

INTERNAL REVENUE SERVICE
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October 15, 1999

LEGEND:

Taxpayer =

Location 1 =

District =

Date =

Company =

Location 2 =

State =

a =

b =

c =

d =

e =

f =

g =

h =

i = _

k =

Dear

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This letter responds to a request for a private letter ruling filed on behalf of Taxpayer dated September 25, 1998, and subsequent submissions. You requested a ruling that a certain neighborhood electric vehicle (NEV) acquired by Taxpayer constitutes a “qualified electric vehicle” for purposes of section 30 of the Internal Revenue Code.¹

Taxpayer is an individual residing in Location 1. Taxpayer utilizes the cash method of accounting and reports income on the basis of a calendar year accounting period. District Director has audit jurisdiction over the return filed by Taxpayer.

In Date, Taxpayer acquired a NEV from a retail dealer. Taxpayer’s NEV is manufactured by Company, which is headquartered in Location 2. Company’s advertising literature, which was submitted to us for consideration as part of Taxpayer’s submissions, portrays the purpose of the NEV as a low speed, zero-emission alternative to the traditional gasoline-powered, passenger automobile for meeting community driving needs for short distance road trips and describes the NEV as designed to be used in residential areas with low-density traffic and low speed zones.

Taxpayer’s NEV is used for most of Taxpayer’s trips in Location 1. Taxpayer utilizes the vehicle for a variety of personal uses including dining, shopping and attending local events in Location 1. The NEV is driven on public roads (i.e., city, state, and federal roads). The NEV is registered in State and has a State license plate. Taxpayer has insurance on it, as required by State law. In response to a question of whether Taxpayer is aware of any operating restriction on what Taxpayer can do with its NEV, Taxpayer represented, that in the Location 1 area where Taxpayer operates the

¹ For purposes of this ruling, we generically refer to Taxpayer’s vehicle as a neighborhood electric vehicle (NEV). The term NEV is applied to certain vehicles recognized by the Department of Transportation National Highway Traffic Safety Administration (NHTSA) as being included in a vehicle group called “low-speed vehicle” (LSV). NHTSA defines the term LSV to mean any 4-wheeled motor vehicle whose top speed is greater than 20 miles per hour (mph), but not greater than 25 mph. The term NEV is defined by NHTSA to mean any 4-wheeled electric vehicle whose top speed is not greater than 25 mph. NHTSA’s definition describes some NEVs as looking more like a passenger car than a typical golf cart. See the discussion accompanying Federal Motor Vehicle Safety Standards, Final Rule, 63 Fed. Reg. 33193 (June 17, 1998) at 33,195. The final rule establishes Federal Motor Vehicle Safety Standard (FMVSS) No. 500 for LSVs. The new FMVSS requires LSVs to be equipped with: headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, windshields, rearview mirrors, seat belts, and vehicle identification numbers (VINs).

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NEV, that the maximum speed limit is 35 mph.²

Taxpayer's NEV is a 4-wheeled electric vehicle which has been designed to attain the maximum speed of 25 mph. Taxpayer's NEV has an acceleration capability of 0 to 20 mph in six seconds for quick acceleration on a roadway and a range of about 30 miles. Taxpayer's NEV is powered by a c-volt, d kilowatt direct current (DC) motor drawing electrical current from e 12-volt lead acid batteries. Taxpayer's NEV has one auxiliary battery for electrical accessories. The NEV's approximate dimensions are f feet, g inches in length, d feet, h inches in width, g feet, i inches in height, and k pounds in weight.

The body configuration of Taxpayer's NEV is that of a rust-free composite unibody construction (including side portions and a roof portion) with front and rear steel subframe. The NEV also possesses four-wheel independent suspension and rack and pinion steering.

Based on Taxpayer's representations and submissions, the following is a description of certain standard features, available for Company's NEV models, that are found in Taxpayer's NEV: (1) 17-digit Society of Automotive Engineers (SAE) NHTSA-approved Vehicle Identification Number (VIN),³ (2) two adjustable bucket seats, each with a three point retractable harness seat belt, (3) laminated auto safety-glass windshield that is sealed into the vehicle for safety, (4) rollover protection from NEV's roof which will support weight of NEV for safety, (5) laminated fiberglass impact-absorbing bumpers for vehicle protection, (6) a dual speed controller and selector switch, which allows the operator the option to select 15 mph or 25 mph as the maximum speed for the vehicle, with 15 mph setting for operation on a golf course and

² Since Taxpayer made the representation relating to any operating restriction on Taxpayer's NEV, State has recently enacted legislation that amends sections of and adds sections to the State Vehicle Code, relating to low-speed vehicles. Taxpayer's NEV meets the State statutory definition of a "low-speed vehicle." See State Vehicle Code Section a. The new law specifically governs the operation of low-speed vehicles. With some exceptions, the law prohibits the operator of a low-speed vehicle from operating the vehicle on any roadway with a speed limit in excess of 35 mph. See State Vehicle Code Section b. In addition, local authorities, by ordinance or resolution, may restrict or prohibit the use of low-speed vehicles.

³ Taxpayer represents that State requires the 17-digit VIN for entry into the Department of Motor Vehicle computers for registration of motor vehicles and that no other vehicle other than motor vehicles are allowed to use approved 17-digit VIN.

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25 mph setting for road travel, (7) a speed control sensor for preventing the NEV from exceeding the selected maximum speed while going down hills, (8) street tires,⁴ (9) inside rearview mirror (day-night adjustable), (10) side and rear red reflectors, (11) three separate braking systems consisting of (a) front wheel hydraulic drum brakes, (b) hand, cable-activated parking brakes, and (c) rear wheel regeneration brakes, (12) headlamps and tail lamps, (13) stop lamps, (14) high mounted center stop lamp, (15) parking lamps, (16) self-correcting turn signals, (17) horn, (18) driver-side outside rearview mirror, and (19) back-up lamps.

Taxpayer's representations describe the standard features of a typical golf cart. A typical golf cart has a maximum speed of 15 mph.⁵ Taxpayer represents that a typical golf cart is designed and manufactured for golf use only but is sometimes used on streets and that the typical golf cart has no rollover protection or seat belts for the riders. According to Taxpayer's representations, a typical golf cart has (1) only turf tires (which are not Department of Transportation approved), (2) a serial number assigned by its manufacturer (as opposed to the VIN which is assigned to Taxpayer's NEV), (3) a one brake system with lock on pedal and (4) a single bench (not adjustable) for riders. Taxpayer represents that a typical golf cart does not generally have (1) headlamps and tail lamps, (2) stop lights, and self-correcting turn signals, unless installed by a dealer. Further, Taxpayer represents that a typical golf cart may also have (1) a nylon screen or plastic covering (as opposed to the windshield that Taxpayer's NEV has), (2) a sun screen, canopy-type roof held up by lightweight supports, and (3) partial rigid bumpers for vehicle protection.

Even though Taxpayer's NEV with its dual speed controller and selector switch has the capability to be used for playing golf, Taxpayer represented that Taxpayer's NEV has not been modified so that it may be used for playing golf. Such a modification would include the use of turf tires that would enable the NEV to be operated on a golf course.

LAW AND ANALYSIS

⁴ According to Taxpayer's representations, all of Company's NEV models are manufactured for street use. Turf tires, in lieu of street tires, can be found on some of Company's NEV models so as to enable those vehicles to also operate on a golf course. Both types of tires are approved by the Department of Transportation for road use for operator safety. Thus, those turf tires, which are mounted on Company's NEV models, have the dual use capability of both on and off road use.

⁵ Taxpayer also represented that one manufacturer's golf cart model will reach a maximum speed of 18 mph but that, in accordance with industry guidelines, golf carts are strictly prohibited from traveling faster than 15 mph on a golf course.

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Sections 30 and 179A of the Code, which were added to the Internal Revenue Code by section 1913 of the Energy Policy Act of 1992, apply to property placed in service after June 30, 1993. Section 30 provides a credit for qualified electric vehicles and section 179A includes a deduction for qualified clean-fuel vehicle property. Section 179A(c) provides that the term “qualified clean-fuel vehicle property” under section 179A does not include any qualified electrical vehicle (as defined in section 30(c)). The legislative history underlying section 30 and section 179A provides that the goal of these provisions is the reduction of atmospheric pollution caused by gasoline-powered motor vehicles and the reduction of the dependence of the United States on imported petroleum and imported petroleum products. See H.R. Rep. No. 474, 102d Cong., 2d Sess., pt.6, at 38 (1992) and S. Prt. No. 95, 102d Cong., 2d Sess., at 7 (1992).⁶

Section 30(a) of the Code allows a credit against tax of an amount equal to 10% of the cost of any “qualified electric vehicle” placed in service by a taxpayer during the taxable year.

Section 30(b) of the Code limits the amount of credit allowed under section 30(a) to \$4,000 and establishes certain other limitations on the availability of the credit which are not applicable to this case.

Section 30(c)(1) of the Code defines the term “qualified electric vehicle” as meaning any motor vehicle:

- (A) which is powered primarily by an electric motor drawing current from rechargeable batteries, fuel cells, or other portable sources of electrical current,
- (B) the original use of which commences with the taxpayer, and
- (C) which is acquired for use by the taxpayer and not for resale.

Section 30(c)(2) of the Code provides that for purposes of section 30(c)(1), the term “motor vehicle” means “any vehicle which is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least 4 wheels.”⁷ Section 1.30-1(a) of the Income Tax

⁶ The conference agreement followed the House bill with some modifications (e.g., the inclusion of an income tax credit equal to 10 percent of the cost of a qualified electric vehicle). Note that the Senate amendment, unlike the House bill, included a provision for an income tax credit for a qualified electric vehicle.

⁷ Identical language appears in section 179A(e)(2) of the Code in defining the term “motor vehicle” for purposes of section 179A. The Department of Transportation

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Regulations defines a qualified electric vehicle as a motor vehicle that meets the requirements of section 30(c).

Based on Taxpayer's representations, notwithstanding the presence of the issue of whether Taxpayer's NEV meets the definition of the term "motor vehicle," Taxpayer's NEV meets the requirements of section 30(c)(1)(A)-(C) of the Code. Thus, the question to be addressed in this ruling in determining whether Taxpayer's NEV is a "qualified electric vehicle" for purposes of section 30 is whether the NEV is a motor vehicle for purposes of section 30(c)(2).

As noted in section 30(c)(2) of the Code, the term "motor vehicle" means any vehicle "which is manufactured primarily for use on public streets, roads, and highways" and which has at least 4 wheels.⁸ Clearly, off-road vehicles, that is, any vehicles that are manufactured primarily for off-road use, would not meet the definition of "motor vehicle" because they are not manufactured primarily for use on public streets, roads, and highways. The capability of incidental off-road use by a vehicle is not a basis for excluding a vehicle from the category of "motor vehicle," for purposes of section 30(c)(2). Further, the capability of incidental road use by a vehicle would not preclude such a vehicle from the category of off-road vehicles. Off-road vehicles would include such vehicles as (1) golf carts manufactured primarily for use on the golf course, which would be capable of incidental road use for traveling to and from a golf course, (2) race cars that, due to their construction, are dedicated for use on racetracks and are never driven on any public roads, (3) ride-on lawn mowers, and (4) farm tractors.

Taxpayer's NEV is a four-wheeled vehicle. Taxpayer's NEV has a body configuration more akin to that of a traditional passenger automobile than to the body configuration of a typical golf cart. Taxpayer's NEV's features include four-wheel

has extensive regulatory authority over motor vehicles. Its statutory definition of "motor vehicle" is similar in language to the definition of "motor vehicle" found in section 30(c)(2). See 49 U.S.C. 30102(a)(6).

⁸ The phrase, "which is manufactured primarily for use on public streets, roads, and highways," appears throughout the Code, for example, in the following current income tax and excise tax provisions enacted prior to sections 30 and 179A: (1) section 280F(d)(5)(A)(i), which relates to the limitation on depreciation for luxury automobiles, (2) section 4001(b)(1)(A), which relates to the excise tax on luxury automobiles, and (3) section 4064(b)(1)(a)(i), which relates to the gas guzzler excise tax. For purposes of the substantiation requirement as it pertains, for example, to listed property under section 280F(d)(4) and section 1.280-6T(b) of the Income Tax Regulations, section 1.274-5T(l) notes that the terms "automobile" and "vehicle," by cross-reference, incorporate the phrase, "which is manufactured primarily for use on public streets, roads, and highways," into their definition.

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independent suspension, rack and pinion steering, a windshield, and two adjustable bucket seats with three point harness seat belts. These features, along with other previously discussed features found in Taxpayer's NEV, are automotive-type design and safety features found in a traditional passenger automobile. As previously noted, Company's literature portrays the NEV as an alternative to the traditional gasoline-powered automobile for short distance road trips and describes the NEV as being designed to be used in residential areas with low-density traffic and low speed zones. Thus, (1) the similarities between Taxpayer's NEV's body configuration and a traditional passenger automobile body, (2) the presence of automotive-type design and safety features throughout Taxpayer's NEV, and (3) Company's advertising literature, which describes the NEV's purpose and use for which it was designed, when considered together, lead us to conclude (1) that Taxpayer's NEV cannot be characterized as a typical golf cart and (2) that Taxpayer's NEV was manufactured primarily for use on roadways, notwithstanding its capability of incidental use on a golf course.

Based solely on Taxpayer's representations and submissions and the relevant law and regulations set forth above, we conclude that the neighborhood electric vehicle purchased by Taxpayer does constitute a "qualified electric vehicle" for purposes of section 30 of the Code.

No opinion is expressed or implied as to the federal tax consequences of this transaction under any provision not specifically addressed herein.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this ruling is being sent to your authorized representative.

Sincerely yours,
Charles B. Ramsey, Chief, Branch 6
Office of Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosure: 6110 copy