

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

January 29, 1999

Third Party Contact: None
Index No.: 4051.00-00
Control No.: TAM-119884-98

Number: **199923001**
Release Date: 6/11/1999

District Director

Taxpayer's Name: .
Taxpayer's Address:

Taxpayer Identification No.:
Quarters Involved:
Date of Conference:

LEGEND:

Taxpayer =

ISSUES:

(1) Is Taxpayer's turkey battery system a trailer or semitrailer body subject to the tax imposed by § 4051(a)(1) of the Internal Revenue Code?

(2) If the Service rules adversely to Taxpayer on Issue (1), will the Service grant Taxpayer's request to apply this technical advice memorandum on a nonretroactive basis under § 7805(b)(8)?

CONCLUSIONS:

(1) Taxpayer's turkey battery system is a trailer or semitrailer body subject to the tax imposed by § 4051(a)(1).

(2) Taxpayer's request to apply this technical advice memorandum on a nonretroactive basis under § 7805(b)(8) is denied.

FACTS:

Taxpayer manufactures and sells at retail a turkey battery system. A turkey battery system is typically comprised of five or six turkey batteries. Each battery is four

or eight feet long by eight feet wide and is comprised of turkey coops that have been welded into a single unit; typically 12 coops are welded into a unit six coops high and two coops wide. A system is designed for installation on the flatbed of a trailer or semitrailer with a gross vehicle weight that exceeds 26,000 pounds. Typically, Taxpayer installs the system by bolting it onto a flatbed semitrailer that is either 44 or 48 feet long, and it occupies the entire surface area of the semitrailer. The turkeys are herded into the coops; the turkey battery system is not installed or removed each time turkeys are loaded or unloaded. Taxpayer sells turkey battery systems installed on customer-owned trailers or semitrailers, or delivers them to customers for installation by the customer.

LAW AND ANALYSIS:

Section 4051(a)(1) imposes a tax on the first retail sale of truck trailer and semitrailer bodies. Section 4051(a)(3) provides an exclusion for truck trailer and semitrailer bodies suitable for use with a trailer or semitrailer that has a gross vehicle weight of 26,000 pounds or less.

Section 4051(b) imposes a tax on the installation of any part or accessory on any vehicle which contains an article taxable under § 4051(a) if the installation is not later than six months after the vehicle was first placed in service.

Rev. Rul. 80-131, 1980-1 C.B. 239, holds that detachable fiberglass containers designed for use in transporting tomatoes on the flatbed of taxable trailers and semitrailers are trailer and semitrailer bodies. When the container is mounted on the flatbed (on each corner of the container is a molded clamp that enables the container to be secured to the flatbed with cables), the resulting vehicle has as its function the transportation of tomatoes over the highway. In so holding, the revenue ruling states that the container is a body rather than a part or accessory despite the fact that the trailer or semitrailer flatbed constitutes an independent hauling unit in the absence of the container.

Rev. Rul. 78-393, 1978-2 C.B. 262, holds that two bunks (U-shaped steel cradles) that are designed to be used in tandem to support logs and are mounted on a truck and trailer chassis form a log carrying system that is a vehicle body.

Rev. Rul. 75-326, 1975-2 C.B. 428, holds that a dump box designed to fit into the body of a standard pickup truck is a truck body. The dump box converts the pickup truck into a dump truck and is so designed that the entire load carrying capacity of the truck becomes the function of the dump box.

Rev. Rul. 69-320, 1969-1 C.B. 279, holds that a collapsible molded rubber tank that is designed to transport liquids over the highway by being mounted on a truck, trailer, or semitrailer chassis is a vehicle body. The tank is designed to be rolled up and stored when not in use so that the vehicle can then transport dry cargo. In so holding,

the revenue ruling states that although the tank may also serve as a storage device, it is a body because its utility lies in the highway transportation function it performs.

Rev. Rul. 67-207, 1967-1 C.B. 295, holds that a tank designed for use with a trailer chassis and highway tractor to transport liquid sugar over the highway is a trailer body. In so holding, the revenue ruling states that although the tank may serve as a storage device, it is a body because its utility lies in the highway transportation function it performs.

Rev. Rul. 61-159, 1961-2 C.B. 170, holds that detachable containers that are produced with specially designed understructures for use with truck chassis designed to accommodate them are truck bodies because they are primarily designed for use in the transportation of property on the highway.

Section 7805(b)(8) provides that the Secretary may prescribe the extent, if any, to which any ruling relating to the internal revenue laws shall be applied without retroactive effect.

The District Director argues that the turkey battery system is a body, so that its first retail sale is subject to the tax imposed by § 4051(a). Taxpayer argues that the turkey batteries are parts or accessories. Therefore, it argues, while turkey batteries it installed on a trailer or semitrailer within six months after it has been placed in service are subject to the tax imposed by § 4051(b), turkey batteries installed by Taxpayer on a trailer or semitrailer more than six months old or sold but not installed by Taxpayer are not subject to tax. Taxpayer emphasizes that turkey batteries are installed on a flatbed body; may be removed for cleaning, repair, or replacement of worn or damaged sections; and may be used off of a highway vehicle to store turkeys.

We agree with the District Director that the turkey battery system is a body. The system is primarily designed to transport turkeys, the vehicle's load, on the highway; its utility lies in the highway load-carrying function it performs. The system enables the flatbed semitrailer to transport turkeys; without the system the vehicle could not transport its intended load. The turkey battery system is similar to the log carrying system described in Rev. Rul. 78-393. It is also similar to the tomato containers described in Rul. 80-131 in that it is designed for use in transporting a load on the flatbed of a trailer or semitrailer body and comprises the load-carrying capacity of the vehicle.

It is immaterial that a truck body is placed or installed on another body. Nor is it material that the body is detachable or can be used for storage. See Rev. Rul. 80-131, Rev. Rul. 75-326, Rev. Rul. 69-320, Rev. Rul. 67-207, and Rev. Rul. 61-159.

CONSIDERATION OF § 7805(b)(8) RELIEF:

Taxpayer's argument for favorable § 7805(b)(8) treatment is that in 1993 this

same issue was settled by the Appeals Office, which held that Taxpayer's turkey batteries were accessories. Taxpayer states that it relied upon that settlement agreement much as it would have relied upon a letter ruling issued to it.

A technical advice memorandum ordinarily is applied retroactively. See section 17.02 of Rev. Proc. 99-2, 1999-1 I.R.B. 73 at 96. Relief under § 7805(b)(8) usually is granted only if a taxpayer relied to its detriment on a published position of the Service or on a letter ruling or technical advice memorandum issued to that taxpayer.

No ruling was issued to Taxpayer; nor does Taxpayer claim detrimental reliance on specific language in the statute, regulations, or a revenue ruling. Reliance upon a settlement with an Appeals Office for a prior period does not provide a basis for relief under § 7805(b)(8); while an Appeals Office settlement resolves a specific tax dispute it does not resolve a technical issue for periods not included in the settlement. Consequently, Taxpayer's arguments do not support granting its request for § 7805(b)(8) relief.

CAVEATS:

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