Deloitte.

Multistate Tax
EXTERNAL ALERT

IRS Guidance on Vehicle Transfer under State Replacement Incentive Program

February 9, 2015

Overview

On January 22, 2015, the Internal Revenue Service ("IRS") Office of Chief Counsel issued IRS Program Manager Technical Assistance 2014-03 ("PMTA 2014-03"), which provides guidance on the federal excise tax implications of a taxpayer's transfer of a vehicle to a dealer under a state vehicle replacement incentive program ("Program").[1] PMTA 2014-03 concludes that under the specified Program the transfer of the vehicle to the dealer is considered a "sale" for purposes of the Federal Heavy Highway Vehicle Use Tax ("HHVUT") under Internal Revenue Code (IRC) §4481 and is thus eligible for a prorated credit or refund of the tax.

Although PMTAs do not constitute precedential authority, the reasoning underlying PMTA 2014-03 may potentially be applicable to vehicle transfers in states with similar Programs. In this Tax Alert we summarize the HHVUT, PMTA 2014-03, and other related matters.

Federal Heavy Highway Vehicle Use Tax

IRC §4481(a) imposes the HHVUT on any highway motor vehicle with a taxable gross weight of at least 55,000 pounds.[2] The tax is generally imposed on an annual basis with a July 1 to June 30 fiscal year and is reported on Form 2290, *Heavy Highway Vehicle Use Tax Return*.[3]

If a vehicle is sold, destroyed, or stolen before the first day of the last month of the taxable period (*i.e.*, before June 1) and is not subsequently used during such taxable period, then the tax is prorated to include only the month of the vehicle's first use until the month in which the vehicle is sold, destroyed, or stolen.[4]

IRC §4481(c)(2)(B) provides that a vehicle is deemed "destroyed" if "such vehicle is damaged by reason of an accident or other casualty to such an extent that it is not economic to rebuild."[5] No applicable statutory or regulatory definitions exist for the terms "sold" or "stolen."

A taxpayer that paid the HHVUT on a vehicle that is subsequently sold, destroyed or stolen may either claim a credit on the taxpayer's next Form 2290 (whether filed during the same taxable period or the following taxable period)[6] or claim a refund on Schedule 6, *Other Claims*, of Form 8849, *Claim for Refund of Excise Taxes*, by the later of three years after the Form 2290 was filed or two years after the HHVUT was paid.[7]

PMTA 2014-03

In PMTA 2014-03, the IRS issued guidance related to vehicles subject to the HHVUT that are transferred to a dealer and subsequently dismantled pursuant to a Program. The Program provides a voucher of between $10,000 and $45,000 to an approved applicant (*i.e.*, the vehicle's owner) for use towards replacing an existing older, high-polluting heavy vehicle ("existing vehicle") with a newer, lower-emission vehicle ("replacement

---

[1] IRS PMTA 2014-03 (dated: Apr. 14, 2014, with a release date of Jan. 22, 2015) is accessible at: **http://www.irs.gov/pub/irs-utl/PMTA-2014-03.pdf**.
[2] IRC §4481(a); *See also,* IRC §4482(b) (defining "taxable gross weight").
[3] IRC §4482(c)(2); *But c.f.,* IRC §4481(c)(1) (noting that for vehicles not used until after the first month of the taxable period (i.e., after Jul. 31), the tax is prorated to include only the month in which the vehicle is first used until the last month of the taxable period).
[4] IRC §4481(c)(2)(A); *See e.g.,* IRS PMTA 2013-27 (dated: Dec, 6, 2013, with a release date of Apr. 11, 2014) accessible at: **http://www.irs.gov/pub/lanoa/pmta_2013-27.pdf** (determining that a lessee-taxpayer could not prorate the tax attributable to the time after the vehicle's lease was terminated as a lease termination did not constitute a sale, destruction, or theft).
[5] *See also,* Rev. Rul. 77-447, 1977-2 C.B. 384 (determining that a wrecked vehicle, the salvaged parts of which were used to assemble a new highway vehicle, was not deemed to be destroyed as it contributed to the use of the new highway vehicle).
[6] Treas. Reg. §41.4481-1(d)(2).
[7] Treas. Reg. §41.4481-1(d)(1); IRC §6511(a); *See* Instructions for Schedule 6 (Form 8849), *Other Claims* (Oct. 2013) (indicating that the taxpayer must include on Schedule 6 the vehicle identification number; whether the vehicle was sold, destroyed, or stolen; the date of the sale, destruction, or theft; and the computation of the refund amount).

vehicle"). The Program stipulates that the applicant must deliver the signed title and physical possession of the vehicle to the dealer before receiving the voucher. The Program further requires the dealer, in turn, to deliver the vehicle to a dismantler wherein a "complete severance of the frame rails [occurs] to ensure that the frame can no longer be used in a vehicle and the existing vehicle's engine [is] destroyed."[8]

In PMTA 2014-03, the IRS addressed whether a transaction under the Program would constitute a "sale" or "destruction" under IRC §4481(c)(2) and thus be subject to a prorated refund or credit of the HHVUT.

PMTA 2014-03 indicates that the transfer of the vehicle would not fall within the statutory definition of "destroyed" because the terms "accidental" and "casualty" under IRC §4481(c)(2)(B) imply the occurrence of an accidental or unforeseen event. The IRS determined that the vehicle was not "destroyed" within the meaning of the statutory definition by virtue of the fact that the taxpayer voluntarily participated in the Program.

The IRS then considered whether the vehicle transferred under the Program is deemed to be "sold." As previously mentioned, there is no applicable statutory definition for the term "sale." Therefore, the IRS gleaned the "ordinary and everyday meaning of the word" from the definition, as provided in Merriam-Webster's dictionary, to mean "to exchange something for money." Applying this definition, the IRS concluded that the act of the taxpayer/applicant delivering title and physical possession of the vehicle in exchange for a cash voucher constituted a "sale" and is thus afforded a prorated credit or refund of the HHVUT.

Contacts

If you have questions regarding PMTA 2014-03 or other issues related to the HHVUT, please contact any of the following Deloitte Tax professionals.

Jeff Kelm
Principal
Deloitte Tax LLP, Houston
jekelm@deloitte.com
(713) 982-4051

Frank Falvo
Senior Manager
Deloitte Tax LLP, Houston
ffalvo@deloitte.com
(713) 982-2078

Arianda Hicks
Senior Manager
Deloitte Tax LLP, Houston
arhicks@deloitte.com
(713) 982-3940

Rich Little
Senior Manager
Deloitte Tax LLP, Houston
rlittle@deloitte.com
(713) 982-2632

Marshal Sulayman
Senior Manager
Deloitte Tax LLP, Houston
msulayman@deloitte.com
(713) 982-4886

[8] IRS PMTA 2014-03.