

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANSThe meeting was called to order by Senator Paul Hess at \_\_\_\_\_  
Chairperson11:00 a.m./p.m. on March 22, 1984 in room 123-S of the Capitol.All members were present except:  
Senators Hein and Steineger

## Committee staff present:

Research Department: Lynne Holt, Lyn Goering, David Monical, Julian Efird, Chris Stanfield, Alan Conroy

Revisor's Office: Norman Furse

Committee Office: Doris Fager

## Conferees appearing before the committee:

Harley Duncan, Secretary of Revenue

HB 2686 - Appropriations FY 1985, Department of Revenue and KPEERSHB 2703 - Appropriations FY 1984, Department of Revenue and KPEERSHB 2703, Section 4 - Department of Revenue

Senator Gaines presented the subcommittee report on this section and committee members were given opportunity to question him.

HB 2686, Section 3 - Department of Revenue

Following Senator Gaines' review of the subcommittee report on this section, there were questions from members of the committee. There were specific questions about the funds deleted in Senate Subcommittee recommendation No. 3. Mr. Duncan said the purpose of this was for appraising agricultural land. The Soil Conservation Service would be used, and it would be extremely valuable information. Mr. Duncan continued by stating that the classification has changed over a period of time. He said the \$100,000 in question would bring the classification up to date. No change was made in the subcommittee recommendation.

Senator Hess asked Mr. Duncan if he would like to comment on the entire report. He said he had sent a letter requesting restoration of funds for court reporter services in the ABC Division. There was also a discussion about Senate Subcommittee recommendation No. 4, especially concerning operation time of oil wells.

Motion was made by Senator Talkington and seconded by Senator Gaines to amend the subcommittee report to provide restoration of \$3,750 of the \$7,500 deleted by House recommendation No. 6. The motion carried by voice vote.INTRODUCTION OF BILLMr. Duncan requested introduction of a bill to provide statutory authority for the Department of Revenue to refuse registration of heavy trucks if they cannot provide proof of payment of certain taxes. He noted this is in accordance with Federal law.  
(See Attachment A)Motion was made by Senator Talkington and seconded by Senator Bogina to introduce the bill and request that it be referred to Committee of the Whole. The motion carried by roll call vote.HB 2686, Section 2 - KPEERS

Senator Gaines presented the subcommittee report on this section, and there were questions from committee members.

Motion was made by Senator Gaines and seconded by Senator Doyen to adopt the subcommittee reports as amended. The motion carried by voice vote.Motion was made by Senator Gaines and seconded by Senator Talkington to report HB 2686 as amended favorably for passage. The motion carried by roll call vote.Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as recorded herein have not been submitted to the individuals appearing before the committee for editing or corrections.

HB 2703 - Appropriations FY 1984, Regents' Institutions

HB 2805 - Appropriations FY 1985, Regents' Institutions

HB 2703, Section 10 - University of Kansas Medical Center

Senator Hess presented the subcommittee report on this section, and committee members were given opportunity to question him.

HB 2805, Section 9 - University of Kansas Medical Center

Following Senator Hess' review of the subcommittee report on this section, there were questions from committee members. There was extended discussion and explanation of both the House and Senate recommendations.

HB 2703, University of Kansas

Senator Werts reviewed the subcommittee report on the University of Kansas. There followed an extended discussion and questions from committee members.

HB 2805, Section 7 - University of Kansas (See also page 3)

Following the presentation of the subcommittee report on this section, there were questions from committee members. No changes were made in the subcommittee report.

HB 2703, Kansas State University

Senator Talkington presented the subcommittee report on this section, and committee members were given opportunity to question him.

HB 2805, Section 4 - KSU Veterinary Medical Center

Following Senator Talkington's presentation of the subcommittee report on this section, committee members were given opportunity to question him.

HB 2805, Section 3 - Kansas State University

Senator Talkington presented the subcommittee report on Kansas State University. He noted that he had been handed a request for \$51,000 for a burned building replacement in Southeast Kansas shortly before this meeting. He said this request was denied in FY 1983 and FY 1984, and the Board of Regents has denied the request for FY 1985. Senator Bogina had also received this request. Senator Talkington suggested waiting until the Joint Committee on State Building Construction looks at the request, and take action during consideration of the Omnibus Appropriations Bill. The committee agreed.

Motion was made by Senator Doyen and seconded by Senator Werts to amend the subcommittee report (House Committee Recommendation 3 (d) on page 3) by adding 3,250 square feet to the planned addition, and an additional \$35,000.

Senator Bogina said there was no intent to cut programs when the Building Committee considered this item. He added that the university was happy with the amount, but it was his understanding the industry is not. Senator Doyen indicated he had conversation with people who donated to the facility and they feel the additional space is needed. Senator Werts agreed. The motion carried by voice vote.

HB 2703, Wichita State University

Senator Bogina reviewed the subcommittee report for FY 1984, and committee members were given opportunity to question him.

HB 2805, Section 8 - Wichita State University

Following Senator Bogina's review of the subcommittee report for FY 1985, Senator Hess asked him to comment on house recommendation No. 4. Senator Bogina clarified the recommendation.

HB 2703 - Continued

HB 2805 - Continued

HB 2805, Section 8 - Wichita State University (Continued)

Senator Bogina explained to the committee that a technical amendment is needed in the subcommittee report concerning wording which was included for other universities but was inadvertently omitted from a proviso for Wichita State University. Motion was made by Senator Bogina and seconded by Senator Talkington to amend the subcommittee report for this section to include in a proviso for the Restricted Fees Fund the words "and the Wichita state university endowment association" in the authorization to construct buildings from private moneys. The motion carried by voice vote.

HB 2805, Section 10 - Kansas Technical Institute

The subcommittee report on this section was reviewed by Senator Bogina. Members of the committee were given opportunity to question him upon completion of the report.

Motion was made by Senator Bogina and seconded by Senator Doyen to adopt the subcommittee reports for Kansas Technical Institute and Wichita State University as amended. The motion carried by voice vote.

HB 2805, Section 7 - University of Kansas

Senator Talkington requested that the committee look at House Subcommittee Recommendation 11 on page 4 of the subcommittee report. He noted that the 10 unclassified positions were not funded, and reminded the committee that the amount would be \$100,000.

Motion was made by Senator Talkington and seconded by Senator Doyen to amend the subcommittee report to add funding for the unclassified positions for Graduate Teaching Assistants. The motion carried by voice vote.

Motion was made by Senator Talkington and seconded by Senator Werts to adopt all the subcommittee reports for Regents' institutions as amended. The motion carried by voice vote, with Senator Bogina passing.

The Chairman commented that the Board of Regents Office and the three regional universities are yet to be considered by the committee. The meeting was adjourned.

Bill No. \_\_\_\_\_  
By Committee on Ways and Means

An Act relating to registration of certain vehicles.

Be it enacted by the Legislature of the State of Kansas:

Section 1. No ~~heavy~~ vehicle, subject to the use tax imposed by section 4481 of the Internal Revenue Code of 1954, shall be registered in this state without presentation of proof of payment of such tax, in such form as may be prescribed by the Secretary of the Treasury of the United States of America.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas Register.

A  
3-22-84  
11:00

Added Pub.L. 90-495, § 22(a), Aug. 23, 1968, 82 Stat. 826, amended Pub.L. 91-605, Title I, § 110, Dec. 31, 1970, 84 Stat. 1719; Pub.L. 93-87, Title I, § 120, Aug. 13, 1973, 87 Stat. 259; Pub.L. 94-280, Title I, § 126, May 5, 1976, 90 Stat. 440; Pub.L. 97-424, Title I, § 119, Jan. 6, 1983, 96 Stat. 2110.

**References in Text.** Section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), referred to in subsecs. (b) and (c), is classified to section 5 of Title 41, Public Contracts.

Section 302(e) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(e)), referred to in subsec. (c), is section 302(e) of Act June 30, 1949, c. 288, 63 Stat. 378, which is classified to section 252(e) of Title 41. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works, and Tables volume.

**1976 Amendment.** Subsec. (b). Pub.L. 94-280 substituted a second sentence reading "Whenever apportionments are made under section 104(b) of this title, the Secretary shall deduct such sums as he may deem necessary, not to exceed \$2,500,000 for the transition quarter ending September 30, 1976, and not to exceed \$10,000,000 per fiscal year, for the administration of this subsection," for prior second sentence reading: "Whenever an apportionment is made under sub-sections 104(b)(1), (b)(2), (b)(3), (b)(5), and (b)(6) of this title of the sums authorized to be appropriated for expenditure upon the Federal-aid primary and secondary systems, and their extensions within urban areas, the Interstate System, and the Federal-aid urban system for the fiscal years 1972, 1973, 1974, 1975, and 1976, the Secretary shall deduct such sums as he may deem necessary not to exceed \$5,000,000 per fiscal year for the fiscal years 1972 and 1973, and \$10,000,000 per fiscal year for the fiscal years 1974, 1975, and 1976, for administering the provisions of this subsection to be financed from the appropriation for the Federal-aid systems."

**1973 Amendment.** Subsec. (b). Pub.L. 93-87 included apportionment of appropriated moneys for administration of subsec. (b) provisions for fiscal years 1974, 1975, and 1976, and substituted provisions which made available for such administration \$5,000,000 per fiscal year for fiscal years 1972, and 1973, and \$10,000,000 per fiscal year for fiscal years 1974, 1975, and 1976, for prior provision making available \$5,000,000 per fiscal year for such administration.

**1970 Amendment.** Subsec. (a). Pub.L. 91-605 designated existing provisions as subsec. (a).

Subsec. (b). Pub.L. 91-605 added subsec. (b).

#### § 141. Enforcement of requirements

(a) Each State shall certify to the Secretary before January 1 of each year that it is enforcing all speed limits on public highways in accordance with section 154 of this title. The Secretary shall not approve any project under section 106 of this title in any State which has failed to certify in accordance with this subsection.

(b) Each State shall certify to the Secretary before January 1 of each year that it is enforcing all State laws respecting maximum vehicle size and weights permitted on the Federal-aid primary system, the Federal-aid urban system, and the Federal-aid secondary system, including the Interstate System in accordance with section 127 of this title.

(c) (1) Each State shall submit to the Secretary such information as the Secretary shall, by regulation, require as necessary, in his opinion, to verify the certification of such State under subsection (b) of this section.

**Effective Date.** Section effective Aug. 23, 1968, see section 37 of Pub.L. 90-495, set out as a note under section 502 of this title.

**Legislative History.** For legislative history and purpose of Pub.L. 90-495, see 1968 U.S. Code Cong. and Adm. News, p. 3482. See, also, Pub.L. 91-605, 1970 U.S. Code Cong. and Adm. News, p. 5392; Pub.L. 93-87, 1973 U.S. Code Cong. and Adm. News, p. 1859; Pub.L. 94-280, 1976 U.S. Code Cong. and Adm. News, p. 798; Pub.L. 97-424, 1982 U.S. Code Cong. and Adm. News, p. 3639.

#### Library References

Civil Rights  $\S$  9.5.  
C.J.S. Civil Rights  $\S\S$  56 to 58.

#### Index to Notes

Generally 1  
Construction with other laws  $\frac{1}{2}$   
Power of states 2

$\frac{1}{2}$ . **Construction with other laws**  
Section 2000d-1 of Title 42 neither empowers state officials to take action nor limits their right to do so pursuant to affirmative action programs authorized and developed pursuant to valid statutes or regulations, such as this section and regulations issued pursuant thereto, and action of state officials in closing down highway projects for failure to have required number of minority trainees on job was not unlawful for failure to comply with conditions set forth in section 2000d-1 of Title 42. *Schlafly v. Volpe*, C.A.Ill.1974, 495 F.2d 273.

#### 1. Generally

Obligation imposed by executive order upon contractors to take "affirmative action" in regard to equal opportunity employment if they desire to participate in federal-aid programs imports more than negative obligation not to discriminate. *Southern Illinois Builders Ass'n v. Ogilvie*, C.A.Ill.1972, 471 F.2d 680.

#### 2. Power of states

State officials were authorized to prescribe number of minority trainees to be employed by contractor in connection with highway construction projects. *Schlafly v. Volpe*, C.A.Ill.1974, 495 F.2d 273.

(2) If a State fails to certify as required by subsection (b) of this section or if the Secretary determines that a State is not adequately enforcing all State laws respecting such maximum vehicle size and weights, notwithstanding such a certification, then Federal-aid highway funds apportioned to such State for such fiscal year shall be reduced by amounts equal to 10 per centum of the amount which would otherwise be apportioned to such State under section 104 of this title.

(3) If within one year from the date that the apportionment for any State is reduced in accordance with paragraph (2) of this subsection the Secretary determines that such State is enforcing all State laws respecting maximum size and weights, the apportionment of such State shall be increased by an amount equal to such reduction. If the Secretary does not make such a determination within such one-year period, the amounts so withheld shall be reapportioned to all other eligible States.

(d) The Secretary shall reduce the State's apportionment of Federal-aid highway funds under section 104(b)(5) of this title in an amount up to 25 per centum of the amount to be apportioned in any fiscal year beginning after September 30, 1984, during which heavy vehicles, subject to the use tax imposed by section 4481 of the Internal Revenue Code of 1954, may be lawfully registered in the State without having presented proof of payment, in such form as may be prescribed by the Secretary of the Treasury, of the use tax imposed by section 4481 of such Code. Amounts withheld from apportionment to a State under this subsection shall be apportioned to the other States pursuant to the formulas of section 104(b)(5) of this title and shall be available in the same manner and to the same extent as other Interstate funds apportioned at the same time to other States. Added Pub.L. 93-643, § 107(a), Jan. 4, 1975, 88 Stat. 2284, and amended Pub.L. 95-599, Title I, § 123(d), Nov. 6, 1978, 92 Stat. 2702; Pub.L. 97-424, Title I, § 143, Jan. 6, 1983, 96 Stat. 2129.

**References in Text.** Section 4481 of the Internal Revenue Code of 1954, referred to in subsec. (d), is section 4481 of Title 26, Internal Revenue Code.

**Prior Provisions.** A prior section 141, Pub.L. 90-495, § 35(a), Aug. 23, 1968, 82 Stat. 836, providing for real property acquisition policies, was repealed by Pub.L. 91-646, Title III, § 306, Jan. 2, 1971, 84 Stat. 1907, and is now covered by sections 4651(1), (3), and (5) and 4655(1) of Title 42, The Public Health and Welfare.

**1978 Amendment.** Pub.L. 95-599 redesignated existing provisions as subsecs. (a) and (b) and added subsec. (c).

**Effective Date of 1978 Amendment.** Section 123(e) of Pub.L. 95-599, formerly set out as a note under this section, providing that subsec. (c)(2) and (3) of this section be applicable to certifications required by this section to be filed on or after Jan. 1, 1980, was repealed by Pub.L. 96-106, § 12, Nov. 9, 1979, 93 Stat. 798.

**Enforcement of Vehicle Weight Limitations.** Section 123(a) to (c) of Pub.L. 95-599 provided that:

"(a) Not later than the one-hundred-eightieth day after the date of enactment of this section [Nov. 6, 1978], the Secretary of Transportation, hereunder referred to as the 'Secretary', in consultation with each State shall inventory the existing system of penalties for violations of vehicle weight laws, rules, and regulations on any portion of any Federal-aid system in such State. Each State shall annually thereafter report to the Secretary its current inventory.

"(b)(1) Not later than the one-hundred-eightieth day after the date of en-

actment of this section [Nov. 6, 1978], the Secretary, in consultation with each State, shall inventory the existing system in such State for the issuance of special permits. Each State shall annually thereafter report to the Secretary its current inventory.

"(2) For purposes of this subsection, the term 'special permit' means a license or permit issued pursuant to State law, rule, or regulation which authorizes a vehicle to exceed the weight limitation for such vehicle established under State law, rule, or regulation.

"(c) Not later than January 1 of the second calendar year which begins after the date of enactment of this section [Nov. 6, 1978] and each calendar year thereafter the Secretary shall submit to Congress an annual report together with such recommendations as the Secretary deems necessary on (1) the latest annual inventory of State systems of penalties required by subsection (a) of this section; (2) the latest annual inventory of special State systems for the issuance of permits required by subsection (b) of this section; (3) the annual certification submitted by each State required by section 141(b) of title 23, United States Code [subsec. (b) of this section]."

**Legislative History.** For legislative history and purpose of Pub.L. 93-643, see 1974 U.S. Code Cong. and Adm. News, p. 8011. See, also, Pub.L. 95-599, 1978 U.S. Code Cong. and Adm. News, p. 8575; Pub.L. 97-424, 1982 U.S. Code Cong. and Adm. News, p. 3639.

### § 142. Public transportation

(a)(1) To encourage the development, improvement, and use of public mass transportation systems operating motor vehicles (other than on

he required monthly wagering tax has not been filed and the tax has not been paid. Id.

icle is subject to forfeiture when used to haul contraband, narcotics, in violation of the customs laws, of an "organized" crime business, by a bookie in his business when not registered and paid his occupation tax. Id.

**Arches and seizure**

amous informant's information equately corroborated by sub-surveillance of law enforcement moreover, independent of the in- subsequent surveillance adequate- blished probable cause to search correctly named defendant's apart- and vehicles, as being used as of and in pursuance of another in- d's unregistered gambling busi- U. S. v. Hirschhorn, C.A.Tex.1981, 54 360.

**Immunity from prosecution**

al occupation tax stamp required e engaged in business of accepting e even if paid, and the registra- ven if made, does not immunize the e business from the reach of local e including local forfeiture laws; lo- cials may arrest and prosecute e who would violate local laws e or not they are registered and e with the federal government. U. 1978 Cadillac El Dorado 2-Door e Red In Color with White Vinyl e Motor No. 6L4758Q134633, Utah Li- e No. VHK388, D.C.Utah 1980, 489 F. e 332.

EXCISE PROVISIONS

Const. Amend. 5, where defendant charged with violating this chapter, § 4403 of this title, which required e keep records and this section pro- that books of account for any per- able for tax may be examined and ted as frequently as necessary to e the enforcement of the tax on ang, and what was seized was no than what the law required defend- maintain. U. S. v. Haydel, C.A.La. 1979 F.2d 1152, rehearing denied 604 61, certiorari denied 102 S.Ct. 1721.

Information

**Index to Notes**

- Constitutionality 1
- Records within section 2
- Documents in criminal proceedings

**1. Constitutionality**

The post-Marchetti amendments to wagering tax provisions, including deletion of requirement that registrants conspicuously display their tax stamp or produce it on demand, repeal of requirement that internal revenue officers provide prosecuting officers a list of those who have paid the occupational tax and enactment of provision barring disclosure, except in connection with enforcement of internal revenue taxes, of documents, etc., supplied by a taxpayer in connection with wagering tax, and ban on use of related documents in criminal proceeding except to enforce wagering tax provisions, are constitutional. U. S. v. Jeffers, C.A.Tex. 1980, 621 F.2d 221.

Government, which compelled bookmak- er to prepare and maintain records show- ing his gross wages, could not, consistent with U.S.C.A.Const. Amend. 5, use such wagering records to convict him of ille- gal gambling, even though the bookmak- er was not compelled to disclose exist- ence or location of the records, and even though the records were discovered by Federal Bureau of Investigation through surveillance and investigation and not through any activity of the Internal Revenue Service. U. S. v. Haydel, D.C.La. 1980, 486 F.Supp. 109, affirmed 649 F.2d 1152, rehearing denied 604 F.2d 84.

**1a. Construction**

This section strictly limiting use to which bookkeeper's resulting material, i. e., daily records detailing volume of his betting business as required by section 4403 of this title, can be put, would be construed so as to forbid the Internal Revenue Service from revealing such in-

formation to other arms of government in any context except tax prosecution. U. S. v. Brian, D.C.R.I.1981, 507 F.Supp. 761.

**2. Records within section**

This section forbidding an officer or employee of the Treasury Department to divulge wagering tax information com- pelled by the tax statute and declaring that the government may not use certain information in any criminal proceeding, applies only to wagering taxes but does not apply to the occupational tax on coin-operated gaming devices and hence, the hazards of self-incrimination inherent in taxing activities which may be illegal under other statutes is not cured. U. S. v. One Coin-Operated Gaming Device, C. A.N.M.1981, 648 F.2d 1297.

This section limiting disclosure by Treasury Department of wagering tax in- formation did not apply to records re- quired for making wagering tax return where the records were found by Federal Bureau of Investigation independently and no disclosure was made by any Treasury Department agent. U. S. v. Haydel, D.C.La.1980, 486 F.Supp. 109, af- firmed 649 F.2d 1152, rehearing denied 604 F.2d 84, certiorari denied 102 S.Ct. 1721.

**3. Use of documents in criminal proceed- ings**

Fact that only suspected offenses listed in search warrant were gambling, not tax related, did not preclude admission of gambling records in prosecution for violating this chapter. U. S. v. Haydel, C.A.La.1981, 649 F.2d 1152, rehearing denied 604 F.2d 84, certiorari denied 102 S. Ct. 1721.

**CHAPTER 36—CERTAIN OTHER EXCISE TAXES**

**Subchapter**

[E. Repealed.]

F. Tax on removal of hard mineral re- sources from deep seabed.

1982 Amendment. Pub.L. 97-248, Title II, § 280(c)(2)(A), Sept. 3, 1982, 96 Stat.

504, struck out item relating to subchap- ter E.

1980 Amendment. Pub.L. 96-283, Title IV, § 402(b), June 28, 1980, 94 Stat. 584, added subchapter F.

**SUBCHAPTER D—TAX ON USE OF CERTAIN VEHICLES**

**Sec.**

4481. Cross references.

**§ 4481. Imposition of tax**

[See main volume for text of (a) to (d)]

(e) **Period tax in effect.**—The tax imposed by this section shall apply only to use before October 1, 1988.

As amended Jan. 6, 1983, Pub.L. 97-424, Title V, § 516(a)(4), 96 Stat. 2182.

**Amendment of Section**

Pub.L. 97-424, Title V, § 513(a), (d), (f), Jan. 6, 1983, 96 Stat. 2177, 2179, provided that, except as otherwise provided in section 513(f) of Pub.L. 97-424, set out as a note under this section, subsecs. (a) and (c) of this section will read as follows, effective on July 1, 1984:

"(a) **Imposition of Tax.**—A tax is hereby imposed on the use of any highway motor vehicle which (together with the semitrailers and trailers customarily used in connection with highway motor vehicles

26 § 4481 MISCELLANEOUS EXCISE TAXES

of the same type as such highway motor vehicle) has a taxable gross weight of at least 33,000 pounds at the rate specified in the following table:

"(1) In General.—

"Taxable gross weight		Rate of tax
At least	But less than	
33,000 pounds	55,000 pounds	\$50 a year, plus \$25 for each 1,000 pounds or fraction thereof in excess of 33,000 pounds.
55,000 pounds	80,000 pounds	\$600 a year, plus the applicable rate for each 1,000 pounds or fraction thereof in excess of 55,000 pounds.
80,000 pounds or more		The maximum tax a year."

"(2) Definitions.—For purposes of paragraph (1)—

"In the case of the taxable period beginning on July 1 of:	The maximum	
	The applicable rate is:	tax is:
1984	\$40	\$1,600
1985	40	1,600
1986	44	1,700
1987	48	1,800
1988 or thereafter	52	1,900."

"(c) Proration of Tax.—

"(1) Where first use occurs after first month—If in any taxable period the first use of the highway motor vehicle is after the first month in such period, the tax shall be reckoned proportionately from the first day of the month in which such use occurs to and including the last day in such taxable period.

"(2) Where vehicle destroyed or stolen.—

"(A) In general.—If in any taxable period a highway motor vehicle is destroyed or stolen before the first day of the last month in such period and not subsequently used during such taxable period, the tax shall be reckoned proportionately from the first day of the month in which the first use of such highway motor vehicle occurs to and including the last day of the month in which such highway motor vehicle was destroyed or stolen.

"(B) Destroyed.—For purpose of subparagraph (A), a highway motor vehicle is destroyed if such vehicle is damaged by reason of an accident or other casualty to such an extent that it is not economic to rebuild."

**Effective Date of 1983 Amendment.** Section 513(f) of Pub.L. 97-424 provided that:

"(1) In general.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 4482 and 4483 of this title] shall take effect on July 1, 1984.

"(2) Special rule in the case of certain owner-operators.—

"(A) In general.—In the case of a small owner-operator, paragraph (1) of this subsection and paragraph (2) of section 4481(a) of the Internal Revenue

Code of 1954 [subsec. (a) of this section] (as added by this section) shall be applied by substituting for each date contained in such paragraphs a date which is 1 year after the date so contained.

"(B) Small owner-operator.—For purposes of this paragraph, the term 'small owner-operator' means any person who owns and operates at any time during the taxable period no more than 5 highway motor vehicles with respect to which a tax is imposed by section 4481 [this section] of such Code for such taxable period.

[No subpar. (C) has been enacted]

MISCELLANEOUS

"(D) Aggregation of vehicle ownership.—For purposes of subparagraph (B), all highway motor vehicles with respect to which a tax is imposed by section 4481 [this section] of such Code which are owned by—

"(i) any trade or business (whether or not incorporated) which is under common control with the taxpayer (within the meaning of section 52(b) [section 52(b) of this title]), or

"(ii) any members of any controlled groups of corporations of which the taxpayer is a member, for any taxable period shall be treated as being owned by the taxpayer during such period. The Secretary shall prescribe regulations which provide attribution rules that take into account, in addition to the persons and entities described in the preceding sentence, taxpayers who own highway motor vehicles through partnerships, joint ventures, and corporations.

"(E) Controlled groups of corporations.—For purposes of this paragraph, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a) [section 1563(a) of this title], except that—

"(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563 (a)(1) [section 1563(a)(1) of this title] and

"(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563 [section 1563 of this title].

"(F) Highway motor vehicles.—For purposes of this paragraph, the term 'highway motor vehicle' has the meaning given to such term by section 4482(a) of such Code [section 4482(a) of this title]."

**Study of Alternatives to Tax on Use of Heavy Trucks.** Section 513(g) of Pub.L. 97-424 provided that:

"(1) In general.—The Secretary of Transportation (in consultation with the Secretary of the Treasury) shall conduct a study of—

"(A) alternatives to the tax on heavy vehicles imposed by section 4481(a) of the Internal Revenue Code of 1954 [subsec. (a) of this section], and

"(B) plans for improving the collecting and enforcement of such tax and alternatives to such tax.

"(2) Alternatives included.—The alternatives studied under paragraph (1) shall include taxes based either singly or in suitable combinations on vehicle size or configuration; vehicle weight, both registered and actual operating weight; and distance traveled. Plans for improving tax collection and enforcement shall, to

§ 4482. Definitions

[See main volume for text]

(c) Other definitions.—For purposes of

[See main volume for text]

(4) Taxable period.—The term "beginning before July 1, 1988, and ending on the close of September 30, 1988, and ends at the close of September 30, 1988, and ends at the close of September 30, 1988, and ends at the close of September 30, 1988." As amended Jan. 6, 1983, Pub.L. 97-424 2182.

Amendment of S

Pub.L. 97-424, Title V, § 513(c), (c), (c) provided that, except as otherwise provided

(D) **Aggregation of vehicle ownerships.**—For purposes of subparagraph (B), all highway motor vehicles with respect to which a tax is imposed by section 4481 [this section] of such Code which are owned by—

(i) any trade or business (whether or not incorporated) which is under common control with the taxpayer (within the meaning of section 52(b) [section 52(b) of this title]), or

(ii) any members of any controlled groups of corporations of which the taxpayer is a member, for any taxable period shall be treated as being owned by the taxpayer during such period. The Secretary shall prescribe regulations which provide attribution rules that take into account, in addition to the persons and entities described in the preceding sentence, taxpayers who own highway motor vehicles through partnerships, joint ventures, and corporations.

(E) **Controlled groups of corporations.**—For purposes of this paragraph, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a) [section 1563(a) of this title], except that—

(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563 (a)(1) [section 1563(a)(1) of this title] and

(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563 [section 1563 of this title].

(F) **Highway motor vehicles.**—For purposes of this paragraph, the term 'highway motor vehicle' has the meaning given to such term by section 4482(a) of such Code [section 4482(a) of this title].

**Study of Alternatives to Tax on Use of Heavy Trucks.** Section 513(g) of Pub.L. 97-424 provided that:

(1) **In general.**—The Secretary of Transportation (in consultation with the Secretary of the Treasury) shall conduct a study of—

(A) alternatives to the tax on heavy vehicles imposed by section 4481(a) of the Internal Revenue Code of 1954 [subsec. (a) of this section], and

(B) plans for improving the collecting and enforcement of such tax and alternatives to such tax.

(2) **Alternatives included.**—The alternatives studied under paragraph (1) shall include taxes based either singly or in suitable combinations on vehicle size or configuration; vehicle weight, both registered and actual operating weight; and distance traveled. Plans for improving tax collection and enforcement shall, to

the extent practical, provide for Federal and State co-operation in such activities.

(3) **Consultation with state officials and other affected parties.**—The study required under subsection (a) shall be conducted in consultation with State officials, motor carriers, and other affected parties.

(4) **Report.**—Not later than January 1, 1985, the Secretary of Transportation shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under paragraph (1) together with such recommendations as he may deem advisable.

**Legislative History.** For legislative history and purpose of Pub.L. 97-424, see 1982 U.S.Code Cong. and Adm.News, p. 3639.

**Library References**

Internal Revenue Code 4305, 4300, 4311, 4313, 4319.

C.J.S. Internal Revenue §§ 1012, 1015, 1016, 1021.

**Supplementary Index to Notes**

Customary use 7

**2. Rules and regulations**

Interpretation of this section or regulations which permitted the Internal Revenue Service to classify a vehicle as a "truck trailer" combination merely because vehicle was equipped for use in combination with trailers, such as equipped with a pintle hook, without first determining that such trailer or semitrailer was the type customarily used in combination with such vehicle was erroneous and regulation permitting the same was contrary to this section and therefore invalid and of no effect. *Pacific Gas and Elec. Co. v. U. S.*, C.A.Cal. 1981, 604 F.2d 1133.

**5. Persons liable**

*Baca v. U. S.*, 576 F.2d 359 [main volume], 217 Ct.Cl. 218.

**7. Customary use**

Internal Revenue Service properly taxed utility's trucks, which were equipped with pintle hooks suitable for towing trailers, as trucktrailer combinations, rather than single units, without making a factual showing that trucks were customarily used in combination with utility's trailers. *Northern States Power Co. v. U. S.*, D.C.Minn.1981, 503 F. Supp. 1182, affirmed 663 F.2d 55.

**§ 4482. Definitions**

[See main volume for text of (a) and (b)]

(c) **Other definitions.**—For purposes of this subchapter—

[See main volume for text of (1) to (3)]

(4) **Taxable period.**—The term "taxable period" means any year beginning before July 1, 1988, and the period which begins on July 1, 1988, and ends at the close of September 30, 1988.

As amended Jan. 6, 1983, Pub.L. 97-424, Title V, § 516(a)(4), 96 Stat. 2182.

**Amendment of Section**

Pub.L. 97-424, Title V, § 513(c), (e), (f), Jan. 6, 1983, 96 Stat. 2179, provided that, except as otherwise provided in section 513(f) of Pub.L.

has a taxable gross weight in the following

**Rate of tax**

50 a year, plus \$25 for each 1,000 pounds or fraction thereof in excess of 33,000 pounds.  
 600 a year, plus the applicable rate for each 1,000 pounds or fraction thereof in excess of 55,000 pounds.

The maximum tax a year."

h (1)–

Rate of tax	The maximum taxable rate is:
-----	\$1,600
-----	1,600
-----	1,700
-----	1,800
-----	1,900."

—If in any taxable period is after the first month proportionately from the occurs to and including

od a highway motor vehicle first day of the last month used during such taxable proportionately from the first which the first use of such including the last day of motor vehicle was destroyed

paragraph (A), a highway vehicle is damaged by reason such an extent that it is not

of 1954 [subsec. (a) of this section] added by this section) shall be applied by substituting for each date defined in such paragraphs a date which is 1 year after the date so contained.

(3) **Small owner-operator.**—For purposes of this paragraph, the term "small owner-operator" means any person who owns and operates at any time during the taxable period no more than one highway motor vehicle with respect to which a tax is imposed by section 4481 [this section] of such Code for such taxable period.

subpar. (C) has been enacted]