

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

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#### Retail Tax on Imported Leased Trucks

This responds to your request for Non-Taxpayer Specific Legal Advice regarding the imposition of the § 4051 retail truck tax on imported trucks that are leased as described below. The trucks have chassis and bodies that are subject to the § 4051 tax and are used by a domestic company. You ask us four questions regarding two scenarios: (1) have the trucks been imported into the United States; (2) does the § 4051 tax apply to the use of the trucks after importation; (3) if so, who is liable for the tax; and (4) what is the tax base.

This document may not be used or cited as precedent.

#### Scenario 1

Facts. DOM, a U.S. company, enters into a one year agreement to lease from FOR, a foreign corporation, new and used foreign-made trucks that meet all U.S. federal highway safety standards. These trucks have never been sold or used in the United States. DOM and FOR are not members of the same controlled group (within the meaning of section 5061(e)(3)). DOM does not regularly sell trucks in the U.S. at retail in arm's length transactions. FOR does not have a U.S. presence.

A verified U.S. Customs and Border Protection (CBP) Form 7501, Entry Summary, that identifies FOR's imported trucks indicates that FOR is the importer of record and DOM is the ultimate consignee.

Under the terms of the lease, FOR retains title to the imported trucks. DOM must register the trucks with the appropriate department of motor vehicles and pay the

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registration fees. DOM must maintain all the trucks in good working order. When the lease expires, DOM must return the trucks to FOR.

Question 1: Have the trucks been imported into the United States?

CBP Form 7501 identifies merchandise entering the commerce of the United States. Thus, the trucks that are listed on a properly completed CBP Form 7501 have been imported into the U.S.

Question 2. Does the § 4051 tax apply to the use of the trucks after importation?

Section 4051(a)(1) of the Internal Revenue Code imposes a 12 percent excise tax on the first retail sale of certain enumerated articles, including bodies and chassis of highway trucks.

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 4052(a)(3) provides that if any person uses an article taxable under section 4051 before the first retail sale of such article, then such person shall be liable for tax under section 4051 in the same manner as if such article were sold at retail by him.

In Smith v. United States, 319 F.2d 776 (5<sup>th</sup> Cir. 1963), the court held that used Volkswagen automobiles manufactured in Germany were subject to the excise tax imposed by § 4061 (a predecessor to § 4051) when imported into the United States and sold at retail as used cars because each sale was the first sale within the United States.

In this scenario, DOM's use of the trucks is treated as if the trucks were sold at retail and, therefore, is subject to the section 4051 tax. See section 4052(a)(3). Whether the trucks are new or used is immaterial. See Smith v. United States. Therefore, section 4051 applies to DOM's use of the trucks.

Question 3. Who is liable for the section 4051 tax?

Section 4052(a)(3) provides that if any person uses an article taxable under section 4051 before the first retail sale of such article, then such person shall be liable for tax under section 4051 in the same manner as if such article were sold at retail by him. Therefore, DOM is liable for tax because DOM used the trucks before the first retail sale of the trucks in the United States.

Question 4. What is the tax base?

Section 4052(a)(3)(C) provides that in the case of any person made liable for tax by § 4052(a)(3)(A) (relating to the taxable use of the article), the tax is computed on the price at which similar articles are sold at retail in the ordinary course of trade, as determined by the Secretary.

Section 145.4052-1(a)(3)(ii) of the Temporary Excise Tax Regulations Under The Highway Revenue Act of 1982 (Pub. L. 97-424) provides that if the taxable sale of an article is a taxable use of such article under § 145.4052-1(c), the tax shall be computed on the price as determined under § 145.4052-1(c).

Section 145.4052-1(c)(5)(ii) provides that if the seller of an article does not regularly sell such articles at retail in arm's length transactions, a constructive price on which the tax shall be computed will be determined by the Commissioner. This price will be established after considering the selling practices and price structures of sellers of similar articles.

In this scenario, DOM's tax liability under § 4051, attributable to DOM's use of the trucks, is calculated pursuant to § 145.4052-1(c)(5)(ii) because DOM does not regularly sell at retail in arm's length transactions the types of trucks that DOM used. Section 145.4052-1(c)(5)(ii) provides that the Commissioner will determine a constructive price on which the tax will be computed after considering the selling practices and price structures of sellers of similar vehicles.

## **Scenario 2**

The facts are the same as those in Scenario 1 except that FOR has a presence in the U.S. FOR's presence in the United States does not change the analysis or the answers in Scenario 1. The trucks retain their status as imported trucks. The section 4051 tax remains applicable to FOR's use of the trucks before the first retail sale of the trucks in the United States. Whether or not FOR has a presence in the United States, DOM remains liable for the section 4051 tax because DOM used the trucks before their first retail sale in the United States. The tax base determination under § 145.4052-1(c)(5)(ii) is unaffected by FOR's presence in the United States.

If you have any questions concerning this memorandum, please contact Celia Gabrysh at (202) 622-3130.