

Office of Chief Counsel
Internal Revenue Service
memorandum

PostS-108445-07

date: February 28, 2007

to: W. Ricky Stiff
Chief, Excise Tax Program

from: Frank A. Falvo
General Attorney (Pittsburgh)
(Small Business/Self-Employed)

subject: [REDACTED]

This memorandum responds to your request for assistance dated December 28, 2006. This memorandum should not be cited as precedent.

ISSUE

Whether certain chassis sold by the taxpayer are subject to the retail excise tax under I.R.C. § 4051.

CONCLUSION

The chassis are subject to tax under section 4051.

FACTUAL BACKGROUND

Unless otherwise noted, all factual information set forth herein has been provided by the excise agent.

The taxpayer, [REDACTED] is engaged in business as a dealer of heavy and medium-sized trucks. The taxpayer purchases its truck and tractor chassis primarily from [REDACTED]. As a dealer, the taxpayer purchases chassis for resale to third parties. The chassis at issue herein were acquired by the taxpayer and resold for the purpose of manufacturing recreational vehicles (hereinafter sometimes referred to as "RV chassis"). Prior to [REDACTED] the taxpayer purchased these RV chassis tax-free from [REDACTED] without providing an exemption certificate to [REDACTED]. Commencing on [REDACTED] the taxpayer provided resale exemption certificates to [REDACTED] at the time of its purchase. The excise agent advises us that the proposed examination adjustments in this case relate solely to chassis sold subsequent to [REDACTED]. Therefore, for each chassis at issue the taxpayer provided [REDACTED] with an exemption certificate.

PMTA: 00853

The taxpayer purchased the RV chassis and resold them to third parties who used the chassis to manufacture motor homes. The taxpayer contends that no section 4051 excise taxes are paid on the sales of the chassis for motor home use because these products are exempt under Treas. Reg. § 48.4061(a)-1(d)(4) and Revenue Ruling 73-197. At the time the taxpayer sold the chassis to the third parties, the taxpayer had not obtained resale exemption certificates from these third parties. The taxpayer states that subsequent to the sale of the chassis, it has obtained exemption certificates from the buyers.

According to the taxpayer, when it purchases from [REDACTED] a chassis which will be used for a motor home application, the specifications for motor home use must be incorporated into the chassis for safety reasons. These specifications include a larger front axle, double frame rails, and increased length of the frame rails and wheelbase. The chassis also include upgraded suspension, power steering, larger fuel tank and larger brakes. The taxpayer contends that the modifications needed for use as a motor home make the chassis specially designed only for motor home use.

Sample invoices of the chassis purchased by the taxpayer from [REDACTED] reveal that they are "conventional" chassis containing mostly standard equipment. The invoices do not specifically state that the chassis will be used for a motor home or recreational vehicle. The chassis have a gross vehicle weight rating in excess of 33,000 pounds, and the engine is mounted above the frame rails. The excise agent advises that the chassis in this case are substantially the same as the chassis described in PLR 200550037.

DISCUSSION

I.R.C. § 4051(a)(1) imposes a 12% tax on the first retail sale of certain enumerated articles, including automobile truck chassis and bodies, truck trailer and semitrailer chassis and bodies, and tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer. The liability for payment of the tax is on the person making the first retail sale of the article. 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 48.4052-1(a) of the Manufacturers and Retailers Excise Tax Regulations provides that tax is not imposed on the sale of an article for resale or leasing in a long-term lease, if, by the time of sale, the seller has in good faith accepted from the buyer a statement that the buyer executed in good faith and that is in substantially the same form, and subject to the same conditions, as the certificate described in § 145.4052-1(a)(6), except that the certificate must be signed under penalties of perjury and need not refer to Form 637 or include a registration number.

Rev. Rul. 73-197, 1973-1 C.B. 423 holds that the sale of specially designed chassis for use in the manufacture of mobile homes are not subject to the tax imposed on truck chassis under section 4061(a)(1). However, the tax imposed under section 4061(a)(1) applies to the sale of conventional truck chassis even though they are used

as components of mobile homes. In determining whether the chassis is specially designed for use in the manufacture of mobile homes, the revenue ruling evaluates several factors including use of a flat rail frame, mounting of the engine between the frame rails, design and placement of the water pumps, oil dip sticks, oil intakes, and radiator coolant, use of a large gas tank, use of three speed automatic transmission and power steering, use of specially designed power brake boosters, and positioning of steering columns and driver seats forward and to the left of conventional truck chassis. The ruling concluded that inasmuch as the chassis are specially designed, constructed, and predominately used for the transportation of mobile home bodies and not to haul freight or cargo, the chassis are not taxable as automobile truck chassis.

The taxability of a chassis is determined on the basis of all the facts available including the predominate use of the chassis in the industry. The chassis in this case have not been specially designed and substantially modified for use in the manufacture of a motor home. The chassis purchased from [REDACTED] are conventional chassis with some modifications to accommodate use as a mobile home. The conventional chassis are used for a variety of non-motor home functions, such as day cabs, sleeper cabs and dump trucks. The sample invoices show that the chassis contain mostly standard equipment or common upgrades. Upgrades such as extended frame rails, heavier front axle and reinforced rails were available options offered by the manufacturer. Although these upgrades made the chassis more stable for mobile home use, they are not so substantial as to render the chassis specially designed for use as a motor home. In fact, the costs of these modifications are relatively small in comparison to the total cost of the chassis. As the taxpayer's website indicates, the predominate use of the conventional chassis in the industry continues to be for hauling cargo or freight.

In Rev. Rul. 73-197, the chassis at issue were specially designed for the purpose of transporting mobile home bodies. There, the engines were mounted between the frame rails, and the design and placement of various components of the engine differed from conventional trucks. Other features which were different from conventional chassis included power brakes, power steering, automatic transmission, larger fuel tank and the placement of the steering column. In this case, the chassis are not so specially designed. Unlike the chassis in the revenue ruling, the engines here are mounted above the rail, which is a feature of a conventional truck chassis. Moreover, the brakes, steering and transmission systems are available for use on the conventional chassis and are not specially designed for mobile home use only. There are no special designs and placements of engine components and steering columns that differ from the conventional chassis.

Based upon the foregoing, we believe the chassis are not specially designed for use in the manufacture of mobile homes and are subject to the tax under section 4051.

The taxpayer states that although it had not obtained exemption certificates from its buyers at the time of sale, it has recently obtained certificates certifying that the chassis were either resold at retail or leased on a long-term lease by the purchaser. We find no merit to the taxpayer's suggestion that these recently obtained exemption

certificates entitled it to sell the chassis tax free. Pursuant to section 48.4052-1(a), in order for the section 4051 tax not to be imposed on the sale of an article for resale or leasing in a long term lease, by the time of the sale, the seller must have accepted from the buyer the required exemption certificate. Since the taxpayer did not have the certificate by the time of the sale, tax is imposed upon the taxpayer's sale of the chassis to the third parties.

The taxpayer raises an alternative argument that because, prior to [REDACTED] it did not provide [REDACTED] with exemption certificates, the point of taxation, for sales through [REDACTED] should be the first sale from [REDACTED] to the taxpayer. The excise agent has advised us that the proposed adjustments in this case relate only to sales made after [REDACTED]. No adjustments will be proposed for periods prior to [REDACTED]. Hence, the taxpayer's alternative argument is moot.

Please contact the undersigned at (412) 644-3417 if you have any questions in this matter.

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