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SALES AND USE TAX TREATMENT OF INTERSTATE MOTOR CARRIERS

(Replaces Revenue Administrative Bulletin 1993-8)

Pursuant to MCL 205.6a, a taxpayer may rely on a Revenue Administrative Bulletin issued by the Department of Treasury after September 30, 2006, and shall not be penalized for that reliance until the bulletin is revoked in writing. However, reliance by the taxpayer is limited to issues addressed in the bulletin for tax periods up to the effective date of an amendment to the law upon which the bulletin is based or for tax periods up to the date of a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired that overrules or modifies the law upon which the bulletin is based.

RAB 2016-2. This Revenue Administrative Bulletin (RAB) replaces RAB 1993-8, rescinds Internal Policy Directives 2003-1 and 2010-1, and explains the sales and use tax treatment of property used by interstate motor carriers in interstate commerce, i.e., the “rolling stock” exemption. This RAB does not discuss the tax treatment of rolling stock used in rail operations.¹

ISSUES

- I. What is the rolling stock exemption?
- II. What is “rolling stock”?
- III. What is an “interstate motor carrier”?
- IV. What does “used in interstate commerce” mean?

CONCLUSIONS

I. THE EXEMPTION

The General Sales Tax Act exempts the “sale of rolling stock purchased by an interstate motor carrier or for rental or lease to an interstate motor carrier and used in interstate commerce.”²

¹ MCL 205.54m and MCL 205.94l.

² MCL 205.54r(1)(b).

The Use Tax Act exempts “the storage, use, or consumption of rolling stock used in interstate commerce and purchased, rented, or leased by an interstate fleet motor carrier.”³

In other words, the sales tax act exempts the sale of rolling stock while the use tax act exempts the storage, use and consumption of it. However, both Acts have the same three requirements for property to qualify for the rolling stock exemption:

1. The property must be “rolling stock”;
2. The rolling stock must be purchased, rented, or leased by an “interstate motor carrier”;⁴ and,
3. The rolling stock must be “used in interstate commerce.”

Each of these requirements is discussed in greater detail below.

II. ROLLING STOCK

Three types of property may qualify as “rolling stock” for purposes of this exemption:

1. “Qualified trucks.” A “qualified truck” is a commercial motor vehicle power unit that has either (1) 2 axles and a gross vehicle weight rating in excess of 10,000 pounds, or (2) 3 or more axles regardless of its gross vehicle weight rating. “Gross vehicle weight rating” is the value specified by the manufacturer as the loaded weight of a single vehicle.⁵
2. Trailers designed to be drawn behind a “qualified truck.”
3. Parts or other tangible personal property affixed to or to be affixed to and directly used in the operation of either a qualified truck or trailer.⁶ 2012 PA 467 expanded the exemption to also include parts or other property that are purchased and affixed to a truck or trailer after the original purchase.

Parts or other property do not need to replace an item that was a component part of the truck or trailer when it was sold or purchased to qualify as rolling stock. Items that may be exempt include, but are not limited to, global positioning systems (GPS), in-cab heaters, alternate power units, straps, chains, and refrigeration units, so long as they are affixed to (or are to be affixed to) and directly used in the operation of a qualified truck or trailer. The term “affixed” is not defined by statute, it is therefore given its common and ordinary meaning. “Affix” means to attach to something else; to attach physically.⁷ In other words, for parts or other tangible

³ MCL 205.94k(4).

⁴ The GSTA uses the phrase “interstate motor carrier” while the UTA uses the phrase “interstate fleet motor carrier” even though both terms are defined identically. See MCL 205.54r(2)(c) and MCL 205.94k(6)(d), respectively. For purposes of this RAB, “interstate motor carrier” will be used to reference both phrases.

⁵ MCL 257.18b(2).

⁶ MCL 205.54r(2)(d) and MCL 205.94k(6)(i).

⁷ <http://www.merriam-webster.com/dictionary/affix> (last visited September 9, 2015).

personal property added to a qualified truck or trailer to qualify for the exemption, it must be affixed (or will be affixed) to the qualified truck or trailer and be directly used in its operation.

Example 1:

ABC Inc. (ABC) operates a qualified trailer. The trailer has metal rollers welded to it that are used to attach straps to the trailer to secure its load. The rollers are the sole method by which the straps can be attached to the trailer. Without the straps the trailer would not be capable of hauling its load. The straps are affixed to the trailer and are used directly in its operation. Therefore, they are exempt.

Example 2:

Assume the same facts as Example 1. However, when a load is too heavy to secure with only the straps, ABC uses chains in addition to or in lieu of the straps. To secure a load, the chains are hooked to the trailer. When the chains are not in use they are attached to a rack on the trailer. Without the chains the trailer would not be capable of hauling loads of certain weights/sizes. The chains are affixed to the trailer and are used directly in its operation, therefore, they are exempt.

Example 3:

Assume the same facts as Example 1. ABC also sometimes uses a tarp to secure its load; this is necessary to the operation of the trailer to ensure none of its contents blow off the trailer. The tarp is held in place by bungee cords, which are affixed to the trailer. The tarp and the bungee cords are used directly in the trailer's operation, however, the tarp – unlike the bungee cords – is not affixed to the trailer. The bungee cords are exempt, but the tarp is taxable.

Example 4:

Assume the same facts as Example 1. ABC also sometimes uses an automated tarper to secure its load; this is necessary to the operation of the trailer to ensure none of its contents blow off the trailer. The automated tarper is attached to the trailer by bolts; the tarp itself is spooled within the automated tarping unit when not in use. The automated tarper, including the tarp, is used directly in the trailer's operation and is affixed to the trailer; therefore, it is exempt.

III. INTERSTATE MOTOR CARRIER

An “interstate motor carrier” is defined as:

A person engaged in the business of carrying persons or property, other than themselves, their employees, or their own property, for hire across state lines, whose fleet mileage was driven at least 10% outside of this state in the immediately preceding tax year.⁸

⁸ MCL 205.54r(2)(a) and MCL 205.94k(6)(d).

If a person does not have an immediately preceding tax year on which to base its fleet mileage, pursuant to the statutory definition, it is not eligible for the exemption.

The fact that a person hauls its own property or employees, in addition to property of others or persons that are not its employees, does not disqualify it as an interstate motor carrier if it meets the other requirements of the definition.

Example 5:

ABC Inc. (ABC) is primarily engaged in the business of carrying its own property with its qualified trucks. On rare occasions, and not as part of ABC's regular course of business, ABC will backhaul property of other businesses. ABC is not engaged in the business of carrying persons or property other than its own property; therefore, ABC may not claim the exemption on its qualified trucks.

Example 6:

ABC Inc. (ABC) is primarily engaged in the business of carrying property of others with its qualified trucks. Occasionally, ABC will use its qualified trucks to haul its own property. Assuming ABC meets all of the other requirements of the exemption, ABC is entitled to an exemption on the entire sales/purchase price of the qualified trucks.

IV. USED IN INTERSTATE COMMERCE

In addition to the above requirements, rolling stock must be used in interstate commerce to qualify for the exemption. Rolling stock may be used in interstate commerce two ways:

1. The rolling stock physically crosses state lines; or
2. The rolling stock does not physically cross state lines, but it carries persons or properties that originated from, or are destined for, locations outside of Michigan.⁹

⁹ *Alvan Motor Freight, Inc., et al, v Dep't of Treasury*, 281 Mich App 35 (2008).