

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

December 20, 2001

Number: **200215004**
Release Date: 4/12/2002
Third Party Contact:None
Index (UIL) No.: 4051.00-00; 6416.00-00
CASE MIS No.: TAM-146480-01/CC:PSI:B8

Director, Area 6
Small Business/Self-Employed Operating Division

Taxpayer Name:
Taxpayer Address:

Taxpayer Identification No.:
Quarter Involved: 200012
Date of Conference: No Conference Held

LEGEND:

Taxpayer =

ISSUES:

(1) Did Taxpayer's Form 720, Quarterly Excise Tax Return, correctly reflect the tax on sales of certain vehicles imposed by § 4051 of the Internal Revenue Code with respect to the transaction described below?

(2) What documentation is needed to support a claim under § 6416(b)(4)?

CONCLUSIONS:

(1) Taxpayer's Form 720 did not correctly reflect the tax on sales of certain vehicles imposed by § 4051 with respect to the transaction described below.

(2) Although no particular documentation is prescribed to support a claim under § 6416(b)(4), Taxpayer must establish that it sold taxed tires in connection with the sale of a vehicle to a state or local government for its exclusive use.

FACTS:

Taxpayer is a retailer of heavy vehicles. Some of the vehicles are taxable under

§ 4051, others are not. Taxpayer purchased taxable vehicles tax free for resale and reported the § 4051 tax on the sale of those vehicles.

For one of Taxpayer's sales, the invoice stated that the vehicle's selling price was \$ _____ and that the federal tax on the sale was \$ _____. Taxpayer included \$ _____ on its Form 720, Part I, IRS No. 33. Taxpayer did not claim a § 4051(d) credit on Form 720, Schedule C, Part II, line 11h with respect to the sale or any other sales.

The examining agent calculated that the § 4051 tax on this sale was \$ _____ (\$ _____ X 12%). The examining agent determined that on Form 720, Part I, IRS No. 33 Taxpayer had reduced the amount of the § 4051 tax on this transaction by \$ _____, the amount of the § 4071 tax on the tires sold in connection with the vehicle, instead of claiming the § 4051(d) tire tax credit.

Taxpayer also sells both taxable and nontaxable vehicles to state and local governments. Taxed tires are sold in connection with the sale of these vehicles. Taxpayer claimed on its Form 720, Schedule C, Part II, line 11g, credits under § 6416(b)(4) for the amount of the tire tax with respect to the exempt sales but not with respect to the sales of nontaxable vehicles.

LAW:

Section 4051 imposes on the first retail sale of the following articles (including in each case parts or accessories sold on or in connection therewith or with the sale thereof) a tax of 12 percent of the amount for which the article is sold:

(A) automobile truck chassis, (B) automobile truck bodies, (C) truck trailer and semitrailer chassis, (D) truck trailer and semitrailer bodies, and (E) tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.

Section 4051(d) provides that if tires are sold on or in connection with the sale of any article and tax is imposed on the sale of the tires, a credit against the tax imposed by § 4051 is allowed in an amount equal to the tax imposed by § 4071 on the tires.

Section 4052(b) provides that in determining price the amount of the § 4051 tax is excluded.

Section 4071 imposes a tax on the sale by the manufacturer of certain tires of the type used on highway vehicles.

Section 6416(a)(1) provides that generally no credit or refund of any overpayment of tax imposed by § 4051 shall be allowed unless the taxpayer established that it (A) 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 that purchased the article, (B) has repaid the tax to the ultimate purchaser of the article, or

(C) 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(a)(2) provides that § 6416(a)(1) does not apply to an overpayment described in § 6416(b)(4).

Section 6416(b)(4) provides that if the § 4071 tire tax has been paid with respect to the sale of a tire and the tire is sold by any person in connection with the sale of any article to a state or local government for the exclusive use of the state or local government, the § 4071 tire tax is deemed to be an overpayment by that person.

ANALYSIS:

Issue (1)

Taxpayer reduced the amount of the § 4051 tax it computed on the sale of the vehicle by the amount of § 4071 tax on the tires sold in connection with the vehicle and reported on Form 720, Part I, IRS No. 33 a “net” amount of tax. This is incorrect.

The tax imposed by § 4051 is computed on the sale price of the vehicle as determined under § 4052(b). The § 4051(d) credit is claimed on Form 720, Schedule C, Part II, line 11h; it is not “netted” against the § 4051 tax with a single amount reported on Form 720, Part I, IRS No. 33. The § 4051(d) credit does not reduce the § 4051 liability; rather, credits are used to reduce the balance due.

With regard to Taxpayer’s sale, the § 4051 tax is imposed on the \$ sale price of the vehicle and is \$ (\$ X 12%). This is the amount that should have been reported on Form 720, Part I, IRS No. 33. Accordingly, Taxpayer underreported its § 4051 tax liability. Also, Taxpayer should have claimed the § 4051(d) credit on Form 720, Schedule C, Part II, line 11h.

The director asks whether the allowance of the § 4051(d) credit is subject to the conditions described in § 6416(a)(1). The § 4051(d) credit does not result from an overpayment of tax; thus, the conditions to allowance described in § 6416(a)(1) do not apply to the allowance of the § 4051(d) credit.

The director also asks whether the § 4051(d) credit needs to be shown on a customer’s invoice. Taxpayer has no obligation to provide its customer with § 4051 tax or § 4051(d) credit information on the invoice.

The director also asks if the formula prescribed in the regulations to determine tax when the invoice provides a single tax-included price should be used to determine the § 4051 tax after the adjustment to correct the “netting” is made. The use of this formula is inappropriate whenever tax is separately stated on the invoice, even if errors are made in the calculations.

Issue (2)

The director asks what documentation is needed to support Taxpayer's § 6416(b)(4) claim and whether any information must be included on the invoice. The director observes that there is no guidance regarding documentation.

There are no regulations under § 6416(b)(4) that prescribe the particular documentation needed. However, Taxpayer must establish that it sold taxed tires in connection with the sale of the vehicle for the exclusive use of the state or local government. Documentation may be a signed statement from the state or local government that the specified vehicle is purchased for the exclusive use of the state or local government. Because here the vehicles are not subject to the § 4051 tax, no information needs to be included on the invoice.

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. Temporary or final regulations pertaining to one or more of the issues addressed in this memorandum have not yet been adopted. Therefore, this memorandum will be modified or revoked by the adoption of temporary or final regulations to the extent the regulations are inconsistent with any conclusion in the memorandum. See section 17.04 of Rev. Proc. 2001-2, I. R. B. 79, at 97. However, a technical advice memorandum generally is not modified or revoked retroactively if the taxpayer demonstrates that the criteria in section 17.06 of Rev. Proc. 2001-2 are satisfied.