

Internal Revenue Service
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07-09-1999

In re: Letter Ruling Regarding Excise Tax

Legend:

Dear

This responds to your May 10, 1999, request for a ruling on whether X is liable for the tax imposed by § 4161(a) of the Internal Revenue Code on the sale of sport fishing equipment by the manufacturer. The letter ruling you requested is based solely on the facts and representations that follow.

A, B, and C are sold by Y to X. A, B, and C are artificial baits. A is not sold exclusively to X. A is packaged by Y in plastic cups with covers. B is sold exclusively to X. B is packaged by Y in plastic cups with covers. The packaging for A and B has been supplied by X and is imprinted with X's name. C is sold exclusively to X. C is not packaged prior to sale to X. C is shipped to X in large drums. X packages C in tubes without the addition of ingredients or further processing.

X has no control over, or knowledge of, the raw materials, product formulae, and processing procedures used by Y to produce A, B, and C. While B and C currently are produced exclusively for X, X does not contractually preclude the production of B and C for other parties. Y maintains an inventory of A, B, and C that has neither been ordered by, nor paid for by, X. X does not bear the risk of loss during production of the baits. Title to the baits passes to X upon shipment of the finished products (including packaging) or, in some cases, upon delivery of the products. X has no financial interest in Y and they are not related parties.

Section 4161(a) imposes a tax on the sale of any article of sport fishing

equipment by the manufacturer, producer, or importer. Section 4162(a)(5)(C) provides that the term “sport fishing equipment” means items of terminal tackle including artificial baits.

Section 48.4161(a)-1(c) of the Manufacturers and Retailers Excise Tax Regulations provides that the tax imposed by section 4161(a) is payable by the manufacturer, producer, or importer making the sale.

Section 48.0-2(a)(4)(i) provides that the term “manufacturer” includes any person who produces a taxable article from scrap, salvage, or junk material, or from new or raw material, by processing, manipulating, or changing the form of an article or by combining or assembling two or more articles.

Section 48.0-2(a)(4)(ii) provides that, under certain circumstances, as where a person manufactures or produces a taxable article for another person who furnishes materials under an agreement whereby the person who furnishes the materials retains title thereto and to the finished article, the person for whom the taxable article is manufactured or produced, and not the person who actually manufactures or produces it, will be considered the manufacturer.

Section 48.0-2(a)(5) of the regulations provides that the term “sale” means an agreement whereby the seller transfers the property (that is, the title or substantial incidents of ownership) in goods to the buyer for a consideration called the price, which may consist of money, service, or other things.

Rev. Rul. 60-42, 1960-1 C.B. 474, holds that among the factors to be considered in determining whether the fabricator or the vendee is liable for the manufacturers excise tax are (1) the ownership of the raw materials used in producing the articles and (2) who has the right to control the production and sales of the articles.

A, B, and C are sport fishing equipment within the meaning of § 4162(a)(5)(C), which defines items of terminal tackle as including artificial baits. As such, tax is imposed under § 4161(a)(1) on the sale of A, B, and C by the manufacturer, producer or importer with the manufacturer, producer, or importer liable for such tax.

You represent that X purchases and receives A, B, and C in finished condition and does not change the form or characteristics of the baits after receipt. You represent that title to A, B, and C passes to X upon shipment or delivery of the artificial baits to X. Further, you represent that X does not furnish the materials to Y to produce A, B, and C, and has no control over the production or sales of the baits. Finally, you represent that X is not a related party of, and has no financial interest in, Y.

To the extent that the actual facts are the same as the above-referenced representations and in accordance with applicable law cited, X is not the manufacturer of A, B, and C for purposes of § 4161(a) and is not liable for tax on the sale thereof.

Section 6110(k)(3) provides that this document may not be used or cited as precedent.

Sincerely,

Assistant Chief Counsel
(Passthroughs and Special Industries)

By: _____
Richard A. Kocak
Chief, Branch 8

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes