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Date: July 18, 2014

In Re:

LEGEND

Taxpayer =

A =

B =

C =

D =

Dear :

This is in response to your authorized representative's letter dated January 13, 2013, requesting rulings regarding the retail excise tax on heavy trucks and trailers imposed by § 4051 of the Internal Revenue Code (Code).

Taxpayer is in the business of manufacturing wrecker vehicles and tow vehicles in the United States. Taxpayer sells these vehicles to end users or to retail dealers with or without the certificates described in § 48.4052-1(a) of the Manufacturers and Retailers Excise Tax Regulations. The four vehicles whose equipment is the subject of this ruling request are A, B, C, and D (collectively the "Recovery Vehicles"). The Recovery Vehicles have a gross vehicle weight in excess of 33,000 pounds and are subject to the § 4051 tax. Taxpayer does not dispute that the Recovery Vehicles are subject to this tax.

The Recovery Vehicles are mainly used to: (1) retrieve a damaged vehicle from a difficult-to-reach accident site; (2) position a retrieved vehicle near a Recovery Vehicle that will tow the retrieved vehicle; (3) lift heavy equipment, such as air compressors and

electrical transformers, over fences or other obstacles; and (4) position heavy equipment, such as air conditioning units, on rooftops.

The following equipment is installed on the Recovery Vehicles: (1) a boom assembly; (2) a drag winch; (3) outriggers; (4) a subframe; and (5) controls for the operation of the boom assembly and drag winch (collectively, the "Equipment").

The boom assembly has five components: (1) the boom; (2) the main winch system; (3) the auxiliary winch system; (4) a rotator turret; and (5) an inclination angle site glass mounted on the boom that shows the operator the position of the boom in relation to the ground. Taxpayer mounts the boom, the main winch system, and the auxiliary winch system on a rotator turret. This boom assembly is not designed or used to load or unload objects onto or from the top of a Recovery Vehicle.

The boom has two or three hydraulic extensions. Each extension is contained within the main boom and can be extended to any distance between full retraction and full extension. The extended reach of the boom without readily removable extensions generally ranges from 25 feet to 37.33 feet. The boom is equipped with numerous D rings that can support a cable, hook, pulley, or other mechanical device. The boom and the mechanical devices that the D rings support can drag and lift heavy objects independent of the winch systems. There are two types of booms: (1) one that continuously rotates 360 degrees; and (2) one that rotates 190 degrees in each direction. The boom's rotational capacity means it can operate from any position on a Recovery Vehicle's horizontal axis. This rotational capacity can also aid in weight distribution and clearance when the Recovery Vehicle tows certain loads.

Taxpayer represents that the Recovery Vehicles' underlift assemblies are not connected to the Recovery Vehicles' booms and do not use the Recovery Vehicles' hydraulic systems. A Recovery Vehicle's underlift assembly is a separate piece of equipment that has an independent hydraulic system. The Recovery Vehicles' underlift assemblies are not at issue in this ruling request.

The boom assembly includes at least one main winch system that consists of two independently-operated, side-by-side winches. The winch cables are 200 or 250 feet long. Each of the two winch cables can be operated at different lengths and the extension or retraction of the winch cables can be operated at two different speeds.

The auxiliary winch system is two additional winches and their related hooks and cables. Similar to the main winch system, the two auxiliary winches can function at different lengths and speeds. The purpose of the auxiliary winch system is to minimize potential damage to an object by providing: (1) greater ability to manipulate an object; (2) greater weight capacity; and (3) greater flexibility and control for moving the object and for distributing force over a larger area of the object.

To allow the boom to rotate, Taxpayer mounts the boom assembly on a rotator turret. Taxpayer also mounts on this turret half of the large ring and pinion gear set that enables the boom to elevate and the hydraulic cylinders that control the boom's ability to elevate.

A drag winch is an optional piece of equipment for the Recovery Vehicles located at the center of the Recovery Vehicle beneath the boom approximately five feet off the ground. The drag winch pulls heavy objects that are on uneven ground (such as an object in a ditch) or that offer resistance (such as an object in mud). The drag winch does not rotate, nor will it lift, tilt, or twist objects.

The standard outriggers for the Recovery Vehicles are of the "grasshopper leg design" and are located above the Recovery Vehicles' frames. The Recovery Vehicles have four of these outriggers that usually extend three feet from the Recovery Vehicles, two on each side in the front and two on each side in the rear. Each outrigger can be independently operated. These outriggers provide stability for a Recovery Vehicle when it operates on uneven ground while it lifts, pulls, twists, tilts, and turns objects. Taxpayer also offers optional H beam outriggers that provide greater stability than the standard outriggers. Neither the standard nor the optional H beam outriggers are used in connection with the underlift assembly. Their use is limited to supporting the safe operation of the boom and drag winch.

In addition to a double frame that Taxpayer represents has sufficient strength to support the transportation of the boom assembly, drag winch, outriggers, and underlift assembly, as well as to tow, the Recovery Vehicles have a subframe. This subframe provides the additional strength needed to support the safe operation of the boom assembly at the job site. The subframe also contains the other half of the large ring and pinion gear set in the rotator turret that enables the boom to rotate. Taxpayer represents that although the underlift assembly is partially mounted on this subframe, the subframe is not necessary to support the weight of the underlift assembly or to enable it to safely function.

The control panel for the boom assembly, drag winch, and outriggers is accessible from side boxes and/or remote control. In some instances, the control panel and/or remote controls will also operate the underlift assembly.

Taxpayer requests a ruling that, for purposes of § 4051, the cost of Equipment mounted on the Recovery Vehicles is excluded from the taxable sale price of a Recovery Vehicle.

Section 4051(a)(1) imposes a 12 percent tax on the first retail sale of truck chassis and truck bodies.

Section 145.4051-1(a)(1) of the Temporary Excise Tax Regulations under the Highway Revenue Act of 1982 (Pub. L. 97-424) explains that the § 4051(a)(1) tax is imposed on the first retail sale of automobile truck chassis and bodies (including in each case parts or accessories therefor sold on or in connection therewith or with the sale thereof).

Section 145.4052-1(f)(2) provides that rules similar to § 48.4061(a)-1(a)(2) and (3) are applicable to § 4051.

Section 48.4061(a)-1(a)(3)(i) of the Motor Vehicles, Tires, Tubes, Tread Rubber, and Taxable Fuel Regulations characterizes equipment or machinery installed on a taxable chassis or body as an integral part of the taxable chassis or body if the machinery or equipment contributes toward the highway transportation function of the chassis or body, regardless of whether separate sales of the machinery or equipment would be subject to the tax on automotive parts or accessories. Therefore, the amount of the sale price of a taxable chassis or body that is attributable to such machinery or equipment must be included in the tax base when computing the tax due on the sale or use of a taxable chassis or body.

Section 48.4061(a)-1(a)(3)(ii) excludes from the taxable sale price of a chassis or body amounts charged for machinery or equipment that is installed on a taxable chassis or body if (A) such machinery or equipment does not contribute toward the highway transportation function of the chassis or body, and (B) the reasonableness of the charge for the machinery or equipment is supportable by adequate records.

Rev. Rul. 79-192, 1979-1 C.B. 340, holds that vacuum equipment, water hoses, and certain other components of street sweeper vehicles are items that primarily perform the nontransportation function of street cleaning and are therefore excludable from the tax base. In reaching this conclusion, the revenue ruling reasons that an article contributes to the highway transportation or load carrying function of a vehicle for purposes of § 48.4061(a)-1(a)(3)(ii) only if it contributes as much or more to the highway transportation function than to the nontransportation function. The revenue ruling further notes that an item that contributes primarily to the nonhighway transportation function of the vehicle is not taxable.

Rev. Rul. 95-40, 1995-1 C.B. 195, considers whether a hose (used to retrieve and load debris) and a vacuum pump mounted on an industrial vacuum loader truck contribute to the highway transportation function of the truck. The revenue ruling concludes that the hose and pump do not contribute to the highway transportation function of the truck because they primarily perform a debris removal function. Consequently, for purposes of the § 4051 tax, the hose and pump are excludable from the tax base.

In the present case, the exclusion in § 48.4061(a)-1(a)(3)(ii) applies to Equipment if Equipment contributes as much or more to the nonhighway transportation function than to the highway transportation function of the Recovery Vehicles. In other words, Equipment is not taxable under § 4051 if it contributes primarily to the nonhighway transportation function of the Recovery Vehicles. See Rev. Rul. 79-192 and Rev. Rul. 95-40. To this end, the word "primarily" means principally or of first importance. See Malat v. Riddle, 383 U.S. 569 (1966). The word "primarily" does not mean exclusive. See Rev. Rul. 77-36, 1977-1 C.B. 347.

Although the boom assembly's rotational capacity can aid in weight distribution and clearance when towing certain loads, this contribution to the highway transportation function of a Recovery Vehicle is incidental. The boom's primary purpose is to retrieve and/or position damaged vehicles and other heavy equipment. The drag winch does not contribute to the highway transportation function of a Recovery Vehicle because its function is limited to pulling heavy objects from uneven ground onto level ground or pulling objects out of resistant circumstances. The outriggers do not contribute to the highway transportation function of a Recovery Vehicle because their use is limited to boom and drag winch operations, neither of which contributes to the highway transportation function of a Recovery Vehicle. The subframe does not contribute to the highway transportation function of a Recovery Vehicle because the subframe provides the additional strength needed to support the safe operation of the boom assembly. The subframe is not needed to transport Equipment, nor is it necessary to support or safely operate the underlift assembly. The control panel is primarily used to operate the boom assembly, the drag winch, and the outriggers. In some instances, the control panel may also operate the underlift assembly, but this operation is merely an incidental contribution to the highway transportation function of a Recovery Vehicle.

Based on the foregoing, we conclude that Equipment contributes primarily to the nonhighway transportation function of the Recovery Vehicles. Any contribution to the highway transportation function of the Recovery Vehicles is incidental. Accordingly, for purposes of § 4051, Taxpayer may exclude from the taxable sale price of a Recovery Vehicle amounts charged for Equipment that is installed on the Recovery Vehicle if the reasonableness of the charge for Equipment is supportable by adequate records.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of this ruling request, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Stephanie Bland
Branch Chief, Branch 7
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes