

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

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to: Holly L. McCann
Chief, Excise Tax Program

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

subject: Excise Tax on Foreign Manufacturer's Sales to U.S. Importer

This responds to your request for assistance as to which person, if any, may claim a credit or refund under § 6402 of the Internal Revenue Code (Code) for excise tax paid by a Foreign manufacturer on sales to a U.S. company. This advice may not be used or cited as precedent.

FACTS

A U.S. company imported sports fishing equipment from a foreign country. The equipment, which is subject to excise tax under § 4161, was made in the foreign country by the Foreign manufacturer. The Foreign manufacturer, which has a U.S. employer identification number, sold the equipment to the Domestic company while the equipment was still in the foreign country. The Foreign manufacturer's selling price included an amount equal to the tax imposed by § 4161. The Foreign manufacturer paid the tax on this sale to the U.S. Government on Form 720, Quarterly Federal Excise Tax Return. After the U.S. company imported the equipment, it sold the equipment in the United States in a taxable sale but did not pay the tax imposed by § 4161.

QUESTIONS

- (1) May the U.S. company claim a credit for the tax paid by the Foreign manufacturer?
- (2) May the Foreign manufacturer claim a refund for the taxes it paid on the sale to the U.S. company? If so, must the Foreign manufacturer comply with the requirements of § 6416(a) and the regulations thereunder?

CONCLUSIONS

- (1) The U.S. company may not claim a credit for the tax paid by the Foreign manufacturer.
- (2) The Foreign manufacturer may claim a refund for the taxes it paid on the sale to the U.S. company if, among other conditions, the Foreign manufacturer complies with the requirements of § 6416(a) and the regulations thereunder.

LAW

Section 4161(a)(1) imposes on the sale of any article of sport fishing equipment by the manufacturer, producer, or importer a tax, which is based on the price for which the equipment is so sold.

Under § 48.4161(a)-1(c), the tax imposed by section 4161(a) is payable by the manufacturer, producer or importer.

Under § 6402, credits and refunds of overpayments are to be made to the person that made the overpayment. Jones v. Liberty Glass, 332 U.S. 524, 531 (1947), defines “overpayment” as any payment in excess of that which is properly due.

Section 6416(a)(1) bars a credit or refund of any overpayment of tax imposed by chapter 32 (manufacturers taxes) unless (among other conditions) the person who paid the tax establishes, under regulations prescribed by the Secretary, that it (i) has not included the tax in the price of the article with respect to which it was imposed and has not collected the amount of the tax from the person who purchased such article; (ii) has repaid the amount of the tax to the ultimate purchaser of the article; or (iii) has filed with the Secretary the written consent of the ultimate purchaser of the article to the allowance of the credit or the making of the refund.

ANALYSIS

Section 4161 is a manufacturers excise tax within chapter 32 of the Code. Accordingly, the credit and refund procedures of section 6416(a) and the regulations thereunder apply.

The Foreign manufacturer’s sale of the fishing equipment to the U.S. importer is not taxed by § 4161 because the sale occurs outside the United States. The U.S. importer’s sale of the fishing equipment is taxed by § 4161 because the sale occurs within the United States.

Because the U.S. company did not make an overpayment of the tax that was paid by the Foreign manufacturer, the U.S. company may not make a claim under § 6402 related to that tax.

The Foreign manufacturer paid the tax to the U.S. Government. This payment was an overpayment because the Foreign manufacturer did not owe the tax. Accordingly, the Foreign manufacturer may claim a refund of the tax, if, among other conditions, it complies with the requirements of § 6416(a) and the regulations thereunder.

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