

INTERNAL REVENUE SERVICE  
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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District Director

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification No.:

Periods Involved:

Conference Held:

Legend:     X=  
              Y=

ISSUE:

Whether X and Y are taxable sport fishing equipment for purposes of the tax imposed by § 4161 of the Internal Revenue Code and, therefore, the manufacturer (the taxpayer) is liable for tax on its sale of X and Y.

CONCLUSION:

X, not Y, is taxable sport fishing equipment for purposes of the tax imposed by § 4161 and, therefore, the manufacturer (the taxpayer) is liable for tax on its sale of X, but not liable for tax on its sale of Y.

FACTS:

The taxpayer manufactures and sells X and Y, which are articles designed to hold fishing lines away from the sides of boats when trolling. X and Y are long, thin, rectangular planer boards. X is an in-line planer board with a fishing line holder that enables the fishing line to be attached directly to X from the fishing rod. A flag is

attached to X for visibility. Y is a planer board with a tow line holder. The tow line runs from a mast on the boat to Y and fishing lines can be affixed to the tow line at evenly-spaced intervals. The recommended position of Y is approximately 75 feet from the boat. Y is used with tow lines over 130 pounds test.

#### APPLICABLE LAW:

Section 4161(a)(1) imposes a tax on the sale of any article of sport fishing equipment by the manufacturer equal to 10 percent of the price for which the equipment is sold.

Section 4162(a)(5) defines sport fishing equipment as items of terminal tackle not including any item designed for use and ordinarily used on fishing lines over 130 pounds test. Section 4162(a)(5)(F) specifies bobbers as included in items of terminal tackle.

Rev. Rul. 88-52, 1988-1 C.B. 356, at 357, defines a bobber as any device used as a means to suspend a fishing line or lure in the water column, or that can be used to visually track the location and status of fishing line and associated hooks and bait. A bobber can be attached to a fishing line and is made of wood, cork, plastic, styrofoam, or other material. It can be any size, shape, or color. Rev. Rul. 88-52 provides that, except for items of terminal tackle designed for use and ordinarily used on fishing lines over 130 pounds test, an article otherwise defined in this revenue ruling as an article of sport fishing equipment is subject to tax under § 4161 unless the taxpayer shows that the article is primarily designed for a purpose other than recreational fishing.

#### RATIONALE:

Section 4162 enumerates the articles of sport fishing equipment subject to tax under § 4161. The legislative history to § 4162 describes the items of terminal tackle subject to tax. H. Rept. 98-133, Part 2, and S. Rept. 98-169, Vol. 1. Taxable items “include, but are not limited to- ... bobbers, i.e., any device used as a means to suspend a fishing line or lure in the water column, or which can be used to visually track the location and status of a fishing line and associated hooks and bait, and which can be attached to a fishing line.” The language contained in Rev. Rul. 88-52 mirrors the language contained in the legislative history.

X and Y hold the fishing line away from the motor boat. X is an in-line planer board attached directly to the fishing line. X keeps the lure away from the side of the boat and suspends, by supporting with buoyancy, the fishing line or lure in the water column. X has a flag that can be used to visually track the location of a fishing line. As such, X is an item of terminal tackle for purposes of the tax on sport fishing equipment.

The taxpayer argues that X and Y are not bobbers because they are devices designed to tow fishing lines while trolling, not to suspend fishing lines. Further, the taxpayer argues that Congress would not have separately specified outriggers and tip-ups as taxable if all devices used as a means to suspend a fishing line or lure in a water

column were intended to be included in items of terminal tackle.

Neither the Code nor the legislative history support the taxpayer's arguments. Clearly, there are items of terminal tackle taxable under § 4161, for example, artificial lures and baits, that can be used while trolling. A fishing line can be suspended, or held up, at the same time it is being towed. Further, in the Deficit Reduction Act of 1984, Pub. L. 98-369, the Congress was expanding the excise tax on sport fishing equipment so that all purchasers of sport fishing equipment would contribute to the financing of the Federal-State sport fish restoration program. The Congress used main categories to classify the various articles subject to tax but did not indicate that the categories are mutually exclusive.

Y is designed for use with fishing tow lines over 130 pounds test. Section 4162(a)(5) provides that items of terminal tackle for purposes of the tax on "sport fishing equipment" do not include items designed for use or ordinarily used on fishing lines over 130 pounds test.

CAVEAT:

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. Under § 6110(c), names, addresses, and identifying numbers have been deleted.