

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

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to: W. Ricky Stiff
Chief, Excise Tax Program

from: Frank Boland 
Chief, Branch 7
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

subject: Request for non-taxpayer specific legal advice; taxable tires

This memorandum responds to your request for guidance on an issue affecting multiple taxpayers in the trucking industry. Specifically, this memorandum provides legal advice regarding tires put on vehicles that meet the mobile machinery exception in § 4053(8) of the Internal Revenue Code. In general, the mobile machinery exception applies to a chassis that is specially designed to serve only as a mobile carriage and mount for equipment or machinery (whose function is unrelated to transportation on or off the highway) that is attached to the chassis. As a consequence of this special design, the chassis could not, without substantial structural modification, be used as a component of a vehicle that could carry a different load.

This memorandum may not be use or cited as precedent. It is intended only for use by the office that requested it.

ISSUE

If a purchaser of a taxable tire puts it on a vehicle that meets the mobile machinery exception in § 4053(8) (MME), is the purchaser entitled to a refund of the tax paid by the tire manufacturer?

CONCLUSION

A purchaser that puts a taxable tire on a vehicle that meets the MME is not entitled to a refund of the tax paid by the tire manufacturer.

PMTA: 01574

FACTS

A tire manufacturer pays the tax imposed by § 4071(a) when it sells a tire that is: (1) of the type used on highway vehicles; (2) wholly or in part made of rubber; and (3) marked pursuant to federal regulations for highway use. The tire does not have any design features to indicate that it is a tire of the type used exclusively on vehicles described in § 4053(8).

The purchaser of this tire puts the tire on a vehicle that meets the MME. This purchaser files a refund claim for the tax paid on this tire.

LAW AND ANALYSIS

Section 4071(a) imposes a tax on taxable tires sold by the manufacturer, producer, or importer of the taxable tires.

Section 4072(a) defines a taxable tire as any tire of the type used on highway vehicles if wholly or in part made of rubber and if marked pursuant to federal regulations for highway use.

Section 4072(c) defines the term "tires of the type used on highway vehicles" as tires of the type used on (1) motor vehicles that are highway vehicles, or (2) vehicles of the type used in connection with motor vehicles which are highway vehicles. This term does not include "tires of the type used exclusively" on vehicles described in § 4053(8).

The tire tax exclusion is not a general exclusion for tires used on vehicles that meet the MME; rather, the exclusion is limited to tires of the type used exclusively on vehicles that meet the MME. Therefore, the characterization of a tire as a taxable tire cannot be changed to a tire that is used exclusively on a vehicle that meets the MME by merely putting the taxable tire on a vehicle that meets the MME. A refund is not allowed to any person for the tax paid on a taxable tire that is put on a vehicle that meets the MME.¹

Please call Celia Gabrysh at (202) 622-3130 if you have any further questions.

cc: Thomas R. Thomas
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Small Business/Self-Employed

¹ Section 6402(a) authorizes a refund of a tax overpayment to the person that made the overpayment. If a tire manufacturer pays tax on a tire of the type used exclusively on vehicles that meet the MME, the proper claimant for a tire tax refund is the tire manufacturer because the tire manufacturer, not the tire purchaser, made the overpayment. Also, a tire manufacturer's refund claim must meet the criteria in § 6416(a).