

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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CASE MIS No.: TAM-107141-99

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification No:

Years Involved:

Date of Conference:

LEGEND: Taxpayer =

ISSUE(S):

(1) Who is liable for the excise tax imposed by § 4001 of the Internal Revenue Code when a vehicle is leased pursuant to the four party arrangements described below?

(2) Who is liable for any additional excise tax resulting from an error made in computing the selling price of a vehicle?

CONCLUSION:

(1) Unless the lease specifies that Taxpayer is Funder's agent, Taxpayer is liable for the excise tax.

(2) Unless the lease specifies that Taxpayer is Funder's agent, Taxpayer is liable for any additional excise tax attributable to an error made in computing the selling price of the vehicle.

FACTS:

Taxpayer's business is soliciting lessees of "luxury passenger automobiles" (Vehicle(s)), which are subject to the excise tax imposed by § 4001(a). Taxpayer entered into agreements with several finance companies (Funder(s)). With one

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exception¹ these agreements provide that Funders will purchase Taxpayer's leases and Vehicles, if certain conditions are met.

Taxpayer's customers are not engaged in Vehicle sales, leasing, or rental. Typically, after a customer identifies the Vehicle it wants to lease, Taxpayer and its customer negotiate lease payments and other terms. Taxpayer uses a lease form provided by Funder. The lease payments are based, in part, on the purchase price Taxpayer negotiated with a Vehicle dealer (Dealer). The lease provides, among other things, that the lessee agrees to the assignment of the lease. After Taxpayer and the customer agree on terms, but before Taxpayer signs a lease, Taxpayer presents the lease to a Funder for that Funder's approval. Upon the Funder's approval, Taxpayer purchases the Vehicle and signs a lease with a customer.

Taxpayer usually pays for the Vehicle with a bank draft drawn on Taxpayer's bank. The Dealer does not collect the excise tax from Taxpayer. Upon Taxpayer's payment for the Vehicle, Dealer transfers the Vehicle's open title to the Funder and the lessee. This arrangement avoids the transfer of title from the the Dealer to Taxpayer, and then from Taxpayer to the Funder and the lessee. When Taxpayer takes possession of the Vehicle from the Dealer, Taxpayer insures the Vehicle until the lessee takes possession of the Vehicle. After the lessee takes possession of the Vehicle, the lessee is responsible for insuring the Vehicle.

Taxpayer uses computer software furnished by a Funder to calculate the federal excise tax on the Vehicle lease. Taxpayer files Form 720, Quarterly Federal Excise Tax Return, and pays the excise tax. During the examination of Taxpayer's return, the revenue agent identified mistakes in calculating the excise tax. The result of correcting these mistakes is an increase in the amount of the excise tax.

LAW AND ANALYSIS:

Section 4001(a) imposes on the first retail sale of any passenger vehicle a tax equal to 10 percent of the price for which so sold to the extent the price exceeds the applicable amount. The term "first retail sale" is defined in § 4002(a) as the first sale, for a purpose other than resale, after manufacture, production, or importation.

With exceptions that are inapplicable to this TAM, § 4002(c)(1) characterizes the lease of a vehicle (including any renewal or any extension of a lease or any subsequent

¹ In one of the leases, the Funder designates Taxpayer as its agent for the purpose of executing the lease. In this instance, Taxpayer does not assign the lease to the Funder because Taxpayer's signature as agent for the Funder renders the Funder the lessor of the Vehicle and, therefore, liable for the excise tax.

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lease of such vehicle) by any person as a sale of such vehicle at retail.

Taxpayer uses its own funds to pay for a Vehicle and insures the Vehicle until the lessee takes possession of the Vehicle. Paying the purchase price and insuring the Vehicle indicates that Taxpayer bears the risk of loss, a characteristic of ownership. Likewise, Taxpayer's assignment of the Vehicle and lease to a Funder indicates that Taxpayer had an ownership interest in the Vehicle and the lease, which the Taxpayer could transfer. The lease assignment, either upon the signing of the lease or shortly thereafter, does not negate Taxpayer's ownership of a Vehicle at the time the lease was signed. The fact that Taxpayer's name never appears on the title of the Vehicle is a matter of administrative convenience and is not determinative of actual ownership at a specific time.

Taxpayer is liable for the federal excise tax imposed by § 4001 because Taxpayer leases a Vehicle for a purpose other than resale after the manufacture, production, or importation of the Vehicle. Taxpayer's use of a Funder's computer software designed to calculate the excise tax does not transfer liability for any additional tax from Taxpayer to the Funder.

CAVEAT:

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) provides that it may not be used or cited as precedent.