

**INTERNAL REVENUE SERVICE**  
**NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM**

May 16, 2003

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Third Party Contact: None

Index (UIL) No.: 4051.00-00

CASE MIS No.: TAM-162800-02/CC:PSI:B8

Director,

Taxpayer Name:

Taxpayer Address:

Taxpayer Identification Number:

Taxable Years:

Date of Conference:

**LEGEND**

Taxpayer =

X =

Y =

Z =

**ISSUES**

(1) When Taxpayer makes first retail sales of the vehicles described below, is it liable for the excise tax imposed by § 4051(a)(1) of the Internal Revenue Code on truck tractors, or are the vehicles classified as trucks upon which no tax is imposed by virtue of § 4051(a)(2).

(2) If the IRS rules that the described vehicles are taxable tractors, will the IRS grant Taxpayer's request to apply this technical advice memorandum (TAM) on a nonretroactive basis under § 7805(b)(8)?

**CONCLUSIONS**

(1) Taxpayer is liable for the excise tax imposed by § 4051(a)(1) on tractors when Taxpayer makes first retail sales of the vehicles described below.

(2) Taxpayer's request to apply this TAM on a nonretroactive basis under § 7805(b)(8) is denied.

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## FACTS

Taxpayer makes first retail sales of certain vehicles that it markets to recreational users as luxury tow vehicles. The types of trailers towed typically include horse and cattle trailers, racing car trailers, and recreational house trailers. The vehicles are also capable of transporting passengers in the cab.

The vehicles are comprised of a X model medium-duty chassis cab (4-door with crew and extended cab) and a Y or Z model platform (96 to 114 inches long by 83 inches wide). The chassis cabs are ordered by Taxpayer with a recreational service package (as designated by the manufacturer) and a recreational vehicle body. The recreational service package extends the normal two-year, or 150,000 mile, vehicle warranty to a five-year, or 150,000, mile warranty. Also, as part of the package, the frame rail cross members are placed to specifically accommodate a towed vehicle. The chassis cabs have gross vehicle weight ratings (GVWRs)<sup>1</sup> of 20,000 pounds and the vehicles have gross combined weight ratings (GCWRs)<sup>2</sup> of 40,000 pounds. The vehicles are equipped with either air or hydraulic brakes, a 275 to 300 horsepower engine, two 75 gallon fuel tanks, and a six-speed automatic transmission. The front axle and suspension system is rated at 8,000 pounds while the rear axle/suspension system is rated at 20,000 pounds and includes a 17,000 pound axle and 12,000 pounds of airbags added to the rear suspension system (which reduces the GVWR of the rear axle to 12,000 pounds) to soften the ride.

Coupling devices are mounted on all vehicles. Most of the vehicles at issue are equipped with a removable 2 5/16 inch ball hitch mounted in the center of the platform,

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<sup>1</sup>For industry purposes, GVWR is the legal load capacity specified by the manufacturer of a single vehicle calculated by adding front and rear axle capacities, including suspension, wheel, and tire and brake limitations (if suspension capacity is less than the axle capacity, the lower capacity is used). Truck Index, Inc., Diesel Truck Index, Glossary of Terms and Abbreviations, at 321 (February 2003). For purposes of § 4051,

§ 145.4051-1(e)(1)(i) of the Temporary Excise Tax Regulations Under The Highway Revenue Act of 1982 (Pub. L. 97- 424), defines GVW as the maximum total weight of a loaded vehicle. Generally, unless found to be unreasonable by the IRS, the maximum total weight is the GVWR as specified by the manufacturer or established by the seller of the vehicle. In establishing a GVWR for purposes of § 4051, the seller may only consider the strength of the chassis frame and the axle capacity and placement.

<sup>2</sup>For industry purposes, GCWR is the value specified by the manufacturer of a vehicle as its gross combination weight (GCW). The GCW is comprised of the actual weight of the entire vehicle at the ground with a trailer or trailers, including vehicle, equipment, driver, passengers, fuel, and payload. Diesel Truck Index, at 321.

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just in front of the rear axle. The ball hitch is rated to tow a trailer with a GVWR of 30,000 pounds. Taxpayer sells some of the vehicles with a platform-mounted air-ride fifth wheel hitch installed instead of the ball hitch. The platforms are designed with rectangular wells to accommodate either coupling device. All the vehicles are equipped with cab-mounted electronic brake controllers (for control of the electric brakes on a towed vehicle), 7-prong RV-type plugs for trailer light connections, a 6,000 pound-rated trailer receiver mounted at the rear of the vehicle, a lighted headache rack, and two cargo compartments below the platform and ahead of the rear wheels. Options include custom headboards and interiors, open top toolboxes mounted behind the cab, belly storage boxes, removable steel stake-bed rails on the platform, audio/visual accessories, and global positioning services.

Taxpayer states that the vehicles have heavy-duty brakes that will stop a towed recreational vehicle safely and that up to 1,000 pounds of ballast is added to the rear frame rails to equalize the vehicle weight while it is driven without a trailer. Without the ballast or trailer to weigh down the rear of the vehicle, skidding or hydroplaning can occur.

During an examination of Taxpayer, the IRS office that submitted this TAM request determined that Taxpayer's vehicles at issue were tractors and assessed the § 4051 excise tax on Taxpayer's first retail sale of the vehicles. That determination was based on the IRS examiner's conclusion that the primary design of the vehicles was that of a tractor and not a truck. The examiner found that the vehicles' equipment included a heavy-duty trailer receiver and either a platform-mounted ball hitch (rated for a trailer with a maximum GVWR of 30,000 pounds) or an air-ride fifth wheel. Although Taxpayer's vehicles were equipped with electric trailer brake controls, the vehicles' brakes were acknowledged by Taxpayer to be strong enough to stop most trailers without a separate trailer brake. Therefore, the braking capabilities of the vehicles were disproportionately large when compared to the braking capacity actually required to safely stop Taxpayer's vehicles when loaded to capacity with passengers and cargo, but not towing a vehicle. Further, the examiner found that Taxpayer's vehicles towing capacity was disproportionately greater than its load-carrying capacity, which is limited to the space behind the chassis cab.

Taxpayer does not report or pay federal excise tax on its sales of the vehicles.

## LAW AND ANALYSIS

Section 4051(a)(1) imposes an excise tax on the first retail sale of automobile truck chassis and bodies, truck trailer and semitrailer chassis and bodies, and tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.

Section 4051(a)(2) provides that the tax imposed by § 4051 does not apply to

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automobile truck chassis and automobile truck bodies suitable for use with a vehicle that has a gross vehicle weight GVW of 33,000 pounds or less.

Section 145.4051-1(e)(1)(i) defines "tractor" as a highway vehicle primarily designed to tow a vehicle, such as a trailer or semitrailer, but does not carry cargo on the same chassis as the engine. A vehicle equipped with air brakes and/or towing package will be presumed to be primarily designed as a tractor.

Section 145.4051-1(e)(2) defines "truck" as a highway vehicle that is primarily designed to transport its load on the same chassis as the engine even if it is also equipped to tow a vehicle, such as a trailer or semitrailer.

Rev. Rul. 76-559, 1976-2 C.B. 365, considers whether two vehicles were trucks or tractors for purposes of the highway vehicle use tax imposed by § 4481(a). At the time the revenue ruling was issued, a tractor was considered to be any motor vehicle primarily designed to tow a trailer or semitrailer and a truck was considered to be any motor vehicle primarily designed to transport property. The first vehicle was a two-axle pickup truck with a bar and a fifth wheel attachment or a special kingpin installed in the truck's bed. The bar and fifth wheel could be removed. The kingpin could be folded flush with the floor. The ruling states that the truck retained its character as a truck despite the installation of hitching devices. The second vehicle was essentially similar to a conventional truck tractor, but had a fifth wheel mounted over its rear axle and an automobile carrier body designed to carry one automobile over the cab of the vehicle and one automobile behind the cab. The ruling states that although the second vehicle had some load carrying capacity the vehicle was primarily designed as a tractor. In applying the primarily designed test to the two vehicles, the revenue ruling states that it is not necessary that a vehicle be designed to only tow or transport a load to the exclusion of the other function in order to be primarily designed for towing semitrailers or trailers or transporting property.

Rev. Rul. 77-36, 1977-1 C.B. 347, in applying the primary design test, states that a three-axled truck chassis with a conventional truck cab and equipped with an automobile carrier body designed to carry three automobiles (two over the cab and one behind the cab), as well as a fifth wheel mounted on a stinger that extended downward from the rear of the chassis is a truck-trailer combination for purposes of § 4481(a).

Consistent with Rev. Rul. 76-559, Rev. Rul. 76-554, 1976-2 C.B. 342, states that a light-duty pickup truck equipped with a removable bar and fifth wheel attachment is a truck for purposes of the light-duty truck exclusion from the tax imposed under former § 4061(a)(1).

Rev. Rul. 74-461, 1974-2 C.B. 377, holds that a vehicle consisting of a two-axled truck chassis, a small flat bed body, and a special hitch mechanism used to tow mobile homes, is primarily designed for the transportation of property and thus is a truck for

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purposes of § 4481(a).

In Horton Homes, Inc. v. United States, No. 5:01-CV-130-2, 2002 U.S. Dist. LEXIS 23960 (M.D. Ga. Nov. 12, 2002), the issue was whether a certain vehicle was a truck or tractor for purposes of the tax imposed by § 4051. The court held that certain incomplete chassis cabs that were purchased and modified by the plaintiff to include a sleeper cab and thereafter completed into what the plaintiff referred to as a “toter”, were tractor chassis taxable under § 4051(a)(1). The court rejected the plaintiff’s argument that the vehicles were trucks and held that the toters fell squarely within the meaning of the term “tractor” as defined in the regulations. Further, the court said:

The toters are highway vehicles primarily designed to tow manufactured homes that are attached to the toter’s A-frame ball hitch with a hydraulic lift hitch. The toters are equipped with air brakes and a towing package. The toters have a control in the cab for operating the manufactured home’s brakes independently of the cab’s brakes.

Id. at \*9.

Section 7805(b)(8) provides that the Secretary may prescribe the extent, if any, to which any ruling relating to the internal revenue laws shall be applied without retroactive effect.

Taxpayer argues alternatively that either, (1) because its vehicles possess load-carrying capability on the vehicles themselves, the vehicles are trucks rather than tractors, and as such are not subject to tax because their GVWs are below the taxable weight threshold set forth in the § 4051(a)(2) exclusion or, (2) if its vehicles are determined to be tractors, that the weight threshold of § 4051(a)(2) is also applicable to the taxability of its tractors.

In support of (1) above, Taxpayer argues that not only are its vehicles equipped with a load-carrying platform, but the vehicles also have cargo compartments, some vehicles are equipped with optional stake-bed rails that can assist in transporting a load on the vehicle itself, and the total load-carrying capacity of the vehicles far exceeds that of a light-duty pickup truck.

As noted above, §145.4051-1(e)(1)(i) provides that “tractor” means a highway vehicle primarily designed to tow a vehicle but does not carry cargo on the same chassis as the engine. Taxpayer argues that its vehicles possess more cargo-carrying capacity than pickup trucks and thus should be classified as trucks. However, Taxpayer’s vehicles cannot be characterized as trucks solely because the vehicles can carry cargo on the same chassis as their engine; otherwise, any tractor, despite its primary design, would be classified as a truck if the tractor has incidental or secondary

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load-carrying capacity. As the court stated in Horton Homes, “[f]inding that Horton Homes toters are not subject to the excise tax would be to elevate form over substance, a practice that is strongly discouraged in the tax arena”. Id at \* 10.

In common, everyday usage, “primarily” means “principally” or “of first importance;” the term does not mean “exclusive.” Taxpayer’s vehicles are primarily designed to tow a semitrailer for the following reasons. Its vehicles are equipped with a trailer receiver, a plug for trailer lights and brakes, and a towing device -- either a ball hitch or a fifth wheel hitch mounted on a sloping platform to accommodate the turns of the towed vehicle. The towing and braking capabilities of these vehicles are disproportionately high in contrast to their load-carrying capacity, which is limited to the space behind the cab (which space is unavailable for use if the vehicle is towing a gooseneck trailer) and compartments. To operate the vehicles safely without a trailer, the ballast is required. If the vehicles were primarily designed as trucks, it is doubtful that Taxpayer would install the ballast, and thus increase the purchase price, for a secondary use of the vehicles as tow vehicles. Finally, as part of the recreational package ordered from X, the chassis frame rails on the vehicles are placed to specifically accommodate a towed vehicle.

Taxpayer also states that the receivers, 7-prong plugs, and brakes installed on its vehicles are also used on light-duty trucks, such as pickups and sport utility vehicles. Taxpayer argues that a “commercial” tractor does not use these components, and since they are found only on light-duty trucks, its vehicles should also be classified as trucks. However, a tractor need not be designed as a “typical” commercial highway tractor in order to be taxable under § 4051 as a tractor. A vehicle need only be “primarily designed” as a tractor to be taxed as such. The Code and regulations do not distinguish between a commercial tow vehicle and a recreational or private tow vehicle for purposes of the definition of a tractor under § 4051.

The classification of the vehicles as trucks or tractors does not depend on whether a particular hitch is included on the vehicle. In Horton Homes, for example, the vehicles that were held to be tractors were not equipped with fifth wheels, the most common coupling device for a commercial tractor. Likewise, the lack of an air brake system to slow the trailer or semitrailer does not preclude the finding that the towing vehicles are primarily designed as tractors where, as in this case, other physical attributes of the vehicles definitively indicate that the vehicles are tractors. We also note that Taxpayer markets these vehicles as “luxury tow vehicles.”

In support of (2) above, Taxpayer argues that the statutory weight exclusion provided in § 4051(a)(2) applies equally to both trucks and truck tractors. Taxpayer states that the heading to §145.4051-1, “Imposition of tax on heavy trucks and trailers sold at retail,” does not distinguish between trucks and tractors and thus, the § 4051(a)(2) exclusion must also apply equally to trucks and tractors. Taxpayer points out that the Federal Highway Administration’s website chart of federal highway user

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fees makes no distinction between a truck and a tractor in referring to the retail excise tax rate as “12 percent of retailer’s sales price for tractors and trucks over 33,000 pounds gross vehicle weight.” Further, Taxpayer states that the term “truck chassis” is the industry accepted designation for truck and tractor chassis. Finally, Taxpayer argues that the intent of § 4051(a)(1) is to tax commercial type vehicles, not a luxury transport and that a use test rather than a primary design test should be applied to its vehicles. Taxpayer states that only about 30% of the time are its vehicles used for towing.

In regard to Taxpayer’s argument (2), we note that generalized statements in the headings of statutes or regulations, or statements in the pronouncements or publications of other agencies, are not determinative. Also, the actual use of the vehicles by Taxpayer’s customers does not effect the issue of whether the vehicles are “primarily designed” as trucks or tractors.

Section 4051(a)(1) imposes tax on discrete automotive items--automobile truck chassis and bodies, automobile truck trailer and semitrailer chassis and bodies, and tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer. The wording of § 4051(a)(2) is quite specific in excluding only automobile truck chassis and automobile truck bodies suitable for use with a vehicle that has a GVWR of 33,000 pounds or less. The United States Supreme Court on numerous occasions has ruled that tax exemptions can not be implied. See, for example, Chickasaw Nation v. United States, 534 U.S. 84, 95 (2001).

#### CONSIDERATION OF § 7805(b)(8) RELIEF

A technical advice memorandum ordinarily is applied retroactively. See § 23.02 of Rev. Proc. 2003-2, 2003-1 I.R.B. 76, at 106. Relief under § 7805(b)(8) usually is granted only if a taxpayer relied to its detriment on a published position of the IRS or on a letter ruling or technical advice memorandum issued to that taxpayer that is being modified or revoked.

Taxpayer's argument for favorable § 7805(b)(8) treatment is that it relied on Rev. Ruls. 74-461, 76-554, 76-559, and 77-36, which involve the taxability of vehicles under § 4061(a)(1) and § 4481 of the type here at issue. Taxpayer notes that the vehicles described in the revenue rulings did not lose their characterization as trucks when they were equipped with towing devices.

Taxpayer’s reliance on the cited revenue rulings is misplaced. Although the primary design test discussed in the revenue rulings is used to determine whether a vehicle is a truck or tractor, the vehicles at issue are structurally and functionally distinguishable from the vehicles described in the revenue rulings. Also, the IRS has not previously issued a letter ruling or a technical advice memorandum to Taxpayer on this issue. Taxpayer has correspondence from the IRS regarding the § 4051 tax in general, but with no reference to the taxability of the vehicles at issue. Consequently,

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Taxpayer's arguments do not support granting its request for § 7805(b) relief.

#### 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.