

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM
July 27, 2001

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

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No:
Years Involved:
No Conference Held

ISSUE:

Is the fabrication of semitrailer bodies under the circumstances described below the manufacture of a new body for purposes of the tax imposed by § 4051 of the Internal Revenue Code and, if so, who is liable for the tax?

CONCLUSION:

The fabrication of semitrailer bodies under the circumstances described below is the manufacture of a new body for purposes of the tax imposed by § 4051, and Taxpayer is liable for the tax.

FACTS:

Taxpayer is a manufacturer of truck semitrailers (a semitrailer consists of a semitrailer body installed on a semitrailer chassis, each of which is a separately taxed article). A customer delivered to Taxpayer a large number of used unitized monocoque constructed semitrailers for Taxpayer to perform the operations described below. Title to the semitrailer chassis remained with the customer while the operations were being performed and the serial numbers of the semitrailer chassis remained unchanged when the semitrailers were returned to the customer.

Taxpayer performed certain restoration operations on the semitrailer chassis. The taxability of the restored semitrailer chassis is not at issue in this technical advice memorandum.

Contemporaneously, Taxpayer disassembled the semitrailer bodies and sold the non-aluminum components as scrap. Taxpayer transported the aluminum components to another company that cleaned, melted, and formed them into bars; fabricated the

bars into body components; and then returned the new aluminum components to Taxpayer. Taxpayer then constructed new semitrailer bodies using new components, some of which were made from the aluminum that had been fabricated as described above. Taxpayer then installed the bodies on the semitrailer chassis and returned the completed semitrailers to the customer.

The cost to manufacture the semitrailer body described above would exceed 75 percent of the retail price of a comparable new body. This is because the operation described above is essentially the manufacture of a new body. However, the total cost to both manufacture the semitrailer body and restore the semitrailer chassis would not exceed 75 percent of the retail price of a comparable new semitrailer (both a body and a chassis).

LAW AND ANALYSIS:

Section 4051(a)(1) imposes a tax of 12 percent on the first retail sale of the following enumerated articles: (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(a)(4) provides that the sale of a semitrailer shall be considered to be the sale of a semitrailer chassis and of a semitrailer body.

Section 4052(a)(1) defines the term "first retail sale" as the first sale, for a purpose other than resale or leasing in a long-term lease after production, manufacture, or importation.

Section 4052(b)(1)(B)(iii) provides that in determining the price for purposes of § 4051 there shall be excluded the value of any component if the component is furnished by the first user of such article and the component has been used before such furnishing.

Section 4052(f) provides that an article described in § 4051(a)(1) shall not be treated as manufactured or produced solely by reason of repairs or modifications to the article (including any modification which changes the transportation function of the article or restores a wrecked article to a functional condition) if the cost of such repairs and modifications does not exceed 75 percent of the retail price of a comparable new article. This provision became effective January 1, 1998.

Section 48.0-2(a)(4)(i) of the Manufacturers and Retailers Excise Tax Regulations states that the term "manufacturer" includes a person who produces a taxable article from scrap, salvage, or junk material, or from any 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) states 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 furnished 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.

Rev. Rul. 63-128, 1963-2 C.B. 476, holds that where a company restores a customer-owned semitrailer to serviceable condition by completely dismantling the body and fabricating a body from new parts and materials, a new body results that is taxable under § 4061(a)(1) (the manufacturers tax predecessor to the § 4051 retailers tax). This conclusion is based on the fact that the old semitrailer body has lost its identity for purposes of the excise tax. The resultant new body is a different article for excise tax purposes and is treated as a newly-manufactured semitrailer body that is taxable as an article discrete from the chassis even if used components from the discarded body are used.

Rev. Rul. 91-27, 1991-1 C.B. 192, considers the taxability of restoration of a highway tractor, which is an article described in § 4051(a)(1)(E). In Situation 1, a worn highway-type tractor is restored so that its useful life is extended. The revenue ruling holds that because the cost of the restoration of the worn tractor did not exceed 75 percent of the price of a comparable new vehicle, no retailers excise tax is imposed on the sale or use of the vehicle. The revenue ruling states that the IRS adopts a 75 percent safe harbor for the “repair or modification of used vehicles listed in section 4051(a) of the Code (tractors and chassis and bodies for trucks, trailers, and semitrailers).”

As indicated in Rev. Rul. 63-128, if during the restoration of a semitrailer the body is dismantled and a new body is fabricated from new parts and materials, a new taxable body results. This conclusion is based on the fact that the old semitrailer body is discarded in its entirety and thus loses its identity for purposes of the excise tax. The resultant new body is a completely different article for excise tax purposes and is treated as a newly manufactured semitrailer body that is taxable as an article discrete from the chassis.

Taxpayer argues that Rev. Rul. 63-128 does not apply to it, because its operations constitute the restoration of a vehicle (a semitrailer) rather than the manufacture of a new body. Further, because Taxpayer is restoring vehicles, the 75 percent safe harbor established by Rev. Rul. 91-27 applies because the total cost of the operations for a semitrailer chassis and body is 75 percent or less of the total retail price of a comparable new semitrailer chassis and body.

We disagree with Taxpayer. The tax imposed by § 4051(a)(1) applies separately to “articles,” that is, to each semitrailer chassis and body. Similarly, the safe harbor contained in § 4052(f), which applies to the periods at issue, applies separately to each semitrailer chassis and each semitrailer body. Section 4052(f) provides a safe harbor

for repairs or modifications to an “article” described in § 4051(a)(1). Specifically, it provides that an “article” listed in § 4051(a)(1) shall not be treated as manufactured or produced solely by reason of repairs or modifications to the “article” if the cost of such repairs and modification does not exceed 75 percent of the retail price of a “comparable new article.” Because semitrailer chassis and semitrailer bodies are separately enumerated articles in § 4051(a)(1) the safe harbor must be applied separately to each article. Under § 4051(a)(4), the sale of a semitrailer chassis and body is not the sale of a single article. Accordingly, because the bodies at issue are new, § 4052(f) has no application to them and their sale to the customer is subject to the tax imposed by § 4051(a)(1)(D).

Rev. Rul. 91-27 addresses whether the restoration of a worn vehicle is subject to tax under § 4051(a). The revenue ruling addresses the restoration of a worn tractor. It holds that “because the cost of the restoration of the worn tractor did not exceed 75 percent of the price of a comparable new vehicle, no retailers excise tax is imposed on the sale or the use of the tractor.” The revenue ruling, which was issued in 1991, before the enactment of § 4052(f), states that the IRS adopts a 75 percent safe harbor for the “repair or modification of used vehicles listed in section 4051(a) of the Code (tractors and chassis and bodies for trucks, trailers, and semitrailers).” Under § 4051(a)(1)(E), a tractor is a discretely taxed article that, unlike trucks, trailers, or semitrailers, is not comprised of a chassis and a body. Compare with § 4051(a)(4), which provides that semitrailer chassis and bodies are separate articles. Thus, the statement in the revenue ruling that the 75 percent safe harbor applies to “vehicles” was appropriate with regard to the tractor at issue. However, the use of the term “vehicles” should not be read to suggest that a safe harbor applies to a chassis and body collectively as a single vehicle where the vehicle involved is not a tractor. In this respect, the explanatory parenthetical in Rev. Rul. 91-27 that immediately follows “vehicle” lists tractors, chassis, and bodies as the articles to which the revenue ruling applies. Any other interpretation would be inconsistent with § 4051(a)(4).

Accordingly, if a new body is installed on a used chassis, the discarded body is not repaired or modified at all and Rev. Rul. 91-27 does not apply to the new body. Moreover, to the extent that Rev. Rul. 91-27 might be interpreted as suggesting that a safe harbor applies to a chassis and body collectively as a single vehicle, such an interpretation would be inconsistent with the change in law providing for a safe harbor applicable to “articles” (§ 4052(f)) for the periods at issue. Thus, Taxpayer’s fabrication of semitrailer bodies is the manufacture of new bodies sales of which are subject to the tax imposed by § 4051.

Under §§ 48.0-2(a)(4)(i) and (ii), if Taxpayer had repaired or restored its customers’ semitrailer bodies any tax consequences resulting from the repair or restoration would be those of the customers. However, here the old semitrailer bodies were discarded and Taxpayer manufactured new bodies. Therefore, Taxpayer and not its customer is liable for the tax resulting from the manufacture and sale of the bodies.

CAVEAT

A copy of this technical advice memorandum is to be given to the taxpayers. Section 6110(k)(3) provides that it may not be used or cited as precedent.