

INTERNAL REVENUE SERVICE  
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

MARCH 2, 2000

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CASE MIS No.: TAM-115047-99/CC:DOM:P&SI:B8

District Director

Taxpayer Name:  
Taxpayer Address:

Taxpayer Identification No:  
Quarters Involved:  
Date of Conference:

LEGEND: Taxpayer =

ISSUES:

(1) Is Taxpayer liable for the excise tax imposed by § 4051(a)(1)(E) of the Internal Revenue Code on a tractor when it makes the first retail sale of the vehicle described below?

(2) If the IRS rules adversely to Taxpayer on Issue (1), will the IRS grant Taxpayer's request to apply this technical advice memorandum on a nonretroactive basis under § 7805(b)(8)?

CONCLUSIONS:

(1) Taxpayer is liable for the excise tax imposed by § 4051(a)(1)(E) on a tractor when Taxpayer makes the first retail sale of the vehicle described below.

(2) Taxpayer's request to apply this technical advice memorandum on a nonretroactive basis under § 7805(b)(8) is denied.

## FACTS:

Taxpayer is a final stage manufacturer. As part of its business, Taxpayer buys a medium duty two ton chassis cab, converts the chassis cab into a vehicle that can tow, and sells the vehicle to one of its customers or another retail dealer. The chassis cab has a gross vehicle weight (GVW) rating of between 20,000 and 32,000 pounds and a gross combination weight of 40,000 pounds. Although the modifications are usually specified by the ultimate purchaser, these vehicles as a group have certain common characteristics. These characteristics include a removable fifth wheel hitch and/or a heavy duty trailer receiver, a trailer plug, an aluminum platform behind the cab, and four to eight storage boxes, whose individual capacity is eight cubic feet. The platform behind the cab has the capacity to accommodate small loads such as groceries, hay bales, feed bags, all-terrain vehicles, or a tool box. The vehicle's brakes are independent of the brakes of a towed trailer. However, the towed trailer's brakes, as well as its lights, are operated from within the vehicle's cab. This cab also has a trailer brake monitor. The monitor's signals indicate the amount of brake pressure needed to safely stop a trailer. The cab can accommodate a maximum of six passengers.

The vehicle is designed to tow heavy trailers such as a 35 to 40 foot house trailer, a racing car trailer, or a horse trailer. The average loaded weight of a 35 to 40 foot house trailer is about 16,000 pounds, but can sometimes reach 20,000 pounds.

Marketing materials for the vehicle describe the modifications as an "effort to produce the safest 5<sup>th</sup>-wheel towing units on the road." and refer to the end product as a "tow vehicle." The marketing materials also state that "... we build smart towing custom vehicles for smart travelers."

The selling price for this vehicle can approach four times the price of a pickup truck that has a GVW rating of less than 6,000 pounds.

## LAW AND ANALYSIS:

Section 4051(a)(1) imposes a 12 percent 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 4051(a)(2) provides that this tax does not apply to automobile truck chassis and automobile truck bodies suitable for use with a vehicle which has a GVW of 33,000 pounds or less.

Under § 145.4051-1(e)(1)(i) of the Temporary Excise Tax Regulations Under The Highway Revenue Act of 1982 (Pub. L. 97-424) the term "tractor" means a highway vehicle primarily designed to tow a vehicle, such as a trailer or semitrailer, but does not carry cargo on the same chassis as the engine. A vehicle equipped with air brakes

and/or towing package will be presumed to be primarily designed as a tractor. Section 145.4051-1(e)(1)(ii) provides a list of equipment that will cause an incomplete chassis cab to be characterized as a tractor.

Section 145.4051-1(e)(2) defines a “truck” as a highway vehicle that is primarily designed to transport its load on the same chassis as the engine even if it is also equipped to tow a vehicle, such as a trailer or semitrailer.

Rev. Rul. 77-36, 1977-1 C.B. 347, holds that a three-axled truck chassis with a conventional truck cab and equipped with an automobile carrier body designed to carry three automobiles, two over the cab, and one behind the cab, as well as a fifth wheel mounted on a stinger that extended downward from the rear of the chassis is a truck-trailer for purposes of the highway use tax. In its analysis, the revenue ruling reiterates the statement in Rev. Rul. 76-559, 1976-2 C.B. 365, that “... it is not necessary that a vehicle be designed to perform only one of those functions [towing semitrailers or trailers, or for transporting property] to the exclusion of the other in order to be ‘primarily’ designed for towing semitrailers or trailers, or for transporting property.”

Rev. Rul. 76-554, 1976-2 C. B. 342, holds that a light-duty pickup truck that had a GVW of 10,000 pounds or less retained its primary character as a truck after a removable bar and fifth wheel attachment was installed. The fifth wheel attachment was placed across the bed over the rear axle and fitted into brackets mounted on either side of the bed. This fifth wheel attachment enabled the truck to tow a gooseneck semitrailer.

Rev. Rul. 76-559 considered whether two vehicles were trucks or tractors. The first vehicle was a two-axle pickup truck with a bar and a fifth wheel attachment or a special kingpin installed in the truck’s bed. The bar and fifth wheel could be removed. The kingpin could be folded flush with the floor. This ruling holds that the truck despite the installation of hitching devices retained its character as a truck. The second vehicle was essentially similar to a truck tractor, but had a fifth wheel mounted over its rear axle and an automobile carrier body designed to carry one automobile over the cab of the vehicle and one automobile behind the cab. The ruling concludes that although the second vehicle had some load carrying capacity the vehicle was primarily designed as a tractor. In applying the primarily designed test to the two vehicles, the revenue ruling states that it is not necessary that a vehicle be designed to only tow or transport a load to the exclusion of the other function in order to be ‘primarily’ designed for towing semitrailers or trailers, or transporting property.

Rev. Rul. 74-461, 1974-2 C.B. 377, considered whether a vehicle with a small flat bed body used to transport materials used in connection with the sale and service of mobile homes, and a special hitch mechanism used to tow mobile homes was a truck or a tractor. The ruling concludes that the vehicle was designed primarily for the transportation of property, even though equipped with a special hitch mechanism for towing mobile homes.

Section 7805(b)(8) provides that the Secretary may prescribe the extent, if any, to which any ruling relating to the internal revenue laws shall be applied without retroactive effect.

During an examination of Taxpayer, the District Director determined that the vehicle was a tractor and assessed the § 4051 excise tax on the first retail sale of the vehicle. The District Director based the characterization of the vehicle as a tractor on the primary design of the vehicle. The vehicle's tow package includes a fifth wheel and/or a heavy duty trailer receiver, a trailer plug, a trailer brake monitor, and the equipment necessary to operate from the vehicle's cab a trailer's independent braking system and lights. The vehicle's GVW rating of 20,000 to 32,000 pounds, its ability to tow a 35 to 40 foot trailer that weighs 16,000 to 20,000 pounds, and its braking capabilities are disproportionately large relative to the vehicle's load capacity. Although the vehicle has storage boxes installed on its bed, the capacity of any one box is eight square feet. The cargo carrying capacity of the vehicle is less than that of a truck that costs one quarter of this vehicle's price. Comparing the towing characteristics and capabilities of the vehicle against its load capacity, the District Director concluded that the vehicle was primarily designed to tow. This conclusion is consistent with the marketing materials for the vehicle, which describe the vehicle as a "tow vehicle" and explain its towing advantages. These marketing materials do not discuss any load carrying capacity of the vehicle apart from the storage boxes. The cost of these design characteristics is so disproportionately high when compared with the cost of vehicles with greater load carrying capacities that a prospective customer who did not need to tow or had minimal tow needs would not buy this vehicle.

Taxpayer's position is that the vehicle is not a tractor, but a truck, because § 145.4051-1(e)(1)(i) provides that a tractor does not carry cargo on the same chassis as the engine. Taxpayer argues that the vehicle carries cargo on its chassis because the vehicle's cab has a maximum capacity of six passengers, cargo carrying space behind the cab, and additional storage boxes. Therefore, the vehicle cannot be a tractor. Taxpayer also argues that because the incomplete chassis cab did not have any of the equipment listed in § 145.4051-1(e)(1)(ii) the vehicle cannot be a tractor.

Taxpayer maintains that an incomplete chassis cab that is purchased and sold as a tractor is ordered from the manufacturer with a tractor package as part of its original equipment. The prevailing practice in the industry is that a medium duty truck chassis cab sold without a tractor package is ordered that way from the manufacturer because the purchaser intends to sell the completed vehicle as a truck below the 33,000 pound GVW threshold. Moreover, Taxpayer represents that the manufacturer's warranty would not apply should such a chassis be modified for tractor use.

Taxpayer's reasoning that if a vehicle can carry cargo on the same chassis as the engine, the vehicle must not be a tractor, but a truck, would render the primary design test in § 145.4051-1(e)(1)(i) meaningless. The same reasoning would also render the presumption in that regulation that a vehicle equipped with a tow package is

primarily designed as tractor meaningless. The vehicle cannot be characterized as a truck solely because the vehicle can carry cargo on the same chassis as its engine; otherwise, any tractor, despite its primary design, would be classified as a truck if the tractor has incidental or inconsequential load carrying capacity.

Assuming there are no modifications to the chassis cab, Taxpayer's assertion that the incomplete chassis cab cannot be treated as a tractor because the cab does not have any of the equipment listed in § 145.4051-1(e)(1)(ii) is correct. However, this characterization must be reconsidered if an incomplete chassis cab is modified because the modifications may result in a vehicle that is primarily designed to tow.

Subsequent modifications to the incomplete chassis cab result in a two ton vehicle with a fifth wheel hitch and/or a heavy duty trailer receiver that can tow a 35 to 40 foot trailer with a loaded weight of up to 20,000 pounds. The controls for the brakes and lights of a trailer towed by the vehicle are in the vehicle's cab. The vehicle's cab also has a brake monitor for a trailer's brakes. These features are the functional equivalent of a towing package.

This vehicle has been primarily designed to tow. The towing and braking abilities of this vehicle are disproportionately powerful for its load carrying capacity, which is limited to the space behind the cab. This space is unavailable if the vehicle is towing a gooseneck trailer. The eight cubic foot storage boxes are incidental storage space because of their individual size. The cost of the vehicle for its capacity to transport a load is disproportionately high when compared to trucks that have similar load carrying capacities. This conclusion is consistent with the marketing materials for the vehicle. These materials describe the vehicle as a tow vehicle and detail its towing characteristics. The materials do not mention the load carrying capacity of this vehicle's bed.

The "primarily designed as a tractor" test in § 145.4051-1(e)(1) does not prescribe a minimum size: tractors are available in various sizes. The vehicle does not require an air brake system because electric brakes are sufficient for the size of the trailers the vehicle tows. Likewise, industry practice for ordering a chassis or the loss of warranty attributable to a change in chassis use from truck to tow vehicle are not factors that are considered under the regulations for purposes of determining whether a vehicle is primarily designed to transport a load or tow.

Taxpayer's reliance on Rev. Rul. 77-36, Rev. Rul. 76-559, Rev. Rul. 76-554, and Rev. Rul. 74-461 is misplaced. None of these revenue rulings consider the vehicle at issue in this technical advice memorandum. Furthermore, in these revenue rulings the vehicle's characterization as a truck or a tractor is given as a fact; whereas the issue in this technical advice memorandum is whether the vehicle is a truck or a tractor.

CONSIDERATION OF § 7805(b)(8) RELIEF:

Taxpayer's argument for favorable § 7805(b)(8) treatment is that in Rev. Rul. 76-554, Rev. Rul. 76-559, Rev. Rul. 74-461, and Rev. Rul. 77-36 vehicles of the type at issue in this technical advice memorandum were held to be primarily designed for the transportation of property and did not lose this characterization when equipped with towing devices. Taxpayer also argues that it relied on an article in a trade association newsletter. This article describes an IRS examination involving a similar issue with respect to another taxpayer, as well as the Office of Appeal's (Appeals) disposition of the issue.

A technical advice memorandum ordinarily is applied retroactively. See section 17.02 of Rev. Proc. 2000-2, 2000-1 I.R.B. 73 at 97. Relief under § 7805(b)(8) usually is granted only if a taxpayer relied to its detriment on a published position of the IRS or on a letter ruling or technical advice memorandum issued to that taxpayer.

The IRS did not issue a ruling or a technical advice memorandum to Taxpayer. Taxpayer's reliance on Rev. Rul. 77-36, Rev. Rul. 76-559, Rev. Rul. 76-554, and Rev. Rul. 74-461 is misplaced because these rulings consider the effect of subsequent modifications made to a truck or tractor, not whether a vehicle is a truck or a tractor. An article in a trade publication does not support a request for § 7805(b) relief because the article is not a published position of the Service. A taxpayer cannot rely on a settlement with Appeals if the taxpayer was not a party to the settlement. Similarly, a taxpayer cannot rely on a settlement with Appeals regarding its own liability for a period other than the period specified in the settlement. Consequently, the Taxpayer's arguments do not support granting its request for § 7805(b) relief.

CAVEATS:

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) provides that it may not be used or cited as precedent. In accordance with § 6110(c), names, addresses, and other identifying numbers have been deleted.