

INTERNAL REVENUE SERVICE  
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

September 30, 2005

Third Party Communication: None  
Date of Communication: Not Applicable

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CASE-MIS No.: TAM-119868-05/CC:PSI:B08

Taxpayer's Name:  
Taxpayer's Address:

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

**LEGEND:**

Taxpayer:

**ISSUE:**

For purposes of the tax imposed on the first retail sale of a truck chassis imposed by § 4051(a)(1)(A) of the Internal Revenue Code, does the chassis described below qualify for the § 4051(a)(2) exclusion for a chassis suitable for use with a vehicle that has a gross vehicle weight (GVW) of 33,000 pounds or less?

**CONCLUSION:**

For purposes of the tax imposed on the first retail sale of a truck chassis imposed by § 4051(a)(1)(A), the chassis described below does not qualify for the § 4051(a)(2) exclusion for chassis suitable for use with a vehicle that has a gross vehicle weight (GVW) of 33,000 pounds or less.

**FACTS:**

Taxpayer purchased a truck chassis from a manufacturer for resale to a customer. On the Manufacturer's Statement of Origin for the chassis the manufacturer stated that the gross vehicle weight rating (GVWR) of the chassis was 33,000 pounds. Taxpayer had the chassis delivered to a company (Company) that installed on the chassis a 3,000 gallon tank body, a tag axle, and related equipment. The tag axle was installed to meet a state frost law requirement. This completed vehicle is commonly referred to as a "bobtail," a truck that is used for the transportation of propane gas for home heating. After Company completed the installations, Company returned the completed chassis to Taxpayer, and certified in a letter and on a required label attached to the chassis that the GVWR of the chassis was 33,000 pounds.

The agent determined that the GVWR of the chassis after installation of the tag axle is 49,520 pounds based on the axle capacities of the chassis: front axle capacity is 12,000 pounds, rear axle capacity is 21,000 pounds, and the tag axle capacity is 16,520. The agent also determined that the strength of the chassis frame exceeds 33,000 pounds because the chassis could be ordered from the manufacturer with a front gross axle weight rating (GAWR) of 12,000 pounds and a rear GAWR of 23,000 pounds.

**LAW AND ANALYSIS:**

Section 4051(a)(1) imposes a tax on the first retail sale of the following articles (including in each case parts or accessories sold on or in connection therewith or with the sale thereof): (A) automobile truck chassis, (B) automobile truck bodies, (C) truck trailer and semitrailer chassis, (D) truck trailer and semitrailer bodies, and (E) tractors of the kind chiefly used for highway transportation with a trailer or semitrailer.

Section 4051(a)(2) provides that the tax imposed by § 4051(a)(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 4051(a)(4) provides that the sale of an automobile truck shall be considered to be the sale of an automobile truck chassis and of an automobile truck body.

Section 145.4051-1(e)(3)(i) of the Temporary Excise Tax Regulations Under The Highway Revenue Act of 1982 (Pub. L. 97-424) provides that the term "gross vehicle weight" means the maximum total weight of a loaded vehicle. With certain exceptions, the maximum total weight shall be the gross vehicle weight rating of the article as specified by the manufacturer or established by the seller of the completed article, unless the Commissioner finds that such rating is unreasonable in light of the facts and circumstances in a particular case.

Section 145.4051-1(e)(3)(v) provides that the seller's gross vehicle weight rating must take into account, among other things, the strength of the chassis frame and the axle capacity and placement.

Section 4052(c) provides that a person shall not be treated as engaged in the manufacture of any article by reason of merely combining such article with any coupling device (including any fifth wheel), wrecker crane, loading and unloading equipment (including any crane, hoist, winch, or power lift gate), aerial ladder or tower, snow and ice control equipment, earthmoving, excavation and construction equipment, spreader, sleeper cab, cab shield, or wood or metal floor.

Section 145.4052-1(c)(1) provides that the use of an article will be deemed to be a sale of the article. Furthermore, if a person purchases a vehicle for which no tax was imposed under § 4051(a)(1) and thereafter converts such vehicle into an article which would have been taxable under §4051(a)(1) and uses it, such person shall be liable for the tax as if such article were sold at retail by such person. For example, a truck having a GVW rating of 24,000 pounds is sold at retail. The purchaser adds a lift axle, thereby increasing the GVW rating to 34,000 pounds. If the purchaser thereafter uses the vehicle the purchaser shall be liable for the tax as if such article were sold at retail.

Section 48.0-2(a)(4)(i) of the Manufacturers and Retailers Excise Tax Regulations provides, in part, that the term "manufacturer" includes a person who produces a taxable article from scrap, salvage, or junk material, as well as from new or raw material, (1) by processing, manipulating, or changing the form of an article, or (2) by combining or assembling two or more articles.

Section 48.0-2(a)(4)(ii) provides that, under certain circumstances, as where a person manufactures or produces a taxable article for another person who furnishes materials under an agreement whereby the person who furnished the materials retains title thereto and to the finished article, the person for whom the taxable article is manufactured or produced, and not the person who actually manufactures or produces it, will be considered the manufacturer.

Rev. Rul. 75-129, 1975-1 C.B. 336, provides that the installation of a pusher or tag axle on a truck chassis or truck tractor that allows the vehicle to transport a heavier load or to meet the load distribution requirements of certain states significantly improves the transportation function of the vehicle and produces a different article. Therefore, the installation of a pusher or tag axle on a truck chassis or truck tractor is further manufacture of the truck chassis or truck-tractor.

Rev. Proc. 2005-19, 2005-14 I.R.B. 832, provides that if an exempt body is mounted on a taxable chassis (or a taxable body is mounted on an exempt chassis) and the resulting vehicle is a highway vehicle, the taxable chassis or body, as the case may be, nevertheless remains subject to the tax imposed by § 4051(a)(1).

Taxpayer argues that the truck is not taxable because the maximum loaded weight of the truck cannot exceed 33,000 pounds. The limited capacity of the tank body does not dictate the tax status of the chassis because a body and a chassis are two separate taxable items. See § 4051(a)(1)(A) and (B). Rev. Proc. 2005-19 explains that the tax status of a chassis is independent of the tax status of a body.

Taxpayer also argues that the tag axle is not required to carry the 3,000 gallon LPG tank. The tax status of a truck's body is separate from the tax status of the truck's chassis because a truck's body and a truck's chassis are separate taxable items. See § 4051(a)(1)(A) and (B); § 4051(a)(4); and Rev. Proc. 2005-19.

In addition, Taxpayer's argues that the Company certified that the truck after the installation of a tag axle had a GVW of 33,000 pounds. Under the facts, Company is not the manufacturer of the chassis because Taxpayer maintained title to the chassis. See § 48.0-2(a)(4). Furthermore, the Taxpayer's GVW rating of 33,000 pounds did not take into account the increased axle capacity attributable to the installation of a tag axle. See § 145.4051-1(e)(3)(v) and Rev. Rul. 75-129. In this case, therefore, Taxpayer's GVW rating is unreasonable because of the addition of a tag axle that improves the transportation function of the vehicle and produces a different article. See § 145.4051-1(e)(3)(i).

Finally, Taxpayer argues that cost makes it impractical to make any changes to the tank body or to replace the tank body with a different body that would result in the truck having a GVW in excess of 33,000 pounds. This is immaterial because a truck's body and a truck's chassis are separate taxable items. See § 4051(a)(1)(A) and (B); § 4051(a)(4); and Rev. Proc. 2005-19.

Taxpayer arranged for Company to install a tag axle on Taxpayer's chassis to comply with a state's frost law. Taxpayer retained title to the chassis when Taxpayer delivered the chassis for the tag axle installation. This tag axle improved the transportation function of the chassis and resulted in a different article, unlike the combinations listed in § 4052(c). See Rev. Rul. 75-129. In these circumstances, § 48.0(a)(4)(i) and (ii) deems Taxpayer the manufacturer of the different article that results from the installation of the tag axle. Taxpayer, in its capacity as manufacturer, had an obligation under § 145.4051-1(e)(v) to reflect the addition of a tag axle to its chassis by increasing the GVW of its chassis by 16,520 pounds, the capacity of the tag axle. This increase results in the chassis having a GVW of 49,250 pounds. Consequently, Taxpayer's sale of a chassis (by virtue of Taxpayer's use of the chassis) with a GVW of 49,250 pounds does not qualify for the § 4051(a)(2) exemption. See § 145.4052-1(c)(1). Accordingly, Taxpayer is liable for the tax imposed by § 4051 on the first retail sale of a truck chassis that is suitable for use with a vehicle that has a GVW in excess of 33,000 pounds. See § 4051(a)(1). Installing a body on this chassis that is suitable for use with a vehicle that has a GVW 33,000 or less has no effect on the tax status of the chassis upon which the body is mounted. See § 4051(a)(1); § 4051(a)(4); and Rev. Proc. 2005-19.

CAVEATS:

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.