INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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February 26, 2003

Director,

Taxpayer Name:
Taxpayer Address:

Taxpayer Identification No.:
Quarter Involved:
Date of Conference:

LEGEND:

Taxpayer =
X =

ISSUES:

(1) Is X, a dump truck, excepted from the definition of a highway vehicle under § 48.4061(a)-1(d)(2)(ii) of the Manufacturers and Retailers Excise Tax Regulations (the offhighway vehicle exception) so that Taxpayer is not liable for the tax imposed by § 4051(a)(1) of the Internal Revenue Code on its sale of X?

(2) Whether Taxpayer is not liable for tax if, at the time X was sold, the purchaser certified to Taxpayer that X was purchased for off-road use?

(3) If the IRS rules adversely to Taxpayer on Issues (1) and (2), will the IRS grant Taxpayer's request to apply this technical advice memorandum on a nonretroactive basis under § 7805(b)(8)?

CONCLUSIONS:

(1) X is not excepted from the definition of a highway vehicle under the offhighway vehicle exception. Therefore, Taxpayer is liable for the tax imposed by § 4051(a)(1) on its sale of X.

(2) Taxpayer is liable for tax even if the purchaser certified that the truck was purchased for off-road use.

(3) Taxpayer's request to apply this technical advice memorandum on a nonretroactive basis under § 7805(b)(8) is denied.

FACTS:

Taxpayer is a retail seller of heavy trucks including X. X has a standard highway chassis and body. It is commonly purchased for use in transporting coal from a mine site to a tipple. The dump body of X is 104 inches wide. The dump body also includes wheel flares that increase the total width of the box to 106.5 inches.

In the course of its business, Taxpayer sold several Xs to purchasers but did not pay excise tax with respect to these sales because the purchasers certified in documents provided to Taxpayer that the "chassis referenced below was purchased for use as an OFF HIGHWAY COAL HAULER" and that "this vehicle is federal excise tax exempt." The purchasers did not register the Xs for highway use.

LAW AND ANALYSIS:

Section 4051(a) imposes on the first retail sale of certain enumerated articles (including in each case parts or accessories sold on or in connection therewith) a tax equal to 12 percent of the article's sale price. Included among those articles are truck chassis and bodies. Section 145.4051(a)-1(a)(2) of the Temporary Excise Tax Regulations under the Highway Revenue Act of 1982 (Pub. L. 97-424) provides that a chassis or body is taxable only if it is sold for use as a component part of a highway vehicle as defined in § 48.4061(a)-1(d).

Section 48.4061(a)-1(d)(1) defines a highway vehicle as any self-propelled vehicle, or any trailer or semitrailer, designed to perform a function of transporting a load over public highways, whether or not also designed to perform other functions, but does not include a vehicle described in § 48.4061(a)-1(d)(2). The term public highway includes any road in the United States that is not a private roadway. Examples of vehicles that are designed to perform a function of transporting a load over the public highways are highway-type trucks, truck tractors, trailers, and semi-trailers.

Section 48.4061(a)-1(d)(2)(ii) provides an exception from the definition of a highway vehicle for certain vehicles specially designed for offhighway transportation. This exception provides that a vehicle is not a highway vehicle if it meets two tests: (A) it is specially designed for the primary function of transporting a particular type of load other than over the public highway in connection with construction, manufacturing, processing, farming, mining, drilling, timbering, or an operation similar to any of the foregoing enumerated operations (the special design test); and (B) if by reason of such special design, the use of the vehicle to transport such load over the public highways is substantially limited or substantially impaired (the substantial impairment test). In

determining whether the use is substantially limited or impaired, account may be taken of whether the vehicle may be driven at regular highway speeds, requires a special permit for highway use, is overweight, overheight, or overwidth for regular use, and any other relevant considerations.

Section 48.4061(a)-1(e)(1) provides the general rule that the sale of a chassis or body is taxable if the chassis or body is, in any sense, reasonably suitable for use as a component part of a highway vehicle. Section 48.4061(a)-1(e)(2)(ii) provides that with respect to the sale of a chassis or body (not including the sale of a completed vehicle described in § 48.4061(a)-1(e)(2)(i)) (emphasis supplied) which would otherwise be treated under § 48.4061(a)-1(e)(1) as a sale of a chassis or body enumerated in § 48.4061(a)-1(a)(1), the tax imposed under § 4061(a) shall not apply to the sale if the chassis or body is actually sold for use, or for resale for use, as a component part of a vehicle that is not a highway vehicle within the meaning of § 48.4061(a)-1(d). Paragraphs 48.4061(a)-1(e)(2)(ii), (iii), and (iv) provide certain procedural requirements with which the manufacturer or reseller must comply in order to sell tax free certain chassis and bodies (not completed vehicles).

Rev. Rul. 70-350, 1970-2 C.B. 262, holds that tax applies to the sale of a heavy-duty truck chassis irrespective of its width, weight, construction, or the extent to which it may travel other than over the highway. The fact that a chassis is designed to withstand rugged use when transporting property over rough terrain does not negate the fact that the chassis is also designed to transport property over the highway. The ruling reasons that the paramount consideration in determining whether a vehicle is a highway vehicle is whether the vehicle is designed for the transportation of persons or property over the highway.

Rev. Rul. 79-296, 1979-2 C.B. 370, holds that tax applies to the sale of truck-tractors and low-bed semitrailers that are used in combination to transport military equipment on and off the highway and that are oversize and require special permits and/or escort vehicles on most state highways. The truck-tractors are eight-by-eight with a 22.5 ton capacity, 120-inch width, and maximum speed of 38.5 miles per hour with a heavy load. The low-bed semitrailers have four axles and a 60 ton capacity and are 137 inches wide. The ruling holds that while the vehicles have characteristics that impair their use on the highway, in that they are oversize and require special permits, those characteristics are necessary in order to enable the vehicles to carry their intended load and accomplish their highway transportation function. Thus, the vehicles are not specially designed for offhighway transportation.

Rev. Rul. 81-252, 1981-2 C.B. 209, holds that tax applies to the sale of a dual-use vehicle designed to transport cargo both off-road and in over-the-highway operations. Because of its special design, the vehicle's on-highway cargo capacity is 10 percent less
than the cargo capacity of a conventional highway-type cargo carrier. However, this

special design does not substantially limit the vehicle's ability to transport a load over public highways.

To be excluded from the definition of a highway vehicle by the offhighway vehicle exception, a vehicle must meet both the § 48.4061(a)-1(d)(2)(ii)(A) special design test and the § 48.4061(a)-1(d)(2)(ii)(B) substantial impairment test. As indicated in the holdings of these revenue rulings, no single characteristic such as width automatically excludes a vehicle from the definition of a highway vehicle under the offhighway vehicle exception.

X does not meet the offhighway vehicle exception under § 48.4061(a)-1(d)(2)(ii) because it does not meet the special design test. X is designed for the primary function of transporting a particular load over the highway from the mine to the tipple. X needs to meet the special design test before the substantial impairment test is relevant. However, even if X did meet the special design test, X does not meet the substantial impairment test. The only evidence submitted with respect to either test is that the width of X is slightly larger than 102 inches thus requiring a special permit for highway use. This evidence does not support a finding of substantial impairment or limitation of the use of the vehicle to transport loads over the public highways. See Rev. Rul. 79-296.

The classification of a taxable highway vehicle is based on the design of the vehicle and not the use of the vehicle. See Rev. Rul. 70-350. That is, whether a vehicle's purchaser registers that vehicle for highway use or actually uses that vehicle on the highways is not determinative of whether the vehicle is designed for highway use.

Taxpayer's liability for tax is not affected by the purported exemption certificates concerning the use of X. Under § 48.4061(a)-1(e)(2), either a chassis or a body may be sold tax free for use as a component in the production of a nonhighway vehicle. Neither the statute nor applicable regulations set forth an exception from the tax imposed by § 4051 based on a certificate by the purchaser related to the use of a completed vehicle (as is the case here.)

CONSIDERATION OF § 7805(b)(8) RELIEF:

Section § 7805(b)(8) provides that the Secretary may prescribe the extent, if any, to which any ruling shall be applied without retroactive effect.

Taxpayer requests favorable § 7805(b)(8) treatment but offers no basis for limiting retroactive application. Taxpayer merely indicates that it does not have sufficient records to determine the tax due and obtaining the necessary records would be very expensive.

The holding in a technical advice memorandum ordinarily is applied retroactively. See section 23.02 of Rev. Proc. 2003-2, 2003-1 I.R.B. 76, 106. Relief under

§ 7805(b)(8) usually is granted only if a taxpayer relied to its detriment on a published position of the IRS or on a letter ruling or technical advice memorandum issued with respect to that taxpayer. There is no prior technical advice memorandum or letter ruling to Taxpayer. Taxpayer could have requested a ruling as to the proper classification of X but failed to do so. Rather, Taxpayer relied on its own interpretation of the law. A taxpayer's erroneous interpretation of the law is not a basis for relief under § 7805(b)(8).

CAVEATS:

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) provides that it shall not be used or cited as precedent. In accordance with § 6110(c), names, addresses, and other identifying numbers have been deleted.