

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

01-13-2000

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CASE MIS No.: TAM-115407-99/CC:DOM:P&SI:B8

District Director

Taxpayer's Name:
Taxpayer's Address:

Taxpayer Identification No:
Periods Involved:
No Conference Held

LEGEND:

Taxpayer =

ISSUE:

Whether the described deicer vehicles (deicers) are subject to tax under § 4051 of the Internal Revenue Code.

CONCLUSION:

The described deicers are not subject to tax under § 4051.

FACTS:

For the tax periods in question, Taxpayer sold at retail airplane deicers that were specially designed for use at commercial airports to apply deicing fluid on airplanes and to inspect and maintain aircraft.

The deicers consist of a highway chassis specially modified to accept the installation of two deicer fluid tanks with a total capacity of about 2,100 gallons, a fluid delivery system including a telescoping articulating boom and personnel basket, an external cabin, and other machinery and equipment. The chassis modifications meet the specifications required for the deicing equipment by its manufacturer and by the Society of Automotive Engineers.

The deicers are capable of traveling 45 - 50 miles per hour (m.p.h.) for limited periods of time when empty but such travel is not recommended by either Taxpayer or by the manufacturers of the various component parts of the deicers. The deicers can travel no more than 25 m.p.h. with full tanks. Whether the tanks are empty or full, the deicers can not climb a grade of more than three percent.

The deicers are constructed with high gear ratios and governing mechanisms that prohibit them from being driven at normal highway speeds when the tanks are full. The combined weight of the equipment and deicing fluid raises the center of gravity of the deicers making the deicers prone to tipping over at highway speeds.

The deicers weigh about 26,000 pounds without fluid in the two tanks. The front and rear axles are rated for a total gross vehicle weight (G.V.W.) of 35,000 pounds. To remain within legal limits, the load carrying capacity of the deicers must be reduced by more than 40 percent.

Each deicer is equipped with a transmission that is specially rated (in excess of its normal maximum G.V.W. of 30,000 pounds) to accommodate the vehicle configurations and duty of vehicles used in airport service. The transmission may only be used in deicers if the maximum top geared speed of the deicers is limited by axle ratio and engine speed. This special rating applies only to airport service vehicles operated on airport property. Vehicles that must leave the airport premises or that are licensed for use on public roads may not use this rating.

The deicers are also equipped with a special boom interlock and a separate vehicle drive mechanism. These combine to prevent the deicers from being driven at speeds greater than 4 m.p.h. unless the boom is stowed and locked. When stowed, the boom partially obstructs the driver's vision, making the deicers unsafe to operate on public highways.

Because of their design, the deicers are not licensed to travel over the public roads; they are exclusively used at the airports and rarely, if ever, leave the airport premises. Cautionary stickers on the deicers provide that the deicers are designed for airport use only and are not recommended for highway use.

LAW AND ANALYSIS:

Section 4051(a)(1) imposes a tax of 12 percent on the first retail sale of automobile truck chassis and bodies (other than those suitable for use with a vehicle having a gross vehicle weight of 33,000 pounds or less).

Section 145.4051-1(a)(2) of the Temporary Excise Tax Regulations Under the Highway Revenue Act of 1982 (Pub. L. 97-424) provides that a chassis or body is taxable under § 4051(a)(1) only if it is sold for use as a component of a highway vehicle

(as defined in paragraph (d) of § 48.4061(a)-1 of the Manufacturers and Retailers Excise Tax Regulations).

Section 48.4061(a)-1(d)(1) defines the term "highway vehicle" to mean any self-propelled vehicle, or any trailer or semitrailer, designed to perform a function of transporting a load over public highways, whether or not also designed to perform other functions, but does not include a vehicle described in § 48.4061(a)-1(d)(2). Section 48.4061(a)-1(d)(2)(ii) provides that a self-propelled vehicle or a trailer or semitrailer, is not a highway vehicle if it is (A) specially designed for the primary function of transporting a particular type of load other than over the public highway in connection with a construction, manufacturing, processing, farming, mining, drilling, timbering, or operation similar to any of the foregoing enumerated operations, and (B) if by reason of such special design, the use of such vehicle to transport such load over the public highways is substantially limited or impaired. The regulations further provide that for purposes of applying the rule of (B), account may be taken on whether the vehicle may travel at regular highway speed, requires a special permit for highway use, is overweight, overheight, or overwidth for regular highway use, and any other relevant considerations.

The deicers described above have characteristics indicating that they are specially designed for the primary function of transporting a particular load other than over the public highway in connection with an operation similar to those enumerated in the regulations. Specifically, these vehicles, as sold by Taxpayer, are specially designed to transport machinery, equipment, and deicing fluid at airports. Further, by reason of such design, the use of the vehicles to transport a load over the highway is substantially limited. Specifically, the design features of the deicers limit their ability to transport a load over the public highways; they can not transport substantial amounts of fluid in their tanks while traveling in excess of 25 m.p.h.; they are continually at risk of tipping while turning; and they can not climb a grade of more than three percent. Moreover, due to the above described features, it would be impractical to use a deicer to transport deicing fluid to an airport or to use a deicer to service multiple airports. Accordingly, the deicers are not highway vehicles under the regulations and sales of the vehicles are not subject to the tax imposed by § 4051.

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 identifying numbers have been deleted.