the **Federal Register** a notice of proposed rulemaking (Notice No. 836, 61 FR 45377) proposing to provide definitions for "component parts" that must be included in the taxable sale price and "nontaxable parts" and "nontaxable accessories" that are excluded from the taxable sale price. The notice stated that the purpose of the proposed definitions is to reinstate the longstanding "commercial completeness" test of the IRS in a manner that will withstand judicial scrutiny. The notice stated that the effect of the definitions would be to replace the readily removable/essential to the function test of the *Auto-Ordnance* case with a more objective, predictable standard to use in determining whether items sold with a firearm are includible in the tax basis.

Analysis of Comments

ATF received nine (9) written comments during the comment period in response to Notice No. 836. These comments were submitted by three (3) members of the public, four (4) Federal firearm licensees, and two (2) firearms industry organizations. All nine respondents opposed the proposed regulations.