

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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CC:PSI:8/PLR-130441-03

Date:

August 21, 2003

Legend:

A =

X =

Dear :

This responds to your request for a ruling concerning whether charges for installation, warranty, and transportation are excludable from the taxable sales price of certain truck bodies that are subject to the retail excise tax imposed by § 4051 of the Internal Revenue Code.

I. FACTS

A. FACTS RELATING TO INSTALLATION

A's parent company manufactures certain refuse collection and recycling collection bodies and installs those bodies onto certain truck chassis. The first retail sale of the chassis and bodies in question is subject to the tax imposed by § 4051. The bodies are installed on chassis in transactions involving three general factual situations. In Situation 1, the body is built and installed on a truck chassis owned by the customer pursuant to the customer's order. In Situation 2, a chassis is purchased and the body is built and installed on that chassis pursuant to the customer's order with the chassis and body sold as a unit. In Situation 3, the body is built and installed on a purchased chassis for stock inventory to be sold to future customers. In all three situations, the parent sells these units to A for resale, which sells them to retail customers. The sales by A are therefore the first retail sale of the bodies at issue here.

The mounting of a body on the chassis generally includes the following steps:

1. The chassis is stripped to permit the proper mounting of the new body and equipment.
2. The chassis frame rails are lengthened or shortened as necessary to accommodate the particular body.
3. A wheel base slide may be performed, in which the rear axles are unbolted, repositioned, and bolted back onto the frame rail.
4. The fuel tank, air canisters, battery, and other chassis parts are repositioned as necessary.
5. A pump mount is attached to the chassis, generally on the front of the truck between the front bumper and engine. A specially designed hydraulic pump is attached to the pump mount. The hydraulic pump, hoses, and fittings are required to operate the hoist assemblies as well as the packing and ejecting mechanisms on the body.
6. Hydraulic tubing is installed and positioned for final connection after the mounting of the body.
7. Truck chassis electrical wiring to the rear of the chassis is removed and replaced. The electrical wiring for the rear of the chassis is incorporated with the electrical wiring necessary for the operation of the body from the truck cab or the outside of the body into a single wiring harness. The wiring harness is connected after the body has been mounted.
8. On full eject models (rear, front, and side load) the body is installed by welding two parallel steel rails to the subfloor of the body and bolting 90 degree angle mounting brackets to both the chassis rails and the parallel steel rails. These brackets are then bolted to each other.
9. On dump models (front and side load) and on certain full eject models that offer a service hoist, pivot assemblies are installed at the end of the chassis rails to allow the front end of the body to be raised. This pivot assembly is installed by welding the assembly to the parallel steel rails and bolting the assembly to the chassis rails. Vertical guide plates are also bolted to the chassis to position and maintain the body over the chassis rails. Additional hold down assemblies are bolted onto the two parallel steel rails and the chassis rails to hold the body in place when not dumping or servicing.
10. Hydraulic hoist lift mechanisms are mounted on the dump models and the models offering service hoists.

11. The control linkages for the hydraulic mechanism and other manual or electrical controls for the body and rear of the chassis are positioned and connected to the body.

12. The body and chassis are painted and decals are added to the body.

The entire cost of the mounting operation, except for the lengthening of the frame and wheelbase slide, is between \$4,500 and \$15,000, depending on the body being mounted. Of this amount, the cost for installing the body on the chassis is between \$2,500 and \$4,500. The costs asserted by A to be excluded from the taxable sales price of the truck bodies as installation costs are those for the following operations and items:

1. Stripping the truck chassis to allow for installation of the new body.
2. Repositioning of chassis parts, such as the fuel tank, air canisters, and battery, to allow for installation of the new body.
3. Removing and replacing the electrical wiring of the chassis with a wire harness that incorporates the chassis wiring with that necessary for the operation of the body.
4. The pump mount itself and the attachment of the mount to the chassis.
5. The hydraulic tubing, hoses, fittings, and adaptors, as well as the installation of these items.
6. On full-eject bodies, the cost of welding parallel steel rails to the underside of the body and bolting mounting brackets to the chassis rails and the parallel rails on the body as well as the cost of the rails, brackets, and clips or other fastening material.
7. On dump models, the cost of welding parallel steel rails (and of the rails themselves) as in 6, above, as well as the cost of vertical guide plates and hold down assemblies that are bolted onto the chassis. In addition, the process of assembly and attachment of the pivot assemblies at the end of the steel rails is included.
8. Installation of the control linkages (incorporated or coinciding with the electrical wiring harness) from the chassis cab to the rear of the refuse body, including the cost of the linkage and switch materials.
9. Direct labor costs and associated direct and indirect overhead associated with the listed installation processes.
10. Material overhead consistent with overhead applied to all materials in the mounting process.

11. A gross margin on cost consistent with margins earned historically.

B. FACTS RELATING TO WARRANTIES

A offers two different types of warranties on its refuse bodies. The first type is the base warranty, which is included with all units. There is no additional charge to the customer for the base warranty. Extended warranties are offered on certain parts or units at the option of the customer. Additional charges apply to the extended warranties and those charges are separately invoiced to the customer.

C. FACTS RELATING TO TRANSPORTATION

The main manufacturing facility of A's parent is located in state X. A has several branch sales and service offices located throughout the United States. Expenses are incurred by A in transporting a unit, consisting of a body installed on either a chassis purchased by A (full package) or on a customer-owned chassis (body only), from the main manufacturing facility to various destinations. A presents eight separate factual scenarios. They are as follows:

1. A unit, either a full package or a body only, is transported to a branch sales office of A pursuant to an order by a customer. The unit is picked up by the customer at the branch sales office.

2. A unit, either a full package or a body only, is transported to the customer's location. Some units will stop at a branch location for final inspection or adjustment before delivery to the customer's location. The unit is manufactured and delivered pursuant to customer order and instruction.

3. A full package is transported to a branch sales office for stock inventory. A customer later purchases the unit with no modifications at the branch sales office. The customer picks up the unit at the branch sales office.

4. A full package is transported to a branch sales office for stock inventory. A customer later purchases the unit with no modifications at the branch sales office. The unit is transported from the branch office to the customer's location.

5. A full package is transported to a branch sales office for stock inventory. A customer later purchases the unit from stock inventory and the branch sales office modifies the unit as the customer directs. The customer picks up the unit at the branch sales office.

6. A full package is transported to a branch sales office for stock inventory. A customer later purchases the unit from stock inventory and the branch sales office modifies the unit as the customer directs. The unit is transported from the branch office to the customer's location.

7. A body is transported to a branch sales office for stock inventory. A customer purchases the body and has it installed onto the customer's chassis at the branch sales

office; painting or other modifications may be performed at the branch sales office. The unit is then picked up by the customer at the branch sales office.

8. A body is transported to a branch sales office for stock inventory. A customer purchases the body and has it installed onto the customer's chassis at the branch sales office; painting or other modifications may be performed at the branch sales office. The unit is then transported from the branch sales office to the customer's location.

II. LAW AND ANALYSIS

A. GENERAL

Section 4051(a)(1) imposes an excise tax on the first retail sale of truck chassis and bodies (including in each case parts or accessories sold on or in connection therewith or with the sale thereof). The rate of tax is 12 percent of the amount for which the article is sold. Prior to the imposition of the retail tax, the excise tax on heavy vehicles, including parts or accessories sold on or in connection therewith, was a manufacturers tax imposed by § 4061(a)(1) (repealed April 1, 1983).

Section 4052(b)(1)(A) provides that, in determining the price of an article for purposes of the tax on the retail sale of vehicles, 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 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, 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 therefor 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."

In Revenue Ruling 68-509, 1968-2 C.B. 508, Question 4 deals with whether a manufacturer may exclude from the tax base the expense of delivery from the factory to a warehouse. That ruling indicates that it is immaterial whether the expense is incurred as a charge made by a common carrier or whether the expense arises from the use of trucks by the manufacturer. If delivery is made prior to sale and is solely for the benefit or convenience of the manufacturer, charges based on the expense may not be excluded from the tax base. However, if the delivery is made subsequent to entering into a sales contract, and the shipment is made as a step in completing delivery to the customer, a charge for transportation or delivery may be excluded from the tax base.

Revenue Ruling 76-552, 1976-2 C.B. 336, holds that any portion of the selling price attributable to the installation of a body on a customer-owned chassis may be excluded from the taxable sales price.

Revenue Ruling 86-68, 1986-1 C.B. 318, addresses the excludability of transportation expenses in two situations, both involving transportation of the taxable vehicle pursuant to an order to the retail dealer by a customer. In Situation 1, the taxable truck is shipped from the manufacturer to the retail dealer where it is picked up by the customer. In this situation, the ruling concludes that the transportation costs from the manufacturer to the dealer are includable in the taxable sales price. In Situation 2, the taxable truck is shipped from the manufacturer directly to the customer that ordered the truck from the dealer. In this situation, the ruling concludes that the transportation charges are includable in the taxable sales price to the extent that they do not exceed the charges that would have been incurred in shipping the vehicle from the manufacturer to the dealer.

B. INSTALLATION CHARGES

Initially, A has inquired whether installation charges must be separately billed in order to be excluded from the taxable sales price. Revenue Ruling 57-253, 1957-1 C.B. 381, holds that it is not necessary for installation charges to be billed separately in order for the charges to be excludable from the taxable sales price. However, any installation

charge must be satisfactorily established by adequate records.

A has presented three factual situations for consideration. In Situation 1, the body is built and installed on a truck chassis owned by the customer pursuant to the customer's order. The costs of attaching the body to the customer's chassis, including modifications to the chassis necessary for the installation of the body (such as for lengthening or shortening the wheel base slide), are excludable from the taxable sales price of the body. These costs include all overhead, direct and indirect, properly attributable to the installation, as well as labor and material costs. However, § 48.4216(a)-2(b)(2) provides that only the actual expense incurred for the excludable expense may be excluded from the taxable sales price. Thus, a gross margin may not be excluded from the taxable sales price.

Situation 2 involves the installation of a body onto a chassis purchased by A or A's parent and the sale of the body and chassis as a unit. No amount may be excluded from the taxable sales price for installation in such a case because the excludable installation charges described in § 145.4052-1(d)(1) are limited to those charges for installation of a taxable body onto a chassis owned by the customer. Rev. Rul. 76-552.

Situation 3 involves installing a body onto a chassis for stock inventory. In that situation, no amount may be excluded from the taxable sales price for installation to the branch sales and service office because the expenses are not incurred in connection with a bona fide sale.

C. WARRANTY CHARGES

A offers two different types of warranties on its refuse bodies. The base warranty, which is included with all units at no additional charge and extended warranties, which are offered on certain parts or units at the option of the customer for an additional charge. Section 48.4216(a)-1(c) provides that for purposes of computing the taxable sale price of articles, a charge for a warranty that the manufacturer requires the purchaser pay in order to obtain the article is part of the taxable sales price. However, a charge for a warranty that is available at the purchaser's option is not included in the taxable sales price.

D. TRANSPORTATION CHARGES

In general, if delivery is made prior to sale and is solely for the benefit or convenience of the seller, charges based on the expense may not be excluded from the tax base. However, if the delivery is made subsequent to entering into a sales contract, and the shipment is made as a step in completing delivery to the customer, a charge for transportation of delivery may be excluded from the tax base. Rev. Rul. 68-509. Transportation or delivery charges for shipping a vehicle directly from the manufacturer to a retail dealer's customer are includible in the tax base to the extent that they do not exceed the charges that would have been incurred to ship the vehicle from the manufacturer to the dealer. Rev. Rul. 86-68.

The eight factual scenarios presented by A are set forth above in section I.C. In

the first two scenarios, the unit, either a full package or a body only, is transported pursuant to a customer order, either to the customer directly or to a branch office of A. The charges for transportation in these two scenarios are includible in the taxable sales price to the extent that they do not exceed the costs that would have been incurred in shipping the unit to A's branch office. In the first scenario, all of the transportation costs are includible in the taxable sales price. In the second scenario, the costs of transporting the unit from the branch sales office to the customer may be excluded from the taxable sales price. For the other six scenarios, the full package or body is first transported to the branch sales office of A for stock inventory. No amount may be excluded from the taxable sales price for transportation to the branch sales office in these scenarios because the transportation expenses are not incurred in connection with a bona fide sale and the delivery is therefore solely for the benefit or convenience of A, the retail dealer. In scenarios 4, 6, and 8, the finished unit is transported by A to the customer's location. Because these charges for transportation to the customer are made subsequent to entering into a sales contract, they may be excluded from the taxable sales price.

III. CONCLUSIONS

A. INSTALLATION CHARGES

Expenses related to installation of a body on chassis supplied by a customer (Situation 1), including labor, materials, and overhead, are excludable from the taxable sales price, whether or not those costs are separately listed on the invoice. Only actual expenses are excludable; thus, a gross margin may not be excluded from the taxable sales price. Expenses related to installation of bodies in Situations 2 and 3 are not excludable from the taxable sales price.

B. WARRANTY CHARGES

The charge for a manufacturer's warranty that A requires the purchaser pay in order to obtain the article is part of the taxable sales price. However, a charge for a warranty that is available at the purchaser's option is not included in the taxable sales price.

C. TRANSPORTATION CHARGES

Transportation charges in Scenario 1 are included in the taxable sales price. In Scenario 2, the charges for transportation of the unit from the manufacturer to the branch sales office are included in the taxable sales price to the extent that they do not exceed the charges that would have been incurred in shipping the vehicle from the manufacturer to the dealer and the charges for transporting the unit from the branch sales office to the customer are excluded from the taxable sales price. For Scenarios

3-8, no amount is excluded from the taxable sales price for the charges for transportation to the branch sales office. In Scenarios 4, 6, and 8, the charges for transportation of the unit from the branch sales office to the customer's location are excluded from the taxable sales price.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it shall not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By:
Frank Boland
Chief, Branch 8

Enclosures(2):

Copy of this letter
Copy for § 6110 purposes

cc: