

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

April 26, 2002

Number: **200237002**
Release Date: 9/13/2002
Third Party Contact: None
Index (UIL) No.: 4051.00-00
CASE MIS No.: TAM-111188-02/CC:PSI:B2

Taxable Periods:

Date of Conference:

No Conference Held

ISSUE

(1) Is Taxpayer's use of the vehicle described below subject to the excise tax imposed by § 4051(a)(1) of the Internal Revenue Code?

CONCLUSION

(1) Taxpayer's use of the described vehicle is not subject to the excise tax imposed by § 4051(a)(1).

FACTS

Taxpayer is an automotive dealership. In August of 1998 it purchased what is commonly known as a "toterhome" vehicle tax free pursuant to its written certification to the seller that it intended to resell the vehicle. The toterhome has a gross vehicle weight rating (GVW) of 29,000 pounds (as does the toterhome chassis). It is equipped with a fiberglass reinforced body with interior features that include, among other items, cabinetry and countertops, windows, sofa bed, dinette, overcab sleeper, refrigerator, microwave oven, range, television, and shower stall. A fresh water tank, propane

furnace, and air conditioner are also included. The toterhome body has a rear outside multipurpose deck (accessible from the forward living compartment by a rear door). The toterhome is equipped with air brakes and a 40,000 pound rated gooseneck hitch is installed into the deck to allow the toterhome to tow a trailer.

Taxpayer did not in fact resell the toterhome but, instead, diverted it to its own use. During an examination of Taxpayer, the IRS office submitting this request determined that the toterhome was a truck tractor and that Taxpayer was liable for tax under § 4052(a)(3)(A) on its use of the vehicle.

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.

Section 4052(a)(1) provides that the term "first retail sale" means the first sale, for a purpose other than for resale or leasing in a long-term lease, after production, manufacture, or importation.

Section 48.4052-1(a) provides that tax is not imposed where the seller accepts written certification from the buyer that the article is purchased for resale or lease on a long-term basis.

Section 4052(a)(3)(A) provides that if any person uses an article taxable under § 4051 before the first retail sale of the article, then the person is liable for tax under § 4051 in the same manner as if the article were sold at retail by him.

Section 4053(1) provides that no tax is imposed by § 4051 on any article designed to be mounted or placed on automobile trucks, automobile truck chassis, or automobile chassis, and to be used primarily as living quarters or camping accommodations.

Rev. Rul. 75-545, 1975-2 C.B. 427, holds that an aluminum sleeper cab designed for permanent installation on a heavy-duty long-distance-hauling automobile truck chassis or highway tractor, with access through the rear cab window, to provide sleeping quarters for the vehicle driver does not qualify for exemption from the tax imposed under § 4061 (a manufacturer's tax now repealed, but the predecessor to the retailers tax imposed by § 4051) as living quarters or camping accommodations under § 4063(a)(1) (the predecessor to § 4053(1)). Although equipped with a mattress and luggage compartment, the sleeper cab is not designed as camping accommodations, nor is it designed as living quarters. Instead, the cab is designed merely to provide a sleeping compartment for the driver.

Rev. Rul. 73-197, 1973-1 C.B. 423, holds that sales of specially designed chassis for use in the manufacture of mobile homes are not subject to the tax imposed on truck chassis under § 4061(a)(1). However, that tax does apply to sales of conventional truck chassis even though they are used as components of mobile homes.

The § 4051(a)(1) tax applies to certain automotive articles, including truck bodies and chassis with a GVW of more than 33,000 pounds and truck tractors regardless of GVW. Pursuant to § 48.4052-1(a), otherwise taxable articles may be purchased tax free for resale under a certification procedure. However, no certificate is required if the articles are not subject to the tax imposed by § 4051.

The exemption from the § 4051(a)(1) tax provided under § 4053(1) includes bodies that are primarily designed for use as living quarters for self-propelled mobile homes. In contrast, a heavy-duty highway tractor equipped with accommodations such as the sleeper cab described in Rev. Rul. 75-545 would not come within the purview of the exemption. The standard features of the toterhome body of the vehicle at issue include household furnishings and appliances that would allow the vehicle users to comfortably use the vehicle as living quarters. The majority of space in the toterhome body is dedicated to living quarters. The rear space of the toterhome body is comprised of a deck with a gooseneck hitch. Although, under § 145.4051-1(e)(1)(i), a vehicle equipped with a towing package (in this case the gooseneck hitch and air brakes) is presumed to be a tractor, the primary design of the toterhome body for use as living quarters effectively rebuts that presumption. Accordingly, the toterhome body comes within the exemption provided under § 4053(1) and is not subject to the tax imposed by § 4051(a)(1).

Under Rev. Rul. 73-197, a specially designed chassis for a mobile home is not subject to tax, whereas a conventional truck chassis used as a component of a mobile home is subject to tax. Insufficient information has been provided for a determination of whether the chassis at issue is specially designed for a mobile home or is of a conventional design. However, § 4051(a)(2) provides that no tax is imposed on truck chassis suitable for use with a vehicle that has a GVW of 33,000 pounds or less. Inasmuch as the GVW of the toterhome truck chassis is 29,000 pounds, it does not meet the weight threshold for taxability under § 4051(a)(2).

Accordingly, neither the toterhome body nor the chassis used to produce the toterhome is an article subject to the tax imposed under § 4051(a)(1). Thus, Taxpayer has no liability for the tax under § 4052(a)(3)(A) on its use of the vehicle.

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.