

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

January 16, 2002

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CASE MIS No.: TAM-153781-01/CC:PSI:B8

Taxable Periods:

ISSUES

(1) Is Taxpayer liable for the excise tax imposed by § 4051(a)(1) of the Internal Revenue Code on tractors when it makes first retail sales of the vehicles described below?

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

CONCLUSIONS

(1) Taxpayer is liable for the excise tax imposed by § 4051(a)(1) on tractors when Taxpayer makes first retail sales of the vehicles described below.

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

FACTS

Taxpayer sells trucks and truck tractors at retail. As part of its business, Taxpayer purchases Models X and Y medium duty chassis cabs. The chassis cabs

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have a gross vehicle weight rating (GVWR) of between 20,000 to 26,500 pounds. Taxpayer has mounted bodies (such as flatbed bodies) on chassis cabs and sold the vehicles as trucks and has also sold the chassis cabs as truck tractors (without a body but with a fifth wheel installed). These vehicles are not at issue. However, an issue of taxability arises when Taxpayer contracts with Z to install Z's 8, 9, and 10 foot platforms (with flush-mounted tiedowns), designated as RV (recreational vehicle) beds, on the chassis cabs along with coupling devices. The completed vehicles are either extended cab 2-door models or crew cab 4-door models. They are typically equipped with standard hydraulic disc brakes. Some have custom headboards, open top toolboxes mounted behind the cab, and belly boxes. Most of the vehicles are equipped with a removable 2 5/16" ball hitch mounted in the center of the flatbed, just in front of the rear axle. The ball hitch is rated to tow a 30,000 pound trailer. Taxpayer sells some vehicles with air-ride fifth wheel hitches installed. All the vehicles are equipped with 7-prong RV plugs for trailer lights, heavy duty trailer receivers, and (in some cases) electric trailer brake units to operate the electric brakes on the trailer.

None of the vehicles at issue is equipped with air brakes. The vehicles are used to tow horse and cattle trailers, racing car trailers, and recreational fifth wheel trailers. The selling price of a four-door Y chassis equipped with a Z body is double that of a comparatively equipped diesel pickup truck.

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 this tax does not apply to automobile truck chassis and automobile truck bodies suitable for use with a vehicle that has a GVW of 33,000 pounds or less.

Under § 145.4051-1(e)(1)(i) of the Temporary Excise Tax Regulations Under The Highway Revenue Act of 1982 (Pub. L. 97- 424) the term "tractor" means 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)(2) defines a "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.

Rev. Rul. 77-36, 1977-1 C.B. 347, holds that a three-axled truck chassis with a conventional truck cab and equipped with an automobile carrier body designed to carry three automobiles, two over the cab, and one behind the cab, as well as a fifth wheel mounted on a stinger that extended downward from the rear of the chassis is a truck-trailer combination for purposes of the highway use tax. In its analysis, the revenue

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ruling reiterates the statement in Rev. Rul. 76-559, 1976-2 C.B. 365, that ". . . it is not necessary that a vehicle be designed to perform only one of those functions [towing semitrailers or trailers, or for transporting property] to the exclusion of the other in order to be 'primarily' designed for towing semitrailers or trailers or for transporting property."

Rev. Rul. 76-559 considered whether two vehicles were trucks or tractors. The first vehicle was a two-axle pickup truck with a bar and a fifth wheel attachment or a special kingpin installed in the truck's bed. The bar and fifth wheel could be removed. The kingpin could be folded flush with the floor. This ruling holds that the truck retained its character as a truck despite the installation of hitching devices. The second vehicle was essentially similar to a truck tractor, but had a fifth wheel mounted over its rear axle and an automobile carrier body designed to carry one automobile over the cab of the vehicle and one automobile behind the cab. The ruling concludes that although the second vehicle had some load carrying capacity the vehicle was primarily designed as a tractor. In applying the primarily designed test to the two vehicles, the revenue ruling states that it is not necessary that a vehicle be designed to only tow or transport a load to the exclusion of the other function in order to be "primarily" designed for towing semitrailers or trailers, or transporting property.

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

During an examination of Taxpayer, the IRS office that submitted this request determined that Taxpayer's vehicles equipped with 8, 9, or 10 foot Z platforms were tractors and assessed the § 4051 excise tax on the first retail sale of the vehicles. That determination was based on the primary design of the vehicle as a truck tractor. The IRS found that the vehicles' equipment included a heavy duty trailer receiver and either a ball hitch (rated for a maximum 30,000 pound trailer) or an air ride fifth wheel. Although some vehicles were equipped with electric trailer brakes, the vehicles' brakes were found to be strong enough to stop many trailers without a separate trailer brake. Therefore, the braking capabilities of the vehicles were disproportionately large in comparison to the vehicles' load capacity. Further, the IRS found that Taxpayer's vehicles could transport more weight if larger bodies were installed on the chassis. The excessive braking and load carrying capacity of the vehicles led the examiner to conclude that the vehicles were primarily designed to tow trailers or semitrailers.

Taxpayer's position is that its vehicles are not truck tractors, but trucks, and as such are not subject to tax because their GVWRs are below the taxable weight threshold set forth in § 4051(a)(2). Taxpayer argues that its vehicles equipped with 8 foot beds have more cubic feet of cargo space than a standard pickup truck with an 8' x 5' bed and that its 9 and 10 foot beds provide even more cargo space. Also, most of the vehicles are sold without trailer brake controls and all are sold without air brakes. Taxpayer indicates that the useful life of the vehicles is three times that of a pickup truck and, when viewed with the accessories ordered by most customers, justifies the

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higher price. The length of the wheel base of the vehicles is equal to that of a pickup truck. Furthermore, Taxpayer argues that the vehicles are not marketed for recreational use and are not equipped with the type of fifth wheel assembly required to tow a recreational vehicle. A purchaser intending to use the vehicle to tow a recreational semitrailer would need to have the fifth wheel installed after purchase of the vehicle, as do pickup truck purchasers.

Section 145.4051-1(e)(1)(i) provides that the term tractor means a highway vehicle primarily designed to tow a vehicle but does not carry cargo on the same chassis as the engine. Taxpayer argues that its vehicles possess more cargo-carrying capacity than pickup trucks. But, Taxpayer's vehicles cannot be characterized as trucks solely because the vehicles can carry cargo on the same chassis as their engine; otherwise, any tractor, despite its primary design, would be classified as a truck if the tractor has incidental or inconsequential load carrying capacity. As stated in Rev. Rul. 76-559 and Rev. Rul. 77-36, it is not necessary that a vehicle be designed to perform only one function—towing or transportation of property—to the exclusion of the other in order to be primarily designed for towing or for the transportation of property.

As completed by Taxpayer, these vehicles have been primarily designed to tow. All of the vehicles are equipped with a heavy duty trailer receiver, a plug for trailer lights, and a towing device -- a ball hitch or a fifth wheel hitch. The towing and braking capabilities of these vehicles are disproportionately powerful for their load carrying capacity, which is limited to the space behind the cab. This space is unavailable for use if the vehicle is towing a gooseneck trailer. The cost of the vehicle for its capacity to transport a load is disproportionately high when compared to trucks that have similar load carrying capacities. Although some of the additional cost of the vehicles can be attributed to accessories, we believe that the major portion of the additional cost is attributable to the intended use of a heavy duty chassis cab and specialized body -- primarily as a tow vehicle with a longer life than a pickup truck or other lighter duty vehicle, even though the vehicle possesses, when not towing a trailer or semitrailer, the capability to transport comparatively light loads.

Also, the fact that the vehicles normally are not sold with RV fifth wheel assemblies and are not marketed to recreational users is not determinative of the classification of the vehicles. The classification of the vehicles as trucks or truck tractors does not depend on whether a particular hitch is included on the vehicle. Likewise, the lack of an air brake system or electric brakes does not preclude the finding the vehicles are primarily designed as truck tractors where, as in this case, the towing and braking capacities of the vehicles far exceed their load-carrying capacities.

CONSIDERATION OF § 7805(b)(8) RELIEF

Taxpayer's only argument for favorable § 7805(b)(8) treatment is that the law is ambiguous and that the IRS has not issued sufficient published guidance to taxpayers to allow them to determine the taxability of the type of vehicles at issue.

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A technical advice memorandum ordinarily is applied retroactively. See § 17.02 of Rev. Proc. 2001-2, 2001-1 I.R.B. 79, at 104. 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 to that taxpayer.

The IRS did not issue a ruling or a technical advice memorandum to Taxpayer. Taxpayer's reliance on the IRS's lack of published guidance is without merit since it could have requested a letter ruling as to the classification of the vehicles. Consequently, the Taxpayer's arguments do not support granting its request for § 7805(b) relief.

CAVEATS

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.