

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

CC:PSI:B7:NPayne
POSTN-139074-13

UILC: 4481.00-00, 4481.03-00

date: December 06, 2013

to: Holly McCann
Chief, Excise Tax Program
(Small Business/Self-Employed Division)

from: Stephanie N. Bland
Senior Technician Reviewer, Branch 7
(Passthroughs & Special Industries) CC:PSI:B7

subject: Termination of Highway Motor Vehicle Lease; Proration of Tax Where Vehicle Sold,
Destroyed, or Stolen

This Chief Counsel Advice responds to your request for assistance in determining whether Taxpayer may claim a prorated credit or refund of the tax imposed under section 4481(a) of the Internal Revenue Code (Code) (the highway use tax). This advice may not be used or cited as precedent.

ISSUE

Whether Taxpayer may claim a prorated credit or refund of tax under section 4481(c) for the amount of tax attributable to the portion of the taxable period remaining after Taxpayer terminates its lease of a highway motor vehicle.

CONCLUSION

Taxpayer may not claim a prorated credit or refund of the highway use tax under section 4481(c) for the portion of the taxable period remaining after Taxpayer terminates its lease of a highway motor vehicle.

FACTS

Taxpayer enters into a one year lease with a leasing company to lease a highway motor vehicle with a gross weight greater than 55,000 pounds. According to the lease terms, Taxpayer is responsible for paying the highway use tax on the use of the vehicle.

Taxpayer timely files Form 2290 and pays the associated highway use tax based on a first use of the vehicle in July. In December, Taxpayer decides to return the vehicle to

the leasing company. After returning the vehicle to the leasing company, Taxpayer files a claim for refund of the highway use tax for the months the taxpayer will not have used the vehicle during the taxable period. Taxpayer relies on the proration rules of section 4481(c)(2) as the basis for its claim.

LAW AND ANALYSIS

Section 4481(a) imposes tax on the use of any highway motor vehicle that (together with the semitrailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) has a taxable gross weight of at least 55,000 pounds at the rate specified in the table provided in section 4481(a) of the Code.

Section 4481(c)(1) provides for proration of the highway use tax in any taxable period where the first use of the highway motor vehicle is after the first month in the period.

Section 4481(c)(2) provides for proration of the highway use tax in situations where a highway motor vehicle is sold, destroyed, or stolen before the first day of the last month in a taxable period and not subsequently used during the taxable period.

Section 41.4481-1(c)(6) of the Highway Use Tax Regulations provides that if the use of a highway motor vehicle during the taxable period is discontinued for reasons other than destruction or theft, or is converted to a use that is exempt from the tax imposed by section 4481(a), the computation of the tax is not affected and no right to a credit or refund of any tax paid under section 4481 arises.

As noted above, section 4481(c) provides for proration of the highway use tax where the first use of the highway motor vehicle occurs after the first month of the taxable period, and where the highway motor vehicle is sold, destroyed or stolen. The statute does not provide for proration under any other circumstances.

Further, § 41.4481-1(c)(6) of the Regulations explicitly provides that if the use of a highway motor vehicle during the taxable period is discontinued for reasons other than those for which proration is explicitly allowed (sale, destruction, or theft under the statute) the computation of the tax is not affected. This is the case even if the highway motor vehicle is converted to an exempt use during the taxable period.

Neither section 4481(c) nor the corresponding regulations permit proration of the highway use tax when a lease of a highway motor vehicle is terminated prior to the end of the taxable period. Accordingly, Taxpayer may not claim a prorated credit or refund of the highway use tax under section 4481(c) for the portion of the taxable period remaining after Taxpayer terminates its lease of the highway motor vehicle.

Please call Natalie Payne at [REDACTED] if you have any further questions.