

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

CC:PSI:B07:AFDunlap
POSTN-119983-16

UILC: 4051.00-00

date: September 19, 2016

to: Alfredo Valdespino
Acting Director, Specialty Examination Policy
(Small Business/Self-Employed)

from: Stephanie N. Bland
Branch Chief, CC:PSI:B7
(Passthroughs & Special Industries)



subject: Retail Truck Tax Refund

This memorandum responds to your request for non-taxpayer specific legal advice regarding claims for credit or refund of the retail truck tax imposed by § 4051 of the Internal Revenue Code (Code). This advice may not be used or cited as precedent.

ISSUE

Whether the purchaser or manufacturer of a truck chassis may claim a refund of the § 4051 tax imposed on the first retail sale of the chassis when the purchaser subsequently permanently mounts mobile machinery on the chassis.

CONCLUSION

There is no provision in the Code or the regulations authorizing a refund to either the purchaser or the manufacturer under the circumstances described below.

FACTS

The manufacturer sold a truck chassis to a purchaser. The sale was the first retail sale of the chassis. The purchaser did not furnish a statement to the manufacturer to support a tax-free sale. The manufacturer filed a Form 720, Quarterly Federal Excise Tax Return, reported the § 4051 tax on the return, and paid the tax to the IRS. The purchaser subsequently had an outfitter permanently mount jobsite equipment on the chassis and perform other modifications to the chassis. As modified, the chassis is eligible for the mobile machinery exemption under § 4053(8).

LAW

Section 4051(a)(1) imposes an excise tax on the first retail sale of 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.

Section 145.4051-1(a)(2) of the Temporary Excise Tax Regulations Under the Highway Revenue Act of 1982 (Pub. L. 97-424) limits the application of this tax to a chassis or a body that is sold for use as a component part of a highway vehicle (as defined in § 48.4061(a)-1(d) of the Manufacturers and Retailers Excise Taxes Regulations).

Section 145.4051-1(f) provides that with respect to tax-free sales of a chassis or body for use as a component of a vehicle other than a highway vehicle, similar provisions to paragraphs (e)(2)(ii), (iii), and (iv) of § 48.4061(a)-1 shall apply.

Section 48.4061(a)-1(e)(2)(ii) generally provides that sales of an otherwise taxable chassis or body can be made tax free if the chassis or body is sold for use as a component part of a nonhighway vehicle, if the purchaser furnishes the manufacturer or reseller a statement in support of the tax-free sale. The manufacturer or reseller must receive the statement before the manufacturer files its return covering the excise taxes for the period in which the sale was made.

Subparagraphs (iii) and (iv) of § 48.4061(a)-1(e)(2) provide certain procedural requirements with which a manufacturer or reseller must comply in order to sell tax free certain chassis and bodies (not completed vehicles).

Section 48.4061(a)-1(e)(2)(v) provides generally that a credit or refund of tax paid is allowable to the manufacturer if tax was paid on a chassis or body that is later used as a nonhighway vehicle.

Section 4053(8) provides an exemption from the tax imposed by § 4051 for mobile machinery. Specifically, § 4053(8) provides that no tax is imposed on a vehicle that consists of a chassis: (A) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways; (B) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation; and (C) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

Section 4053(8) was added to the Code by section 851(a)(1) of the American Jobs Creation Act of 2004, Pub. L. 108-357. This provision essentially codified the regulatory

mobile machinery exception to the definition of highway vehicle in § 48.4061(a)-1(d)(2)(i) of the Manufacturers and Retailers Excise Taxes Regulations.

Section 6416(a)(1) bars a credit or refund of any overpayment of tax imposed by chapter 31 or chapter 32 unless, among other conditions, the person who paid the tax establishes, under regulations prescribed by the Secretary, that he (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.

Section 6416(b) provides special cases in which tax payments are considered overpayments, and states that credit or refund (without interest) shall be allowed or made in respect of these overpayments under regulations prescribed by the Secretary.

Section 6416(b)(6) provides that if, (A) the tax imposed by § 4051 has been paid with respect to the sale of any article, and (B) before any other use, such article is by any person used as a component part of another article taxable under § 4051 manufactured or produced by him, such tax shall be deemed to be an overpayment by such person.

ANALYSIS

In the facts provided, the manufacturer sold a truck chassis to a purchaser. The sale was the first retail sale of the chassis. The purchaser did not provide to the manufacturer the statement required by § 48.4061(a)-1(e)(2)(ii), (iii), and (iv) to effectuate a tax-free sale, and the manufacturer filed Form 720 to report the sale of the chassis and pay the tax. After the first retail sale of the truck chassis, the purchaser converted the chassis into a mobile carriage and mount for mobile machinery as described in § 4053(8) so that the chassis was no longer a component of a highway vehicle.

In this case, no credit or refund is available under § 6416(a) because there was no overpayment of the § 4051 tax. Specifically, the § 4051 tax was properly imposed and paid on the first retail sale of the chassis because the purchaser did not provide a statement to the manufacturer to support a tax-free sale of the chassis. The chassis only became eligible for the § 4053(8) exemption upon the subsequent conversion of the chassis into a mobile carriage and mount for mobile machinery, which was after the first retail sale to which tax attached. In considering whether a refund is available in the present case, we must therefore look to § 6416(b) to determine if there is a deemed overpayment of the § 4051 tax.

There are six subsections contained in § 6416(b), each of which describes a different situation in which excise tax payments are considered overpayments. Section 6416(b)(6) describes the only set of circumstances remotely analogous to this scenario. Specifically, § 6416(b)(6) applies to chassis used for further manufacture, but only if the

article is used as a component part of another article taxable under § 4051. Here, the modified chassis is eligible for the mobile machinery exemption under § 4083(8) and is therefore not an article taxable under § 4051. Thus § 6416(b)(6) is inapplicable. Since this scenario does not meet the requirements of § 6416(b)(6), there is no basis under § 6416(b) for a refund of the tax to either the purchaser or the manufacturer of the truck chassis.

Further, although § 48.4061(a)-1(e)(2)(v) may appear to provide a mechanism for a refund in this case, that provision is inapplicable. Section 48.4061(a)-1(e)(2) applies to the manufacturers excise tax on heavy trucks and tractors imposed by § 4061. The § 4061 manufacturers tax on heavy trucks and tractors was repealed and replaced with the § 4051 retail tax on heavy trucks and tractors. Although § 145.4051-1(f) specifically incorporates the provisions of § 48.4061(a)-1(e)(2)(ii), (iii), and (iv) regarding tax-free sales into the § 4051 tax regime by cross reference, it does not specifically adopt the credit and refund provisions of § 48.4061(a)-1(e)(2)(v). Thus, there is no authority under § 48.4061(a)-1(e)(2)(v) to allow a credit or refund of a § 4051 tax.

If you have any questions concerning this memorandum, please call Amanda F. Dunlap at (202) 317-6855.