

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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Taxpayer's Name:

Taxpayer's Identification No:

Years Involved:

Date of Conference:

LEGEND: Taxpayer =

ISSUE:

Are self-unloading automobile semitrailer bodies (bodies) sold by Taxpayer exempt from the retailers tax on semitrailer bodies imposed by § 4051 of the Internal Revenue Code by virtue of the exemption from tax provided by § 4053(2)?

CONCLUSION:

The bodies sold by Taxpayer are not exempt from the retailers tax on semitrailer bodies imposed by § 4051 by virtue of the exemption from tax provided by § 4053(2). This technical advice memorandum revokes the letter ruling (LTR-8907008) issued to Taxpayer on November 14, 1988. This technical advice memorandum is effective on the date of its issuance. See § 17.06 of Rev. Proc. 2000-2, 2000-1 I.R.B. 73, 98.

FACTS:

Taxpayer custom manufactures open box semitrailers that haul a variety of bulk materials including bales, crates, boxes, rolled paper, newsprint, barrels, palletized products, pasteboard, cardboard, solid waste, rubbish, ferrous metal, metal shavings, solid fuel, ore, ash, and gravel. The semitrailers also can haul agricultural products

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from the fields where the products are harvested to farms or feedlots where these products are fed to livestock. These semitrailers have a gross vehicle rating of 68,000 pounds and are used in combination with highway-type tractors.

The body of this semitrailer incorporates a special deck that is equipped with a patented reciprocating floor conveyor system. The deck forms the load-supporting bed of the body and is also the unloading mechanism for the bulk material carried by the body. The conveyor mechanism includes modular power units that drive an assortment of longitudinal and transverse beams in a multi-phase reciprocating action. The beams are linked to the deck's individually-mounted floor members. In its initial unloading phase, the reciprocating beams cause a simultaneous and slight rearward movement of all floor members. This movement creates a conveying action that causes the stationary load in the body to shift slightly to the rear of the body. In the mechanism's subsequent phases, individual floor members are sequentially retracted without affecting the new location of the load until all floor members are returned to their initial phase positions. The reciprocating cycles are continuously repeated creating a "walking" floor that discharges the entire load from the rear of the body.

Taxpayer was issued a letter ruling (LTR-8907008) on November 14, 1988, that held that the bodies of the semitrailers were exempt from tax under § 4053(2)(B). This ruling was caveated to the effect that because the semitrailers were cargo-carrying highway vehicles, the chassis components of the semitrailers were subject to the tax imposed by § 4051 on the first retail sale of the vehicles.

LAW AND ANALYSIS:

Section 4051(a)(1)(b) imposes a tax on the first retail sale of automobile semitrailer bodies.

Section 4053(2) provides that the tax imposed by § 4051 shall not be imposed on any body primarily designed:

- (A) to process seed, feed, or fertilizer for use on farms,
- (B) to haul feed, seed, or fertilizer to and on farms,
- (C) to spread feed, seed, or fertilizer on farms,
- (D) to load or unload feed, seed, or fertilizer on farms, or
- (E) for any combination of the foregoing.

Rev. Rul. 69-579, 1969-2 C.B. 200, holds that certain automotive truck bodies

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equipped with heavy-duty unloading equipment and used primarily for hauling feed, seed, or fertilizer to and on farms are exempt from the manufacturers tax under § 4063(a)(2)(B) [now § 4053(2)(B)]. The ruling states that the elaborate and expensive unloading equipment built into the bodies and the modifications required to accommodate the unloading systems make it impractical to purchase the bodies for use other than in hauling seed, feed, or fertilizer to, and unloading it on, farms. The equipment included heavy duty mechanical or pneumatic unloading equipment that formed an integral part of the bodies. The mechanical system employed conveyors or augers and unloaded from the top of the bodies. The pneumatic system employed blowers and a hose and usually unloaded from the bottom and rear of the body.

Rev. Rul. 75-462, 1975-2 C.B. 419, holds that a dump truck designed for, and primarily used in, hauling grain, sugar, and beets from the field to points on or off the farm and that may also be used to haul feed and fertilizer over the highway is subject to the manufacturers excise tax because the dump truck did not have specific features that indicate the dump truck is primarily designed to haul those items to and on farms.

In Peerless Corp. v. United States, 185 F.3d 922 (8th Cir. 1999), the appeals court affirmed the district court's entry of judgment on the jury's verdict that Peerless' live-floor trailers were not primarily designed to haul and unload feed, seed, or fertilizer to and on farms and, therefore, were not exempt under § 4053(2). Peerless' live-floor mechanism, like a "walking" floor, automatically unloads the cargo in a trailer body. The appeals court determined that the district court properly admitted evidence regarding the uses of trailer bodies on which live-floors had been installed to demonstrate the purpose for which the trailer bodies were designed. The evidence submitted demonstrated that the taxpayer's customers used the trailer bodies for purposes other than hauling or unloading feed, seed, or fertilizer to and on farms. "Therefore, . . . the jury reasonably could have found, as it did, that the trailer bodies were not primarily designed for the purpose exempted under § 4053(2)."

Section 17.06 of Rev. Proc. 2000-2, 2000-1 I.R.B. 73, 97, provides, in part, that a technical advice memorandum that revokes a letter ruling is not applied retroactively either to the taxpayer to whom or for whom the letter ruling was originally issued, or to a taxpayer whose tax liability was directly involved in the letter ruling if—

- (1) there has been no misstatement or omission of material facts;
- (2) the facts at the time of the transaction are not materially different from the facts on which the letter ruling was based;
- (3) there has been no change in the applicable law;
- (4) in the case of a letter ruling, it was originally issued on a prospective or proposed transaction; and

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(5) the taxpayer directly involved in the letter ruling acted in good faith in relying on the letter ruling and the retroactive modification or revocation would be to the taxpayer's detriment.

During an examination of Taxpayer, the IRS reconsidered the primary design of Taxpayer's bodies and determined that LTR-8907008 was inapplicable to Taxpayer's bodies because the bodies are designed for more than hauling feed, seed, or fertilizer to and on farms. The IRS argues that Taxpayer's bodies are comparable to the truck body described in Rev. Rul. 75-462 rather than the truck body described in Rev. Rul. 69-579. Taxpayer agreed to the IRS' statements of the issue and facts and declined to submit any argument in response to the IRS' position. Taxpayer declined a national office conference.

The exemption from tax provided by § 4053(2) does not extend to bodies designed for general use even though the bodies may be capable of hauling feed, seed, or fertilizer to and on farms and/or performing a combination of the other functions described in § 4053(2). To be exempt, a body must be primarily designed for one, or a combination of, the purposes described in § 4053(2).

Unlike the bodies described in Rev. Rul. 69-579, which would not be purchased for use other than in hauling feed, seed, or fertilizer, the bodies here are designed for general hauling. The bodies' multipurpose design is emphasized in the taxpayer's marketing materials, which list the products that the bodies can transport. The mere presence of a conveyor belt and powered rear discharge door to facilitate unloading does not establish that a body was primarily designed for an exempt purpose under § 4053(2). These bodies are equally useful for transporting and unloading any of the products listed in the Taxpayer's marketing materials. Thus, the bodies are functionally similar to the bodies described in Rev. Rul. 75-462 in that they are not primarily designed to haul feed, seed, or fertilizer. Accordingly, the bodies are not exempt from tax under § 4053(2) and LTR 8907008 is revoked effective the date of this technical advice memorandum. See Peerless.

CAVEATS

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