INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

12-28-1998

Index (UIL) No.: 4051.00-00
CASE MIS No.: TAM-116783-98:CC:DOM:P&SI:B8
Number: **199946001**
Release Date: 11/19/1999

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No:
Years Involved:
Date of Conference:

LEGEND:

X =

ISSUES:

(1) Where X manufactures and sells as a single unit a concrete mixer vehicle, the chassis of which is subject to tax under § 4051 of the Internal Revenue Code and the body of which is exempt from the tax under § 4053(5), how does X determine the taxable portion of the price?

(2) Is X considered to have further manufactured the vehicle chassis by adding a pusher axle?

(3) If X is considered to have further manufactured the vehicle chassis by adding a pusher axle to the chassis, does the § 4052(b)(4)(A) four percent presumed markup apply to the taxable portion of the price?

(4) For purposes of the tax under § 4051, are charges for delivery of the concrete mixer vehicle from the manufacturer to the purchaser excluded from the sale price of the mixer vehicle?

CONCLUSIONS:

(1) Where X manufactures and sells as a single unit a concrete mixer vehicle,

the chassis of which is subject to tax under § 4051 and the body of which is exempt from the tax under § 4053(5), X determines the taxable portion of the sale price by multiplying the total sale price by a percentage equal to the percentage of the total costs of producing the vehicle that are allocable to the chassis.

(2) X is considered to have further manufactured the chassis by adding a pusher axle.

(3) Because X is considered to have further manufactured the chassis by adding a pusher axle to the chassis, the § 4052(b)(4)(A) four percent presumed markup applies to the taxable portion of the price in calculating the price for purposes of the § 4051 tax.

(4) For purposes of the tax under § 4051, charges for delivery of the concrete mixer vehicle from the manufacturer to the purchaser pursuant to a bona fide sale are excluded from the sale price of the mixer vehicle. By contrast, the costs of shipping a vehicle from the manufacturer to a distributor, or to any person not in connection with a bona fide sale, are not excludable from the sale price of the mixer vehicle.

FACTS:

X buys automobile truck chassis tax free for resale under § 4221 of the Code. X manufactures concrete mixer bodies and installs these concrete mixer bodies on the chassis to produce completed vehicles. As part of its "mount shop process," X lists costs of mounting the body on the chassis to include attaching pump hydraulics; mounting the water tank and plumbing; and installation of fenders and/or mud flaps, lights, cables, electronic controls to run the mixer, chutes, bumper, signs, decals, and bib. X installs lift or pusher axles to some of the chassis. It sells the completed vehicles for a "package" price. X does not have an established practice of selling the chassis separately.

For the periods at issue, X has paid the § 4051 excise tax on its cost of the pusher axles and chassis.

LAW AND ANALYSIS:

Section 4051(a)(1) imposes a tax of 12 percent of the amount paid (the price) on the first retail sale of automobile truck chassis and bodies (including in each case parts or accessories sold on or in connection therewith or with the sale thereof).

Section 4052(b) provides rules for determination of the price for purposes of the § 4051 tax.

Section 4052(b)(4) provides that in any case where the manufacturer, producer,

or importer of any article (or a related person) is liable for tax imposed by this subchapter with respect to any article, the tax under this subchapter shall be computed on a price equal to the sum of--

> (i) the price that would (but for this paragraph) be determined under this subchapter, plus
>
> (ii) the product of the price referred to in clause (i) and the presumed markup percentage determined under paragraph (3)(B).

Section 4052(b)(3)(B) provides that the term "presumed markup percentage" means the average markup percentage of retailers of articles of the type involved, as determined by the Secretary.

Under § 145.4052-1(d)(7)(i) of the Temporary Regulations under the Highway Revenue Act of 1982, the presumed markup percentage for retail sales of trucks shall be four percent.

Under § 4053(5), the tax imposed under § 4051(a)(1) does not apply to any article designed to be placed or mounted on an automobile truck chassis and to be used to process or prepare concrete.

Rev. Rul. 75-129, 1975-1 C.B. 336, states that the installation of a pusher or tag axle on a truck chassis makes the vehicle capable of transporting a heavier load or enables the vehicle to meet the load distribution requirements of certain states. The addition of such axles significantly improves the transportation function of the vehicle and a different vehicle has been produced. Rev. Rul. 75-129 concludes that the installation of a pusher or tag axle on a truck chassis constitutes further manufacture of the truck chassis.

Section 145.4051-1(a)(2) provides that a chassis or body is taxable under § 4051(a)(1) only if such chassis or body is sold for use as a component part of a highway vehicle (as described in § 48.4061(a)-1(d) of the Manufacturers and Retailers Excise Tax Regulations).

Section 145.4052-1(d)(1) provides rules for determining the price for which a taxable article is sold.

Section 48.4061(a)-1(a)(3) provides that, for purposes of the tax on the sale of heavy trucks, equipment or machinery installed on a taxable chassis is considered to be an integral part of the taxable chassis if the machinery or equipment contributes toward the highway transportation function of the chassis.

Section 48.4061(a)-1(d)(1) defines a "highway vehicle" as any self-propelled

vehicle, or any trailer or semitrailer, designed to perform a function of transporting a load over public highways, whether or not also designed to perform other functions, but does not include a vehicle described in § 48.4061(a)-1(d)(2).

Section 48.4061(a)-1(d)(2)(i) provides that a self-propelled vehicle, or trailer or semitrailer, is not a highway vehicle if it (A) consists of a chassis 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 operation similar to any one of the foregoing enumerated operations, if the operation of the machinery or equipment is unrelated to transportation on or off the public highways, (B) the chassis 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) by reason of such special design, such chassis 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.

As an initial matter, the representatives of X have asserted that no tax is imposed on the sale of the completed concrete mixer vehicles at issue because of the "mobile machinery" exemption described in § 48.4061(a)-1(d)(2)(i). The first test for the mobile machinery exception requires that "the operation of the machinery or equipment is unrelated to transportation on or off the public highways." Because the concrete mixer body serves both to combine various ingredients into concrete as well as to transport that concrete over the public highways, this first test is not met. Therefore, the concrete mixer vehicles at issue are not exempt from the § 4051 excise tax as mobile machinery. See, Rev. Rul. 78-342, 1978-2 C.B. 261. The chassis is taxable and, under § 4053(5), the mixer body mounted on that chassis is not taxable. We must now determine the correct method of calculating the amount subject to tax.

Generally, when a taxable chassis and a nontaxable body are sold as a unit at a single price, the taxable portion of the sale price is determined by applying to the sale price of the complete vehicle the ratio that the cost of the chassis bears to the sum of the cost of the body and the cost of the chassis. Rev. Rul. 59-125, 1959-1 C.B. 308.[1] The cost of the taxable chassis includes any items that contribute to the highway

[1] This methodology applies where, as here, the seller does not have an established practice of selling separately both the bodies and the chassis. It is a question of fact whether a seller has an established practice of separate selling of bodies and chassis. If the seller does have such a regular practice, the ratio applied to the sale price is the ratio which the separate sale price of the chassis bears to the sum of the separate sale price of the body and the separate sale price of the chassis.

transportation function of the chassis. Section 48.4061(a)-1(a)(3). For example, pusher and tag axles increase the load carrying capacity of vehicles or adapt the vehicles to meet the load distribution requirements of certain states. Rev. Rul. 75-129. The axles perform a transportation function and are part of the taxable chassis rather than the nontaxable body. Additionally, the cost of the nontaxable body does not include the costs associated with mounting the body on the chassis. Rev. Rul. 59-125. Thus, all costs allocable to mounting of the body, including attaching pump hydraulics; mounting the water tank and plumbing; and installation of fenders and/or mud flaps, lights, cables, electronic controls to run the mixer, chutes, bumper, signs, decals, and bib, are not included in the cost of the body or the chassis. Rather, they are reflected in the sale price of the completed vehicle and are subject to the cost-based allocation.

Pursuant to the foregoing, X determines the taxable portion of the price by multiplying the total price paid for the mixer unit by a percentage equal to the percentage of the total costs of producing the mixer unit allocable to the production of the taxable chassis. If X is considered to be the manufacturer of the chassis, § 4052(b)(4) provides that a presumed markup percentage must be added to the amount determined to be the taxable portion of the sale price. For those vehicles for which X is not the manufacturer, the cost of the chassis, including the amount paid by X to the chassis manufacturer for shipping the chassis to X is used instead of the cost of producing the chassis.

For those vehicles on which X has installed pusher or tag axles, X is considered to be the manufacturer. Rev. Rul. 75-129. Because X is the manufacturer of these chassis, § 4052(b)(4) requires that a presumed markup percentage must be added to the amount determined to be the taxable portion of the sale price. The presumed markup percentage is four percent. Section 145.4052-1(d)(7)(i).

Finally, we have been asked whether charges for delivery of the unit to the purchaser are included in the sale price. Section 145.4052-1(d)(1) provides that charges for transportation, delivery, insurance, and other expenses incurred in connection with the delivery of an article to the purchaser in connection with a bona fide sale are excluded from the price in computing the tax.

## CAVEAT

A copy of this technical advice memorandum is to be give to the taxpayer. Section 6110(k)(3) provides that it may not be used or cited as precedent.