specified waterways during a particular voyage by multiplying total fuel consumed in the propulsion engine by a fraction. The numerator of the fraction is the time spent operating on the specified waterways; the denominator is the total time spent operating on the specified and nonspecified waterways during the voyage. This calculation may not be used when it is unreasonable. It may be determined to be unreasonable by:

(1) Better evidence of fuel consumed (e.g., readings from an accurate fuel gauge or records from similar voyages); or

(2) The existence of factors causing a substantial discrepancy between the rate of fuel consumption on the specified and nonspecified waterways.

(c) Records required. (1) All operators of vessels used in commercial waterway transportation must maintain records sufficient to establish to the satisfaction of the district director the amount of fuel used for taxable purposes. Those records may include, when relevant to establish liability:

(i) Quantity of fuel and date of acquisition of all liquid fuels acquired for both taxable and nontaxable purposes, whether delivered to storage tanks or tanks on a vessel;

(ii) Date and quantity of fuel pumped into tanks on each vessel;

(iii) Identification number or name of each vessel using fuel; and

(iv) Departure time, departure point, route traveled, destination, and arrival time for each vessel.

(2) Vessel operators seeking a tax exemption provided by section 4042(c) must maintain records which will support any exemption claimed. Where applicable, the records shall contain:

(i) The draft of the vessel on each voyage (for exemption under section 4042(c)(1));

(ii) The type of vessel in which fuel is consumed and the type of vessel in which cargo is transported (for exemption under section 4042(c)(1), (2) or (4)); and

(iii) The ultimate use of cargo transported (for exemption under section 4042(c)(3)).

when loaded, then for purposes of section 4042(c)(1) the vessel satisfies the 12 foot draft requirement for the entire voyage. Similarly, if a vessel loaded with cargo travels into the specified waterway system with a draft sufficient to qualify for the exclusion provided by section 4042(c)(1), then the fuel consumed on the entire voyage may be excluded, regardless of the vessel’s draft after the cargo is unloaded.

(ii) **Example.** The following example illustrates the application of paragraph (a)(4)(i) of this section:

**Example.** A ship with a design draft of 20 feet (maximum certified draft when fully loaded) travels into a taxable waterway with only a partial load, such that the draft is 12 feet. The ship unloads and departs the waterway empty. The portion of the fuel consumed for propulsion of the vessel on the specified waterway is taxable because only vessels with a draft greater than 12 feet are eligible for the section 4042(c)(1) exemption from tax.

(b) **Commercial passenger vessels.** Under section 4042(c)(2), the tax imposed by section 4042(a) does not apply to fuel consumed by vessels used primarily for the transportation of persons. Thus, commercial passenger vessels while being operated or passenger vessels are not subject to tax, even if such vessels in fact transport property in addition to transporting passengers. Similarly, ferry boats carrying passengers are not subject to tax, even if such vessels carry the passengers’ automobiles.

(c) **Exemption for State or local governments—** (1) **In general.** Under section 4042(c)(3), there is no tax imposed by section 4042(a) if:

(i) The vessel is being used by a State or local government; and

(ii) The vessel is being used in transporting property in the State or local government’s business.

(2) **State or local government.** For purposes of paragraph (c)(1)(i) of this section a “vessel is being used by a State or local government” if it is operated by any State, the District of Columbia, or any political subdivision of a State. If a private party is contracted to haul for a State or local government, the vessel is not “being used by a State or local government.” Similarly, if a person other than a State or local government is contracted to supply vessel operators, the fuel consumed by the vessel is not used “by a State or local government,” regardless of ownership of the vessel. However, when a local government leases barges and employees of the local government operate the barges, the vessel is being used by the local government.

(3) **Government business.** The test for whether a vessel is being used “in transporting in a State or local government’s business,” within the meaning of paragraph (c)(1)(ii) of this section, is whether the ultimate use of the cargo is for a function which is ordinarily carried out by governmental units. For example, when the cargo transported is salt to be spread on icy roads, the vessel is being used “in transporting in a State or local business” because the use to which the cargo will be put (road maintenance) is a function ordinarily performed by governmental units. Fuel consumed in a vessel transporting property for compensation or in furtherance of a business not ordinarily carried out by a governmental unit is not exempt from taxation by section 4042(c)(3).

(d) **Ocean-going barges.** Under section 4042(c)(4), the tax imposed by section 4042(a) does not apply to fuel consumed by tugs moving exclusively barges released by ocean-going carriers solely to pick up or deliver international cargos. The tax exemption provided by section 4042(c)(4) applies to LASH barges, SEABEE barges, and all other ocean-going barges carried aboard ocean-going vessels. There is no exemption under section 4042(c)(4) while:

(1) One or more of the barges in the tow is not a LASH barge, SEABEE barge, or other ocean-going barge carried aboard on ocean-going vessels; or

(2) One or more of the barges in the tow is not on an international voyage; or

(3) Part of the cargo in the tow is not being transported internationally.

[T.D. 7727, 45 FR 70862, Oct. 27, 1980]

Subpart H—Motor Vehicles, Tires, Tubes, Tread Rubber, and Taxable Fuel

SOURCE: T.D. 6648, 28 FR 3633, Apr. 13, 1963, unless otherwise noted.