

§ 48.4061(a)-2 Bonding of importers.

(a) *Authority for requiring bond.* Section 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1623), provides as follows:

SEC. 623. *Bonds and other security.* (a) In any case in which bond or other security is not specifically required by law, the Secretary of the Treasury may by regulation or specific instruction require, or authorize collectors of customs to require, such bonds or other security as he, or they, may deem necessary for the protection of the revenue or to assure compliance with any provision of law, regulation, or instruction which the Secretary of the Treasury or the Customs Service may be authorized to enforce.

(b) Whenever a bond is required or authorized by a law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, the Secretary of the Treasury may—

(1) Except as otherwise specifically provided by law, prescribe the conditions and form of such bond, and fix the amount of penalty thereof, whether for the payment of liquidated damages or of a penal sum: *Provided*, That when a consolidated bond authorized by paragraph 4 of this subsection is taken, the Secretary of the Treasury may fix the penalty of such bond without regard to any other provision of law, regulation, or instruction.

(2) Provide for the approval of the sureties on such bond, without regard to any general provision of law.

(3) Authorize the execution of a term bond the conditions of which shall extend to and cover similar cases of importations over such period of time, not to exceed one year, or such longer period as he may fix when in his opinion special circumstances existing in a particular instance require such longer period.

(4) Authorize, to the extent that he may deem necessary, the taking of a consolidated bond (single entry on term), in lieu of separate bonds to assure compliance with two or more provisions of law, regulations, or instructions which the Secretary of the Treasury or the Customs Service is authorized to enforce. A consolidated bond taken pursuant to the authority contained in this subsection shall have the same force and effect in respect of every provision of law, regulation, or instruction for the purposes for which it is required as though separate bonds had been taken to assure compliance with each such provision.

(c) The Secretary of the Treasury may authorize the cancellation of any bond provided for in this section, or of any charge that may have been made against such bond, in the event of a breach of any condition of the bond, upon the payment of such lesser

amount or penalty or upon such other terms and conditions as he may deem sufficient.

(d) No condition in any bond taken to assure compliance with any law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce shall be held invalid on the ground that such condition is not specified in the law, regulation, or instruction authorizing or requiring the taking of such bond.

(e) The Secretary of the Treasury is authorized to permit the deposit of money or obligations of the United States, in such amount and upon such conditions as he may by regulation prescribe, in lieu of sureties on any bond required or authorized by a law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce.

(b) *Application for determination whether bond required—*(1) *Requirement of application—*(i) *In general.* Except as otherwise provided in subparagraph (2) of this paragraph, every importer of articles taxable under section 4061(a) shall make application for a determination whether the importer is required to give bond in accordance with the provisions of paragraph (c) of this section. Such application shall be submitted in writing to the district director for the district in which the importer will file returns of any tax under section 4061(a) for which he may incur liability.

(ii) *Form of application.* No form is prescribed for making the application required under subdivision (i) of this subparagraph, but such application shall include the following information:

(a) The name of the person making the application and the address of his principal place of business, and, if the principal place of business of such person is outside the United States, the address of his principal place of business, office, or agency in the United States.

(b) Information establishing that the person making the application is an importer of articles taxable under section 4061(a).

(c) The kind and approximate number of automobiles, trucks, buses, etc., which the importer may be expected to import during an average calendar quarter and the approximate amount of tax under section 4061(a) for which the importer may be expected to incur liability in respect of such articles.

(d) Whether the importer has filed returns of tax under chapter 31 or chapter 32 within the 2-year period immediately preceding the date on which the application is filed, and, if so, the internal revenue district in which such returns were filed.

(e) Facts pertaining to the importer's assets and liabilities which will aid the district director in determining whether a bond shall be required.

(2) *Exceptions.* The provisions of subparagraph (1) of this paragraph shall have no application in any case where an article taxable under section 4061(a) is:

(i) Incidentally imported by an individual for his personal use.

(ii) Brought into the United States for export to a foreign country or possession of the United States.

(iii) Admitted to the United States free of duty as an instrument of international traffic.

(iv) Admitted to the United States free of duty as a temporary importation under bond.

(v) Returned to the United States after having been sold in the United States and exported.

(c) *Requirement of bond—(1) In general.* If the district director determines that a bond is necessary in order to insure payment of the tax under section 4061(a), and to assure compliance with all provisions of the Code and regulations thereunder, with respect to articles imported by any importer required to make application for a determination under paragraph (b) of this section, such bond shall be given by such importer. Such bond shall be submitted, in duplicate, to the district director for the district in which the importer will file returns of any tax under section 4061(a) for which he may incur liability.

(2) *Execution of bond—(i) In general.* The bond required under this paragraph shall be executed with satisfactory surety. (For provisions as to what will be considered "satisfactory surety", see subparagraph (3) of this paragraph.) Such bond shall be conditioned that the principal shall not engage in any attempt, by himself or by collusion with others, to defraud the United States of any tax under section 4061(a); that he shall render truly and com-

pletely all returns, statements, and other documents required of him by law or regulations in respect of such tax; that he shall timely pay all such tax for which he is liable; and, in the case of any such tax in respect of an article released from customs custody by reason of such bond that he shall pay such tax whether the liability therefor is incurred by him or by some other person as the importer of the articles covered by the bond, unless such other person makes payment of such tax on or before the due date. The bond shall be in an amount which the district director believes to be sufficient to protect the interests of the United States with respect to all articles taxable under section 4061(a) which are released from customs custody by reason of such bond, but in no event shall the bond be in an amount less than the approximate amount of tax under section 4061(a) for which the principal may be expected to incur liability during an average calendar quarter. Such bond shall be signed by the individual, if the principal is an individual; the president, vice president, or other principal officer, if the principal is a corporation; a responsible and duly authorized member or officer having knowledge of its affairs, if the principal is a partnership or other unincorporated organization; or the fiduciary, if the principal is a trust or estate.

(ii) *Cancellation clause.* The bond required under this paragraph may be accepted with a cancellation clause incorporated therein. Such cancellation clause shall provide that:

(a) Any surety on the bond may at any time give notice to the principal and the district director that he desires to be relieved of liability under said bond after a date named, which shall be at least 60 days after the receipt of notice by the district director.

(b) If the notice is not withdrawn in writing prior to the date named in the notice, the rights of the principal as supported by said bond shall be terminated on such date (unless supported by another bond or bonds). The surety shall, however, remain liable with respect to any tax under section 4061(a) (plus penalties and interest) the liability for which is incurred in respect of

articles released from customs custody by reason of the bond.

(c) Said notice may not be given by an agent of the surety, unless it is accompanied by power of attorney duly executed by the surety authorizing the agent to give such notice or by a verified statement that such power of attorney is on file with the Treasury Department.

(iii) *Changes in bond.* After filing of the bond required under this paragraph, no change may be made in the terms thereof except with the consent of the surety or sureties and subject to the approval of the district director.

(3) *Satisfactory surety*—(i) *Approved surety company or bonds or notes of the United States.* For purposes of subparagraph (2) of this paragraph, a bond shall be considered executed with satisfactory surety if:

(a) It is executed by a surety company holding a certificate of authority from the Secretary as an acceptable surety on Federal bonds; or

(b) It is secured by bonds or notes of the United States as provided in 6 U.S.C. 15 (see 31 CFR Part 225).

(ii) *Other surety acceptable in discretion of district director.* For purposes of subparagraph (2) of this paragraph, a bond may, in the discretion of the district director, be considered executed with satisfactory surety if, in lieu of being executed or secured as provided in subdivision (i) of this subparagraph, it is:

(a) Executed by a corporate surety (other than a surety company), provided such corporate surety establishes that it is within its corporate powers to act as surety for another corporation or an individual;

(b) Executed by two or more individual sureties, provided such individual sureties meet the conditions contained in subdivision (iii) of this subparagraph;

(c) Secured by a mortgage on real or personal property;

(d) Secured by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or any State, Territory, or possession of the United States, or by a United States postal, bank, express, or telegraph money order;

(e) Secured by corporate bonds or stocks, or by bonds issued by a State or political subdivision thereof, of recognized stability; or

(f) Secured by any other acceptable collateral. Collateral shall be deposited with the district director or, in his discretion, with a responsible financial institution acting as escrow agent.

(iii) *Conditions to be met by individual sureties.* If a bond is executed by two or more individual sureties, the following conditions must be met by each such individual surety:

(a) He must reside within the State in which the principal place of business or legal residence of the primary obligor is located;

(b) He must have property subject to execution of a current market value, above all encumbrances, equal to at least the penalty of the bond;

(c) All real property which he offers as security must be located in the State in which the principal place of business or legal residence of the primary obligor is located;

(d) He must agree not to mortgage, or otherwise encumber, any property offered as security while the bond continues in effect without first securing the permission of the district director; and

(e) He must file with the bond, and annually thereafter so long as the bond continues in effect, an affidavit as to the adequacy of his security, executed on the appropriate form furnished by the district director.

Partners may not act as sureties upon bonds of their partnership. Stockholders of a corporate principal may be accepted as sureties provided their qualifications as such are independent of their holdings of the stock of the corporation.

(iv) *Adequacy of surety.* No surety or security shall be accepted if it does not adequately protect the interest of the United States.

(4) *New or additional bond.* The district director may require a new or additional bond under this section in any case where he deems it necessary or desirable in order to protect the interests of the United States.

(d) *Termination of requirement*—(1) *Application for relief from requirement.* Any

importer who has given bond as required under paragraph (c) of this section may make application for relief from such requirement at any time after the last day of the first month following the close of the calendar quarter in which the bond was given. Any such application shall be submitted to the district director to whom the bond was furnished and shall set forth such facts as will be of assistance to the district director in determining whether the relief shall be granted.

(2) *Relief from requirement.* In any case where the district director determines that the bond required under paragraph (c) of this section to be given by an importer is no longer necessary to insure payment of any tax under section 4061(a) for which liability may be incurred by such importer, such importer shall no longer be required to give such bond.

(e) *Evidence required for release of imported articles from customs custody*—(1) *In general.* Each article taxable under section 4061(a) which arrives in the United States from any foreign country or possession of the United States on or after the first day of the first calendar quarter beginning more than 60 days after the date of publication of this Treasury decision in the Federal Register, and which is imported by any person required under paragraph (b) of this section to make application for a determination whether bond shall be given, shall not, if subject to customs examination and release, be released from customs custody until the evidence prescribed in subparagraph (2) (i) or (ii) of this paragraph has been furnished by such person to the collector of customs.

(2) *Form of evidence.* The evidence required under subparagraph (1) of this paragraph shall be in the form of a statement, executed, signed, and dated by the district director. Such statement shall show the following:

(i) *Bond required.* If the importer is required to give bond under this section the statement shall show:

(a) The total number of articles in respect of which the statement is given.

(b) The model number of each such article.

(c) The name and address of the importer of such articles.

(d) If the articles are to be released from customs custody to a person other than the importer, the name and address of such other person.

(e) That the importer has given a bond which the district director finds sufficient to protect the interests of the United States with respect to any tax under section 4061(a) for which liability may be incurred in respect of such articles.

A statement under this subdivision shall be furnished to the importer by the district director, upon request of the importer, in every case where such importer furnishes the district director with information which establishes to the satisfaction of the district director that the importer has given bond in an amount sufficient to protect the interests of the United States with respect to any tax under section 4061(a) which may become due in respect of the articles to which the request relates, and with such other information as is required under this subdivision to be shown in the statement. Such request, together with such information, shall be submitted by the importer immediately upon receipt by him of notice that articles taxable under section 4061(a) have been exported to his order. A separate request shall be made in respect of each shipment. Each statement given under this subdivision shall be executed in duplicate. The original of such statement shall be furnished by the district director to the importer and the copy shall be retained by the district director.

(ii) *No bond required.* If the importer is not required to give bond under this section, the statement shall show:

(a) The name and address of the importer.

(b) That bond under this section is not required of such importer.

A statement under this subdivision shall be furnished to the importer by the district director on the date on which the district director determines that the importer is not required to give a bond under this section. Such statement shall be executed in triplicate. The original of such statement and one signed copy shall be furnished by the district director to the importer, and one copy shall be retained by the district director. Additional

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signed copies of such statement will be furnished by the district director to the importer upon request of the importer. However, once such statement, or a signed copy thereof, has been furnished by the importer to a collector of customs, the requirements imposed by subparagraph (1) of this paragraph are deemed to be satisfied in respect of all articles taxable under section 4061(a) which thereafter arrive in the United States for release to or for the importer in a port under the jurisdiction of such collector of customs, until such time, if any, as such collector of customs receives written notification from the district director or the Commissioner of Customs that such statement has been withdrawn.

(46 Stat. 759; 19 U.S.C. 1623)

[T.D. 6499, 25 FR 10347, Oct. 28, 1960, as amended by T.D. 7517, 42 FR 58935, Nov. 14, 1977]

§ 48.4061(a)-3 Definitions.

For purposes of the tax imposed by section 4061, unless otherwise expressly indicated:

(a) *Automobile truck*. The term “automobile truck” includes automobile buses, and truck and bus trailers and semitrailers.

(b) *Other automobile*. The term “other automobile” means all automobiles other than automobile trucks, and includes trailers and semitrailers suitable for use in connection with passenger automobiles, but does not include house trailers.

(c) *Tractor*. The term “tractor” means any tractor chiefly used for highway transportation in combination with a trailer or semitrailer.

§ 48.4061(a)-4 Parts or accessories sold on or in connection with chassis, bodies, etc.

(a) *In general*. The tax attaches in respect of parts or accessories for articles specified in section 4061(a) sold on or in connection therewith or with the sale thereof at the rate applicable to the sale of the basic article. The tax attaches in such case whether or not the parts or accessories are billed separately. For the tax applicable to parts or accessories which are not sold on or in connection with the sale of a taxable

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chassis, body, or tractor, see § 48.4061(b)-1.

(b) *Essential equipment*. If taxable chassis, bodies, or tractors are sold by the manufacturer, producer, or importer without parts or accessories which are considered equipment essential for the operation or appearance of such articles, the sale of such parts or accessories will be considered, in the absence of evidence to the contrary, to have been made in connection with the sale of the basic article even though they are shipped separately at the same time or on a different date. For example, if a manufacturer sells to any person a chassis and the bumpers for such chassis, or sells a taxable tractor and the fifth wheel and attachments, the tax applies to such parts or accessories at the same rate as on the chassis or tractor regardless of the method of billing or the time at which the shipments were made.

§ 48.4061(a)-5 Sale of automobile truck bodies and chassis.

(a) *Sale of completed vehicle*. An automobile truck (as defined by § 48.4061(a)-3(a)) for purposes of the tax imposed by section 4061(a) consists of two parts, namely, a body and a chassis. Generally, the tax applies to the sale by the manufacturer of each. Thus, if the purchaser of a tax-paid chassis attaches to it a taxable body manufactured by him and sells the completed vehicle, he is liable for tax based on the sale price of the body only. However, in such a case, the tax attaches to the selling price of the entire vehicle unless adequate records are available to show the portion of the total selling price attributable to the body.

(b) *Cross references*. For special rules relating to the sale of a chassis or body to a purchaser who will use it in the manufacture or assembly of a non-highway vehicle, see § 48.4061(a)-1(e). With respect to bodies sold to a chassis manufacturer, see also section 4063(b) and the regulations thereunder.

[T.D. 7461, 42 FR 2675, Jan. 13, 1977]

§ 48.4061(b) [Reserved]

§ 48.4061(b)-1 Imposition of tax.

(a) *In general*. Section 4061(b) imposes a tax on the sale by the manufacturer,