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INTERNAL REVENUE SERVICE

NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

Third Party Contact: None
Index No: 4051.00-00
Control No: TAM-114205-98

District Director

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification Number:

Years Involved:

No Conference Held

LEGEND:

X =

ISSUE:

Whether retail sales of certain trucks (stack movers) by X are subject to the tax imposed by § 4051(a)(1) of the Internal Revenue Code.

CONCLUSION:

Retail sales of stack movers by X are not subject to the tax imposed by § 4051(a)(1). Rather, these vehicles are within the exception to the definition of a highway vehicle provided by § 48.4061(a)-1(d)(2)(ii) of the Manufacturers and Retailers Excise Tax Regulations.

FACTS:

X manufactures "stack movers," which are trucks designed to pick up large quantities of loose or baled hay on the farm and to transport the hay to other farms or storage facilities, as well as to other areas on the farm. The stack mover travels on public roads and highways, as well as on farm roads. The stack mover is

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manufactured using a truck chassis that is stretched and reinforced to increase its weight-carrying capacity. A stack mover body is then attached to the chassis. The stack mover body consists of steel beams, hydraulic equipment to tilt the bed, and tractor equipment to move the hay on and off the stack mover. The stack mover is operated by backing the stack mover near the hay to be loaded, tilting the bed, and loading the hay by means of a chain-driven tractor feed system.

The chassis is capable of normal highway speeds, although in the state of its manufacture, and in several surrounding states permitting its use, it is considered an agricultural vehicle and no vehicle tags are required. The width of the stack mover unloaded is approximately 15 feet, its loaded width is up to 20 feet, and the length varies from 56 to 65 feet (depending on the state of intended use). The height of a loaded stack mover is 18 feet. The stack mover is equipped with a rear tandem axle that bears a weight of approximately 38,000 pounds. Maximum legal size for semitrailers on interstate routes is, in general, 8.5 feet in width, 13.5 to 14 feet in height, and 48 to 59 feet in length. The federal tandem axle weight limit is 34,000 pounds. Because the stack mover exceeds these limits it requires special permits to transport loads on the highway.

There are significant restrictions imposed by those states that allow stack movers to operate on their roads. Stack movers may only operate in daylight, and when visibility is not limited by weather, dust, or smoke. They may not be operated when the roads are slippery. In general, stack movers must be equipped with special mirrors, flags, lights, and monitoring equipment in order to travel on the state highway system.

LAW AND ANALYSIS:

Section 4051(a)(1) imposes on the first retail sale of certain enumerated articles (including in each case parts or accessories sold on or in connection therewith or with the sale thereof) a tax of 12 percent of the amount for which the article is sold. The enumerated articles include truck semitrailer chassis and bodies.

Section 145.4051-1(a)(2) of the Temporary Excise Tax Regulations provides that a chassis or body is taxable under § 4051(a)(1) only if such chassis or body is sold for use as a component of a highway vehicle (as defined in § 48.4061(a)-1(d)) which is an automobile truck, truck trailer or semitrailer, or a highway type tractor of the kind chiefly used in combination with a trailer or semitrailer.

Section 48.4061(a)-1(d)(1) provides that the term "highway

vehicle" means 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)(ii) provides that a self-propelled vehicle, or a trailer or semitrailer, is not a highway vehicle if it is (A) specially designed for the primary function of transporting a particular type of load other than over the public highway in connection with a construction, manufacturing, processing, farming, mining, drilling, timbering, or operation similar to any one of the foregoing enumerated operations, and (B) if by reason of such special design, the use of such vehicle to transport such load over the public highways is substantially limited or substantially impaired. For purposes of applying the rule of (B), account may be taken of whether the vehicle may travel at regular highway speeds, requires a special permit for highway use, is overweight, overheight or overwidth for regular highway use, and any other relevant considerations.

Section 48.4061(a)-1(e)(2)(i) provides that with respect to the sale of a vehicle which would otherwise be treated as a taxable chassis or body enumerated in § 48.4061(a)-1, the tax imposed under § 4061(a) (the predecessor to § 4051(a)) shall not apply to such sale if the vehicle (considered as a completed unit) is not considered to be a highway vehicle within the meaning of § 48.4061(a)-1(d).

Since the stack mover is designed in part to transport hay over the public highways, it meets the threshold test of taxability established by § 48.4061(a)-1(d)(1) of the regulations, even though it is also designed to be used on the farm. The question is then whether, for purposes of the exception from tax provided by § 48.4061(a)-1(d)(2)(ii), the stack mover is, (1) specially designed for the primary function of transporting hay other than over the highway and, (2) its use to transport hay over the highway is substantially limited or impaired by reason of such special design.

The body of the stack mover is an integrated system designed for the loading, unloading, and transporting of loose or baled hay on the farm. Thus, for purposes of § 48.4061(a)-1(d)(2)(ii)(A), the stack mover is specially designed for the primary function of transporting hay other than over the highway.

The special design of the stack mover that permits it to load and unload loose and baled hay and to carry excessive weight also results in a vehicle that is substantially limited in its capability to transport hay over the highway. In all states it

is considered to be overwidth for highway use and in many, if not most, states it is both overheight, overlength, and overweight. Many states will not allow stack movers to operate on their highway systems. Because of these design features, in those states that do allow its operation, a special permit is required to operate the stack mover over the highway. The special permit is also required because excessive weight (in excess of the 34,000 pound tandem axle limit) is normally transported on the stack mover. Thus, for purposes of § 48.4061(a)-1(d)(2)(ii)(B), the special design of the stack mover substantially limits or impairs its usage as an over-the-road transporter of hay.

CAVEATS:

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

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