

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

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CGabrysh

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date: March 30, 2015

to: Robert P. Wolff
Appeals Officer

from: Stephanie Bland
Branch Chief, CC:PSI:7
Office of the Associate Chief Counsel
Passthroughs & Special Industries

subject: Section 4051: Truck Chassis and Bodies

This responds to your request for Taxpayer Specific Legal Advice regarding § 4051 of the Internal Revenue Code (Code). Neither the chassis nor the bodies that are the subject of this request qualify for the weight exemptions in § 4051(a)(2) and (3). This request excludes the non-transportation machinery and/or equipment installed on the trucks and trailers as determined by a revenue agent.

This advice may not be used or cited as precedent.

Legend

Taxpayer =

Model X =

Model Y =

Model Z =

Issue

Whether certain paver trucks and trailers are off-highway vehicles for purposes of the tax imposed by § 4051.

Facts

Taxpayer manufactures and sells truck and trailers including Models X, Y, and Z (collectively, vehicles) used in the highway construction and maintenance industry. These vehicles are referred to as “pavers” and are used to resurface parking lots, residential streets, and highways. The vehicles drive a few miles from a local site where unmixed resurfacing materials are stored to a jobsite where the resurfacing materials are usually mixed and applied to repair pavement. Taxpayer may relocate a local site depending on jobsite changes and traffic flows.

The Model X truck or trailer mounted paver has five compartments for the five components of the resurfacing materials. A separate diesel engine runs the hydraulic system that releases the correct amounts of resurfacing materials from the five compartments, mixes these materials, dispenses the mixed materials into a delivery system that deposits the mixture into a spreader box at the back of the truck from which the mixture is poured on to the area to be resurfaced. A trained operator manually calculates the appropriate amounts of resurfacing materials and adjusts the paver to release and mix these amounts. This truck moves at 1.5 miles per hour when it is dispensing the resurfacing materials.

The Model Y truck or trailer mounted paver has an automated system that calculates the amounts of the five resurfacing components that need to be released from their compartments and mixed before being released into the delivery system for deposit into the spreader box.

The Model Z truck carries a premixed slurry seal that is continually mixed. This slurry seal is spread and laid down with the same equipment used for these purposes on a Model X truck.

Law

Section 4051(a)(1)(A) imposes a 12 percent tax on the first retail sale of a truck chassis and a truck body.

Section 145.4051-1(a)(2) of the Temporary Excise Tax Regulations Under the Highway Revenue Act of 1982 (Pub. L. 97-424) limits the application of this tax to a chassis or a body that is sold for use as a component part of a highway vehicle (as defined in § 48.4061(a)-1(d) of the Regulations on Manufacturers and Retailers Excise Taxes)).

Section 48.4061-1(d)(1) defines the term “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.

Section 48.4061(a)-1(d)(2)(i) provides an exception (the mobile machinery exception) to the term “highway vehicle” for certain specially designed mobile machinery vehicles that (A) consist of a chassis to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining drilling, timbering or operation similar to any one of the foregoing enumerated operations if the operation of the machinery or equipment is unrelated to transportation on or off the public highways, (B) the chassis has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and (C) by reason of such special design, such chassis could not, without substantial modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

Several court cases have addressed the application of the § 48.4061(a)-1(d)(2)(i) exception to asphalt trailers and semitrailers. *Flow Boy, Inc. v. United States*, 83-1 U.S.T.C. ¶16,395, *aff'd*, 54 A.F.T.R.2d 6545, 84-1 U.S.T.C. ¶16,418 (10th Cir. 1984), and *Gateway Equip. Corp. v. United States*, 247 F. Supp. 2d 299 (W.D.N.Y. 2003). Relying on § 48.4061(a)-1(d)(2)(i), the courts in *Flow Boy* and *Gateway* held that the asphalt trailers and semitrailers in question were not highway vehicles.

Section 7701(a)(48)(A), which became effective on October 22, 2004, defines an off-highway vehicle as a vehicle that is specially designed for the primary function of transporting a particular type of load other than over the public highway and because of this special design such vehicle’s capability to transport a load over the public highway is substantially limited or impaired. A vehicle’s design is determined solely on the basis of its physical characteristics. In determining whether substantial limitation or impairment exists, account may be taken of factors such as the size of the vehicle, whether such vehicle is subject to the licensing, safety, and other requirements applicable to highway vehicles, whether such vehicle is subject to the licensing, safety, and other requirements applicable to highway vehicles, and whether such vehicle can transport a load at a sustained speed of at least 25 miles per hour. It is immaterial that a vehicle can transport a greater load off the public highway than such vehicle is permitted to transport over the public highway.

Section 4061(a)-1(d)(1) defines the term “public highway” as any road (whether a Federal highway, State highway, city street or otherwise) in the United States which is not a private roadway.

The Joint Committee explained the elimination of the mobile machinery exception in § 48.4061(a)-1(d)(2)(i) as follows:

The Congress understood that a mobile machinery exception was created by Treasury regulation because the Treasury Department believed that mobile machinery used the public highways only incidentally to get from one jobsite to another. However, it had come to the attention of the Congress that certain vehicles are taking advantage of the mobile machinery exemption even though they spend a significant amount of time on public highways and, therefore, cause wear and tear to such highways.

General Explanation of Tax Legislation Enacted in the 108th Congress, (May 2005).

Analysis and Conclusion

As of October 22, 2004, Congress, in effect, repealed the mobile machinery exception in § 48.4061(a)-1(d)(2)(i) by enacting the statutory definition of an off-highway vehicle in § 7701(a)(48). Further, the Flow Boy and Gateway decisions discussed above predate the enactment of § 7701(a)(48); therefore, after October 22, 2004, Flowboy and Gateway are no longer precedent for determining whether a vehicle meets the definition of an off-highway vehicle. Thus, Taxpayer's trucks and trailers must meet the definition of an off-highway vehicle in § 7701(a)(48) to be exempt from the § 4051 tax.

The design of Taxpayer's Models X, Y, and Z (vehicles) enables them to transport resurfacing materials on a public highway from a local site where resurfacing materials are stored to a jobsite where the resurfacing materials are sometimes mixed, depending on the model, and applied to public highways with the exception of parking lots. Although designed to carry a particular load of resurfacing materials and related equipment, this design does not substantially limit or impair the vehicles' capability to transport its load over the public highway from a local storage site to a jobsite because this is what their design enables them to do. There is nothing in the materials submitted for consideration that indicate that the vehicles are oversized and require special permits to travel on a public highway or that the vehicles are exempt from the licensing, safety, and other requirements applicable to highway vehicles. There is also no indication that the vehicles cannot transport its load at a sustained speed of at least 25 miles per hour. Therefore, we conclude that the vehicles do not meet the definition of off-highway vehicles in § 7701(a)(48). We further conclude that the vehicles are subject to the § 4051 tax on their first retail sale.

If you have any questions concerning this memorandum, please contact Celia Gabrysh at (202) 317-5255.