

**M e m o r a n d u m****235.0040**

To: Mr. R. M. Wall  
Return Review Section – MIC:35

Date: February 18, 1994

From: Sukhwinder K. Dhanda, Staff Counsel  
Legal Division – MIC:82

Subject: X-----

This is in response to your memorandum of December 30, 1993 in which you request our opinion as to the deductibility of a Federal Excise Tax (FET) from gross receipts. Apparently, X----- claimed a \$22,393.00 deduction on line 10(e) of the Sales and Use Tax Return for DMV fees (\$12,643.00), Freight (\$2,700.00) and FET (\$7,050.00). The amount of the FET is derived from line 8 of IRS Form 8807, Certain Manufacturers and Retailers Excise Taxes. Your inquiry relates to only the deductibility of the FET.

The FET at issue is imposed pursuant to Internal Revenue Code (IRC) section 4051 which provides:

"There is imposed on the first retail sale of the following articles (including in each case parts and 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 so sold .... "

Items subject to this tax include automobile truck chassis, automobile truck bodies, truck trailer and semitrailer chassis, and bodies and tractors of the kind used for highway transportation.

IRC section 4052 defines a "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."

Revenue and Taxation Code sections 6011(c)(4) and 6012(c)(4) provide an exclusion from the measure of tax for "the amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer."

This exclusion from the measure of tax is explained in Regulation 1617, which states in relevant part:

“(a) Gross receipts subject to sales tax and the sale price subject to use tax do not include the amount of any federal tax imposed upon or with respect to retail sales whether imposed upon the retailer or upon the consumer and regardless of whether the amount of federal tax is stated to the consumer as a separate charge ....”

“(b) (1) Except as stated in (b)(2) below gross receipts subject to sales tax and the sales price subject to use tax include the amount of any manufacturer’s or importers’ excise tax included in the prices of the property sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether or not the amount of such tax is stated as a separate charge.”

If the at issue is a tax imposed under IRC section 4051, then it is a retail tax that comes within the Revenue and Taxation Code Sections 6011 (c)(4) and 6012 (c)(4) and is not included in the measure of the tax.

SKD:plh