INTERNAL REVENUE SERVICE
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In re: Letter Ruling Regarding Excise Tax

Legend:

Taxpayer =
X =

Dear

This responds to your March 27, 2000, letter submitted on your behalf by your representative in which Taxpayer requests a ruling (1) as to its federal excise tax liability under § 4051(a)(1) of the Internal Revenue Code in regard to its importation and sale of certain used truck trailers, and (2) whether Taxpayer's sales of new truck trailers to Canadian purchasers for resale or long-term lease may be made without excise tax liability under § 4051 (a)(1) where the purchaser provides to Taxpayer an exemption certificate in the form and manner prescribed in § 145.4052-1(a)(2)(ii)(B) of the Temporary Excise Tax Regulations Under The Highway Revenue Act of 1982?

Taxpayer manufactures taxable highway truck trailers and semitrailer chassis and bodies (hereinafter referred to as truck trailers) for sale to retail dealers and retail customers. The truck trailers are subject to the tax imposed by § 4051(a)(1). Since 1994, Taxpayer has regularly sold its truck trailers to X, a Canadian dealer of truck trailers. During the period January 1994 to September 1997, X sold Taxpayer's truck trailers to retail customers in the United States and Canada. The exported truck trailers in question were reacquired by X subsequent to use by X's customers in Canada. Taxpayer intends to repurchase from X a number of those truck trailers, none of which have been previously sold or used by customers, dealers, or other users in the United States.

Taxpayer's original sales of the truck trailers to X were made pursuant to the tax-free sales provision for export under § 4221(a)(2). In a subsequent audit by the Internal Revenue Service (the IRS), it was determined that Taxpayer was liable for tax under § 4051(a)(1) in regard to all of its export sales of truck trailers to X during the period in question. Under a Closing Agreement between the Commissioner of Internal Revenue, Taxpayer, and X, Taxpayer's excise tax liability was resolved only for the truck trailers sold tax free to X for export, but resold to U.S. customers. The remaining truck trailers sold by Taxpayer to X , and resold to Canadian customers, are the subject of question (1) of this ruling request. In

question (2), Taxpayer asks whether it may make future sales of truck trailers to Canadian purchasers free of tax where the parties are unregistered and an exemption certificate is provided.

Section 4051(a)(1) imposes a 12% excise tax on the first retail sale of certain enumerated articles, including bodies and chassis of highway truck trailers and semitrailers.

Section 4052(a)(1) defines the term "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 145.4052-1(a)(1) provides that for purposes of § 4051(a)(1), the term “first retail sale” means a taxable sale described in § 145.4052-1(a)(2).

Prior to March 31, 2000, § 145.4052-1(a)(2) provided that the sale of an article is a taxable sale unless--

(i) The sale is a tax-free sale under section 4221,

(ii)(A) For a sale before July 1, 1998, both the purchaser and the seller are registered under section 4222 and § 48.4222(a)-1 of the Manufacturers and Retailers Excise Tax Regulations and the seller has in good faith accepted from the purchaser a proper certification, as provided in § 145.4052-1(a)(6), executed in good faith, that the purchaser intends to lease such article on a long-term basis or resell such article,

(B) For a sale after June 30, 1998, and regardless of the registration status of the seller or the purchaser, the seller has in good faith accepted from the purchaser a statement that the purchaser executed in good faith and that is in substantially the same form as the certificate described in § 145.4052-1(a)(6), except that the statement must be signed under penalties of perjury and need not contain a registration number, or

(iii) there has been a prior taxable sale of the article.

Effective as of March 31, 2000, § 145.4052-1(a)(2)(ii) provides that for sales after June 30, 1998, see § 48.4052-1. (Sections 145.4052-1(a)(2)(i) and (iii) remain unchanged).

Section 48.4052-1(a) provides that tax is not imposed by § 4051 on the sale of an article for resale or leasing in a long-term lease if, by the time of the sale, the seller has in good faith accepted from the buyer a statement that the buyer executed in good faith in substantially the same form, and subject to the same conditions, as the certificate described in § 145.4052-1(a)(6), except that the certificate must be signed under penalties of perjury and need not refer to Form 637 or include a registration number.

Section 4221(a)(2) provides that no tax is imposed on the sale of an article for export.

Rev. Rul. 85-95, 1985-2 C.B. 204, holds that if a truck is sold by a U.S. manufacturer to a retail dealer for export, and the truck is thereafter exported, used in a foreign country, and imported into the United States, the first retail sale of the truck after

importation is subject to the tax imposed by § 4051(a)(1). The revenue ruling distinguishes the case of U.S. Truck Sales Co. v. United States, 229 F.2d 693 (6th Cir. 1956), wherein the court held that a manufacturers tax on trucks (a predecessor to the § 4051 retailers tax) did not apply to the resale in the United States of trucks that had been originally sold tax free in the United States and shipped to a foreign country and used there prior to importation. The court reasoned that the tax could not be imposed on the second sale of an article that had already once been subject to the tax, even though the initial sale had been exempted from the tax under another provision of the Code. However, under the facts in the revenue ruling, the "first retail sale" of the truck was when it was sold in the United States after importation. The § 4051 retailers tax was not applicable to the original manufacturer's sale of the vehicle for export since the sale was not a sale at retail. No initial retail sale, taxable or tax-free, occurred prior to exportation of the truck from the United States. The first retail sale after the vehicle was subsequently imported into the United States presented the first, and only, opportunity to impose the tax.

In the instant case, Taxpayer's original sales of the truck trailers to X were incorrectly transacted as tax-free sales under §s 4221(a)(2) and 145.4052-1(a)(2)(i). The tax-free sales provisions of § 4221 are applicable only to sales that are subject to tax. Taxpayer's sales to X were for resale and, thus, not retail sales subject to tax. However, to avoid liability for tax, Taxpayer should have sold the truck trailers pursuant to § 145.4052-1(a)(2)(ii) for resale, under proper certification, and with both Taxpayer and X registered with the IRS. Not having done so, Taxpayer became liable for the § 4051 tax upon its sales of the truck trailers to X. Under the reasoning of the court in U.S. Truck Sales Co. and the provisions of § 145.4052-1(a)(2)(iii), since Taxpayer's original sales of the truck trailers have previously been subject to the § 4051 tax, the subsequent importation and sale of the vehicles by Taxpayer would not be subject to tax. In regard to Taxpayer's future sales of new truck trailers to Canadian purchasers who intend to resell or lease them on a long-term basis, Taxpayer may sell free of excise tax pursuant to § 48.4052-1(a) without registration with the IRS, provided that, by the time of the sale, Taxpayer has accepted a certificate, as described in § 145.4052-1(a)(6), executed by the purchaser in good faith and signed under penalties of perjury.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,
Assistant Chief Counsel
(Passthroughs and Special Industries)
By: Richard A. Kocak
Chief, Branch 8

Enclosures (2):
Copy of this letter
Copy for § 6110 purposes