INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No
Year(s) Involved:
Date of Conference: August 5, 2004

LEGEND:

ISSUE:

Whether Taxpayer's retail sales of the X vehicles and Y truck semitrailer bodies described below are subject to the excise tax imposed by § 4051(a)(1) of the Internal Revenue Code on truck semitrailer bodies and chassis.

CONCLUSION:

Taxpayer is not liable for the excise tax imposed by § 4051(a)(1) on its sales of the X vehicles or of the Y truck semitrailer bodies.

FACTS:

Taxpayer manufactures and sells at retail both the X vehicles and Y truck semitrailer bodies. The multi-axled X vehicles are semitrailers designed to transport

highway construction materials such as hot asphalt, asphalt-related materials, and concrete. The vehicles are equipped with sloped insulated hopper sidewalls and a “live bottom” continuous rubber belt horizontal discharge system in the floor of the hopper. The belt moves the payload to a rear tailgate that is designed to allow the controlled discharge of asphalt at the job site into a trailing asphalt paving machine. The X vehicles vary in overall length from approximately 31 to 43 feet, in capacity from 24 to 40 cubic yards, and in maximum design payload from 30 to 35 tons. The X vehicles are designed to be towed by a standard highway tractor at normal highway speeds. The vehicles comply with all federal and state regulations governing highway use and may be legally operated on the public highways when loaded within legal weight limits. However, special permits are required for the highway operation of the X vehicles when their tractor/trailer combination gross vehicle weights exceed 80,000 pounds.

The Y bodies are mounted on multi-axled semitrailer chassis and are designed to transport agricultural products, including feed, seed, and fertilizer. The aluminum bodies are equipped with sloped hopper sidewalls (with plastic liners for product release) and a “live bottom” segmented or continuous rubber belt horizontal discharge system in the floor of the hopper. The belt, which has a floor speed discharge control, moves the load to the rear of the semitrailer where it is unloaded through a side-swing (with hydraulic knife gate) or top-hinged tailgate metering door. The overall lengths of the Y bodies vary from 41 to 53 feet, overall widths from 96 to 102 inches, and overall heights from 114 to 159 inches. All Y bodies are rated at 30 tons maximum capacity and are mounted on chassis equipped with heavy duty fifth wheels, suspension subframes, and drive systems that are designed to withstand twisting such as encountered in farm fields.

LAW AND ANALYSIS:

Section 4051(a)(1) imposes a tax on the first retail sale of certain enumerated articles, including automobile truck trailer and semitrailer chassis and bodies.

Section 4053(2) provides, in part, that no tax shall be imposed by § 4051 on any body primarily designed (B) to haul feed, seed, or fertilizer to and on farms, or (D) to load or unload feed, seed, or fertilizer on farms.

Section 145.4051-1(a)(2) of the Temporary Regulations under the Highway Revenue Act of 1982 (Pub. L. 97-424) specifies that the tax under § 4051(a)(1) is imposed on a chassis or body only if such chassis or body is sold for use as a component part of a highway vehicle (as defined in § 48.4061(a)-1(d) of the regulations).

Section 48.4061(a)-1(d)(1) of the Manufacturers and Retailers Excise Tax Regulations defines "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.

Section 48.4061(a)-1(d)(2)(ii) provides that a self-propelled vehicle, or a trailer or semitrailer, is not a highway vehicle if it is (A) specially designed for the primary function of transporting a particular type of load other than over the public highway in connection with a construction, manufacturing, processing, farming, mining, drilling, timbering, or operation similar to any of the foregoing enumerated operations (the (A) test), and (B) if by reason of the special design, the use of the vehicle to transport the load over the public highways is substantially limited or substantially impaired (the (B) test). The regulation further provides that when considering the (B) test, account may be taken of whether the vehicle may travel at regular highway speeds, requires a special permit for highway use, is overweight, overheight or overwidth for regular highway use, and any other relevant considerations. Lastly, solely for making determinations with regard to this exception, the regulation provides that, where there is affixed to the vehicle equipment used for loading, unloading, storing, vending, handling, processing, preserving, or otherwise caring for a load transported by the vehicle over public highways, the functions are related to the transportation of a load over the public highways even though such functions may be performed off the public highways.

In Flow Boy, Inc. v. United States, 84-1 U.S.T.C., ¶16,418 (10th Cir. 1984), the appellate court affirmed a district court jury decision in Flow Boy, Inc. v. United States, 83-1 U.S.T.C. ¶ 16,395 (W.D. OK 1982), which held that the Flow Boy ST-1000 semitrailer (equipped with insulated sidewalls and a horizontal discharge system in the floor) was specially designed for off-highway use and that the special design substantially impaired the semitrailer's capability to transport hot-mix asphalt over public highways. The court held that the ST-1000 was not subject to federal excise tax under the exception provided by § 48.4061(a)-1(d)(2)(ii). The court in Gateway Equipment Corporation v. United States, 92 A.F.T.R. 2d (RIA) 6970 (W.D.N.Y. 2003), in a ruling on a summary judgment motion, held that a hot asphalt transporting semitrailer, the CB-4000 (the similarly equipped successor to the Flow Boy ST-1000), met both the (A) test and the (B) test of the exception to the definition of a highway vehicle provided in § 48.4061(a)-1(d)(2)(ii).

Since the X vehicles are physically and operationally similar to the hot asphalt semitrailers that are described in the Flow Boy and Gateway decisions, the X vehicles will be treated similarly for excise tax purposes. Accordingly, the X vehicles meet the (A) and (B) tests of the regulatory exception provided in § 48.4061(a)-1(d)(2)(ii) and Taxpayer's sales thereof are not subject to the tax imposed by § 4051(a)(1) for the taxable periods at issue.

Section 4053(2) provides that the tax imposed by § 4051 shall not be imposed on any body primarily designed –

> (A) to process or prepare seed, feed, or fertilizer for use on farms,

(B) to haul feed, seed, or fertilizer to and on farms,
(C) to spread feed, seed, or fertilizer on farms,
(D) to load or unload feed, seed, or fertilizer on farms, or
(E) for any combination of the foregoing.

Rev. Rul. 69-579, 1969-2 C.B. 200, involves certain automotive truck, trailer and semitrailer bodies equipped with heavy-duty unloading equipment that are used primarily for hauling animal and poultry feed to farms and unloading the products into bins and troughs on the farms. The revenue ruling holds that the described bodies are primarily designed for hauling feed, seed, or fertilizer to and on farms and are therefore exempt from the § 4061 manufacturers tax (replaced by the § 4051 retailers tax) by virtue of the exemption provided under § 4063(a)(2)(B) [§ 4053(2)(B) under the retailers tax]. The revenue ruling states that the elaborate and expensive unloading equipment built into the bodies and the modifications required to accommodate the unloading systems make it impractical to purchase the bodies for use other than in hauling seed, feed, or fertilizer to, and unloading it on, farms. The equipment included heavy duty mechanical or pneumatic unloading equipment that formed an integral part of the bodies. The mechanical system employed conveyors or augers and unloaded from the top of the bodies. The pneumatic system employed blowers and a hose and usually unloaded from the bottom and rear of the body. Each system is activated by a power take-off from the truck or truck tractor engine. The bodies are usually divided into separate compartments and are either open at the top or completely enclosed. The enclosed type is equipped with sliding doors on top to permit easy loading at grain elevators.

Rev. Rul. 75-462, 1975-2 C.B. 419, involves a dump truck body designed for hauling level loads of low density farm cargo. The body is primarily used to haul grain and sugar beets from the field to points on or off the farm and may also be used to haul feed and fertilizer over the highway. The revenue ruling holds that the body is not exempt under the provision of § 4063(a)(2)(B) from the tax imposed by § 4061(a)(1). The ruling states that highway bodies that are used for the general hauling of feed, seed, or fertilizer over the highway are subject to tax unless they have specific features that indicate the bodies are primarily designed to haul those items to and on farms.

Rev. Rul. 2004-80, 2004-32 I.R.B.164, concerns the definition of “primarily designed” as that term is used in distinguishing a truck from a tractor for purposes of § 4051(a)(1). The revenue ruling states that the term “primarily” means principally or of first importance.

Taxpayer states that, historically, feed, seed, and fertilizers were produced in the dry pellet or granular form and were transported in the traditional feed body or trailer body equipped with a gravity dump or some type of screw auger or tube conveyor for unloading the vehicle body. In response to the need to also transport and handle other

forms of feed and fertilizers that are sticky, wet, and bulky, Taxpayer states that it designed and developed the Y bodies. Taxpayer further states that these bodies were designed with an elaborate chain and belt conveyor system that is housed within special aluminum extrusions and include features such as steep side slopes, plastic liners, and wide belt systems to safely and efficiently unload bulky, wet, sticky, and high volume products. Taxpayer argues that the addition of heavy duty mechanical (augers) or pneumatic (blowers) unloading equipment would only aid in the unloading of dry loads and that the sticky, wet, and bulky feeds and fertilizers would actually clog those unloading devices. Those commodities are most efficiently unloaded by moving the load to the rear of the body by the conveyor where it can be dumped through the non-metered rear door. The conveyor/sloped wall/metered rear door system is also designed to efficiently unload dry feed, seed, and fertilizer through the rear door of the body into a feed bin or into a separate augering device on the farm.

Additionally, Taxpayer has submitted data to show that, as in Rev. Rul 69-579, the addition of the unloading systems adds considerable cost to the bodies and since the sloped hoppers and conveyors limit capacity, the Y bodies have higher cost to volume (transported) ratios then other similarly-sized agricultural and nonagricultural commercial transport vehicles. Therefore, Taxpayer argues that it would be at a distinct disadvantage if it marketed its bodies to purchasers who intended to use the bodies primarily, for example, in the transportation of harvested crops to market.

The exemption from tax provided by § 4053(2) does not extend to bodies primarily designed for general use even though the bodies may be capable of hauling feed, seed, or fertilizer to and on farms and/or performing another of the functions described in § 4053(2) (or a combination of those functions). The dump truck body described in Rev. Rul. 75-462 is an example of a multipurpose automotive truck body that is able to perform some of the exempt functions but is not primarily designed to do so. To be exempt, a body must be primarily (principally) designed for one, or a combination, of the functions described in § 4053(2). The truck trailer and semitrailer bodies described in Rev. Rul. 69-579 were equipped with expensive and elaborate integrated equipment that included heavy duty mechanical (conveyors or augers that unloaded from the top of the body) or pneumatic (blowers and a hose that usually unloaded from the bottom and rear of the body) unloading equipment. That equipment was primarily designed to unload feed, seed, or fertilizer at farm locations such as silos and feed lots.

Taxpayer's Y bodies are not equipped with the mechanical augering or pneumatic unloading systems described in Rev. Rul. 69-579. However, the Y bodies are equipped with an elaborate and expensive unloading system, which includes the sloped hopper sidewalls (with plastic liners) and a "live bottom" segmented or continuous rubber belt horizontal discharge system (with power unit and controls) in the floor of the hopper that is specially designed for hauling feed, seed, or fertilizer (especially feed and fertilizers that are sticky, wet, and bulky). Because of the incorporation of such features (including modifications required to accommodate the unloading systems), their added cost, and diminution of load-carrying capability in

comparison to a similarly-sized commercial semitrailer body, it would be impractical to purchase the bodies for use other than in hauling seed, feed, or fertilizer to, and unloading it on, farms.

CAVEAT(S):

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