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INTERNAL REVENUE SERVICE
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OFFICE OF
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INTERNAL REVENUE SERVICE
NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR ASSOCIATE AREA COUNSEL
(SMALL BUSINESS/SELF EMPLOYED) AREA 4 CC:SB:4:LOU

FROM: Chief, Branch 8, Associate Chief Counsel CC:PSI:8
(Passthroughs and Special Industries)

SUBJECT: Excise Tax on Heavy Trucks and Trailers Sold at Retail

This Chief Counsel Advice responds to your memorandum dated August 8, 2001. Please call this office at (202) 622-3130 if you have any further questions. In accordance with § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent. This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

ISSUE

What should be considered in determining whether a vehicle is excluded from the definition of a highway vehicle by § 48.4061(a)-1(d)(2)(ii) of the Manufacturers and Retailers Excise Tax Regulations (the offhighway vehicle exception)?

CONCLUSION

To be excluded from the definition of highway vehicle by the offhighway vehicle exception, a vehicle must meet the § 48.4061(a)-1(d)(2)(ii)(A) special design test and the § 48.4061(a)-1(d)(2)(ii)(B) substantial impairment test. No single characteristic, such as width or the addition of an axle, automatically excludes a vehicle from the definition of a highway vehicle under the offhighway vehicle exception. Slight modifications made to a highway vehicle, such as adding oversized tires or mirrors, do not meet the special design test.

FACTS

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Certain taxpayers have claimed that some types of dump trucks that they sell are not subject to tax under § 4051 because they are described in the offhighway vehicle exception to the definition of highway vehicle contained in § 48.4061(a)-1(d)(2)(ii). The following are examples.

A. A standard highway dump truck is modified by changing an axle and replacing tires with spokes and rims that increase the rear width of the dump truck by two to four inches. The total modified width slightly exceeds 102 inches.

B. A dump truck with a dump box that exceeds the allowable highway width requirements is modified by adding two-inch wheel flares. The total modified width slightly exceeds 104.5 inches.

LAW

Section 4051(a) imposes on the first retail sale of certain enumerated articles (including in each case the parts or accessories sold on or in connection therewith) a tax equal to 12 percent of the article's sale price. Included among those articles are truck chassis and bodies. Section 145.4051(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 it 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). The term public highway includes any road in the United States that is not a private roadway. Examples of vehicles that are designed to perform a function of transporting a load over the public highways are highway-type trucks, truck tractors, trailers, and semi-trailers.

Section 48.4061(a)-1(d)(2)(ii) provides an exception from the definition of a highway vehicle for certain vehicles specially designed for off-highway transportation. This exception provides that a vehicle is not a highway vehicle if it meets two tests: (A) it is specially designed for the primary function of transporting a particular type of load other than over the public highway in connection with construction, manufacturing, processing, farming, mining, drilling, timbering, or an operation similar to any of the foregoing enumerated operations (the special design test); and (B) by reason of the special design, the use of the vehicle to transport the load over the public highways is substantially limited or substantially impaired (the substantial impairment test). In determining whether the use is limited or impaired, account may be taken of whether the vehicle may be driven at regular highway

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speeds, requires a special permit for highway use, is overweight, overheight, or overwidth for regular use, and any other relevant considerations.

Rev. Rul. 70-350, 1970-2 C.B. 262, holds that tax applies to the sale of a heavy-duty truck chassis irrespective of its width, weight, construction, or the extent to which it may travel other than over the highway. The fact that a chassis is designed to withstand rugged use when transporting property over rough terrain does not negate the fact that the chassis is also designed to transport property over the highway. The ruling reasons that the paramount consideration in determining whether a vehicle is a highway vehicle is whether the vehicle is designed for the transportation of persons or property over the highway and not the ultimate use of the vehicle.

Rev. Rul. 79-296, 1979-2 C.B. 370, holds that tax applies to the sale of truck-tractors and low-bed semitrailers that are used in combination to transport military equipment on and off the highway and that are oversize and require special permits and/or escort vehicles on most state highways. The ruling holds that while the vehicles have characteristics that impair their use on the highway, in that they are oversize and require special permits, those characteristics are necessary in order to enable the vehicles to carry their intended load and accomplish their highway transportation function. Thus the vehicles are not specially designed for off-highway transportation. The truck-tractors are eight-by-eight with a 22.5 ton capacity, 120 inch width, and maximum speed of 38.5 miles per hour with a heavy load. The low-bed trailers have four axles and a 60 ton capacity and are 137 inches wide.

Rev. Rul. 79-308, 1979-2 C.B. 372, holds that tax applies to the sale of a mixer-feeder vehicle designed to transport a load over the public highway with an overall width of 96-108 inches that sustains highway speeds of 40-50 miles per hour.

Rev. Rul. 81-252, 1981-2 C.B. 209, holds that tax applies to the sale of a dual-use vehicle designed to transport cargo both off-road and in over-the-highway operations. Because of its special design, the vehicle's on-highway cargo capacity is 10 percent less than the cargo capacity of a conventional highway-type cargo carrier. However, this special design does not substantially limit the vehicle's ability to transport a load over public highways.

Rev. Rul. 77-141, 1977-1 C.B. 317, holds that semitrailers designed for hauling heavy oil-field equipment over rough terrain come within the offhighway vehicle exception. The semitrailers have gross vehicle weights ranging from 80,000 to 120,000 pounds and widths from 102 to 114 inches and may be used on the public highway only under highly restrictive special permits. The permits restrict highway movement of the vehicles to daylight hours and prohibit movement on weekends and during inclement weather. The ruling concludes that the use of the semitrailers on the highway is substantially limited.

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ANALYSIS

To come within the offhighway vehicle exception a vehicle must meet both the special design test and the substantial impairment test; meeting one of the tests is not sufficient. No single characteristic, such as a vehicle's being overwidth, automatically excludes the vehicle from the definition of highway vehicle under the offhighway vehicle exception. Slight modifications made to an otherwise taxable vehicle, such as adding oversize tires or mirrors, do not meet the special design test. Similarly, additions to an otherwise taxable vehicle of readily detachable components, such as an axle, do not meet the special design test. These types of changes do not contribute to the primary function of transporting a particular type of load other than over the public highway.

As demonstrated by the above revenue rulings, whether a vehicle meets the offhighway vehicle exception is fact specific.

In determining whether the special design test is met, some questions to be answered include:

- Does the vehicle have a standard highway chassis and/or body?
- If so, were substantial modifications made?
- Is the vehicle specially designed to carry a particular type of load other than over the public highway?
- If so, what kind of load?
- What are the vehicle's special design characteristics and how do they contribute to the vehicle's transporting its load other than over the public highway?
- Is the vehicle overwide, overweight, or overheight?
- If so, how does the characteristic contribute to the primary function of transporting a particular load other than over the public highway?
- Is the vehicle substantially structurally different than a standard highway vehicle?
- Is the vehicle of a type that is not required to be registered?

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If it is determined that a vehicle meets the special design test, then in determining whether a vehicle meets the substantial impairment test, some questions to be answered include:

- What are the relevant requirements for lawfully operating a motor vehicle on the public highway?
- How is the vehicle substantially impaired (for example, is the vehicle's speed or carrying capacity over the public highway substantially limited)?
- May the vehicle operator pay a higher annual vehicle registration fee for unrestricted use of the public highway?
- Is a special permit required for each use over the public highway?
- If a permit is required, does the cost of a permit increase according to size and weight?
- Is special signage required for each use over the public highway?
- Is an escort required for each use over the public highway?
- Is the vehicle restricted in using the highways to certain hours or days, to certain roads, during certain hours, within certain distances of their destination, under certain weather conditions, or during certain months of the year?
- Must the vehicle be equipped with special mirrors, flags, lights, and monitoring equipment in order to travel on the public highway?

CASE DEVELOPMENT, HAZARDS, AND OTHER CONSIDERATIONS

We strongly recommend that should this issue arise in an examination that it be submitted to the national office in the form of a request for technical advice. Any such request should include the manufacturer's specifications for the vehicle, marketing materials describing the uses and characteristics of a vehicle, and other written descriptions, such as those found in contracts or leases, that may be available.

Although not precedential, TAM 200023011 and PLR 9836016 cited in your request are good examples of the reasoning we used in determining whether a vehicle met the offhighway vehicle exception.