

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

December 11, 2002

Number: **200315005**
Release Date: 4/11/2003
Third Party Contact: None
Index (UIL) No.: 4051.00-00
CASE MIS No.: TAM-157939-02/CC:PSI:B08

Director, Area 10
Small Business/Self-Employed Operating Division

Taxpayer Name:
Taxpayer Address:

Taxpayer Identification Number:
Taxable Periods:
Date of Conference:

No Conference Held

LEGEND

Taxpayer =

ISSUES

(1) Under the facts set forth below, what transportation and delivery charges are excludable by Taxpayer in determining its taxable sale price of a truck semitrailer subject to the excise tax imposed by § 4051(a)(1) of the Internal Revenue Code?

(2) For purposes of the tax imposed by § 4051(a)(1), may Taxpayer exclude from its taxable sale price of a semitrailer charges for lights and dock bumpers installed on the vehicle by the manufacturer?

CONCLUSIONS

(1) The actual transportation and delivery charges for shipping a semitrailer directly from the manufacturer to Taxpayer's customer are includable in Taxpayer's taxable sale price to the extent that those charges do not exceed the charges that would have been incurred to ship the semitrailer from the manufacturer to Taxpayer. To the extent the actual transportation and delivery charges exceed the charges that would have been incurred to ship the semitrailer from the manufacturer to Taxpayer, the charges are excludable from Taxpayer's taxable sale price.

TAM-157939-02

(2) For purposes of the tax imposed by § 4051(a)(1), Taxpayer may not exclude from its taxable sale price of a semitrailer charges for lights and dock bumpers installed on the vehicle by the manufacturer.

FACTS

Taxpayer is an independently owned company that is under contract with a manufacturer of semitrailers to sell and distribute the manufacturer's brand of semitrailers. Under the facts submitted, customers order semitrailers from Taxpayer to be produced by the manufacturer according to customer specifications. The manufacturer invoices, and transfers title to, Taxpayer upon completion of production of the vehicle. As per agreement between Taxpayer and its customer, the manufacturer ships the semitrailer directly from the manufacturer to the customer. Upon delivery to the customer, Taxpayer invoices the customer for the semitrailer and includes a charge for transportation and delivery from the manufacturer. The invoice also includes the federal excise tax imposed by § 4051(a)(1) on the sale price of the vehicle. Taxpayer excludes from the taxable sale price, (1) the above-referenced transportation and delivery charge, and (2) charges for lights and dock bumpers installed on the semitrailer by the manufacturer.

LAW AND ANALYSIS

Section 4051(a)(1) imposes a 12 percent excise tax on the first retail sale of, among other articles, truck trailer and semitrailer chassis and bodies (including in each case parts or accessories sold on or in connection therewith or with the sale thereof). Prior to the imposition of the retail tax, the excise tax on heavy vehicles, including parts or accessories sold on or in connection therewith, was a manufacturers tax imposed by § 4061(a)(1) (repealed April 1, 1983). Concurrent with the § 4061(a)(1) tax, there was also a manufacturers tax under § 4061(b)(1) on the separate sale of vehicle (including trailer and semitrailer) parts or accessories.

Section 4052(b)(1)(A) provides that, in determining the price of an article for purposes of the tax on the retail sale of vehicles, there shall be included any charge incident to placing the article in condition ready for use.

Section 145.4052-1(a)(3)(i) of the Temporary Excise Tax Regulations Under the Highway Revenue Act of 1982 provides that if the sale of an article is a taxable sale, the tax is computed on the price as determined under § 145.4052-1(d).

Section 145.4052-1(d)(1) provides that the price for which an article is sold includes the total consideration paid for the article, whether the consideration is paid in money, services, or other forms. In addition, there shall be included any charge

TAM-157939-02

incident to placing the article in condition ready for use. Similar rules to § 4216(a) and the regulations thereunder, relating to charges to be included in the price and excluded from the price, shall apply. For example, charges for transportation, delivery, insurance, and installation (other than installation charges to which § 4051(b) applies), and other expenses actually incurred in connection with the delivery of an article to a purchaser pursuant to a bona fide sale, shall be excluded from the price in computing the tax.

Under § 4216(a), which defines "the price for which an article is sold" for purposes of the Chapter 32 manufacturers excise taxes, transportation and delivery charges are excludable from the taxable sale price. Section 48.4216(a)-2(b) of the Manufacturers and Retailers Excise Tax Regulations provides that charges for transportation, delivery, and other expenses actually incurred in connection with the delivery of an article to a purchaser pursuant to a bona fide sale shall be excluded from the sale price in computing the tax. Such charges include all items of transportation, delivery, and similar expense incurred after shipment to a customer begins, in response to the customer's order, pursuant to a bona fide sale. However, costs of such nature incurred by a manufacturer in transporting, in the normal course of business and for its benefit and convenience, articles from a factory or port of entry to a warehouse or other facility (regardless of the location of such warehouse or other facility) are not considered as being incurred in connection with the delivery of an article to a purchaser pursuant to a bona fide sale, and charges therefor cannot be excluded from the sale price in computing tax liability.

Section 48.4216(a)-2(b)(3) provides that for purposes of computing the taxable sale price of articles, it is immaterial whether the transportation, delivery, or other services are performed by a common carrier or independent agency for, or on behalf of, the manufacturer, producer, or importer, or are performed by the manufacturer, producer, or importer with the use of its own vehicles or other facilities. In determining whether an expense is an excludable transportation or delivery expense, "only those expenses incurred by reason of the fact that the purchaser accepts delivery at some point other than the manufacturer's place of business shall be considered excludable transportation or delivery expenses."

ISSUE 1

Taxpayer's sales of the semitrailers at issue are subject to the tax imposed by § 4051(a)(1). Computation of the tax is based on the taxable sale price of the semitrailer. The sale price rules under § 4216(a), and the regulations thereunder, generally apply to a determination of price in connection with a sale subject to a manufacturers excise tax, as opposed to a retailers excise tax. However, as noted above, §145.4052-1(d)(1) provides that similar rules shall apply to a determination of

TAM-157939-02

sale price in connection with a sale subject to the § 4051(a)(1) retailers excise tax.

Taxpayer argues that the rule set forth in Rev. Rul. 86-68, 1986-1 C.B. 318, for excluding transportation and delivery charges for purposes of § 4051(a)(1) is not a "similar rule" and subjectively treats retailers differently than manufacturers.

Most of the concepts set forth under § 4216(a) are directly applicable to the retailers tax imposed by § 4051. For instance, the "purchaser" under the manufacturers tax is the same as the "purchaser" under the retailers tax. On the other hand, other concepts are applicable only in analogue. Thus, Taxpayer's place of business takes the place of the manufacturer's place of business. So, when a customer places a vehicle order with a retail dealer and the truck is thereafter shipped from the manufacturer to the dealer, all charges for delivery and transportation to the dealer are includable in the taxable sale price of the vehicle. The exclusion of charges for transportation and delivery under § 145.4052-1(d)(1) is not applicable because the charges are incurred to deliver the vehicle to the taxpayer retailer's place of business. See § 48.4216(a)-2(b)(3).

Section 4216(a) and the regulations thereunder are only concerned with transportation from the taxpayer's place of business to the taxpayer's customer. That section concerns a manufacturers excise tax, under which the tax is imposed where the taxable articles originate. Therefore, § 4216(a) does not expressly address the question of transportation charges incurred prior to the taxpayer's (manufacturer's) possession of the taxable articles. See also, Rev. Rul. 68-509, 1968-2 C.B. 508, and Rev. Rul. 72-590, 1972-2 C.B. 571, which concern the application of §4216(a) to transportation costs. There also, the § 4216(a) exclusions only apply to charges that arise after the taxpayer (manufacturer) relinquishes possession of the taxable articles.

By analogy, the statement in § 145.4052-1(d)(1), that "similar rules to § 4216(a) and the regulations thereunder" shall apply in determining the price for purposes of the § 4051 tax, applies only to the movement of the taxable articles from the taxpayer (retailer) to the taxpayer's customer, after the taxpayer is in possession of the articles. Because § 4216 assumes that the articles originate with the taxpayer, that section and the regulations thereunder provide no authority for the exclusion of transportation expenses incurred prior to possession of the articles by the taxpayer, whether the taxpayer is the manufacturer (§ 4061(a)(1)) or the retailer (as is currently the case).

Since manufactured articles routinely originate with their manufacturer, it is difficult to analogize to a § 4061(a)(1) scenario wherein articles would originate other than with the taxpayer/manufacturer. However, § 4061(a)(1) also imposed tax on importers of automotive articles. Therefore, a § 4061(a)(1) case somewhat analogous to the case at hand (in that the articles originate elsewhere than with the taxpayer) is

TAM-157939-02

set forth in Rev. Rul. 59-139, 1959-1 C.B. 352, a situation involving an importer. That revenue ruling considers the computation of the excise tax on the sale of phonograph records by the importer thereof. Former § 4141 imposed a tax on the sale of phonograph records by the manufacturer, producer, or importer of phonograph records. Under the facts of the revenue ruling, a domestic company offered for sale imported phonograph records. When an order was received, the importer relayed that order to the foreign manufacturer with instructions to ship the records directly to the customer. The domestic company then billed the customer separately for the expenses incurred in connection with the importation of the records. The revenue ruling holds that the expenses incurred in connection with the purchase and importation of the records, such as import duties, customs handling fees, ocean freight and order expenses, were elements of the cost of the records and were includable in the tax base. However, the revenue ruling also holds that charges made by the importer in connection with the shipment from the point of importation to the customer could be excluded in determining the sale price for purposes of computing the tax. In applying § 4216(a) to the importer situation, the revenue ruling recognizes the distinction between the transportation of articles (actual or constructive) to the taxpayer and the transportation of articles from the taxpayer to the customer. The revenue ruling states:

In any case involving two movements, either actual or constructive, of the taxable goods from the supplier to the taxpayer vendor, in the instant case the importer, and the other from the vendor to his vendee, no exclusion would be allowable for the charges for the first of these movements but an exclusion would be allowable for the charges for the second.

Therefore, Rev. Rul. 59-139, in the context of a manufacturer's excise tax applied to an importer, deals with a situation in which the taxable articles did not originate with the taxpayer by creating a constructive shipment from the manufacturer to the taxpayer (importer) and a second constructive shipment from the taxpayer to the customer.

In Rev. Rul. 86-68, the IRS, in facts similar to the case at hand involving the § 4051 tax, applies an analysis similar to that set forth in Rev. Rul. 59-139 and holds that where a truck is shipped directly from the truck manufacturer to the retail dealer's customer, the exclusion for transportation and delivery charges provided in § 145.4052-1(d)(1) and § 48.4216(a)-2(b) applies only with respect to actual or constructive shipments from the taxpayer (the retailer in the case of § 4051), and not with respect to actual or constructive shipments to the taxpayer.

Therefore, in computing the portion of the transportation and delivery charges includable in Taxpayer's taxable sale price for purposes of § 4051(a)(1), there is deemed to be an initial constructive shipment of the semitrailer from the manufacturer to Taxpayer. If the actual charge for transportation between the manufacturer and

TAM-157939-02

Taxpayer's customer is greater than the charge would have been for transportation between the manufacturer and Taxpayer, then only a portion of the actual transportation charge is includable in the sale price. The includable amount is the charge that would have been incurred if the semitrailer had been shipped from the manufacturer to Taxpayer instead of directly from the manufacturer to the customer. The balance of the actual transportation charge is excludable from the taxable sale price because it was "incurred by reason of the fact that the purchaser accepts delivery at some point other than" the taxpayer retailer's place of business. If the actual charge for transportation between the manufacturer and the customer is less than the charge would have been if the semitrailer had been shipped from the manufacturer to Taxpayer, then the entire actual transportation charge for the shipment of the semitrailer from the manufacturer to the customer is includable in Taxpayer's taxable sale price.

ISSUE 2

Taxpayer argues that its charges for the lights and dock bumpers installed on the semitrailers should be excludable from the taxable sale price of the vehicles because the articles are parts or accessories of general use. In support of that position, it cites § 48.4061(b)-2(b), Rev. Rul. 71-510, 1971-2 C.B. 363 (certain lights that could be mounted on trucks or recreational vehicles were not subject to the § 4061(b)(1) tax), and Rev. Rul. 71-186, 1971-1 C.B. 370 (a truck/dock bumper that could be attached to a truck or a loading dock was classified as an article of general use and not subject to the § 4061(b)(1) tax).

The regulation and revenue rulings cited by Taxpayer are IRS rules provided to assist taxpayers in regard to the application of § 4061(b)(1)(now repealed). That code section imposed a tax on the separate sale of automotive parts or accessories for the vehicles enumerated in § 4061(a)(1). Rev. Rul. 71-510 held that certain lights were not subject to the separate tax because they were suitable for use with other non-truck vehicles enumerated in § 4062(b)(2). Rev. Rul. 71-186 held that the truck/dock bumper was not subject to the separate tax because it was an article of general use under § 48.4061(b)-2(b). However, if an article was not subject to the tax on the separate sale of parts or accessories this did not preclude its taxation under § 4061(a)(1)(which also taxed parts or accessories sold with the vehicle) when installed on a body or chassis subject to the § 4061(a)(1) tax. In general, any article that was installed on § 4061(a)(1) vehicle body or chassis and contributed to its highway transportation function was taxed as a part or accessory of that body or chassis. For example, see Rev. Rul. 71-128, 1971-1 C.B. 364, where the described truck chassis, including lights, was held to be subject to the § 4061(a)(1) tax.

Similarly, for purposes of § 4051(a)(1), parts or accessories that contribute to

TAM-157939-02

the transportation function of a taxable body or chassis of a vehicle are subject to tax when sold on or in connection with the sale of the body or chassis. Without question, lights (including, but not limited to, headlights, tail lights, stop lights, and directional signals) and dock bumpers installed by the manufacturer on a semitrailer sold by Taxpayer, contribute to the highway transportation function of the semitrailer. Accordingly, Taxpayer's charges for these articles may not be excluded from the tax base.

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.