

**Office of Chief Counsel
Internal Revenue Service**
memorandum

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date: April 14, 2014

to: Holly McCann
Chief, Excise Tax Program
(Small Business/Self-Employed Division)

from: Charles J. Langley, Jr.
Acting Senior Technician Reviewer, Branch 7
(Passthroughs & Special Industries)

subject: Application of Section 4481(c)(2) Requirements for Proration to Vehicles Transferred to a Participating Dealer under a State Vehicle Replacement Incentive Program

This Chief Counsel Advice responds to your request for assistance in determining whether a taxpayer may claim a prorated credit or refund under section 4481(c)(2) of the Internal Revenue Code (Code) of tax paid under section 4481(a) (the highway use tax) on a highway motor vehicle that the taxpayer transfers to a participating dealer, in exchange for a voucher award towards a new highway motor vehicle, per the requirements of the State vehicle replacement incentive program (State replacement program). This advice may not be used or cited as precedent.

ISSUES

- (1) Whether a highway motor vehicle that a taxpayer transferred to a participating dealer under the State replacement program is “destroyed” within the meaning of section 4481(c)(2), allowing the taxpayer to claim a prorated credit or refund of the highway use tax under section 4481(c)(2).
- (2) Whether a highway motor vehicle that a taxpayer transferred to a participating dealer under the State replacement program is “sold” within the meaning of section 4481(c)(2), allowing the taxpayer to claim a prorated credit or refund of the highway use tax under section 4481(c)(2).

CONCLUSION

- (1) A vehicle transferred to a participating dealer for eventual dismantling under the State replacement program is not “destroyed” within the meaning of section 4481(c)(2)(B).

- (2) A vehicle transferred to a participating dealer under the State replacement program is “sold” within the meaning of section 4481(c)(2). Therefore, the taxpayer may claim a prorated credit or refund of the highway use tax under section 4481(c)(2).

FACTS

The taxpayer is an applicant to the State replacement program. The State replacement program provides a voucher award to an approved applicant that the applicant will use towards replacing its existing older, high-polluting heavy vehicle (existing vehicle), with a newer, lower-emission vehicle (replacement vehicle). The program provides this incentive in order to retire high-polluting vehicles sooner than would otherwise occur. For heavy vehicle replacements, voucher award amounts range from \$10,000 to \$45,000. The applicant is responsible for the cost of the replacement vehicle, minus the voucher award amount.

An applicant must submit a copy of the title for the existing vehicle with the application package. The applicant must be listed on the title as the current and sole owner of the existing vehicle, and must have owned the existing vehicle for a minimum specified amount of time.

An applicant submits its application package through a participating vehicle dealer. The participating dealer must ensure that the applicant delivers both the signed title to the existing vehicle and the vehicle itself to the dealer before the dealer releases the replacement vehicle to the applicant. The dealer must reject the existing vehicle if it is not roadworthy or if the dealer determines that parts were stripped from the vehicle. Once accepted, the dealer must ensure the existing vehicle and the original, signed title remain in dealer custody until sent to a participating dismantler yard for destruction, within 30 business days of the dealer taking possession of the existing vehicle.

The participating dismantler must destroy the existing vehicle within 60 calendar days of receiving the vehicle. This destruction must include complete severance of the frame rails to ensure that the frame can no longer be used in a vehicle and the existing vehicle's engine must be destroyed. The State replacement program requires that the dismantler drill a hole of a specified minimum size diameter in the engine block to render it useless.

Verification of the delivery of the existing vehicle to the dealer, the pre-dismantling inspection, the delivery for dismantling, and the inspection of the dismantled vehicle are provided to the State replacement program. Further, the dismantler must provide verification that the existing vehicle is registered with the State DMV as non-repairable.

LAW

Section 4481(a) imposes tax on the use of any highway motor vehicle that (together with the semitrailers and trailers customarily used in connection with highway motor

vehicles of the same type as such highway motor vehicle) has a taxable gross weight of at least 55,000 pounds at the rate specified in the table provided in section 4481(a) of the Code.

Section 4481(c)(2)(A) provides for proration of the highway use tax in situations where a highway motor vehicle is sold, destroyed, or stolen before the first day of the last month in a taxable period and not subsequently used during the taxable period.

Under section 4481(c)(2)(B), a highway motor vehicle is destroyed if such vehicle is damaged by reason of an accident or other casualty to such an extent that it is not economic to rebuild.

Section 4481(c)(2)(B) provides a highway motor vehicle is destroyed if such vehicle is damaged by reason of an accident or other casualty to such an extent that it is not economic to rebuild. The statutory use of the terms “accident or other casualty” indicates that the destruction contemplated by the statute is accidental and unforeseen, not purposeful.

ANALYSIS

As noted above, section 4481(c)(2)(A) permits proration of the highway use tax where a highway motor vehicle is sold or destroyed before the first day of the last month of the taxable period.

With regard to destroyed vehicles, section 4481(c)(2)(B) provides that a highway motor vehicle is destroyed if such vehicle is damaged by reason of an accident or other casualty. Here, although the existing vehicle is ultimately destroyed, it is not destroyed by accident or other casualty. Rather, the destruction is voluntary, which does not fit within the meaning of section 4481(c)(2)(B). Therefore, the vehicle is not destroyed for purposes of a section 4481(c)(2)(A) proration.

Neither subchapter D of chapter 36 of subtitle D (sections 4481 – 4484) nor the Highway Use Tax Regulations (26 CFR Part 41) define the term “sold.” If a statute uses words that it does not define, it is necessary to look to the ordinary and everyday meaning of the words in question. Crane v. Comm’r, 331 U.S. 1, 6 (1947). The word “sold” is the past tense of the verb “sell.” According to the dictionary definition, the verb “sell” means to exchange something for money or credit.¹ This suggests that in order

¹ The Merriam-Webster online dictionary, available at <http://www.merriam-webster.com>, defines “sell” to mean “to exchange something for money.” The Dictionary.com online dictionary, available at <http://dictionary.reference.com>, defines the term “sell” to mean “to transfer (goods) to or render (services) for another in exchange for money; dispose of to a purchaser for a price.” Both dictionaries referenced herein were accessed on April 14, 2014.

for a vehicle to be sold, the owner of the vehicle must have exchanged it for money or a cash equivalent.

If an applicant is approved for the State replacement program the applicant must transfer both the signed title to the vehicle and possession of the vehicle to a participating dealer in exchange for a voucher award worth between \$10,000 and \$45,000 toward the purchase of a new vehicle. The applicant does not retain any rights in the existing vehicle after the applicant surrenders the vehicle and the signed title to the dealer.

Based on the foregoing, we find that the taxpayer in the present case voluntarily exchanged its existing vehicle for a cash equivalent (in this case, a voucher award that significantly reduces the amount the taxpayer must pay for a new vehicle). This meets the ordinary and everyday meaning of the word "sold." Therefore, the taxpayer sold the vehicle for purposes of section 4481(c)(2)(A), and may claim a prorated credit or refund of the highway use tax under section 4481(c)(2).

Please call Natalie Payne at (202) 317-5262 if you have any further questions.