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Date:
03/10/2023

In Re:

LEGEND

Taxpayer =

A =
B =
C =
D =
E =
side puller =

Dear :

This is in response to your authorized representative's letter dated September 2, 2022, requesting rulings regarding the retail excise tax on heavy trucks and trailers imposed by § 4051(a) of the Internal Revenue Code (Code).

FACTS

Taxpayer is in the business of manufacturing the following wrecker and tow vehicles: A, B, C, D, and E (collectively the "Subject Vehicles"). Each Subject Vehicle has a gross vehicle weight in excess of 33,000 pounds and is subject to the § 4051(a) tax upon its first retail sale.

The Subject Vehicles are mainly used for two functions: (1) the recovery function, and (2) the towing function. The recovery function principally refers to retrieving a damaged or disabled vehicle, appropriately positioning it (such as moving an overturned vehicle to an upright position) and/or placing it near a Subject Vehicle.

The towing function principally refers to towing a damaged or disabled vehicle away from the accident site once the damaged or disabled vehicle has been placed or appropriately positioned near a Subject Vehicle.

Taxpayer requests a ruling that the following equipment installed on the Subject Vehicles is excludable from the taxable sale price of each Subject Vehicle for purposes of the § 4051(a) tax: (1) the second and, in some models, third recovery stage booms; (2) two recovery winches; (3) an optional drag winch; (4) an optional side puller; (5) the jack legs and optional horizontal stabilizers; (6) certain hydraulic control valves; and (7) one of two hydraulic oil tanks (for applicable models) (collectively, the "Subject Equipment").

1. The Second and Third Stage Recovery Booms

All Subject Vehicles have a recovery boom assembly comprised of an outer boom, second stage recovery boom, and in some cases, a third stage recovery boom. The outer boom contributes significantly to both the recovery function and the towing function. It houses the second and third stage recovery booms, augments the reach of these booms, and provides the lifting function of these booms. However, that lifting function is also used to facilitate the towing function. Taxpayer does not dispute that the outer boom is subject to the § 4051 tax.

All the Subject Vehicles have a second stage recovery boom and some of the Subject Vehicles also have a third stage recovery boom. The second and third stage recovery booms are housed by and extend from the outer boom. These second and third stage recovery boom assemblies are generally comprised of: (1) the boom; (2) D-rings or shackles; and (3) a winch system.

The second and third stage recovery booms can extend or retract to any customized length from the end of the outer boom to the fully extended length of the second and, if applicable, third stage recovery boom.

The second and third stage recovery booms are also equipped with D-rings or shackles that are used to facilitate the recovery function. A winch cable (see "Two Recovery Winches" below) is typically pulled out to the damaged or disabled vehicle through a pulley and back to the Subject Vehicle, where the hook at the end of the winch rope is affixed to the D-ring or shackle. The D-rings or shackles on the booms aid the recovery function by creating a two-part line. A two-part line can significantly increase the Subject Vehicle's ability to efficiently position the damaged or disabled vehicle by decreasing the amount of force necessary for such positioning.

The second and third stage recovery booms are not equipped with a tow bar or similar device and are not designed for the attachment of such device. Without a tow bar or similar device, the towed object would not be secured in the correct position and would shift or swing dangerously from side to side.

2. Two Recovery Winches

The Subject Vehicles have two side-by-side recovery winches that are independently operated. The cables operated by the recovery winches are 200 to 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. With only one recovery winch, a damaged or disabled vehicle could be pulled, dragged, and lifted; the second recovery winch allows for the vehicle to be turned, tilted or twisted.

3. Optional Drag Winch

The drag winch is only an option on some of the Subject Vehicles. 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 have the ability to lift or lower a disabled vehicle.

4. Optional Side Puller

The side puller is only an option on some of the Subject Vehicles and is used to place a damaged or disabled vehicle close to the Subject Vehicle. The side puller is a modular device that is separate from the Subject Vehicles and is installed just behind the operator's cab. This equipment has independent winches, legs, and controls, its own hydraulic control valve, and generally is used in conjunction with the other winches of the Subject Vehicle. It can only be used for side recoveries.

5. Jack Legs and Optional Horizontal Stabilizers

The inner and outer jack legs and optional inner and outer horizontal stabilizers stabilize the Subject Vehicles so that they will resist overturning. The jack legs extend vertically, which in turn raises and lowers the rear of the Subject Vehicles. For example, the jack legs can help to level the Subject Vehicles when they are on uneven ground to provide increased stability and to maintain appropriate ground clearance. The optional horizontal stabilizers are an option on some of the Subject Vehicles and extend from the inner jack legs.

6. Hydraulic Control Valves

A Subject Vehicle has two separate hydraulic control valves, each of which is comprised of several spools. One hydraulic control valve typically has three or four spools. The other hydraulic control valve has the remaining spools.

Towing functions generally require four spools: (1) a boom up/down spool (which also contributes to the recovery function), (2) an under lift tilt up/down spool, (3) an

under lift fold up/down spool, and (4) an under lift in/out spool. In some of the Subject Vehicles, the towing operations only require three spools because a single spool is used for both the under lift tilt up/down function and the under lift fold up/down function.

Recovery functions generally require five spools: (1) a winch one in/out spool, (2) a winch two in/out spool, (3) a boom in/out spool, (4) a left jack up/down spool, and (5) a right jack up/down spool. As noted earlier, the boom up/down spool also contributes to the recovery function; however, because the boom up/down spool is important for both the towing and recovery functions, Taxpayer will treat that spool as facilitating only the towing function. Nonstandard options may result in either adding more hydraulic control valves to the system (e.g., the side puller), or adding additional spools to an existing hydraulic control valve (e.g., the drag winch).

Because a Subject Vehicle performs both towing and recovery functions, a Subject Vehicle typically has nine spools.

7. Second Hydraulic Oil Tank

Some of the Subject Vehicles are equipped with two hydraulic oil tanks of the same or similar size. If those Subject Vehicles were only performing the towing function, then only one hydraulic oil tank would be needed to efficiently support the tubing, hoses, and hydraulic cylinders for that function. However, because those Subject Vehicles also perform a recovery function, a second hydraulic oil tank is necessary for efficient operations of those Subject Vehicles.

LAW

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 Manufacturers and Retailers Excise Tax 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. Examples of the type of machinery or equipment that contribute to the highway transportation function of a chassis or body are the following: loading and unloading equipment; towing winches; and all other machinery or equipment contributing to either the maintenance or safety of the vehicle, the preservation of cargo (other than refrigeration units), or the comfort or convenience of the driver or passengers.

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 nonhighway transportation 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 nonhighway transportation 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.

ANALYSIS & CONCLUSION

In the present case, the exclusion in § 48.4061(a)-1(a)(3)(ii) applies to Subject Equipment if Subject Equipment contributes as much or more to the nonhighway transportation function than to the highway transportation function of the Subject Vehicles. In other words, Subject Equipment is not taxable under § 4051(a) if it contributes primarily to the nonhighway transportation function of the Subject 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.

The second and third stage recovery booms' primary purposes are to retrieve and/or position damaged vehicles and other heavy equipment as part of the recovery function. The second and third stage recovery booms do not contribute to the highway transportation function of a Subject Vehicle because they facilitate the recovery function rather than the towing function of a Subject vehicle.

The two recovery winches, the optional drag winch, and the optional side puller do not contribute to the highway transportation function of a Subject Vehicle because their functions are limited to retrieval, positioning and/or placement of heavy objects, including pulling heavy objects from uneven ground onto level ground or pulling objects out of ditches, embankments, mud, or the like, which are recovery functions.

The jack legs and optional horizontal stabilizers do not contribute to the highway transportation function of a Subject Vehicle because they only provide the additional stability needed to resist overturning while engaging in the recovery function.

Each hydraulic control valve is considered separately for purposes of the exclusion in § 48.4061(a)-1(a)(3)(ii). A hydraulic control valve contains multiple spools. The spools generally required for towing operations (the boom up/down spool, the under lift tilt up/down spool, the under lift fold up/down spool, and the under lift in/out spool) contribute to the highway transportation function of a Subject Vehicle. The spools generally required for recovery operations (the winch one in/out spool, the winch two in/out spool, the boom in/out spool, the left jack up/down spool, and the right jack up/down spool) do not contribute to the highway transportation function of a Subject Vehicle. To the extent the number of spools on a hydraulic control valve that contribute to the recovery function of a Subject Vehicle is greater than or equal to the number of spools on the hydraulic control valve that contribute to the towing function, the hydraulic control valve contributes as much or more to the nonhighway transportation function of a Subject Vehicle than to the highway transportation function of a Subject Vehicle.

The second hydraulic oil tank contributes primarily to the nonhighway transportation function of a Subject Vehicle. Because the highway transportation function of a Subject Vehicle can be facilitated wholly by one hydraulic oil tank, the addition of a second hydraulic oil tank is only necessary to facilitate the nonhighway transportation function. Because of this, the second hydraulic oil tank contributes primarily to the nonhighway transportation function of a Subject Vehicle.

Based on the foregoing, we conclude that the second and third stage recovery booms, the two recovery winches, the optional drag winch, the optional side puller, and the second hydraulic oil tank contribute primarily to the nonhighway transportation function of the Subject Vehicles. Any contribution to the highway transportation function of the Subject Vehicles is incidental. Accordingly, for purposes of the tax imposed by § 4051(a), Taxpayer may exclude from the taxable sale price of a Subject Vehicle amounts charged for the second and third stage recovery booms, the two recovery winches, the optional drag winch, the optional side puller, and the second hydraulic oil

tank installed on the Subject Vehicle if the reasonableness of the charge for such equipment is supportable by adequate records.

Further, to the extent the spools on a hydraulic control valve installed on a Subject Vehicle contribute as much or more to the nonhighway transportation function of the Subject Vehicle as the highway transportation function of the Subject Vehicle, Taxpayer may exclude from the taxable sale price of the Subject Vehicle amounts charged for the hydraulic control valve if the reasonableness of the charge for such 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 provision 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,

/s/

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

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: