Office of Chief Counsel
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memorandum

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to: Holly McCann
Chief, Excise Tax Program

from: Stephanie Bland
Senior Technician Reviewer, Branch 7
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subject: Section 4051: Chassis Renovation

This responds to your request for Non-Taxpayer Specific Legal Advice regarding the application of the tax imposed by § 4051 of the Internal Revenue Code to scenarios in which an outfitter combines various automotive components, sometimes packaged as glider kits, to produce a highway tractor or a truck chassis (the "Article" or "Articles").

Please note that we previously issued advice on the excise tax consequences of certain chassis renovations on January 7, 2013 (POSTN-143596-12). When we received this current request for advice, we reconsidered the position we took in POSTN-143596-12. We now recommend that you no longer rely on the advice we provided in POSTN-143596-12.

Below is revised advice on the issue of chassis renovations. This advice may not be used or cited as precedent.

In each of the scenarios below: (1) Outfitter was in the business of selling Articles; (2) the finished Articles do not qualify for the weight exemptions in § 4051(a)(2) or (4); and (3) Customer acquired the Article for a purpose other than for resale or leasing in a long-term lease.

Scenario 1

Pursuant to Customer's order, Outfitter removed the engine and transmission from Customer's used Article, and sent Customer's engine and transmission to a remanufacturing company. In exchange, the remanufacturing company, at Customer's request, sent Outfitter a different, but comparable, refurbished engine and transmission. Outfitter combined the refurbished engine and transmission with the following new components: a finished cab and hood, front axle and brakes, front suspension and steering, rear suspension, chassis frame, fuel tanks, electrical system, engine cooling system, rear drive axle, and rear wheels and tires. Outfitter sold the finished Article to Customer.

Scenario 2

Pursuant to Customer's order, Outfitter removed the transmission and rear axle from Customer's used Article. Outfitter combined Customer's used transmission and rear axle with the following new components: a finished cab and hood, front axle and brakes, front suspension and steering, rear suspension, chassis frame, fuel tanks, electrical system, engine and engine cooling system, and rear wheels and tires. Outfitter sold the finished Article to Customer.

Scenario 3

Outfitter's Customer ordered an Article from Outfitter. To fill this order, Outfitter combined new components that included a finished cab and hood, front axle and brakes, front suspension and steering, rear suspension, chassis frame, fuel tanks, electrical system, engine cooling system, rear drive axle, rear wheels and tires with an engine and a transmission from a used article in Outfitter's inventory. Outfitter sold the finished Article to Customer.

Scenario 4

Outfitter's Customer provided Outfitter with new components that included a finished cab and hood, front axle and brakes, front suspension and steering, rear suspension, chassis frame, fuel tanks, electrical system, engine and engine cooling system, and rear wheels and tires. Customer also provided Outfitter with a used transmission and rear axle. Customer retained title to all these automotive components. Outfitter assembled these components into an Article. Customer paid Outfitter for the assembly and overhead expenses associated with the finished Article. Customer used the finished Article in its business.

Law

Section 4051(a)(1) imposes an excise tax on the first retail sale of certain enumerated articles, including tractors and chassis of highway trucks. The tax is 12 percent of the price for which the article is sold.

Section 4051(a)(2) excludes from this tax chassis that are suitable for use with a vehicle that has a gross vehicle weight of 33,00 pounds or less.

Section 4051(a)(4) excludes from this tax tractors that have a gross vehicle weight of 19,500 pounds or less and a gross combined weight of 33,000 pounds or less.

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

Section 4052(a)(3)(A) taxes the use of an article taxable under § 4051 before its first retail sale as if there was a first retail sale of the article. In this case, the tax is computed on the price at which similar articles are sold at retail in the ordinary course of trade, as determined by the Secretary.

Section 4052(b)(1)(A) defines “price” as including any charge incident to placing the article in condition for use. Section 4052(b)(1)(B) excludes from the term “price”: (i) the § 4051 tax; (ii) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee; and (iii) the value of any component of the article if the component is furnished by the first user of the article, and the component has been used before the first user furnished it. Additionally, “price” is determined without regard to any trade-in. Section 4052(b)(1)(C).

Section 145.4052-1(a)(3) of the Temporary Excise Tax Regulations Under the Highway Act of 1982 (Pub. L. 97-424) provides that the tax is computed on the price determined under § 145.4052-1(d).

Section 145.4052-1(d) (1) provides that the price for which an article is sold includes the total consideration paid for the article, whether that consideration is paid in money, services, or other forms.

Section 145.4052-1(d)(2) provides rules for determining the § 4051 tax when a manufacturer, producer, or importer or related person is liable for this tax.

Section 4052(b)(4) provides that if a manufacturer of an article is liable for the § 4051 tax, the manufacturer must compute its tax liability based on a price equal to the sum of (i) the price which would be determined under § 4052; plus (ii) the product of the price described in (i) and the presumed markup percentage. The presumed markup percentage for purposes of § 4052(b)(4)(ii) is four percent. See § 145.4052-1(d)(7).

Section 4052(f)(1) provides that an article taxed by § 4051(a)(1) is not 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 modification does not exceed 75 percent of the retail price of a comparable new article.

Therefore, a chassis is not considered "manufactured" if its repairs and modifications do not exceed 75 percent of the retail price of a comparable new article.

The legislative history of § 4052(f) provides, in part, that the "determination under present law of whether a particular modification to an existing vehicle constitutes remanufacture (taxable) or a repair (nontaxable) is factual and generally based on whether the function of the vehicle is changed, or, in the case of worn vehicles, whether the cost of the modification exceeds 75 percent of the value of the modified vehicle." H.R. Rep. No. 105-220, at 726 (1997) (emphasis added). This language suggests that Congress intended to limit the safe harbor in § 4052(f) to modifications to an existing article (in other words, Congress did not intend for the safe harbor to apply to the mere combination of automotive components).

Section 48.0-2(a)(4)(i) of the Manufacturers and Retailers Excise Tax Regulations defines "manufacturer" as a person who produces a taxable article from scrap, salvage, or junk material, as well as from new or raw material, (i) by processing, manipulating, or changing the form of an article, or (ii) by combining or assembling two or more articles.

Section 48.0-2(a)(4)(ii) provides that if a person manufactures or produces a taxable article for another person that furnishes materials under an agreement whereby the person that 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 that actually manufactures or produces it, will be considered the manufacturer.

In Boise National Leasing, Inc. v. U.S., 389 F.2d 633, 636 (9th Cir. 1968), the court determined that the combination of new cabs, frames, and other minor components with major components of old trucks, such as engines and axles, to produce complete and operational trucks constitutes manufacturing for excise tax purposes. The court reasoned that this activity constituted "a production or manufacture of trucks, and not a restoration of the existence and utility of the previous trucks. The old trucks had been permanently stripped of all their form, all their identity, and all their utility as vehicular structures and entities."

Questions

1. **Does § 4051(a)(1) apply in the scenarios described above?**

Tax is imposed under § 4051(a)(1) in Scenarios 1 through 3, because each scenario includes a first retail sale of a taxable article for a purpose other than resale or leasing in a long-term lease.

Tax is imposed under § 4051(a)(1) in Scenario 4, because § 4052(a)(3) treats the use of an article before its first retail sale as the first retail sale of the article.

2. **Does § 4052(f)(1) apply in the scenarios described above?**

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" described in § 4051(a)(1) is not 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."

In each scenario described above, neither Outfitter nor Customer repaired or modified an "article" described in § 4051(a)(1); rather they manufactured a new article from a combination of new and used automotive components, none of which were articles described in § 4051(a)(1). See Boise and § 48.0-2(a)(4)(i). Therefore, the § 4052(f)(1) safe harbor rule is inapplicable to Scenarios 1 through 4.

In Scenario 1, all of the components of the finished Article were new, except for the engine and transmission that the remanufacturing company refurbished and sent to Outfitter. A refurbished engine and transmission are not § 4051(a)(1)(A) taxable articles that could be repaired or modified for purposes of § 4052(f)(1).

In Scenario 2, all of the components of the finished Article were new except for the used transmission and rear axle from Customer's previously taxed article. A used transmission and rear axle are not § 4051(a)(1)(A) taxable articles that could be repaired or modified for purposes of § 4052(f)(1).

In Scenario 3, all of the components of the finished Article were new except for the used engine and transmission from Outfitter's inventory. A used engine and transmission and are not § 4051(a)(1)(A) taxable articles that could be repaired or modified for purposes of § 4052(f)(1).

In Scenario 4, all of the components of the finished Article were new except for the used transmission and rear axle. A used transmission and rear axle are not § 4051(a)(1)(A) taxable articles that could be repaired or modified for purposes of § 4052(f)(1).

3. **Who is liable for the § 4051 tax?**

The person making the first retail sale of a taxable article is liable for the § 4051 tax. In Scenarios 1 through 3, Outfitter is liable for the tax because Outfitter made the first retail sales of the finished Articles. In Scenario 4, Customer is liable for the tax because Customer used the finished Article before its first retail sale.

4. **How is price computed?**

In Scenarios 1 through 4, the price on which the tax is computed is the price determined under § 4051(b), plus a four percent markup. See § 4052(b)(4) and §§ 145.4052-1(d)(2) and 145.4052-1(d)(7).

In Scenario 1, the price computed under § 4052(b)(4) is not reduced by the value of the engine and transmission that Outfitter removed from Customer's Article because Outfitter did not incorporate these two components into the finished Article as § 4052(b)(1)(B)(iii) requires. Instead, Outfitter used the engine and transmission that Outfitter received in exchange, on behalf of Customer, from the remanufacturing company as components in the finished Article.

In Scenario 2, the price computed under § 4052(b)(4) is first reduced by the value of the used transmission and axle that Customer provided before applying the four percent markup. See § 4052(b)(1)(B)(iii).

In Scenario 3, the price computed under § 4052(b)(4) is not reduced by the value of the engine and transmission that Outfitter removed from a used Article in Outfitter's inventory because there is no statutory provision that excludes used components supplied by Outfitter. The exclusion for the value of a used component in § 4052(b)(1)(B)(iii) is limited to a component furnished by the first user of the finished Article.

In Scenario 4, the price computed under § 4052(b)(4) is first reduced by the value of the used transmission and rear axle that Customer furnished to Outfitter before applying the four percent markup. See § 4052(b)(1)(B)(iii),

Please call Celia Gabrysh at if you have any further questions.