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Seventh Circuit: Safe harbor relief from federal excise tax, refurbished heavy truck tractors

The U.S. Court of Appeals for the Seventh Circuit today—in a case presenting two questions of first impression with regard to a federal excise tax on heavy trucks and the scope of a statutory safe harbor—held that the taxpayer could take advantage of the safe harbor under section 4052(f)(1) for repairs and modifications and would not have to pay the 12% excise tax on tractors that were overhauled for 2011 to 2013.

The Seventh Circuit reversed the findings of a federal district court (that had determined that the degree of refurbishing at issue constituted the manufacture of new trucks, rather than repairs or modifications and therefore concluded that the safe harbor did not apply) and remanded the case to the district court further proceedings consistent with its opinions.

The case is: *Schneider National Leasing, Inc. v. United States*, No. 20-3354 (7th Cir. August 25, 2021). Read the Seventh Circuit's [decision](#) [PDF 373 KB]

Summary

The taxpayer—a large trucking company—between 2011 and 2013 overhauled approximately 1,000 existing tractors using new and refurbished parts packaged together in “glider kits” (bundled assemblies of new and remanufactured tractor components) so that, as counseled by the taxpayer's tax advisers, the taxpayer would not have to pay the 12% excise tax on new tractors.

The taxpayer had paid the 12% excise tax when it first purchased the subject trucks. However, the taxpayer did not pay the excise tax on any of the refurbished tractors. Rather, the taxpayer invoked relief under the safe harbor pursuant to section 4052(f)(1) for repairs or modifications the cost of which did not exceed 75% of the retail price of a comparable new article and took the position that the overhauled tractors were exempt from the excise tax.

The IRS disagreed, arguing the 75% safe harbor did not apply to taxpayer's repair process because it was so extensive that in reality it resulted in the production of a new truck. The IRS determined that only six tractors qualified for the safe harbor, and assessed the taxpayer for over \$9 million plus

interest in unpaid excise tax over 12 quarterly periods from January 1, 2011, through December 31, 2013.

The taxpayer paid a portion of the excise tax and then filed an administrative refund claim which the IRS denied. In the ensuing tax refund litigation, the federal district court held for the government. The taxpayer appealed.

The Seventh Circuit today reversed finding that “the plain text of the safe harbor does not contemplate any measurement apart from this 75% test” and that “retail price” referred to in section 4052(f)(1) is the price that a comparable tractor could be acquired in the open market. The appellate court remanded the case to the district court for a determination as to whether the cost of the taxpayer’s refurbishments exceeded 75% of the “retail price of a comparable new article.”

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