

Internal Revenue Service
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Attn:

Dear

Your letter of July 20, 2000, to [REDACTED] has been forwarded to this office for reply. Therein you request guidance as to the applicability of the federal excise tax imposed by § 4051 of the Internal Revenue Code to your agency's importation of heavy trucks (with gross vehicle weights in excess of 33,000 pounds) that were initially purchased (and will be purchased in the future) by your agency for purposes of leasing to U.S. Government agencies for use in foreign countries. We hope the following information is helpful to you.

Section 4051(a)(1) imposes a 12 percent tax on the first retail sale of certain enumerated articles, including truck tractors, truck bodies and chassis, and bodies and chassis for trailers and semitrailers. The tax is also imposed on parts and accessories sold on or in connection with the sale of an enumerated article. The liability for payment of that tax is on the person making the first retail sale of the article.

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

Section 145.4052-1(a)(1) of the Temporary Excise Tax Regulations Under the Highway Revenue Act of 1982 (Pub. L. 97-424) provides that for purposes of § 4051(a)(1), the term "first retail sale" means a taxable sale described in § 145.4052-1(a)(2).

Prior to March 31, 2000, § 145.4052-1(a)(2) provided that the sale of an article is a taxable sale unless--

- (i) The sale is a tax-free sale under section 4221,
- (ii)(A) For a sale before July 1, 1998, both the purchaser and the seller are registered under section 4222 and § 48.4222(a)-1 of the Manufacturers and Retailers Excise Tax Regulations and the seller has in good faith accepted from the purchaser a proper

certification, as provided in § 145.4052-1(a)(6)(copy enclosed), executed in good faith, that the purchaser intends to lease such article on a long-term basis or resell such article,

(B) For a sale after June 30, 1998, and regardless of the registration status of the seller or the purchaser, the seller has in good faith accepted from the purchaser a statement that the purchaser executed in good faith and that is in substantially the same form as the certificate described in § 145.4052-1(a)(6), except that the statement must be signed under penalties of perjury and need not contain a registration number, or

(iii) there has been a prior taxable sale of the article.

Effective as of March 31, 2000, § 145.4052-1(a)(2)(ii) provides that for sales after June 30, 1998, see § 48.4052-1. (Sections 145.4052-1(a)(2)(i) and (iii) remain unchanged).

Section 48.4052-1(a) provides that tax is not imposed by § 4051 on the sale of an article for resale or leasing in a long-term lease if, by the time of the sale, the seller has in good faith accepted from the buyer a statement that the buyer executed in good faith in substantially the same form, and subject to the same conditions, as the certificate described in § 145.4052-1(a)(6), except that the certificate must be signed under penalties of perjury and need not refer to Form 637 or include a registration number.

Section 145.4052-1(b)(1) provides that the leasing of an article on a long-term basis (defined in § 145.4052-1(d)(6) as any lease with a term of one year or more) will be deemed to be a sale of the article and will be deemed to be a taxable sale unless one of the exceptions contained in § 145.4052-1(a)(2) applies. Thus, if a dealer (a person who sells articles at retail) purchases an article tax free under an exception noted above and then leases the article on a long-term basis, the leasing of the article will be treated as a taxable sale unless an exception to the lease transaction applies.

Section 4221(a)(2) provides that no tax is imposed on the sale of an article for export. Section 145.4052-1(f)(5) provides that rules similar to § 4221 and the regulations thereunder shall apply for § 4051 purposes.

Rev. Rul. 85-95, 1985-2 C.B. 204, holds that if a truck is sold by a U.S. manufacturer to a retail dealer for export, and the truck is thereafter exported, used in a foreign country, and imported into the United States, the first retail sale of the truck after importation is subject to the tax imposed by § 4051(a)(1). The revenue ruling distinguishes the case of U.S. Truck Sales Co. v. United States, 229 F.2d 693 (6th Cir. 1956), wherein the court held that a manufacturer's tax on trucks (a predecessor to the § 4051 retailers tax) did not apply to the resale in the United States of trucks that had been originally sold tax free in the United States and shipped to a foreign country and used there prior to importation. The court reasoned that the tax could not be imposed on the second sale of an article that had already once been subject to the tax, even though the initial sale had been exempted from the tax under another provision of the Code. However, under the facts in the revenue ruling, the "first retail sale" of the truck was when it was sold in the United States after importation. The § 4051 retailers tax was not applicable to the original manufacturer's sale of the vehicle for export since the sale was not a sale at retail. No initial retail sale, taxable or tax-free,

occurred prior to exportation of the truck from the United States. The first retail sale after the vehicle was subsequently imported into the United States presented the first, and only, opportunity to impose the tax.

Should your agency decide to request a letter ruling, we have enclosed a copy of Revenue Procedure 2000-1, 2000-1 I.R.B. 4, which sets forth the procedures for submitting such a request. In general, a user fee applies to all requests for letter rulings. However, the user fee does not apply to departments, agencies, or instrumentalities of the United States that certify that they are seeking a letter ruling on behalf of a program or activity funded by federal appropriations. If you have any further questions you may contact [REDACTED]

Sincerely yours,

Associate Chief Counsel
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By:

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Enclosures