

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

11-30-1999

Number: **200011009**
Release Date: 3/17/2000
Third Party Contact: None
Index (UIL) No.: 4161.00.00
CASE MIS No.: TAM-114685-99/CC:DOM:P&SI:B8

District Director

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification No:

Periods Involved:

No Conference Held

LEGEND: Taxpayer =
Product A =
Product B =
Product C =
Product D =

Product E =

Product F =

Product G =
Product H =
Product I =
"p" =
"q" =

ISSUE:

Whether the described products are taxable landing nets under § 4161 of the

Internal Revenue Code and, as the importer of the products, is Taxpayer liable for tax on the sale of the products?

CONCLUSION:

None of the described products are taxable landing nets under § 4161. Therefore, Taxpayer is not liable for tax on the sale of the products.

FACTS:

Taxpayer is a manufacturer of plant fertilizers that it sells to distributors and retailers. For the tax periods in question, Taxpayer also sold a line of products marketed as nets to be used in residential pond and pool maintenance. Taxpayer imported the products into the United States.

Products A, B, and C are aluminum poles that are not attached to, or sold on or in connection with, hoops or nets. Products D, E, F, and G have handles, hoops, and nets. Products D, E, and F have plastic handles measuring “p” in diameter. Product G has a 12 inch wire handle with a net that measures “q.” Products H and I are nets that are not attached to, or sold on or in connection with, handles.

LAW AND ANALYSIS:

Section 4161(a)(1) imposes on the sale of any article of sport fishing equipment by the manufacturer, producer, or importer a tax equal to 10 percent of the price for which the article is sold.

Section 4161(a)(3) provides that in the case of any sale by the manufacturer, producer, or importer of any article of sport fishing equipment, the article shall be treated as including any parts or accessories of the article sold on or in connection with the sale.

Section 4162(a) enumerates articles of sport fishing equipment taxable under section 4161(a). Section 4162(a)(6)(G) defines sport fishing equipment to include a landing net.

Section 48.4161(a)-3(a) of the Manufacturers and Retailers Excise Tax Regulations states that the tax attaches with respect to parts and accessories for articles specified in section 4161(a) that are sold on or in connection with the articles, or with the sale thereof, at the same rate applicable to the sale of the basic articles.

The legislative history under § 4161, H.R. No. 98-133, pt. 2, at 8 (1983), defines the items listed in § 4162. Landing nets are defined as “those items consisting of a handle connected to a hoop, which hoop is covered by a bag-type net. (Such nets are

designed primarily for scooping a hooked fish out of the water and into a vessel or onto shore.)”

Rev. Rul. 88-52, 1988-1 C.B. 356, defines certain items of sport fishing equipment that are listed in section 4162(a) and that are subject to the excise tax under § 4161. Rev. Rul. 88-52 defines a landing net as consisting of a handle connected to a hoop that is covered by a bag-type net. A landing net is primarily designed for scooping fish out of the water and onto shore, into a vessel, or onto any structure.

RATIONALE:

The tax imposed by § 4161 applies only to articles of sport fishing equipment that are designed or constructed for use in the sport of fishing. It does not apply to an item that cannot practically be used for such purpose. A taxable landing net is comprised of three essential parts, a handle, a hoop, and a bag-type net. By definition, it must be primarily designed for scooping a hooked fish out of the water and onto shore or into a vessel or structure.

Products A, B, C, H, and I are net parts or accessories that are not themselves articles of sport fishing equipment and are not sold in connection with an otherwise taxable article. Therefore, they are not subject to the tax imposed by § 4161.

Products D, E, F, and G have the three components of a landing net. However, they are not primarily designed for scooping a hooked fish out of the water and into a vessel or onto shore. Therefore, they are not taxable landing nets as defined in § 4162 and Rev. Rul. 88-52.

CAVEAT:

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