

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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from: Frank Boland
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subject: CCA-Imported Vehicles Under Temporary Importation

This responds to your request for Non-Taxpayer Specific Legal Advice regarding the imposition of the § 4051 retail truck tax on an imported truck that is leased as described below. The truck has a chassis and a body that are subject to the § 4051 tax. You ask four questions regarding two scenarios: (1) has the truck been imported into the United States; (2) is there any § 4051 tax liability; (3) if so, who is liable for the tax; and (4) what is the tax base.

This response does not apply to trucks described in 19 C.F.R. § 123.14, which generally relates to vehicles in international traffic arriving with goods or passengers destined to points in the United States.

This document may not be used or cited as precedent.

Scenario 1

Facts. DOM, a company located in the United States, enters into a six month agreement to lease from FOR, a foreign corporation, a truck that DOM will use to transport equipment and machinery to and from points within the United States. Before the truck is brought into the United States, and before DOM uses the truck, DOM must demonstrate that the truck meets all U.S. federal highway safety standards. This truck has never been sold or used in the United States.

A verified U.S. Customs and Border Protection (CBP) Form 7501, Entry Summary, that identifies FOR's imported truck indicates that FOR is the importer of record and DOM is the ultimate consignee. This form also indicates that FOR posted a Temporary Importation Bond to insure that the truck will be exported from the United States within a specified period.

A Temporary Importation Bond is a procedure whereby, under certain conditions, merchandise may be entered -- for a limited time -- into U.S. Custom's territory free of duty. Instead of duty, the importer posts a bond for twice the amount of duty, taxes, etc., that would otherwise be owed on the importation. Under this procedure, the importer agrees to export or destroy the merchandise within a specified time or pay liquidated damages, which are twice the normal duty.

Under the terms of the lease, FOR retains title to the truck. DOM must register the truck with the appropriate department of motor vehicles in the United States and pay the registration fees. DOM must maintain the truck in good working order and when the lease expires, DOM must return the truck to FOR.

Question 1: Has the truck been imported into the United States.?

CBP Form 7501 identifies merchandise entering the commerce of the United States. Thus, the truck that is listed on a properly completed CBP Form 7501 has been imported into the United States. The amount of time the truck stays in the United States is not a consideration in determining whether the truck has been imported for federal excise tax purposes. Therefore, the truck's status as imported into the United States is unaffected by the fact that FOR posted a Temporary Importation Bond.

Question 2. Does the § 4051 tax apply to the use of the trucks after importation?

Section 4051(a)(1) of the Internal Revenue Code imposes a 12 percent excise tax on the first retail sale of certain enumerated articles, including bodies and chassis of highway trucks.

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 4052(a)(3) provides that if any person uses an article taxable under section 4051 before the first retail sale of such article, then such person is liable for tax under § 4051 in the same manner as if such article were sold at retail by him.

Smith v. United States, 319 F.2d 776 (5th Cir. 1963), holds that a used Volkswagen automobile that was manufactured in Germany was subject to the excise tax imposed

by § 4061 (the predecessor to § 4051) when imported into the United States and sold at retail as a used car because the sale was the first sale within the United States.

In this scenario, DOM's use of the truck is treated as if the truck was sold at retail and, therefore, is subject to the § 4051 tax. See § 4052(a)(3). Whether the truck is new or used is immaterial. See Smith v. United States. Therefore, § 4051 applies to DOM's use of the truck.

Question 3. Who is liable for the § 4051 tax?

Section 4052(a)(3) provides that if any person uses an article taxable under § 4051 before the first retail sale of such article, then such person is liable for tax under § 4051 in the same manner as if such article were sold at retail by him. Therefore, DOM is liable for tax because DOM used the trucks before the first retail sale of the truck in the United States.

Question 4. What is the tax base?

Section 4052(a)(3)(C) provides that in the case of any person made liable for tax by § 4052(a)(3)(A) (relating to the taxable use of the article), the tax is computed on the price at which similar articles are sold at retail in the ordinary course of trade, as determined by the Secretary.

Section 145.4052-1(a)(3)(ii) of the Temporary Excise Tax Regulations Under The Highway Revenue Act of 1982 (Pub. L. 97-424) provides that if the taxable sale of an article is a taxable use of such article under § 145.4052-1(c), the tax is computed on the price as determined under § 145.4052-1(c).

Section 145.4052-1(c)(5)(ii) provides that if the seller of an article does not regularly sell such articles at retail in arm's length transactions, a constructive price on which the tax shall be computed will be determined by the Commissioner. This price will be established after considering the selling practices and price structures of sellers of similar articles.

In this scenario, DOM's tax liability under § 4051, attributable to DOM's use of the truck, is calculated pursuant to § 145.4052-1(c)(5)(ii) assuming that DOM does not regularly sell at retail in arm's length transactions the type of truck that DOM used. Section 145.4052-1(c)(5)(ii) requires the Commissioner to determine a constructive price on which the tax will be computed after considering the selling practices and price structures of sellers of similar vehicles.

Scenario 2

The facts are the same as those in Scenario 1 except that the truck remains registered in FOR's name. This registration does not change the analysis or the answers in

Scenario 1. The truck retains its status as an imported truck. The § 4051 tax remains applicable to DOM's use of the truck before its first retail sale in the United States. DOM remains liable for the section 4051 tax because DOM used the truck before its first retail sale in the United States. The tax base determination under § 145.4052-1(c)(5)(ii) is unaffected by the truck's registration.

If you have any questions concerning this memorandum, please contact Celia Gabrysh at (202) 622-3130 if you have any further questions.