INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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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 on the sale of its automobile truck chassis by § 4051(a)(1)(A) of the Internal Revenue Code because Taxpayer's chassis fail to meet the exception for certain specially designed mobile machinery for nontransportation functions described in § 48.4061(a)-1(d)(2)(i) of the Manufacturers and Retailers Excise Taxes Regulations (mobile machinery exception)?

(2) If Taxpayer is liable for the excise tax imposed by § 4051(a)(1)(A), are the telescoping aerial cranes, aerial lifts, aerial lift/crane combinations and accessories (aerial equipment) and outriggers that Taxpayer installs on chassis parts and accessories sold on or in connection with the chassis?

(3) If Taxpayer is not liable for the excise tax imposed by § 4051(a)(1)(A) on aerial equipment and outriggers, how should the retail price of the chassis be allocated between taxable and nontaxable items?

CONCLUSIONS:

(1) Taxpayer is liable for the excise tax imposed by § 4051(a)(1)(A) because Taxpayer's chassis fail to meet the mobile machinery exception.

(2) Taxpayer is not liable for the tax imposed by § 4051(a)(1)(A) on aerial equipment and outriggers because the aerial equipment and outriggers are not parts

and accessories.

(3) The retail price of the chassis should be allocated between taxable and nontaxable items in accordance with Rev. Rul. 69-394, 1969-2 C.B. 206.

FACTS:

Taxpayer manufactures and sells truck mounted aerial equipment. Taxpayer only manufactures aerial equipment that has extended horizontal reaches in excess of 25 feet (without readily removable extensions). Taxpayer installs its aerial equipment on standard over the road chassis that Taxpayer purchases from truck manufacturers. Taxpayer also installs front and rear outriggers on the chassis. These outriggers stabilize the truck when the aerial equipment is in use. Taxpayer does not resell chassis without aerial equipment installed on the chassis. Taxpayer rarely sells aerial equipment that is not installed on a chassis. All the chassis at issue have a gross vehicle weight (GVW) rating in excess of 33,000 pounds. The weight of a chassis with aerial equipment installed is less than the GVW rating of the chassis.

Most of the bodies at issue have integrated platform flatbeds that range in length from 22 feet to 27.5 feet. In certain instances, the lengths may be 2 to 3 feet shorter when storage boxes are installed for aerial equipment supplies. The aerial units are mounted behind the tandem axle of the chassis and extend forward over the flatbeds and chassis cabs. There is empty space beneath the boom and on either side of the boom. In addition, there is approximately 36 inches to 48 inches of empty space behind the trailing edge of the base plate.

Taxpayer represents that the vehicles are usually used to transport the aerial cranes and related tools and supplies. Advertising signs and construction materials are usually carried in a separate vehicle or a towed trailer. However, signs also are carried on the chassis to job sites for installation.

LAW AND ANALYSIS:

Section 4051(a)(1)(A) imposes a 12 percent excise tax on the first retail sale of an automobile truck chassis and the parts and accessories sold on or in connection with the automobile truck chassis. Section 145.4061(a)-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 mobile machinery exception to the tax imposed by § 4051(a)(1)(A). Each part of this test must be met to qualify for the exception. The second part of the test described in § 48.4061(a)-1(d)(2)(i)(B) 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.

Section 48.4061(b)-2 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. 81-71, 1981-1 C.B. 496, holds that a chassis that has a reinforced box-type frame that is specially designed to withstand torsional stresses imposed by the articulation of the crane, built-in hydraulic reservoirs and controls for operating the crane, and a rear axle walking beam suspension system that is welded directly to the chassis frame without load cushions or springs is specially designed to serve only as a mobile carriage and mount for the crane.

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, established a rebuttable presumption that cranes, which 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.

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 and established prices for the taxable and nontaxable items do not exist.

During an examination of Taxpayer, the District Director determined that the

vehicles at issue failed the mobile machinery exception test because their chassis had not been specially designed to serve only as a mobile carriage and mount for the aerial equipment. The chassis at issue have the capacities to carry loads in addition to the aerial equipment Taxpayer installs. The installation of the aerial equipment does not cause the vehicles to exceed their weight capacities. After installation of the aerial equipment, 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 aerial equipment.

Taxpayer argues that loading vehicles so as to maximize the vehicles' weight carrying capacities shortens the useful lives of the vehicles. Furthermore, the GVW ratings of the vehicles can be in excess of state imposed road weight limits. Taxpayer also argues that a load on any of the vehicles' flatbeds would interfere with the operation of the aerial equipment.

The size and weight of any additional loads the chassis can carry, as well as the frequency with which the chassis are used to carry additional loads, are immaterial because the second part of the mobile machinery exception test requires that the chassis be specially designed to serve only as a mobile carriage and mount for the equipment involved. Therefore, the vehicles' capacities to carry any additional loads, regardless of size, weight, or frequency, disqualify the vehicles from meeting the § 48.4061(a)-1(d)(2)(i)(B) test.

Taxpayer's argument that an additional load on any of the vehicles' flat beds would interfere with the operation of the aerial equipment is ineffective because the § 48.4061(a)-1(d)(2)(i)(B) test requires that the "designed to serve only as a mobile carriage or mount test" must be met "whether or not such machinery or equipment is in operation." If the aerial equipment is not in use, the vehicles' flat beds are available to carry additional loads.

Taxpayer's aerial equipment has extended horizontal reaches in excess of 25 feet without readily removable extensions. Having these characteristics, the aerial equipment meets the presumption in Rev. Rul. 75-88 that the aerial equipment is not designed to load and unload the trucks upon which they are mounted. Therefore, the aerial equipment is not taxable under § 4051. The outriggers that serve to stabilize the aerial equipment 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 aerial equipment as described in Rev. Rul. 76-117.

The aerial equipment and outriggers are not taxable. However, they are mounted on taxable chassis. Taxpayer does not separately sell chassis and rarely sells aerial equipment separate from chassis. These facts make it appropriate to use Rev. Rul. 69-394 to apportion the sales price between the taxable chassis and the nontaxable aerial equipment. Taxpayer made no argument against using this revenue ruling for this purpose.

CAVEATS:

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