management should consider all available evidence to evaluate the realizable value of its investment.

There are numerous factors to be considered in such an evaluation and their relative significance will vary from case to case. The staff believes that the following are only a few examples of the factors which, individually or in combination, indicate that a decline is other than temporary and that a write-down of the carrying value is required:

a. The length of the time and the extent to which the market value has been less than cost;

b. The financial condition and near-term prospects of the issuer, including any specific events which may influence the operations of the issuer such as changes in technology that may impair the earnings potential of the investment or the discontinuance of a segment of the business that may affect the future earnings potential; or

c. The intent and ability of the holder to retain its investment in the issuer for a period of time sufficient to allow for any anticipated recovery in market value.

Unless evidence exists to support a realizable value equal to or greater than the carrying value of the investment, a write-down accounted for as a realized loss should be recorded. In accordance with the guidance of paragraph 11 of Statement No. 12, such loss should be recognized in the determination of net income of the period in which it occurs. The written down value of the investment in the company becomes the new cost basis of the investment.

Question 2: When management determines that a write-down, accounted for as a realized loss, is necessary, how should the amount of the write-down be determined?

Interpretive Response: The carrying value of the investment should be written down to reflect realizable value. The particular facts and circumstances dictate the amount of realized loss to be recognized on a case by case basis.

* * * * *

[FR Doc. 85-21918 Filed 9-12-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Tylosin

Correction

In FR Doc. 85-18558 beginning on page 31708 in the issue of Tuesday, August 6, 1985, make the following correction:

On page 31708, third column, under **"FOR FURTHER INFORMATION CONTACT"**, second line, "(HFV-35)" should read "(HFV-135)".

BILLING CODE 1505-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Iron Hydrogenated Dextran Injection.

Correction

In FR Doc. 85-18559 appearing on page 31709 in the issue of Tuesday, August 6, 1985, make the following correction:

In the third column, fourth line, insert the word "Injectable." after "Animal drugs,".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 5f and 602

[T.D. 8052]

Reporting of State and Local Income Tax Refunds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the reporting of State and local income tax refunds. Changes to the applicable law were made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Tax Reform Act of 1984. The regulations affect all persons who, with respect to individuals, make payments of refunds of State and local income taxes, or allow credits or offsets with respect to such taxes, and provide them with the guidance to comply with the law.

DATES: The regulations are effective for refunds made, and credits and offsets allowed, after December 31, 1982.

FOR FURTHER INFORMATION CONTACT: Alice M. Bennett of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3238 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1983, the **Federal Register** published temporary regulations (48 FR 41385) and proposed amendments (48 FR 41436) to the Income Tax Regulations (26 CFR Part 1) under section 6050E of the Internal Revenue Code of 1954. These amendments were proposed to provide rules relating to the information reporting of State and local income tax refunds, credits, and offsets under section 6050E of the Code. Section 6050E was added to the Code by section 313 of the Tax Equity and Fiscal Responsibility Act of 1982. (96 Stat. 603). Section 6050E subsequently was amended by section 151 of the Tax Reform Act of 1984 (98 Stat. 690).

Five written comments were received with respect to the proposed amendments to the regulations. A public hearing was not held. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision. The Treasury decision also reflects the changes made to section 6050E by the Tax Reform Act of 1984.

Tax Reform Act of 1984

Section 6050E as originally enacted did not provide any exception to the reporting requirement or the requirement to furnish statements to taxpayers with respect to a refund, credit or offset made or allowed to a taxpayer who did not claim itemized deductions for Federal income tax purposes for the taxable year giving rise to the refund, credit, or offset. The temporary and proposed regulations, however, provide that a refund officer need not make an information return or send a statement to the applicable taxpayer if the refund officer can verify that the taxpayer did not claim itemized deductions for Federal income tax purposes for the taxable year giving rise to the refund, credit, or offset.

The Tax Reform Act of 1984 amended section 6050E to provide an exception only to the requirement to furnish statements to taxpayers if it can be determined, in the manner provided by regulations, that the applicable taxpayer did not claim itemized deductions for Federal Income tax purposes for the taxable year giving rise to the refund, credit, or offset. The amendment is effective for refunds, credits, and offsets made or allowed after December 31, 1982. Congress intended that a refund officer be required to make an information return with respect to itemizers and non-itemizers who receive a refund, credit, or offset of State or local income taxes. Therefore, the Treasury decision provides that a refund officer need not send a statement to a taxpayer with respect to a refund, credit, or offset of personal income taxes if the refund officer can verify, in the manner

provided by the regulations, that the taxpayer did not claim itemized deductions for Federal income tax purposes for the taxable year giving rise to the refund, credit, or offset. The refund officer, however, must make an information return with the Internal Revenue Service with respect to those refunds, credits, and offsets.

Public Comments

The temporary and proposed regulations provide that a refund officer can verify that a taxpayer did not claim itemized deductions for Federal income tax purposes for the taxable year giving rise to the refund, credit or offset only from the three sources listed in the regulations. The first listed source of verification is a copy of Schedule A of the individual's Federal income tax return if the copy is required to be attached to the State or local income tax return. The second listed source is the State or local income tax return if transcription of information from schedule A of the Federal return on the State or local income tax return is required for the purpose of computing liability for the State or local income tax. The third listed source is information obtained through a voluntary information exchange agreement with the United States for the applicable taxable year.

One comment suggested that the list of sources for verification of non-itemization be expanded to include information transcribed on the State or local income tax return from the Federal return (other than schedule A), where the information can be used by the refund officer to determine independently whether the taxpayer itemized deductions for Federal income tax purposes. The Service believes, however, that for verification purposes the transcription of such information on the State or local income tax return must be required by the State or local taxing authority for the purpose of computing the taxpayer's liability for the State or local income tax. The Service believes that this additional requirement is necessary in order to ensure that the transcribed information will be subject to the same checks for accuracy as other information on the State or local income tax return. Consequently, the Treasury decision provides that, in addition to the sources of verification set forth in the temporary and proposed regulations, information transcribed from the Federal return (other than Schedule A) on the State or local income tax return may be used to verify non-itemization if two conditions are met. First, the transcription of the information must be required for the purpose of computing liability for the State or local income tax. Second, the information must be such that the refund officer can determine conclusively from that information whether the taxpayer itemized deductions for Federal income tax purposes.

The Treasury decision also clarifies that the State or local income tax return is the source of verification in cases where a copy of Schedule A of the Federal return is required to be attached to the State or local income tax return, or where transcription of information from Schedule A of the Federal return is required for the purpose of computing liability for the State or local income tax. In this connection, the Treasury decision provides that the omission of a copy of the Schedule A, or of information required to be transcribed from the Schedule A, must be consistent with the taxpayer's computation of tax on the State or local income tax return. In addition, the information contained on the Schedule A must be required for the purpose of computing liability for the State or local income tax.

The remaining comments suggested revisions to the regulations that either would have conflicted with the express statutory language of section 6050E, or would have placed an unreasonable burden on refund officers by requiring them to determine whether taxpayers who itemized deductions for Federal tax purposes received a tax benefit from the payment to which the State or local income tax refund, credit or offset is attributable. These suggestions were not adopted.

In particular, several comments suggested that the regulations be revised to allow a refund officer to furnish the required statement to the applicable taxpayers at any time before the end of January of the calendar year following the calendar year in which the refund is paid or the credit or offset is allowed. Section 6050E(b), however, provides that the statement must be furnished to the taxpayer during January of the calendar year following the calendar year in which the refund is paid or the credit or offset is allowed. This requirement was not changed by the Tax Reform Act of 1984. Therefore, in accordance with section 6050E(b), the Treasury decision retains the rule contained in the temporary and proposed regulations that the statement must be furnished to the taxpayer during January of the calendar year following the calendar year in which the refund is paid or the credit or offset is allowed.

Special Analyses

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although a notice of proposed rulemaking soliciting public comments was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 533 do not apply. Accordingly, these regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these regulations is Alice M. Bennett of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR 1.6001–1—1.6109–2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 5f

Income taxes, Filing requirements, Tax Equity and Fiscal Responsibility Act of 1982.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1, 5f, and 602 are amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

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

Section 1.6050E–1 also issued under 26 U.S.C. 6050E.

Par. 2. Section 1.6050E–1 is added to Part 1 at the appropriate place:

§ 1.6050E-1 Reporting of State and local income tax refunds.

(a) *Applicability.* Section 6050E and this section apply to any refund officer who, with respect to an individual, makes payments of refunds of State or local income taxes or allows credits or offsets with respect to such taxes aggregating $10 or more for such individual in any calendar year.

(b) *Definitions.* For purposes of this section,—

(1) The term "refund officer" means the officer or employee of a State or local taxing jurisdiction having control of payments of refunds or the allowance of credits or offsets, or the person appropriately designated for purposes of this section.

(2) The term "State" shall include the District of Columbia but shall not include the Commonwealth of Puerto Rico or any possession of the United States.

(3) The terms "individual" shall not include an estate or trust.

(4) The term "credit or offset" means an overpayment of tax which, in lieu of being refunded to the taxpayer, is:

(i) Applied against an existing liability of the taxpayer,

(ii) Available for application against a future liability of the taxpayer, or

(iii) Otherwise used or available for use for the taxpayer's benefit.

(c) *Requirement of reporting.* Every refund officer described in paragraph (a) of this section shall make an information return in accordance with this section for each calendar year. An information return must be made even if the refund officer is not required to furnish a statement to the applicable taxpayer under paragraph (k)(2) of this section.

(d) *Prescribed Form.* Except as otherwise provided in paragraph (i) of this section, the information return required by paragraph (c) of this section shall be made on Forms 1096 and 1099.

(e) *Refunds involving different taxable years.* In the case of refunds paid or credits or offsets allowed during a calendar year with respect to two or more taxable years of an individual, a separate Form 1099 shall be filed with respect to each taxable year of the individual. Thus, if during calendar year 1983 a refund officer pays to an individual a refund of $15 with respect to that individual's taxable year ending in 1982 and $20 with respect to that individual's taxable year ending in 1981, a separate Form 1099 shall be filed for each of the two payments. If, instead, the refund with respect to the individual's taxable year ending in 1982 were $5 instead of $15, no return would be required for the payment of $5.

(f) *Information required.* The information required to be reported on Forms 1096 and 1099 includes the aggregate amount of refunds, credits, and offsets made or allowed during the calendar year with respect to the taxable year of the individual covered by the return; the name, address and taxpayer identification number of the individual with respect to whom such payment, credit, or offset was made or allowed; the taxable year covered by the return; and such other information as may be required by the forms. In addition, the nature of the tax is required to be indicated on the Form 1099 in any case where the refund, credit or offset is made or allowed with respect to a payment attributable to an income tax that applies exclusively to income from a trade or business and is not a tax of general application.

(g) *When credit or offset deemed allowed.* For purposes of a return of information under this section, a credit or offset is deemed to be allowed when the liability to pay or credit such amount is admitted by the State or local taxing jurisdiction. Thus, if an amount with respect to a taxpayer's 1982 taxable year is credited in 1983 to reduce the liability of the taxpayer to make estimated tax payments in 1983, it is reportable as a credit allowed in 1983. It is not reportable in the taxable year that gives rise to the refund, credit or offset.

(h) *Time and place for filing.* The returns required under this section for any calendar year shall be filed after September 30 of that calendar year, but not before the refund officer's final payment (or allowance of credit or offset) for the year, and on or before February 28 of the following year. Returns shall be filed with the appropriate Internal Revenue Service Center, the addresses of which are listed in the instructions for Forms 1099. For extensions of time for filing returns under this section, see § 1.6081-1.

(i) *Use of magnetic media and substitute forms*—(1) *Magnetic media.* A refund officer may be required to file the Forms 1099 required by this section on magnetic media or machine-readable paper forms. See section 6011(e) and applicable regulations and revenue procedures thereunder. If a refund officer is not required to file the Forms 1099 required by this section on magnetic media, the refund officer may request permission under applicable regulations and revenue procedures to submit the information required by this section on magnetic media.

(2) *Substitute forms.* A refund officer may prepare and use a form which contains provisions identical with those of Form 1096 if the refund officer complies with all revenue procedures relating to substitute Form 1096 in effect at that time. In addition, if a refund officer is not required to file the Forms 1099 required by this section on magnetic media or machine-readable paper forms, the refund officer may prepare and use a form which contains provisions identical with those of Form 1099 if the refund officer complies with all revenue procedures relating to substitute Form 1099 in effect at that time.

(j) *Voluntary information exchange agreements.* The requirements of reporting information to the Internal Revenue Service under this section may be satisfied for any calendar year by submission of the information required under paragraph (f) of this section in accordance with the terms of a voluntary information exchange agreement between the State and the United States in effect during such year.

(k) *Requirement of furnishing statements to recipients*—(1) *In general.* Except as provided in paragraph (k)(2) of this section, every refund officer required to make a return of information under this section shall furnish to the individual whose identifying number is required to be shown on the return a written statement showing the aggregate amount shown on the information return of refunds, credits and offsets made or allowed to such individual with respect to each taxable year of the individual, the name of the State or local taxing jurisdiction paying such refund or allowing such credits or offsets, the taxable year giving rise to the refund, credit or offset and a legend stating that such amount is being reported to the Internal Revenue Service. The requirement of this paragraph may be met by furnishing to the individual a copy of the Form 1099 filed with respect to that individual provided that the form bears a legend stating that such amount is being reported to the Internal Revenue Service. For purposes of this paragraph, a statement shall be considered to be furnished to an individual if it is mailed to the individual at the individual's last known address.

(2) *Exception for nonitemizers.* A refund officer need not furnish a statement to an individual under paragraph (k)(1) of this section if the refund officer verifies that the individual did not claim itemized deductions for Federal income tax purposes for the taxable year giving rise to the refund, credit, or offset. This exception shall not apply, however, if the refund, credit, or offset is made or allowed with respect to a payment attributable to an income tax that applies exclusively to income from

a trade or business and is not a tax of general application. For purposes of this paragraph (k)(2), verification shall be made solely from—

(i) The State or local income tax return, or

(ii) Information obtained through a voluntary information exchange agreement with the United States for the applicable taxable year.

(3) *Verification from the State or local income tax return.* A refund officer shall verify from the State or local income tax return that an individual did not claim itemized deductions for Federal income tax purposes for the applicable taxable year only if—

(i)(A) An individual who itemized deductions for Federal income tax purposes either must attach a copy of Schedule A of the individual's Federal income tax return to the State or local income tax return or must transcribe information from Schedule A of the individual's Federal income tax return on the State or local income tax return;

(B) The information contained on or transcribed from the Schedule A is required for the purpose of computing liability for the State or local income tax; and

(C) The omission of a copy of the Schedule A, or of the information required to be transcribed from the Schedule A, is consistent with the taxpayer's computation of tax on the State or local income tax return; or

(ii) Individuals are required to transcribe information from their Federal income tax return (other than from Schedule A) on the State or local income tax return for the purpose of computing liability for the State or local income tax and the information can be used to determine conclusively whether the taxpayer itemized deductions for Federal income tax purposes.

(4) *Example.* The provisions of paragraph (k)(3)(ii) of this section may be illustrated by the following example:

Example. State X asks for transcription of the following information on its 1983 income tax return from the taxpayer's 1983 Federal income tax return: Adjusted gross income; taxable income; and number of exemptions claimed. The amount of adjusted gross income and the number of exemptions claimed on the Federal income tax return are taken into account in computing the liability for income tax under the laws of State X. The amount of taxable income transcribed from the Federal return, however, does not enter into the computation of liability for income tax under the laws of State X. Thus, this amount may not be taken into account by the refund officer of State X for purposes of verifying whether a taxpayer itemized deductions for Federal income tax purposes. Since the refund officer of State X will not be able to determine conclusively from the amount of adjusted gross income and the number of exemptions transcribed from the Federal return whether a taxpayer itemized deductions for Federal income tax purposes, the transcribed information does not meet the requirements of paragraph (k)(3)(ii) of this section.

(l) *Time for furnishing statements*—(1) *General rule.* The statement required under paragraph (k) of this section shall be furnished after December 31 of the year in which the refund is paid or credit or offset is allowed, and on or before January 31 of the following year.

(2) *Extensions of time.* For good cause shown upon written application of the refund officer, the service center director may grant an extension of time not exceeding 30 days in which to furnish statements under this paragraph. The application shall be addressed to the Service Center with which the Forms 1099 required under this section are required to be filed and shall contain a concise statement of the reasons for requesting the extension to aid the service center director in determining the period of the extension, if any, which will be granted. The application shall state at the top of the first page that it is made under this section and shall be signed by the refund officer. In general, the application shall be filed after September 30 of the year in which the refund is paid or credit or offset is allowed, and before January 15 of the following year.

(m) *Effective date.* This section applies to payments of refunds and credits and offsets allowed after December 31, 1982.

Temporary Income Tax Regulations Under the Tax Equity and Fiscal Responsibility Act of 1982

PART 5f—[AMENDED]

Par. 3. The authority for Part 5f is revised to read as set forth below and the authority citations following all sections in Part 5f are removed:

Authority: 26 U.S.C. 7805. Sections 5f.103–1 and 5f.163–1 also issued under 26 U.S.C. 103(j), 26 U.S.C. 163(f), and 96 stat. 595. Section 5f.6045–1 also issued under 26 U.S.C. 6045.

§ 5f.605E–1 [Removed]

Par. 4. Part 5f of 26 CFR is amended by removing § 5f.6050E–1.

OMB Control Numbers Under the Paperwork Reduction Act

PART 602—[AMENDED]

Par. 5. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.6050E–1 . . . 1545–0120".

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 12, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85–21983 Filed 9–12–85; 8:45 am]

BILLING CODE 4830–10–M

26 CFR Parts 145 and 602

[T.D. 8050]

Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors; Reporting and Recordkeeping Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to the excise tax imposed on the retail sale of heavy trucks, truck trailers and semitrailers, and tractors. Changes in the applicable tax law were made by the Highway Revenue Act of 1982 (Title V of the Surface Transportation Assistance Act of 1982). These regulations affect manufacturers, producers, importers, dealers, and retailers of these vehicles and will provide them with the guidance needed to comply with the law.

DATES: These regulations are effective for heavy trucks, truck trailers and semitrailers, and tractors sold on or after April 1, 1983.

FOR FURTHER INFORMATION CONTACT: John Broadbent of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T (202–566–3287, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Temporary Excise Tax Regulations (26 CFR Part 145) under section 4052 of the Internal Revenue Code of 1954 (Code) relating to the excise tax on the sale of heavy trucks, truck trailers and semitrailers, and tractors. These amendments conform the regulations to section 512 of the Highway Revenue Act of 1982 (Title V of the Surface Transportation Assistance Act of 1982) (Pub. L. 97–424). The temporary regulations provided by this document will remain in effect until

superseded by final regulations on this subject.

Temporary regulation § 145.4052–1, relating to the excise tax on heavy trucks, truck trailers and semitrailers, and tractors, was published in the Federal Register on April 4, 1983 (T.D. 7882) (48 FR 14361). These regulations generally provided that the sale of a heavy vehicle to a purchaser who intends to lease the vehicle long term is not a first retail sale.

Summary of Changes in Temporary Regulation

This document amends § 45.4052–1 (a), (b), and (f) by revising the rules relating to the definition of the first retail sale of a vehicle. Under the new rules, the distinction between long-term and short-term leasing has been eliminated.

If a lease is entered into by the manufacturer, producer, or importer of the vehicle, both the prior rules and the revised rules provide that the first retail sale occurs when the vehicle is leased. Under the revised rules, if a vehicle is sold by the manufacturer, producer, or importer, the sale is treated as the first retail sale unless either (a) the purchaser is not in the business of leasing and intends to resell the vehicle, or (b) the seller and the purchaser register under section 4222, and the purchaser certifies that it intends to resell the vehicle. If a vehicle is sold tax-free but is later leased by the purchaser, the leasing of the vehicle will be deemed to be the first retail sale.

No change has been made to the existing temporary regulations with respect to the event triggering liability for the tax. Under all circumstances, the entire tax is due at the time the first retail sale occurs.

These revised temporary rules apply to sales made on or after April 1, 1983, the effective date of section 4051, with specified transitional rules. In no case, under these transitional rules, will tax be imposed on a vehicle under both the existing temporary regulations and the revised temporary regulations.

In determining the tax base of a vehicle, the retail value of the tires on the vehicle is excluded under section 4052(b)(1)(B)(iii). Under both the existing and the revised regulations, this value is the lowest established price at which the retailer would sell the tires. The existing temporary regulations provide as a safe-harbor rule that if a vehicle retailer has no lowest established price for tires, a price is not unreasonable if it is no more than 50 percent of the tire manufacturer's suggested retail price. This rule permits the tax base to be affected by a price that has no bearing on the actual sales price of the tires and is subject to considerable variation among tire manufacturers. Accordingly, this safe-harbor rule is deleted in these revised temporary regulations, effective prospectively.

Need for Temporary Regulations

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Special Analyses

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C Chapter 6) does not apply, and no regulatory flexibility analysis is required for this rule. The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required.

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these regulations is John Broadbent of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR Part 145

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

26 CFR Part 145 and Part 602 are amended as follows:

PART 145—TEMPORARY EXCISE TAX REGULATIONS UNDER THE HIGHWAY REVENUE ACT OF 1982 (PUB. L. 97–424)

Paragraph 1. The authority citation for Part 145 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 145.4052–1 also issued under 26 U.S.C. 4052(d).

Par. 2. Section 145.4052–1 is amended as follows:

(a) Paragraph (a) is revised to read as set forth below.

(b) Paragraph (b) is revised to read as set forth below.

(c) The last sentence of paragraph (d)(2)(iii) is amended by adding at the beginning thereof, "For vehicles sold on or after April 1, 1983, and before [the date 30 days after publication of this document in the **Federal Register**],".

(d) Paragraph (f) is revised to read as set forth below.

§ 145.4052–1 Special rules and definitions.

(a) *First retail sale*—(1) *In general.* For purposes of § 145.4051–1, the term "first retail sale" means the first sale of an article after manufacture, production or importation. The sale of an article to a purchaser who is not engaged in the business of leasing and who intends to resell the article, is not a first retail sale. In addition, the sale of an article to a purchaser who is engaged in the business of leasing to any extent will not be considered a first retail sale if the purchaser and the seller are registered under § 48.4222(a)–1, and the seller in good faith accepts a proper certification, as provided in paragraph (a)(3) of this section, from the purchaser that the purchaser intends to resell the article. The first sale of an article following a tax-free sale of the article shall be considered the first retail sale of the article, unless the subsequent sale qualifies as a tax-free sale under either of the two preceding sentences or under section 4221. An intent to lease an article is not considered an intent to resell the article for purposes of this section. The fact that articles are sold in wholesale lots, or at wholesale prices, will not change the character of such sales as first retail sales if the purchaser is not engaged in the business of reselling such articles and acquires them for the purpose of using them rather than reselling them.

(2) *No installment payments of tax.* If the first retail sale is a lease, an installment sale, or another form of sale under which the sales price is paid in installments, then the liability for the entire tax arises at the time of the lease or installment sale. No portion of the tax

is deferred by reason of the fact that the sales price is paid in installments.

(3) *Certificate.* A certificate signed by the purchaser, or an officer or employee authorized by the purchaser to sign the certificate, may be accepted by a seller in support of a tax-free sale to the purchaser. The certificates and proper records of invoices, orders, etc., relating to tax-free sales must be retained by the seller as provided in section 6001 and the regulations thereunder. The certificates shall be substantially in the following form:

Exemption Certificate

I hereby certify that I am (Title) of (Name of purchaser), that I am authorized to execute this certificate, and that the vehicles specified in the accompanying order, or on the reverse side hereof, (or all orders placed by the purchaser for the two year period commencing ————) are purchased for resale and not for the purpose of leasing. I have filed Form 637 and have received registration number ——

I understand that the fraudulent use of this certificate to secure exemption will subject me and all parties making such fraudulent use to a fine of not more than $10,000, or to imprisonment for not more than 5 years, or both, together with costs of prosecution.

(Signature) ————————————

(Address) ————————————

(4) *Registration.* Section 4222 and the regulations thereunder shall apply to tax-free sales made under this section.

(b) *Lease treated as first retail sale*—(1) *In general.* For purposes of this section and § 145.4051-1, the leasing of an article before the first retail sale (within the meaning of paragraph (a) of this section) of the article shall be considered the first retail sale of the article. This rule applies without regard to the term of the lease. Thus, if a manufacturer leases an article prior to sale, or if a purchaser purchases an article tax free under paragraph (a) (1) of this section or section 4221 and then leases it, the leasing of the article will be deemed to be the first retail sale.

(2) *Computation of tax.* When a lease is treated as the first retail sale under paragraph (b) (1) of this section, the tax shall be computed on a constructive sales price established by the Commissioner as if such article were sold at retail on the date the lease is made.

* * * * *

(f) *Effective date*—(1) *In general.* The provisions of this section shall be effective for articles sold or leased on or after April 1, 1983. However, if a sale to a lessor before November 12, 1985, would have been tax free under § 145.4052-1 of the temporary regulations contained in 26 CFR part 145 revised as of April 1, 1984, (the "prior regulations") and it was so treated by the parties, a subsequent sale or lease that was or would have been treated as the first retail sale of the vehicle under the prior regulations will be treated as the first retail sale for purposes of this section. For example, if a vehicle was sold to a purchaser who intended to lease it long term, the sale would have been tax free under the prior regulations. If such a sale was treated as tax free by the parties, and the purchaser later sells the vehicle or leases it long term, the sale or lease will be treated as the first retail sale of the vehicle.

(2) *Vehicle subject to tax only once.* In no case will tax be imposed on the first retail sale of a vehicle under both the prior regulations and this section. If, under the prior regulations, tax was properly paid on the first retail sale of a vehicle, and if the amount of the tax determined under the prior regulations is greater than the amount of tax that would be imposed upon the first retail sale of the vehicle as determined under this section, then the taxpayer shall be entitled to a refund of the difference. For example, if under the prior regulations a lessor treated a long-term lease of a vehicle as a first retail sale, and paid tax upon making the lease, the taxpayer may claim a refund of any excess of the tax paid under the prior regulations (based on a constructive sales price) over the tax that would be imposed under this section (based on the sales price charged the lessor by the manufacturer or other seller). No additional tax would be payable under this section by a manufacturer that treated the sale of the vehicle to a lessor as a tax-free sale under the prior regulations.

PART 602—REPORTING AND RECORDKEEPING REQUIREMENTS

Par. 3. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table:

"§ 145.4052-1 ..... 1545-0745"

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: August 30, 1985.

Ronald A. Pearlman,
Assistant Secretary of the Treasury.

[FR Doc. 85-21984 Filed 9-12-85; 8:45 am]

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DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

Correction

In FR Doc. 85-21325, beginning on page 36420 in the issue of Friday, September 6, 1985, make the following correction: On page 36421, in the middle column, between the seventh and eighth lines insert ", where feasible, as part of the prisoner's parole release plan,".

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Coke Oven Emissions Standard; Conforming Deletions

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; Deletion of portions of standard to conform with court decision.

SUMMARY: OSHA is deleting certain terms from the permanent standard governing employee exposure to coke oven emissions [29 CFR 1910.1029] to conform the standard to the decision of the United States Court of Appeals for the Third Circuit in the case of *American Iron and Steel Institute et al. v. Occupational Safety and Health Administration*, 577 F.2d 825 (3d Cir. 1978), *cert. dismissed*, 448 U.S. 917, 101 S. Ct. 38, 65 L. Ed. 2d 1180 (1980). The deletions implement the Court's interpretation of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) that the Secretary of Labor lacks statutory authority to place an affirmative duty on each employer to research and develop new technology to reduce exposures to coke oven emissions. The deletions also respond to