INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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Index (UIL) No.: 4051.00-00
CASE-MIS No.: TAM-122995-06

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No
Year(s) Involved:
Date of Conference:

LEGEND:

Taxpayer =
Model A =
Dealer X =
Dealer Y =
z =

ISSUES:

(1) Are the vehicles described below tractors subject to the tax imposed by § 4051(a)(1)(E) of the Internal Revenue Code?

(2) If the vehicles described below are taxable tractors, is Taxpayer liable for the tax imposed on the first retail sale of tractors?

CONCLUSION:

(1) The vehicles described below are tractors subject to the tax imposed by § 4051(a)(1)(E).

(2) Taxpayer is liable for the tax imposed on its first retail sale of tractors.

FACTS:

One of Taxpayer's businesses is the manufacture of incomplete chassis cabs into vehicles referred to as "toterhomes." Taxpayer sold toterhomes to retail dealers. These dealers sold the toterhomes to retail customers.

Taxpayer's manufacturing process began with its purchase of eight Model A incomplete chassis cabs from Dealer X and six Model A incomplete chassis cabs from Dealer Y. All of these incomplete chassis cabs had a gross vehicle weight rating (GVWR) of 33,000 pounds or less.

In the "Specification Proposals" for an incomplete Model A chassis cab, the chassis manufacturer described the chassis as a conventional chassis. Marketing materials for this incomplete Model A chassis cab provided that an optional tractor package was available with this model. Taxpayer did not buy its chassis with this option. The chassis manufacturer did not describe these chassis as motorhome or recreational vehicle chassis. In a "Specification Confirmation," however, the manufacturer under "General Application Information" included the following language: "Truck/Trailer Configuration;" "Motorhome Vehicle Body;" and "Single (1) Trailer."

The chassis manufacturer issued a "Certificate of Origin" for each incomplete chassis cab it sold. The certificate stated that each incomplete chassis cab had a body type of "truck" and was of a "Series or Model A."

Dealer X described the Model A as a motorhome chassis on Taxpayer's invoice. This dealer also secured from Taxpayer a statement that the incomplete chassis cabs would be completed as a non-taxable trucks, not tractors. Taxpayer's statement also included a representation that the chassis would not be equipped "with a device relating to its operation as tractor, such as (1) pressure supply system to the brake system of a towed vehicle, (2) safeguard against loss of pressure in the brake system of a towed vehicle, (3) brake system control linage or (4) control for independent operation of a towed vehicle's brake system."

Dealer Y did not secure a statement from Taxpayer that the incomplete chassis cabs Taxpayer purchased would be completed as trucks.

Neither Dealer X nor Dealer Y paid federal excise tax on any of the incomplete chassis cabs Taxpayer purchased.

Taxpayer installed a body on each incomplete chassis cab it purchased. Inside a typical body was a dinette table that folded into a bed, a sleeper sofa, an optional bunk bed over the cab, sitting space, counter tops, sink, refrigerator, microwave oven, stove top burners, an optional oven, toilet, sink, shower stall, and cabinets. Taxpayer furnished the body with a water tank, a propane furnace, and an air conditioner. The body does not extend over the full length of the chassis.

On the remaining chassis space behind this body is an outside bed or platform that is accessible from the body by a door or steps built into the bed. The bed has a rectangular well that accommodates a 30,000 or 40,000 pound rated gooseneck hitch or a fifth wheel with a 20,000 to 22,000 pound towing capacity. Taxpayer installs one of these hitches over the rear axle of the vehicle. This enables the vehicle to tow trailers and semitrailers (trailers) that exceed 35 feet in length and have a GVWR of over 20,000 pounds. Taxpayer includes as a standard item a tag hitch. After this installation, Taxpayer issued a new Certificate of Origin for each vehicle. The new Certificate of Origin changed the vehicle's "Make" to z and changed the "Series/Model" to MPV (multipurpose vehicle).

When Taxpayer sold the vehicles to retail dealers, Taxpayer did not report or pay any federal excise tax on the sales; nor did Taxpayer obtain exemption certificates from its retail dealers that stated that the vehicles were being purchased for resale. Likewise, Taxpayer's invoices did not indicate that the vehicles purchased were for resale.

LAW AND ANALYSIS:

Section 4051(a)(1) imposes a 12 percent excise tax on the first retail sale of automobile truck chassis and bodies, truck trailer and semitrailer chassis and bodies, and tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.

Section 4051(a)(2) provides that the tax imposed by paragraph (1) shall not apply to automobile truck chassis and automobile truck bodies suitable for use with a vehicle which has a GVW of 33,000 pounds or less.

Section 145.4051-1(e)(1)(i) of the Temporary Excise Tax Regulations Under the Highway Revenue Act of 1982 (Pub. L. 97-424) defines "tractor" as a highway vehicle primarily designed to tow a vehicle, such as a trailer or semitrailer, but does not carry cargo on the same chassis as the engine. A vehicle equipped with air brakes and/or towing package will be presumed to be primarily designed as a tractor.

Section 145.4051-1(e)(1)(ii) provides that an incomplete chassis cab shall be treated as a tractor if it is equipped with one or more of the following:

(A) A device for supplying pressure from the chassis cab to the brake system (air or hydraulic) of the towed vehicle;

(B) A mechanism for protecting the chassis cab brake system from the effects of a loss of pressure in the brake system of the towed vehicle;

(C) A control linking the brake system of the chassis to the brake system of the towed vehicle;

(D) A control in the cab for operating the towed vehicle's brakes independently of the chassis cab's brakes; or

(E) Any other equipment designed to make it suitable for use as a tractor.

An incomplete chassis cab which is not equipped with any of the devices set forth in paragraphs (e)(1)(ii) (A) through (E) of this section shall be treated as a truck if the purchaser certifies in writing that the vehicle will not be equipped for use as a tractor.

In Freightliner of Grand Rapids, Inc. v. United States, 351 F. Supp. 2d 718, 724, (W.D. Mich. 2004), the district court concluded that this regulation is properly read to provide that an incomplete chassis cab that does not have any of the listed equipment in §145.4051-1(e)(1)(ii) is to be treated as a tractor unless the purchaser certifies in writing that it will not equip the vehicle for use as a tractor.

Section 145.4051-1(e)(2) defines "truck" as a highway vehicle that is primarily designed to transport its load on the same chassis as the engine even if it is also equipped to tow a vehicle, such as a trailer or semitrailer.

"Primarily" means "principally" or "of first importance." See Malat v. Riddle, 383 U.S. 569 (1966), 1966-1 C.B. 184.

"Primarily" does not mean "exclusive." See Rev. Rul. 77-36, 1977-1 C.B. 347.

Under the primarily designed test, a vehicle that can both carry cargo on its chassis and tow a trailer is characterized as either a truck or tractor depending on which function is of greater importance. The function for which a vehicle is primarily designed is evidenced by physical characteristics such as the vehicle's capacity to tow a vehicle, carry cargo, and operate (including brake) safely when towing or carrying cargo. Cargo carrying capacity depends on the vehicle's GVW rating and the configuration of the vehicle's bed or platform. Towing capacity depends on the vehicle's GVW and GCW ratings and whether the vehicle is configured to tow a trailer or semitrailer. See Rev. Rul. 2004-80, 2004-2 C.B. 164.

Section 4052(a)(1) provides that the term "first retail sale" means the first sale for a purpose other than for resale or leasing in a long-term lease, after production, manufacture, or importation.

Section 145.4052-1(a)(1) provides that for purposes of § 4051(a)(1) and § 145.4051-1, the term “first retail sale” means a taxable sale described in paragraph (a)(2) of this section. Section 145.4052-1(a)(2) provides, in part, that the sale of an article is a taxable sale unless (i) there is a tax-free sale of an article under § 4221; (ii) [Reserved] for sales after June 30, 1998, see § 48.4052-1 of this chapter; (iii) there has been a prior taxable sale of the article.

Section 48.4052-1 of the Manufacturers and Retailers Excise Taxes Regulations provides that tax is not imposed by § 4051 on the sale of an article for resale or leasing in a long-term lease if, by the time of sale, the seller has in good faith accepted from the buyer a statement that the buyer executed in good faith and that is in substantially the same form, and subject to the same conditions, as the certificate described in § 145.4052-1(a)(6) of this chapter, except that the certificate must be signed under penalties of perjury and need not refer to Form 637 or include a registration number.

Section 4221 provides, in part, that under regulations prescribed by the Secretary no tax shall be imposed on the first retail sale of an article described in § 4051 (1) for use by the purchaser for further manufacture, or for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture; (2) for export, or for resale by the purchaser to a second purchaser for export; (3) for use by the purchaser as supplies for vessels or aircraft; (4) to a State or local government for the exclusive use of a State or local government; or (5) to a nonprofit educational organization for its exclusive use.

Section 48.4221-2(b) of the Manufacturers and Retailers Excise Taxes Regulations provides that an article shall be treated as sold for use in further manufacture if the article is sold for use by the buyer as material in the manufacture or production of, or as a component part of, another article taxable under chapter 32 of the Internal Revenue Code. Section 4051(a) is in chapter 31.

Section 4053(1) provides an exemption from the tax imposed by § 4051 on camper coach bodies for self-propelled mobile homes. Specifically, no tax is imposed on any article designed to be mounted or placed on automobile trucks, automobile truck chassis, or automobile chassis, and to be used primarily as living quarters or camping accommodations.

The predecessor of § 4053(1), § 4063(a)(1), was added to the Internal Revenue Code by the Excise Tax Reduction Act of 1965, Pub. L. 89-44. The Senate report to the Act, S. Rept. No. 324, 89th Cong., 1st Sess. (1965), 1965-2 C.B. 676, 693, states where a chassis is sold by the manufacturer without a body being mounted on it, it is intended that the category for the chassis be determined by the basis of all of the facts available including the predominant use of such types of chassis in the industry. The Senate Report further states that in the case of self-propelled mobile homes, the exemption

does not extend to the chassis upon which such a body is mounted (regardless of the manner in which the entire unit is constructed). Id. at 711.

Rev. Rul. 73-197, 1973-1 C.B. 423, holds that the sales of specially designed chassis for use in the manufacture of mobile homes are not subject to the tax imposed on truck chassis under § 4061(a)(1). However, the tax imposed under § 4061(a)(1) applies to the sale of conventional truck chassis even though they are used as components of mobile homes. In determining whether the chassis is specially designed for use in the manufacture of mobile homes, the revenue ruling evaluates several factors including use of a flat rail frame, mounting of the engine between the frame rails, design and placement of the water pumps, oil dip sticks, oil intakes, and radiator coolant, use of a large gas tank with a capacity of 40 to 50 gallons, use of three speed automatic transmission and power steering, use of specially designed power brake boosters, and position of steering columns and driver seats forward and to the left of conventional truck chassis.

Although some of the paperwork associated with the sales of the incomplete chassis cabs indicated that the chassis were motorhome bodies or trucks, these characterizations are inconsistent with the manufacturer's initial description of the chassis as conventional chassis. Furthermore, the manufacturer's marketing materials for these chassis state that the chassis are conventional chassis. For tax purposes, to consider a chassis a motorhome chassis it must be constructed specifically for the purpose of transporting motorhome bodies as described in Rev. Rul. 73-197. Model A chassis do not meet this criteria. Accordingly, the Model A chassis is a conventional chassis that can be completed as a truck or tractor.

To apply the primarily designed test to the vehicles at issue, one determines whether the vehicles are primarily designed to tow or primarily designed to provide living accommodations. Although most of the vehicle's bed space supports living accommodations, there are other physical characteristics that must be considered. The installation of a fifth wheel hitch or a gooseneck hitch over the rear axle enables this vehicle to safely tow at least a 35 foot trailer with a GVW of 20,000 pounds. These types of hitches and their placement over the rear axle maximizes the vehicles' towing capacities. This towing configuration is typical of tractors. A similar vehicle with a ball or tag hitch attached to the rear cross rail between the vehicle's frame rails does not have the same capacity to safely tow a comparable trailer. The size of the hitch and its placement over the rear axle demonstrates that towing was a major consideration in designing this vehicle. Furthermore, the living accommodations do not extend the length of the frame rails, as is often the case with more conventional motorhomes or camper coach bodies. This design accommodates the installation of a substantial hitch that requires the support of the vehicle's rear axle, which further establishes the primacy of the vehicle's design to tow.

When Dealer X sold the incomplete chassis cabs to Taxpayer, Taxpayer gave Dealer X a statement that Taxpayer would not complete the incomplete chassis cabs as tractors. Under these circumstances, § 145.4051-1(e)(1) provides that the incomplete chassis cabs will be treated as trucks. The GVWR given to these incomplete chassis cabs is 33,000 pounds or less. Section 4051(a)(2) excludes from the tax imposed by § 4051(a)(1) trucks that have a gross vehicle weight of 33,000 pounds or less.

Notwithstanding the certificate that Taxpayer gave Dealer X, Taxpayer completed the incomplete chassis cabs as tractors. When Taxpayer sold these tractors to retail dealers, Taxpayer made the first retail sales of these tractors because these sales did not meet any of the three exceptions in §145.4052-1(a)(2): (1) the sales did not qualify as tax free sales under § 4221 because the “further manufacture” exception only applies to articles taxable under chapter 32 (§ 4051 is in chapter 31); (2) Taxpayer did not receive from its buyers a certificate described in § 48.4052-1; and (3) there were no prior taxable sales of the tractors. Accordingly, Taxpayer is liable for the tax imposed by § 4051(a)(1)(E) on the first retail sale of these highway tractors.

When Dealer Y sold the incomplete chassis cabs to Taxpayer, Taxpayer did not give Dealer Y a statement that Taxpayer would not complete the incomplete chassis as tractors. Section 145.4051-1(e)((1)(ii) provides that under these circumstances the incomplete chassis cabs are to be treated as tractors. Dealer Y’s sale of these tractors is the first retail sale of these tractors because: (1) this sale was not a tax free sale under § 4221; (2) Taxpayer did not give Dealer Y a statement or certificate described in § 48.4052-1(a); and (3) there were no prior taxable sales of the tractors. Therefore, Taxpayer is not liable for the tax on these tractors because Taxpayer did not make the first retail sale of these tractors.

CAVEAT(S):

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.