

Dated: June 14, 2004.

Linda Tollefson,

Acting Director, Center for Veterinary
Medicine.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9133]

RIN 1545-BB06

Depreciation of Vans and Light Trucks

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to the definition of passenger automobile for purposes of the dollar limits on depreciation deductions for passenger automobiles. These regulations affect certain taxpayers that use vans and light trucks in their trade or business.

DATES: *Effective Date.* These regulations are effective June 25, 2004.

Applicability Dates. These regulations apply to property placed in service by a taxpayer on or after July 7, 2003. For regulations applicable to property placed in service before July 7, 2003, see § 1.280F-6T as in effect prior to July 7, 2003 (§ 1.280F-6T as contained in 26 CFR part 1, revised as of April 1, 2003). Taxpayers may choose to apply § 1.280F-6(c)(3)(iii) to property placed in service prior to July 7, 2003, and if necessary may either amend returns for open taxable years or file a Form 3115 in order to apply § 1.280F-6(c)(3)(iii) to such property.

FOR FURTHER INFORMATION CONTACT: Bernard P. Harvey, (202) 622-3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2003, the IRS published temporary regulations (TD 9069) in the **Federal Register** (68 FR 40129) containing amendments to 26 CFR part 1 under section 280F of the Internal Revenue Code of 1986 (Code), including the addition of § 1.280F-6T(c)(3)(iii). On the same date, the IRS published proposed regulations (REG-138495-02) in the **Federal Register** (68 FR 40224) inviting comments under section 280F and inviting requests to hold a public hearing. Several comments were

received, but no requests to hold a public hearing. After consideration of all the comments, the rules in TD 9069 and the proposed regulations are made retroactive for taxpayers that choose to apply the rules to property placed in service before the proposed effective date and are adopted as final regulations. In addition, a conforming amendment is made to § 1.280F-6T, and § 1.280F-6T is redesignated as § 1.280F-6.

Explanation of Provisions

Section 280F(a) of the Code imposes annual dollar limits on the depreciation deduction allowable with respect to passenger automobiles. TD 9069 and the proposed regulations provide that a truck or van is not subject to these limits if it is a *qualified nonpersonal use vehicle* as defined in § 1.274-5T(k). This rule applies to vehicles placed in service on or after July 7, 2003.

Commentators suggested that the rule announced by TD 9069 and the proposed regulations be made available retroactively to owners of qualified nonpersonal use vehicles placed in service during the period beginning January 1, 2003, and ending July 6, 2003, and that taxpayers who have filed fiscal-year returns be allowed to amend those returns to claim additional deductions for such vehicles. Commentators have also requested that we give some measure of audit protection to taxpayers who placed qualified nonpersonal use vehicles in service prior to 2003 and depreciated the vehicles in a manner consistent with TD 9069 and the proposed regulations. We have amended the effective date provision to allow taxpayers to use the exclusion for qualified nonpersonal use vehicles for vehicles placed in service prior to July 7, 2003, and to permit taxpayers either to amend tax returns for open taxable years, or to treat the change as a change in method of accounting by filing a Form 3115, "Application for Change in Accounting Method".

Comments received from the funeral services industry requested amendments to the definition of *qualified nonpersonal use vehicles* in the temporary regulations under section 274 to clarify that certain vehicles used in the funeral services industry are qualified nonpersonal use vehicles for purposes of the substantiation requirements under that section. We believe that such an amendment is beyond the scope of these regulations, which are specific to section 280F(a).

Another commentator indicated that the relief afforded by TD 9069 and the proposed regulations is too narrow, and

requested that we amend the regulations to establish a use-based test that would exclude more trucks and vans from section 280F(a). The comment suggested a test that would exclude all trucks and vans for which the taxpayer could demonstrate a specific business need, and which are used for a valid business purpose. We believe that the proposed test is inherently subjective and would cause administrative difficulty of the type that the proposed regulations were designed to avoid. We continue to encourage suggestions for objective use-based tests that could serve as the basis for future guidance.

We were asked by the Office of Advocacy of the U.S. Small Business Administration (Advocacy) to perform a regulatory flexibility analysis because Advocacy believes that TD 9069 and the proposed regulations constitute a legislative rule as defined in the Regulatory Flexibility Act. A Regulatory Flexibility Act (RFA) analysis must be performed for legislative rules having a significant impact on small business, but not for interpretive rules or for legislative rules with no significant impact on small businesses. It is the position of the IRS and Treasury that TD 9069 and the proposed regulations constitute an interpretive rule for which no regulatory flexibility analysis is necessary. In any event, the rule proposed in the regulations is in all cases beneficial to taxpayers and does not have a significant impact on small business for purposes of the Regulatory Flexibility Act.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 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 Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Bernard P. Harvey, Office of Associate Chief Counsel (Passthroughs and Special Industries). 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.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended by adopting the rules of section 1.280F-6T as final regulations, by making conforming amendments to sections 1.280F-1T through 1.280F-7, and by updating the authority citation as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entry for “Section 1.280F-6T” and adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.280F-6 also issued under 26 U.S.C. 280F. * * *

§ 1.280F-1T [Amended]

■ **Par. 2.** Section 1.280F-1T is amended as follows:

- 1. The heading in the fifth column of the table of paragraph (b) is amended by removing “§ 1.280F-6T” and adding “§ 1.280F-6” in its place.
- 2. The first sentence in paragraph (c)(1) is amended by removing “1.280F-6T” and adding “1.280F-6” in its place.
- 3. The first sentence in paragraph (c)(2) is amended by removing “1.280F-6T” and adding “1.280F-6” in its place.

§ 1.280F-2T [Amended]

■ **Par. 3.** Section 1.280F-2T is amended as follows:

The first sentence in paragraph (i) is amended by removing “§ 1.280F-6T(d)(3)” and adding “§ 1.280F-6(d)(3)” in its place.

§ 1.280F-3T [Amended]

■ **Par. 4.** Section 1.280F-3T is amended as follows:

- 1. The first sentence in paragraph (a) is amended by removing “§ 1.280F-6T(b)” and adding “§ 1.280F-6(b)” in its place.
- 2. The last sentence in paragraph (a) is amended by removing “§ 1.280F-6T(d)” and adding “§ 1.280F-6(d)” in its place.
- 3. The first sentence in paragraph (b)(1) is amended by removing “§ 1.280F-6T(d)(1)” and adding “§ 1.280F-6(d)(1)” in its place.
- 4. The third sentence in paragraph (b)(1) is amended by removing “§ 1.280F-6T(d)(3)” and adding “§ 1.280F-6(d)(3)” in its place, and by removing “§ 1.280F-6T(d)(2)(i)” and adding “§ 1.280F-6(d)(2)(i)” in its place.

■ 5. The first sentence in paragraph (b)(2) is amended by removing “§ 1.280F-6T(d)(3)” and adding “§ 1.280F-6(d)(3)” in its place.

■ 6. The third sentence in paragraph (b)(2) is amended by removing “§ 1.280F-6T(d)(1)” and adding “§ 1.280F-6(d)(1)” in its place.

■ 7. The first sentence in paragraph (c)(1) is amended by removing “§ 1.280F-6T(b)” and adding “§ 1.280F-6(b)” in its place, and by removing “§ 1.280F-6T(d)(4)” and adding “§ 1.280F-6(d)(4)” in its place.

■ 8. The first sentence in paragraph (c)(2) is amended by removing “§ 1.280F-6T(d)(4)” and adding “§ 1.280F-6(d)(4)” in its place.

■ 9. Paragraph (d)(1) is amended by removing “§ 1.280F-6T(d)(4)” and adding “§ 1.280F-6(d)(4)” in its place.

§ 1.280F-4T [Amended]

■ **Par. 5.** Section 1.280F-4T is amended as follows:

■ The fifth sentence in paragraph (a)(1) is amended by removing “§ 1.280F-6T(d)(2)” and adding “§ 1.280F-6(d)(2)” in its place.

§ 1.280F-5T [Amended]

■ **Par. 6.** Section 1.280F-5T is amended as follows:

■ The first sentence in paragraph (d)(1) is amended by removing “§ 1.280F-6T(d)(3)(i)” and adding “§ 1.280F-6(d)(3)(i)” in its place.

§ 1.280F-6T [Redesignated as § 1.280F-6 and amended]

■ **Par. 7.** Section 1.280F-6T is redesignated as § 1.280F-6 and the word “(temporary)” is removed from the section heading. Newly-designated § 1.280F-6 is amended as follows:

■ 1. Paragraph (b)(1)(iv) is amended by removing “section 168(j)(5)(D)” and adding “section 168(i)(2)(B)” in its place.

■ 2. Paragraph (f) is added.

The addition reads as follows:

§ 1.280F-6 Special rules and definitions.

* * * * *

(f) *Effective date*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, this section applies to property placed in service by a taxpayer on or after July 7, 2003. For regulations applicable to property placed in service before July 7, 2003, see § 1.280F-6T as in effect prior to July 7, 2003 (§ 1.280F-6T as contained in 26 CFR part 1, revised as of April 1, 2003).

(2) *Property placed in service before July 7, 2003.* The following rules apply to property that is described in paragraph (c)(3)(iii) of this section, was placed in service by the taxpayer before July 7, 2003, and was treated by the

taxpayer as a passenger automobile under § 1.280F-6T as in effect prior to July 7, 2003 (pre-effective date vehicle):

(i) Except as provided in paragraphs (f)(2)(ii), (iii), and (iv) of this section, a pre-effective date vehicle will be treated as a passenger automobile to which section 280F(a) applies.

(ii) A pre-effective date vehicle will be treated as property to which section 280F(a) does not apply if the taxpayer adopts that treatment in determining depreciation deductions on the taxpayer's original return for the year in which the vehicle is placed in service.

(iii) A pre-effective date vehicle will be treated, to the extent provided in this paragraph (f)(2)(iii), as property to which section 280F(a) does not apply if the taxpayer adopts that treatment on an amended Federal tax return in accordance with this paragraph (f)(2)(iii). This paragraph (f)(2)(iii) applies only if, on or before December 31, 2004, the taxpayer files, for all applicable taxable years, amended Federal tax returns (or qualified amended returns, if applicable (for further guidance, see Rev. Proc. 94-69 (1994-2 C.B. 804) and

§ 601.601(d)(2)(ii)(b) of this chapter)) treating the vehicle as property to which section 280F(a) does not apply. The applicable taxable years for this purpose are the taxable year in which the vehicle was placed in service by the taxpayer (or, if the period of limitation for assessment under section 6501 has expired for such year or any subsequent year (a closed year), the first taxable year following the most recent closed year) and all subsequent taxable years in which the vehicle was treated on the taxpayer's return as property to which section 280F(a) applies. If the earliest applicable taxable year is not the year in which the vehicle was placed in service, the adjusted depreciable basis of the property as of the beginning of the first applicable taxable year is recovered over the remaining recovery period. If the remaining recovery period as of the beginning of the first applicable taxable year is less than 12 months, the entire adjusted depreciable basis of the property as of the beginning of the first applicable taxable year is recovered in that year.

(iv) A pre-effective date vehicle will be treated, to the extent provided in this paragraph (f)(2)(iv), as property to which section 280F(a) does not apply if the taxpayer adopts that treatment on Form 3115, Application for Change in Accounting Method, in accordance with this paragraph (f)(2)(iv). The taxpayer must follow the applicable administrative procedures issued under § 1.446-1(e)(3)(ii) for obtaining the

Commissioner's automatic consent to a change in method of accounting (for further guidance, for example, see Rev. Proc. 2002-9 (2002-1 C.B. 327) and § 601.601(d)(2)(ii)(b) of this chapter). If the taxpayer files a Form 3115 treating the vehicle as property to which section 280F(a) does not apply, the taxpayer will be permitted to treat the change as a change in method of accounting under section 446(e) of the Internal Revenue Code and to take into account the section 481 adjustment resulting from the method change. For purposes of Form 3115, the designated number for the automatic accounting method change authorized for this paragraph (f)(2)(iv) is 89.

§ 1.280F-7 [Amended]

■ **Par. 8.** Section 1.280F-7 is amended as follows:

■ 1. Paragraph (a)(2)(iii) is amended by removing “§ 1.280F-6T(d)(3)(i)” and adding “§ 1.280F-6(d)(3)(i)” in its place.

■ 2. The second sentence in paragraph (b)(1) is amended by removing “§ 1.280F-6T(d)(1)” and adding “§ 1.280F-6(d)(1)” in its place.

■ 3. Paragraph (b)(2)(i)(B) is amended by removing “§ 1.280F-6T(d)(3)(i)” and adding “§ 1.280F-6(d)(3)(i)” in its place, and by removing “§ 1.280F-6T(d)(1)” and adding “§ 1.280F-6(d)(1)” in its place.

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved: June 17, 2004.

Gregory Jenner,
Acting Assistant Secretary of the Treasury.
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DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 326

RIN 0710-AA54

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending its regulations to adjust its Class I civil penalties under the Clean Water Act and the National Fishing Enhancement Act. The adjustment of civil penalties to account for inflation is required by the Federal Civil Penalties Inflation

Adjustment Act of 1990, as amended. Since we have not made any adjustments to our Class I civil penalties to account for inflation since 1989, we are making the initial 10 percent increase under this Act. The Class I civil penalty under the Clean Water Act will not exceed \$11,000 per violation, with a maximum civil penalty amount of \$27,500. Under the National Fishing Enhancement Act, the Class I civil penalty will not exceed \$11,000 per violation. Increasing the maximum amounts of the Class I civil penalties to account for inflation will maintain the deterrent effects of those penalties.

DATES: *Effective Date:* July 26, 2004.

ADDRESSES: HQUSACE, ATTN: CECW-CO, 441 “G” Street, NW., Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson at 202-761-4922 or access the U.S. Army Corps of Engineers Regulatory Home Page at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>.

SUPPLEMENTARY INFORMATION:

Background

In the August 20, 2003, issue of the **Federal Register** (68 FR 50108) the Corps issued a proposal to amend 33 CFR 326.6(a)(1) to increase its Class I administrative penalties under section 309(g) of the Clean Water Act and section 205(e) of the National Fishing Enhancement Act to account for inflation. Under section 309(g) of the Clean Water Act, Class I civil penalties can be assessed for violations of the conditions and limitations of permits issued under section 404 of the Clean Water Act. Under section 205(e) of the National Fishing Enhancement Act, Class I civil penalties can be assessed for violations of permits issued under section 10 of the Rivers and Harbors Act of 1899 and/or section 404 of the Clean Water Act for the construction and management of artificial reefs.

According to section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, each Federal agency is required to adjust for inflation the maximum civil monetary penalties that can be imposed pursuant to that agency's statutory authorities. Under section 6 of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, the initial adjustment is limited to 10 percent of the civil penalty amount. Since we had not made any inflation adjustments for the Class I civil penalties since 33 CFR 326.6 was promulgated in 1989, we are limited to a 10 percent increase for these civil penalties. Therefore, we proposed to increase the Class I civil penalty for

violations of the conditions and limitations of Clean Water Act section 404 permits, so that it may not exceed \$11,000 per violation, with a \$27,500 maximum penalty. We also proposed to increase the Class I civil penalty for violations of permits for the construction and management of artificial reefs under section 205 of the National Fishing Enhancement Act of 1984 so that it may not exceed \$11,000 per violation.

In response to the August 20, 2003, proposal, we received no comments. Therefore, we are amending 33 CFR 326.6 as indicated below.

Administrative Requirements

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998, regarding plain language, this preamble is written using plain language. The use of “we” in this notice refers to the Corps and the use of “you” refers to the reader. We have also used the active voice, short sentences, and common everyday terms except for necessary technical terms.

Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Production Act, 44 U.S.C. 3501 *et seq.* This final rule adjusts our civil penalty amounts to comply with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Therefore, this action is not subject to the Paperwork Reduction Act.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. For the Corps regulatory program under section 10 of the Rivers and Harbors Act of 1899,