

INTERNAL REVENUE SERVICE  
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM  
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Director, Area 6  
Small Business/Self-Employed Operating Division

Taxpayer Name:

Taxpayer Address:

Taxpayer Identification No.:

Quarters Involved:

Date of Conference:

LEGEND:

Taxpayer =  
Model A =  
State M =  
State N =

ISSUE:

(1) Whether Model A dump truck is excepted from the definition of a highway vehicle under § 48.4061(a)-1(d)(2)(ii) of the Manufacturers and Retailers Excise Tax Regulations (the offhighway vehicle exception) and therefore not subject to the tax imposed by § 4051(a)(1)?

(2) If the Model A is considered a taxable highway vehicle, is Taxpayer's liability for tax affected by its acceptance of a statement from the purchaser that the truck is purchased for off-road use?

CONCLUSION:

(1) Model A dump truck is not is excepted from the definition of a highway vehicle under the offhighway vehicle exception and therefore is subject to the tax imposed by § 4051(a)(1).

(2) Taxpayer's liability for tax is not affected by its acceptance of a statement from the purchaser that the truck is purchased for off-road use.

FACTS:

Taxpayer is a retail seller of heavy trucks located in State M. Taxpayer is a Form 637 registrant that purchases the trucks from the manufacturer tax free for resale. As such, Taxpayer is liable for tax, if any, on its retail sales of the trucks.

The Model A is designed with rugged, heavy-duty features and is commonly purchased for use in transporting coal both at the mine site and from the mine site to a tippie.

Taxpayer sold a Model A to a purchaser but did not pay excise tax on the sale. Instead, Taxpayer secured a certificate from the purchaser stating that the Model A was being purchased for off-road use. The purchaser did not register the Model A for highway use.

The Model A has a standard highway chassis and body. As ordered by Taxpayer from the manufacturer, the Model A is equipped with a rear axle (including tires, rims, and spokes) that provides an increased rear width of two to four inches (as compared with a Model A with a standard smaller axle.) Neither Taxpayer nor its purchaser made additional modifications to the Model A.

So equipped, the Model A slightly exceeds the normal 102-inch width allowable on State N public highways.

Taxpayer reported and paid tax on a Model A it sold to a different purchaser that did not certify its off-road use.

LAW AND ANALYSIS:

Section 4051(a) imposes on the first retail sale of certain enumerated articles (including in each case the parts or accessories sold on or in connection therewith) a tax equal to 12 percent of the article's sale price. Included among those articles are truck chassis and bodies. Section 145.4051(a)-1(a)(2) of the Temporary Excise Tax Regulations under the Highway Revenue Act of 1982 (Pub. L. 97-424) provides that a chassis or body is taxable only if it is sold for use as a component part of a highway vehicle as defined in § 48.4061(a)-1(d).

Section 48.4061(a)-1(d)(1) defines a highway vehicle as any self-propelled vehicle, or any trailer or semitrailer, designed to perform a function of transporting a load over public highways, whether or not also designed to perform other functions, but does not

include a vehicle described in § 48.4061(a)-1(d)(2). The term public highway includes any road in the United States that is not a private roadway. Examples of vehicles that are designed to perform a function of transporting a load over the public highways are highway-type trucks, truck tractors, trailers, and semi-trailers.

Section 48.4061(a)-1(d)(2)(ii) provides an exception from the definition of a highway vehicle for certain vehicles specially designed for off-highway transportation. This exception provides that a vehicle is not a highway vehicle if it meets two tests: (A) it is specially designed for the primary function of transporting a particular type of load other than over the public highway in connection with construction, manufacturing, processing, farming, mining, drilling, timbering, or an operation similar to any of the foregoing enumerated operations (the special design test); and (B) by reason of the special design, the use of the vehicle to transport the load over the public highways is substantially limited or substantially impaired (the substantial impairment test). In determining whether the use is limited or impaired, account may be taken of whether the vehicle may be driven at regular highway speeds, requires a special permit for highway use, is overweight, overheight, or overwidth for regular use, and any other relevant considerations.

Rev. Rul. 70-350, 1970-2 C.B. 262, holds that tax applies to the sale of a heavy-duty truck chassis irrespective of its width, weight, construction, or the extent to which it may travel other than over the highway. The fact that a chassis is designed to withstand rugged use when transporting property over rough terrain does not negate the fact that the chassis is also designed to transport property over the highway. The ruling reasons that the paramount consideration in determining whether a vehicle is a highway vehicle is whether the vehicle is designed for the transportation of persons or property over the highway and not the ultimate use of the vehicle.

Rev. Rul. 79-296, 1979-2 C.B. 370, holds that tax applies to the sale of truck-tractors and low-bed semitrailers that are used in combination to transport military equipment on and off the highway and that are oversize and require special permits and/or escort vehicles on most state highways. The ruling holds that while the vehicles have characteristics that impair their use on the highway, in that they are oversize and require special permits, those characteristics are necessary in order to enable the vehicles to carry their intended load and accomplish their highway transportation function. Thus the vehicles are not specially designed for off-highway transportation. The truck-tractors are eight-by-eight with a 22.5 ton capacity, 120 inch width, and maximum speed of 38.5 miles per hour with a heavy load. The low-bed trailers have four axles and a 60 ton capacity and are 137 inches wide.

Rev. Rul. 79-308, 1979-2 C.B. 372, holds that tax applies to the sale of a mixer-feeder vehicle designed to transport a load over the public highway with an overall width of 96-108 inches that sustains highway speeds of 40-50 miles per hour.

Rev. Rul. 81-252, 1981-2 C.B. 209, holds that tax applies to the sale of a dual-use vehicle designed to transport cargo both off-road and in over-the-highway operations. Because of its special design, the vehicle's on-highway cargo capacity is 10 percent

less than the cargo capacity of a conventional highway-type cargo carrier. However, this special design does not substantially limit the vehicle's ability to transport a load over public highways.

Rev. Rul. 77-141, 1977-1 C.B. 317, holds that semitrailers designed for hauling heavy oil-field equipment over rough terrain come within the offhighway vehicle exception. The semitrailers have gross vehicle weights ranging from 80,000 to 120,000 pounds and widths from 102 to 114 inches and may be used on the public highway only under highly restrictive special permits. The permits restrict highway movement of the vehicles to daylight hours and prohibit movement on weekends and during inclement weather. The ruling concludes that the use of the semitrailers on the highway is substantially limited.

To be excluded from the definition of a highway vehicle by the offhighway vehicle exception, a vehicle must meet both the § 48.4061(a)-1(d)(2)(ii)(A) special design test and the § 48.4061(a)-1(d)(2)(ii)(B) substantial impairment test. As suggested by the revenue rulings discussed above, no single characteristic such as width automatically excludes a vehicle from the definition of a highway vehicle under the offhighway vehicle exception. Slight modifications made to an otherwise taxable highway vehicle do not satisfy the special design test. These types of changes do not contribute to the primary function of transporting a particular type of load other than over the public highway.

The Model A does not meet the offhighway vehicle exception under § 48.4061(a)-1(d)(2)(ii) because it meets neither the special design nor the substantial impairment test. The only evidence submitted with respect to either test is that the rear axle assembly is slightly larger than 102 inches. This evidence does not support a substantial impairment or limitation of the use of the vehicle to transport loads over the public highways.

The classification of an otherwise taxable highway vehicle is based on the design of the

vehicle and is not affected by the use for which a particular customer purchases a vehicle. That is, whether a vehicle purchaser registers that vehicle for highway use or uses the vehicle on the highways is not determinative of whether the vehicle is designed for highway use. Taxpayer's liability for tax is not affected by its purchaser's certification of off-road use of the Model A.<sup>1</sup>

CAVEATS:

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) provides that it shall not be used or cited as precedent. In accordance with § 6110(c), names, addresses, and other identifying numbers have been deleted.

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<sup>1</sup> Under § 48.4061-1(e)(2), either a chassis or a body may be sold tax free for use as a component in the production of a nonhighway vehicle. However, this section does not apply to the sale of a completed vehicle (as is the case here.)