INTERNAL REVENUE SERVICE

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MAY 16, 2000

In re:

Legend:

Taxpayer =

Dear

This is in response to a request for a private letter ruling dated February 23, 2000, concerning the taxability of certain crane-carrying truck chassis under § 4051(a)(1) of the Internal Revenue Code.

Taxpayer manufactures truck mounted telescoping hydraulic cranes that have extended horizontal reaches in excess of 25 feet. Taxpayer installs its cranes on standard over-the-road truck chassis it purchases. All of the chassis are rated in excess of 33,000 pounds Gross Vehicle Weight (GVW). Some chassis may require shortening, lengthening, or strengthening, but certain standard modifications are made to all the chassis in order to accommodate the cranes. These modifications include (1) bolting a torsion resistant subframe (torsion box or subframe spacer) to the chassis, (2) repositioning chassis cross-members, (3) mounting a bed to the subframe, (4) installing of front and side outriggers (rear outriggers are required for rear-mounted cranes) on the chassis, (5) installing of a power-take-off (PTO) and modifying the transmission to power it, (6) modifying the electrical system, (7) reprogramming the electronic fuel injection computer, and (8) adding any necessary counter-weights to the chassis. Optional under-the-bed tool boxes and an air throttle are also available for installation. The cranes are mounted either in the front or the rear of the trucks. Empty bed space exists beneath, and on both sides of, the boom of the crane. The weight of a chassis with the crane installed is less than the GVW rating of the chassis. Depending on the model, this allows for a remaining cargo capacity of between somewhat more that ½ ton to approximately 6 ½ tons.

Taxpayer represents that once the cranes are mounted on the vehicle, the purpose

of the chassis is to serve as (1) a carrier to transport the crane on the job site and from one job site to another, and (2) a stable platform that allows the crane to operate properly. Taxpayer states that its sales of the modified chassis should not be subject to the tax imposed by § 4051(a)(1)(A) by virtue of the exception provided under § 48.4061(a)-1(d)(2)(i) of the Manufacturers and Retailers Excise Tax Regulations. It indicates that job site cranes have been permanently mounted on chassis that are specially designed and constructed solely as a mobile carriage, mount, and power source for the cranes. Taxpayer believes that the chassis of the completed vehicles have been substantially structurally modified to the extent that they fulfill the requirements of subparts (A) and (B) of the exception. Furthermore, Taxpayer believes that, as modified, the chassis differ in many respects to the type of chassis that would ordinarily be purchased for over-the-road transportation of a different load and that the chassis fulfill the requirements of subpart (C) of the exception because in order to transform the chassis into chassis that could transport another type of load in a reasonable and efficient manner, certain major modifications would have to be made to the chassis. Additionally, Taxpayer argues that once the crane is mounted, the remaining cargo capacity of the truck is much less than that of a similar truck chassis equipped with only a flatbed body.

Section 4051(a)(1) imposes a 12 percent excise tax on the first retail sale of certain enumerated articles, including automobile truck chassis (including the parts and accessories sold on or in connection therewith or with the sale thereof) suitable for use with a vehicle which has a GVW of more than 33,000 pounds.

Section 145.4051-1(a)(2) of the Temporary Excise Tax Regulations Under The Highway Revenue Act of 1982 (Pub. L. 97-424) provides that a chassis is taxable only if the chassis is sold as a component part of a highway vehicle (as defined in § 48.4061(a)-1(d)).

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 a three part test to determine if a vehicle meets the exception to the tax imposed by § 4051(a)(1) by virtue of the mounting of mobile machinery to the chassis. Each part of this test must be met to qualify for the exception. The first part of the test as described in subpart (A) of § 48.4061(a)-1(d)(2)(i) requires that there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways (the A test). Subpart (B) of the exception requires that 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 (the B test). Subpart (C) requires that 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 (the C test).

Section 48.4061(b)-2 (a) provides that the term "parts or accessories" includes (1) any article the primary use of which is to improve, repair, replace, or serve as a component part of an automobile truck or bus chassis or body, or other automobile chassis or body, or taxable tractor, (2) any article designed to be attached to or used in connection with such chassis, body, or tractor to add to its utility or ornamentation, and (3) any article the primary use of which is in connection with such chassis, body, or tractor, whether or not essential to its operation or use. An article is not a taxable part or accessory even though it is designed to be attached to the vehicle or to be primarily used in connection with the vehicle if the article is in effect the load being transported and the primary function of the article is to serve a purpose unrelated to the vehicle.

Rev. Rul. 76-117, 1976-1 C.B. 338, holds that an article is not subject to tax if it is designed to perform a job site function in connection with the nontaxable equipment on a vehicle, such as a power derrick, ladder, tower, or earth borer, rather than a function connected with the vehicle itself. The fact that this article may be attached to, or installed on, a taxable body or chassis is not material. This revenue ruling refers to Transairco, Inc. v. United States, 366 F. Supp. 602 (S.D. Ohio 1973). In this case, the court concluded that an outrigger assembly installed on a truck chassis was not a part or accessory of a taxable chassis. The truck was used to transport a mobile aerial platform for workmen and the only function of the outrigger assembly was to stabilize the truck while this platform was in operation.

Rev. Rul. 75-88, 1975-1 C.B. 341, establishes a rebuttable presumption that cranes that exceed 25 feet in extended horizontal reach without readily removable extensions are not designed or primarily used for loading and unloading the trucks upon which they are mounted and are not taxable truck parts or accessories for purposes of the § 4061 tax.

Rev. Rul. 69-394, 1969-2 C.B. 206, describes methods for determining the price of taxable articles when taxable articles are sold in combination with nontaxable items.

Taxpayer contends that because of the substantial modifications performed on the chassis, it has met the requirements of all three parts of the test under § 48.4061(a)-1(d)(2)(i) for exception of its chassis from taxation under § 4051(a)(1). We believe that Taxpayer has met the A test of the regulation in that it has permanently mounted nontransportation equipment (job site cranes) on the chassis. However, the chassis have the capacities to carry loads in addition to the cranes Taxpayer installs. The installation of the cranes does not cause the vehicles to exceed their weight capacities.

After installation of the cranes, the vehicles' flatbeds have empty space that can accommodate additional loads. Therefore, the chassis' load-carrying capacities are not

limited to serving only as a mobile carriage and mount for the cranes. The fact that the vehicles have considerably less cargo-carrying capacity, after the cranes are installed, than similar flatbed trucks is irrelevant. The vehicles' capacities to carry any additional loads, regardless of size, weight, or frequency, disqualify the vehicles from meeting the B test. Inasmuch as all three tests must be met for the exception to be applicable, Taxpayer's failure to meet the B test renders its argument as to the C test moot.

Taxpayer's cranes have extended horizontal reaches in excess of 25 feet without readily removable extensions. Having these characteristics, the cranes meet the presumption in Rev. Rul. 75-88 that the cranes are not designed to load and unload the trucks upon which they are mounted and are not truck parts or accessories. Therefore, the cranes are not taxable under § 4051(a)(1). The outriggers that serve to stabilize the cranes when in use are not parts or accessories of the taxable chassis because the outriggers perform a job site function in connection with the nontaxable cranes as described in Rev. Rul. 76-117.

The cranes and outriggers are not taxable. However, they are mounted on taxable chassis. To determine the taxable sale price where, as in this case, taxable and nontaxable articles are sold as a unit, Taxpayer may use the methods described in Rev. Rul. 69-394.

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

Sincerely,

Assistant Chief Counsel
(Passthroughs and Special Industries)

By:
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Enclosures (2):

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