

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

June 21, 2005

Third Party Communication: None
Date of Communication: Not Applicable

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CASE-MIS No.: TAM-165283-04

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No.:
Period Involved:
Date of Conference: No Conference Held

LEGEND:

Taxpayer =

M =

State X =

Y =

ISSUE:

Whether, under the circumstances described below, transportation and delivery charges for trailers are excludable from the taxable sale price of such trailers for purposes of the tax imposed by § 4051 of the Internal Revenue Code?

CONCLUSION:

The transportation and delivery charges are excludable from the taxable sale price of the trailers.

FACTS:

Taxpayer manufactures and sells trailers. Taxpayer's trailers have a gross vehicle weight rating greater than 26,000 pounds. Taxpayer sells its trailers to dealers and makes first retail sales to ultimate purchasers (hereinafter referred to as "first retail sales").

For Taxpayer's first retail sales business, Taxpayer does not maintain an inventory of trailers available for purchase. Rather, the trailers are custom ordered to specifications chosen by the ultimate purchaser. Taxpayer does not begin manufacture of a trailer for its first retail sales business unless it has been ordered by the ultimate purchaser.

Taxpayer manufactures its trailers in Mexico at manufacturing facility, M. Taxpayer leases space in State X, located in the United States. This trailer parking facility is capable of storing Y trailers. The trailers are completed when they pass quality control tests performed at M. The transportation and delivery charges at issue are incurred after the trailers are completed. The transportation and delivery charges relate to the cost of importation and to the cost of delivery from M to a place chosen by the ultimate purchaser and agreed to by Taxpayer in the sales contract.

LAW AND ANALYSIS:

Section 4051(a)(1) imposes a 12 percent ad valorem 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).

Section 4052(b)(1)(A) provides that, in determining the price of an article for purposes of the tax imposed by § 4051 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 (Pub. L. 97-424) 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 incident to placing the article in a 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, insurance, installation 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 therefore 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."

For Taxpayer's first retail sales business, Taxpayer is both the manufacturer and the retailer. M is not the manufacturer of the trailers. Taxpayer makes the first retail sale of the trailers to ultimate purchasers.

The transportation and delivery charges at issue are excludable from the price of the trailers. These charges are items of transportation, delivery or similar expense actually incurred after shipment to the customer begins, in response to the customer's order, pursuant to a bona fide sale. These charges are incurred only after shipment to the ultimate purchaser begins. Shipment to the ultimate purchaser begins when the trailers are completed. The trailers are completed when they pass the quality control inspections at M.

The charges at issue are incurred in response to a customer's order, pursuant to a bona fide sale. Taxpayer does not manufacture trailers for its first retail sales

business except in response to the ultimate purchaser's order. The trailers are custom-manufactured to specifications required by the ultimate purchaser. The specifications are stated in a contract between Taxpayer and the ultimate purchaser. The transportation and delivery charges are not incurred for Taxpayer's benefit or convenience.

The charges at issue are not incident to placing the article in a condition ready for use. The trailers are in a condition ready for use when they are completed at M. The additional services provided by Taxpayer to the ultimate purchaser, such as importation of completed trailers and delivery of completed trailers from M to a place chosen by the ultimate purchaser, are provided only after the trailers are already in a condition ready for use. See Rev. Rul. 72-590, 1972-2 C.B. 571 (stating all transportation expenses from the time shipment began at the inspection area until the vehicles were delivered to the purchaser were charges for delivery within the meaning of § 4216(a)).

The trailer parking facility where some ultimate purchasers pick up their trailers is not a warehouse for the trailers. The trailers have an identified customer before manufacture begins. See generally United States v. Stowe-Woodward, Inc., 306 F.2d 678 (1st Cir. 1962), (holding a \$0.75 warehouse and shipment cost was not excludable from the taxable sale price of bowling balls under § 4216(a) when the product was not earmarked for a particular customer when it was sent from the factory in Massachusetts to a west coast warehouse). The trailer parking facility is also not a retail dealer; Taxpayer leases the spaces at the parking facility.

Rev. Rul. 86-68, 1986-1 C.B. 318, Situation 2, does not alter the holding of this technical advice memorandum. In Rev. Rul. 86-68, a trucking company ordered a taxable heavy truck from a retail truck dealer and the vehicle was shipped by the manufacturer directly to the customer. The ruling holds that the actual transportation and delivery charges for shipping the truck directly from the manufacturer to the retail dealer's customer are includable in the taxable sales price to the extent that such charges did not exceed the charges that would have been incurred to ship the truck to the retail dealer through whom the truck was ordered. The balance, if any, of the actual transportation and delivery charges would be excludable from the taxable sales price.

Rev. Rul. 86-68 is not applicable to the facts of this technical advice memorandum. The revenue ruling applies to sales from retailer dealers to ultimate purchasers; here, the sales are from a manufacturer to ultimate purchasers. Nevertheless, if the analysis of Rev. Rul. 86-68 were applied to the facts of this technical advice memorandum, the holding would not change. The constructive cost to transport the trailers from the manufacturer to the retailer would be zero because the retailer and the manufacturer are the same person and at the same location. The balance of the actual transportation and delivery charges to transport the trailers to the ultimate purchaser is all of the transportation costs. Thus, the total amount of charges to transport the trailers to the customers is excludable from the taxable sales price.

Accordingly, the charges at issue are excludable from the price of the trailers in Taxpayer's first retail sales business.

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.