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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.

Deputy Commissioner for Services and Enforcement.

Approved:

Acting Assistant Secretary of the Treasury.