

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

10-29-1999

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CASE MIS No.: TAM-111545-99/CC:DOM:P&SI:B8

District Director

Taxpayer's Name:
Taxpayer's Address:

Taxpayer Identification No:
Periods Involved:
No Conference Held

LEGEND: Taxpayer =

ISSUES:

(1) Who is liable for the excise tax imposed by § 4001 of the Internal Revenue Code in the four party vehicle lease transaction described below and when is that liability incurred?

(2) If Taxpayer is liable for the excise tax, what is included in the tax base?

CONCLUSIONS:

(1) In the four party vehicle lease transaction described below, Taxpayer is the person liable for the excise tax imposed by § 4001, and liability is incurred when Taxpayer leases the vehicle.

(2) The tax base is the sum of the price paid by Taxpayer for the vehicle, the cost of delivering the vehicle to the lessee, and the cost of parts or accessories added to the vehicle by Taxpayer.

FACTS:

Taxpayer's business is soliciting lessees of "luxury passenger automobiles" (vehicles) that are subject to the excise tax imposed by § 4001(a). Taxpayer has agreements with several finance companies (Funders). With one exception these agreements provide that the Funders will purchase Taxpayer's leases and vehicles, if certain conditions are met.

Taxpayer's customers are not engaged in vehicle sales, leasing, or rental. Typically, after a customer identifies the vehicle it wants to lease, Taxpayer and the customer negotiate lease payments and other terms. Taxpayer receives and controls nonrefundable deposits and/or trade-in vehicles.

Taxpayer uses a lease form provided by the Funder. The lease identifies Taxpayer as the lessor and the customer as the lessee. The lease specifies the lessee's monthly lease payments. The lease term is one year or more. The lease provides that the lessee agrees to the assignment of the lease to a Funder either upon the signing of the lease or shortly thereafter. After Taxpayer and the customer agree on lease terms, but before Taxpayer signs a lease, Taxpayer presents the lease to a Funder for that Funder's approval.

Upon the Funder's approval, Taxpayer pays the franchised dealer (Dealer) for the vehicle, usually with a bank draft drawn on Taxpayer's bank. Subsequent to Taxpayer's payment for the vehicle, the Dealer transfers the vehicle's open title to the Funder and the lessee. After Taxpayer accepts delivery of the vehicle from the Dealer, Taxpayer may install additional parts or accessories prior to delivery of the vehicle to the lessee. From the time Taxpayer takes possession of the vehicle from the Dealer, Taxpayer insures the vehicle. After the lessee takes possession of the vehicle, the lessee is responsible for insuring the vehicle. Upon assignment of a lease to a Funder, the Funder pays Taxpayer a facilitator fee.

LAW AND ANALYSIS:

Issue (1)

Section 4001(a) imposes a tax on the first retail sale of any passenger vehicle the price of which exceeds the applicable amount. The term "first retail sale" is defined in § 4002(a) as the first sale, for a purpose other than resale, after manufacture, production, or importation. With exceptions that are inapplicable to this memorandum, § 4002(c)(1) characterizes the lease of a vehicle (including any renewal or any extension of the lease or any subsequent lease of the vehicle) by any person as a sale of the vehicle at retail.

To determine who is liable for the excise tax imposed by § 4001, the person that makes the first retail sale must be identified. Section 4002(c)(1) provides that the lease of a vehicle is considered a sale of the vehicle at retail. Therefore, the person who leases a vehicle is liable for the tax. Taxpayer argues that it only acts as an agent for a

Funder. However, neither the agreements between Taxpayer and the Funders nor the leases identify Taxpayer as an agent. Taxpayer uses its own funds to pay for a vehicle and insures the vehicle until the lessee takes possession of the vehicle. Paying the purchase price and insuring the vehicle indicate that Taxpayer bears the risk of loss, a characteristic of ownership. Likewise, Taxpayer's assignment of its interest in the vehicle and lease to a Funder indicates that Taxpayer had an ownership interest in the vehicle and the lease that Taxpayer could transfer. The lease assignment does not negate Taxpayer's ownership of a vehicle at the time Taxpayer signs the lease. The fact that Taxpayer's name never appears on the title of the vehicle is not determinative of actual ownership at a specific time. Therefore, Taxpayer is the person in this four party transaction that buys a vehicle from a Dealer and then leases the vehicle. As the vehicle lessor, Taxpayer is the person liable for the excise tax imposed by § 4001, and this liability is incurred when Taxpayer leases the vehicle.

Issue (2)

Section 4002(c)(2)(C)(i) provides that in the case of a long term lease the tax is computed on the lowest price for which the vehicle is sold by retailers in the ordinary course of trade. Section 4002(d)(1)(A) provides that in determining price there shall be included any charge incident to placing the vehicle in condition ready for use. Charges incident to placing the vehicle in condition ready for use include preparation charges, dealer add-ons, and delivery charges. H.R. Conf. Rep. No. 101-964, at 1060 (1990).

In determining the lowest price for which a vehicle is sold by retailers in the ordinary course of trade, a lessor that regularly sells similar vehicles in arms length sales is to use the comparable sales price for the vehicle on the first date of the lease term. If the lessor does not regularly sell similar vehicles in arms length retail sales, the lowest retail price is the sum of the price for which the lessor purchases the vehicle in an arm's length transaction at retail, the cost of delivering the vehicle to the lessee, and the cost of additional parts or accessories installed by the lessor.

The district argues that the facilitator fee paid to Taxpayer by the Funder should be included in determining the lowest retail price of a vehicle. However, only Taxpayer's vehicle costs are to be included in the tax base, and the facilitator fee paid to Taxpayer is not an element of the vehicle's cost.

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. Temporary or final regulations pertaining to one or more of the issues addressed in this memorandum have not yet been adopted. Therefore, this memorandum will be modified or revoked by the adoption of temporary or final regulations to the extent the regulations are inconsistent with any conclusion in the memorandum. See § 17.04 of Rev. Proc. 99-2, 1999-1 I.R.B. 73, at 97. However, a technical advice memorandum

generally is not modified or revoked retroactively if the taxpayer demonstrates that the criteria in § 17.06 of Rev. Proc. 99-2 are satisfied.