

**§ 4052. Definitions and special rules****(a) First retail sale**

For purposes of this subchapter—

**(1) In general**

The term “first retail sale” means the first sale, for a purpose other than for resale or leasing in a long-term lease, after production, manufacture, or importation.

**(2) Leases considered as sales**

Rules similar to the rules of section 4217 shall apply.

**(3) Use treated as sale****(A) In general**

If any person uses an article taxable under section 4051 before the first retail sale of such article, then such person shall be liable for tax under section 4051 in the same manner as if such article were sold at retail by him.

**(B) Exemption for use in further manufacture**

Subparagraph (A) shall not apply to use of an article as material in the manufacture or production of, or as a component part of, another article to be manufactured or produced by him.

**(C) Computation of tax**

In the case of any person made liable for tax by subparagraph (A), the tax shall be computed on the price at which similar articles are sold at retail in the ordinary course of trade, as determined by the Secretary.

**(b) Determination of price****(1) In general**

In determining price for purposes of this subchapter—

(A) there shall be included any charge incident to placing the article in condition ready for use,

(B) there shall be excluded—

(i) the amount of the tax imposed by this subchapter,

(ii) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and

(iii) the value of any component of such article if—

(I) such component is furnished by the first user of such article, and

(II) such component has been used before such furnishing, and

(C) the price shall be determined without regard to any trade-in.

**(2) Sales not at arm's length**

In the case of any article sold (otherwise than through an arm's-length transaction) at less than the fair market price, the tax under this subchapter shall be computed on the price for which similar articles are sold at retail in the ordinary course of trade, as determined by the Secretary.

**(3) Long-term lease****(A) In general**

In the case of any long-term lease of an article which is treated as the first retail sale of such article, the tax under this subchapter shall be computed on a price equal to—

(i) the sum of—

(I) the price (determined under this subchapter but without regard to paragraph (4)) at which such article was sold to the lessor, and

(II) the cost of any parts and accessories installed by the lessor on such article before the first use by the lessee or leased in connection with such long-term lease, plus

(ii) an amount equal to the presumed markup percentage of the sum described in clause (i).

**(B) Presumed markup percentage**

For purposes of subparagraph (A), the term “presumed markup percentage” means the average markup percentage of retailers of articles of the type involved, as determined by the Secretary.

**(C) Exceptions under regulations**

To the extent provided in regulations prescribed by the Secretary, subparagraph (A) shall not apply to specified types of leases where its application is not necessary to carry out the purposes of this subsection.

**(4) Special rule where tax paid by manufacturer, producer, or importer****(A) In general**

In any case where the manufacturer, producer, or importer of any article (or a related person) is liable for tax imposed by this subchapter with respect to such article, the tax under this subchapter shall be computed on a price equal to the sum of—

(i) the price which would (but for this paragraph) be determined under this subchapter, plus

(ii) the product of the price referred to in clause (i) and the presumed markup percentage determined under paragraph (3)(B).

**(B) Related person**

For purposes of this paragraph—

**(i) In general**

Except as provided in clause (ii), the term “related person” means any person who is a member of the same controlled group (within the meaning of section 5061(e)(3)) as the manufacturer, producer, or importer.

**(ii) Exception for retail establishment**

To the extent provided in regulations prescribed by the Secretary, a person shall not be treated as a related person with respect to the sale of any article if such article is sold through a permanent retail establishment in the normal course of the trade or business of being a retailer.

**(c) Certain combinations not treated as manufacture****(1) In general**

For purposes of this subchapter (other than subsection (a)(3)(B)), a person shall not be treated as engaged in the manufacture of any article by reason of merely combining such article with any item listed in paragraph (2).

**(2) Items**

The items listed in this paragraph are any coupling device (including any fifth wheel), wrecker crane, loading and unloading equipment (including any crane, hoist, winch, or power liftgate), aerial ladder or tower, snow and ice control equipment, earthmoving, excavation and construction equipment, spreader, sleeper cab, cab shield, or wood or metal floor.

**(d) Certain other rules made applicable**

Under regulations prescribed by the Secretary, rules similar to the rules of subsections (c) and (d) of section 4216 (relating to partial payments) shall apply for purposes of this subchapter.

**(e) Long-term lease**

For purposes of this section, the term “long-term lease” means any lease with a term of 1 year or more. In determining a lease term for purposes of the preceding sentence, the rules of section 168(i)(3)(A) shall apply.

**(f) Certain repairs and modifications not treated as manufacture****(1) In general**

An article described in section 4051(a)(1) shall not be treated as manufactured or produced solely by reason of repairs or modifications to the article (including any modification which changes the transportation function of the article or restores a wrecked article to a functional condition) if the cost of such repairs and modifications does not exceed 75 percent of the retail price of a comparable new article.

**(2) Exception**

Paragraph (1) shall not apply if the article (as repaired or modified) would, if new, be taxable under section 4051 and the article when new was not taxable under such section or the corresponding provision of prior law.

**(g) Regulations**

The Secretary shall prescribe regulations which permit, in lieu of any other certification, persons who are purchasing articles taxable under this subchapter for resale or leasing in a long-term lease to execute a statement (made under penalties of perjury) on the sale invoice that such sale is for resale. The Secretary shall not impose any registration requirement as a condition of using such procedure.

(Added Pub. L. 97-424, title V, §512(b)(1), Jan. 6, 1983, 96 Stat. 2175; amended Pub. L. 98-369, div. A, title VII, §§731, 735(b)(2), July 18, 1984, 98 Stat. 976, 981; Pub. L. 100-17, title V, §§505(a)-(c), 506(a), Apr. 2, 1987, 101 Stat. 258, 259; Pub. L. 100-647, title VI, §6111(a), Nov. 10, 1988, 102 Stat. 3713; Pub. L. 105-34, title XIV, §§1402(b), 1434(a), (b), Aug. 5, 1997, 111 Stat. 1046, 1052; Pub. L. 105-206, title VI, §6014(c), July 22, 1998, 112 Stat. 820.)

## PRIOR PROVISIONS

A prior section 4052, act Aug. 16, 1954, ch. 736, 68A Stat. 479, provided that lease of an article would be considered the sale of article for excise tax purposes, prior to repeal by Pub. L. 94-455, title XIX, §1904(a)(1)(D), Oct. 4, 1976, 90 Stat. 1811.

## AMENDMENTS

1998—Subsec. (f)(2). Pub. L. 105-206 substituted “such section” for “this section”.

1997—Subsec. (b)(1)(B)(ii) to (iv). Pub. L. 105-34, §1402(b), inserted “and” at end of cl. (ii), redesignated cl. (iv) as (iii), and struck out former cl. (iii) which read as follows: “the fair market value (including any tax imposed by section 4071) at retail of any tires (not including any metal rim or rim base), and”.

Subsec. (d). Pub. L. 105-34, §1434(b)(1), substituted “rules of subsections (c) and (d) of section 4216 (relating to partial payments) shall apply” for “rules of—

“(1) subsections (c) and (d) of section 4216 (relating to partial payments), and  
“(2) section 4222 (relating to registration), shall apply”.

Subsec. (e). Pub. L. 105-34, §1434(a), redesignated subsec. (f) as (e).

Subsec. (f). Pub. L. 105-34, §1434(a), added subsec. (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 105-34, §1434(b)(2), added subsec. (g).

1988—Subsec. (a)(1). Pub. L. 100-647 substituted “production, manufacture” for “manufacture, production”.

1987—Subsec. (a)(1). Pub. L. 100-17, §505(a), inserted “or leasing in a long-term lease” after “resale”.

Subsec. (b)(3). Pub. L. 100-17, §505(b), added par. (3).

Subsec. (b)(4). Pub. L. 100-17, §506(a), added par. (4).

Subsec. (f). Pub. L. 100-17, §505(c), added subsec. (f).

1984—Subsec. (b)(1)(B)(iv). Pub. L. 98-369, §731, added cl. (iv).

Subsec. (c). Pub. L. 98-369, §735(b)(2), in amending subsec. (c) generally, designated existing provisions as par. (1), in par. (1) as so designated substituted “by reason of merely combining such article with any article listed in paragraph (2)” for “with any equipment or other item listed in section 4063(d)”, and added par. (2).

## EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

## EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1402(b) of Pub. L. 105-34 effective Jan. 1, 1998, see section 1402(c) of Pub. L. 105-34, set out as a note under section 4051 of this title.

Pub. L. 105-34, title XIV, §1434(c), Aug. 5, 1997, 111 Stat. 1052, provided that: “The amendments made by this section [amending this section] shall take effect on January 1, 1998.”

## EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title VI, §6111(b), Nov. 10, 1988, 102 Stat. 3713, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1988.”

## EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-17, title V, §505(d), Apr. 2, 1987, 101 Stat. 259, provided that: “The amendments made by this section [amending this section] shall apply with respect to articles sold by the manufacturer, producer, or importer on or after the first day of the first calendar quarter which begins more than 90 days after the date of the enactment of this Act [Apr. 2, 1987].”

Pub. L. 100-17, title V, §506(b), Apr. 2, 1987, 101 Stat. 259, provided that: “The amendment made by this section [amending this section] shall apply with respect to

articles sold by the manufacturer, producer, or importer on or after the 1st day of the 1st calendar quarter which begins more than 90 days after the date of the enactment of this Act [Apr. 2, 1987].”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

**§ 4053. Exemptions**

No tax shall be imposed by section 4051 on any of the following articles:

**(1) Camper coaches bodies for self-propelled mobile homes**

Any article designed—

(A) to be mounted or placed on automobile trucks, automobile truck chassis, or automobile chassis, and

(B) to be used primarily as living quarters or camping accommodations.

**(2) Feed, seed, and fertilizer equipment**

Any body primarily designed—

(A) to process or prepare seed, feed, or fertilizer for use on farms,

(B) to haul feed, seed, or fertilizer to and on farms,

(C) to spread feed, seed, or fertilizer on farms,

(D) to load or unload feed, seed, or fertilizer on farms, or

(E) for any combination of the foregoing.

**(3) House trailers**

Any house trailer.

**(4) Ambulances, hearses, etc.**

Any ambulance, hearse, or combination ambulance-hearse.

**(5) Concrete mixers**

Any article designed—

(A) to be placed or mounted on an automobile truck chassis or truck trailer or semitrailer chassis, and

(B) to be used to process or prepare concrete.

**(6) Trash containers, etc.**

Any box, container, receptacle, bin or other similar article—

(A) which is designed to be used as a trash container and is not designed for the transportation of freight other than trash, and

(B) which is not designed to be permanently mounted on or permanently affixed to an automobile truck chassis or body.

**(7) Rail trailers and rail vans**

Any chassis or body of a trailer or semitrailer which is designed for use both as a highway vehicle and a railroad car. For purposes of the preceding sentence, piggy-back trailer or semitrailer shall not be treated as designed for use as a railroad car.

**(8) Mobile machinery**

Any vehicle which consists of a chassis—

(A) 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 similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

(B) which 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) which, by reason of such special design, 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.

**(9) Idling reduction device**

Any device or system of devices which—

(A) is designed to provide to a vehicle those services (such as heat, air conditioning, or electricity) that would otherwise require the operation of the main drive engine while the vehicle is temporarily parked or remains stationary using one or more devices affixed to a tractor, and

(B) is determined by the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Energy and the Secretary of Transportation, to reduce idling of such vehicle at a motor vehicle rest stop or other location where such vehicles are temporarily parked or remain stationary.

**(10) Advanced insulation**

Any insulation that has an R value of not less than R35 per inch.

(Added Pub. L. 97-424, title V, §512(b)(1), Jan. 6, 1983, 96 Stat. 2176; amended Pub. L. 98-369, div. A, title VII, §735(b)(1), July 18, 1984, 98 Stat. 981; Pub. L. 108-357, title VIII, §851(a)(1), Oct. 22, 2004, 118 Stat. 1607; Pub. L. 110-343, div. B, title II, §206(a), Oct. 3, 2008, 122 Stat. 3839.)

PRIOR PROVISIONS

A prior section 4053, acts Aug. 16, 1954, ch. 736, 68A Stat. 479; Sept. 2, 1958, Pub. L. 85-859, title I, §104, 72 Stat. 1276, made provision for the imposition of the retailers tax on installment sales, prior to repeal by Pub. L. 94-455, title XIX, §1904(a)(1)(D), Oct. 4, 1976, 90 Stat. 1811.

For provisions of prior sections 4054 to 4058 of this title, see Prior Provisions note set out preceding section 4041 of this title.

AMENDMENTS

2008—Pars. (9), (10). Pub. L. 110-343 added pars. (9) and (10).

2004—Par. (8). Pub. L. 108-357 added par. (8).

1984—Pub. L. 98-369 amended section generally, substituting provisions listing articles on which no tax under section 4051 shall be imposed for former provisions which stated that no tax be imposed under section 4051 on any article specified in subsection (a) of section 4063 and that the exemptions provided by section 4221(a) extended to the tax imposed by section 4051.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. B, title II, §206(b), Oct. 3, 2008, 122 Stat. 3839, provided that: “The amendment made by