

FEDERAL TAX & MEDIUM- CLASS TRUCK COMPLIANCE

Based on recent IRS audit activity identified by the National Automobile Dealers of America's (NADA) American Truck Dealers group, dealers of medium duty trucks can no longer assume that vehicles under the 33,000 lbs. Gross Vehicle Weight Rating (GVWR) are not subject to the 12% federal excise tax. All affected dealers should be aware of the implications of noncompliance.

The federal excise tax applies to the following:

- Truck chassis and bodies with a *GVWR in excess of 33,000 lbs*;
- Truck trailer and semi trailer chassis and bodies with a *GVWR in excess of 26,000 lbs*; and
- Tractors used only for highway transportation in combination with a trailer or semi trailer.

Note that there is no GVWR threshold concerning tractors and

this lack of specificity is one issue. There also are no strict criteria for determining the types of vehicles that are subject to the tax since the GVWR is not a determining factor.

For IRS purposes, the difference between a truck and a trailer lies in its design and purpose. If a vehicle is sold *with a body*, the IRS would view it as a truck for its design and because the main purpose would presumably be other than hauling cargo. Therefore, it would not be subject to the federal excise tax unless it exceeded the GVWR of 33,000 lbs.

A vehicle sold *without a body* could be used as a tractor for hauling and may be subject to the federal excise tax depending on the intent of the owner. If the owner cannot certify in writing that they do not intend to use the vehicle for hauling, then the vehicle would be subject to the tax, regardless of its GVWR.

However, this *primary design* test does not address vehicles that are designed to carry cargo on the same chassis as the engine, and tow a vehicle. Regarding this very select group of vehicles, the IRS has issued Revenue Rulings, Technical Advice Memoranda, and Private Letter Rulings.

Compliance

If you are a dealer of medium class trucks the cost of non-compliance is payment of the 12% federal excise tax in addition to the penalties and interest incurred if found non-compliant.

If you are a dealer of vehicles that are sold without a body, you should ensure that customers certify in writing that they are not going to use the vehicle for towing, and keep that information on file in the event of an audit. You should speak with your Auto Team America representative who can assist you in the appropriate tax treatment of vehicles to help avoid IRS scrutiny.

ATTENTION: UNCLAIMED PROPERTY OWNERS

Many states are performing an increasing number of unclaimed property audits. The rise is partially due to the continuing lack of businesses' compliance with laws regarding unclaimed property. If you are not in compliance, your business could be subject to an audit, interest and penalties and significant liabilities.

Requirements for Unclaimed Property Holders

Generally, holders of unclaimed or abandoned property are required on an annual basis to report and transfer such property to the state of the property owner, depending on the location of the owner's last-known address. When the holder lacks an address for the

rightful property owner, unclaimed property should escheat (revert) to the state in which the holding company is domiciled or incorporated.

Unclaimed Property

Unclaimed property is any financial asset for which there has not been owner-generated

(see *Unclaimed* on page 2)

(Unclaimed continued from page 1) activity for a set period of time (dormancy period). Unclaimed property includes cash, safe deposit box contents, tangible and intangible property. A few examples of intangible property include bank accounts, unredeemed gift certificates, vendor and cashiers' checks, unclaimed insurance benefits, and dividend checks, stocks, bonds and mutual fund shares. Depending on the state, the dormancy period may be as short as one year for uncashed payroll checks to as long as fifteen years for uncashed travelers' checks. Once the stipulated dormancy period for a particular property type has been exceeded, the holder of such property is required to escheat the property to the appropriate state. Not surprisingly, the trend has been toward shortening dormancy periods so states can receive their money faster.

Escheat Laws

Escheat laws date back to colonial America and ostensibly exist to protect unclaimed property and help return it to its rightful owner. The laws take what would be a windfall for a business and make it a public benefit. Until fairly recently, escheat laws were largely ignored by both holders of unclaimed property and states. However, states have realized that unclaimed property is a source of revenue since states retain any income earned by the unclaimed property that they hold in trust until its return to its rightful owner.

As a result of continued widespread noncompliance by businesses, and the states' fiscal crises, the states have increased their vigilance regarding escheat law compliance. One trend is toward the use of contingent fee "bounty hunters" by states in an aggressive move to

collect maximum sums from businesses.

Typically, state unclaimed property audits will have look-back periods of 10 to 20 years. There are no statutes of limitations and there are incidences of even 40 to 50 year audits! If records are unavailable for the entire audit period, an assessment is expanded for missing years using available records.

Holders of unclaimed property are subject to successor liability. Therefore, a business that purchased another business may be held liable for the predecessor's unclaimed property and interest and penalties for many years.

Adding to the exposure for unclaimed property holders, there are no requirements of a physical connection (nexus) with a state. Many businesses are incorporated in Delaware due its corporate-friendly laws. Unclaimed property apparently is not one of them. Even though a holder may never physically be in Delaware, if that is its state of incorporation, Delaware wants all unclaimed property with respect to unknown owners. This can account for a large component of unclaimed property. Due to the large number of incorporated businesses in Delaware, they are considered the most aggressive state with respect to auditing.

What Can A Holder Do To Help Itself?

In many cases, businesses can't tell the difference between old, uncashed checks and accounting errors. The burden of proof is on the taxpayer. Businesses need to make a concerted effort to "clean up" the books, i.e., to reconcile unreconciled accounts as much as possible rather than writing off unreconciled credits to miscellaneous income. Businesses should exercise their due diligence often by

TAX TIP

THE END OF THE LONG-DISTANCE EXCISE TAX

The U.S. Treasury Department announced it is conceding the legal dispute over the federal excise tax on long-distance telephone service. The Department of Justice will no longer pursue litigation and the Internal Revenue Service (IRS) will issue refunds of tax on long-distance service for the past three years. Taxpayers will be able to apply for refunds on their 2006 tax forms, to be filed in 2007.

The excise tax on long distance telephone service is an outdated, antiquated tax that has survived a century beyond its original purpose, and by now should have been ancient history.

Key Facts Regarding Tax Refunds:

- No immediate action is required by taxpayers.
- Refunds will be a part of 2006 tax returns filed in 2007.
- Refund claims will cover all excise tax paid on long-distance service over the last three years (time allowed given statute of limitations). Interest will be paid on refunds.
- The IRS is working on a simplified method for individuals to use with which to claim a refund on their 2006 tax returns.
- Refunds will not include tax paid on local telephone service, which was not involved in the litigation.
- Originally established in 1898 as a "luxury" tax on wealthy Americans who owned telephones, the federal excise tax on telephone calls is not compatible with today's modern information-age society.

contacting inactive property holders to inform them of the existence of their property. This can be good for business by generating owner gratitude and perhaps generating additional business from the owner. Further, continuing to do business with unclaimed property owners creates a viable defense that the property is actually not unclaimed and therefore, not escheatable.

Given the focus that is being placed on unclaimed property, there is a chance that your business will eventually be audited. It is unclear whether a previously noncompliant business, which files an initial report, increases its chance of being audited. Discovered property for unreported years will be subject to interest and penalty. Unfortunately, there are no formal incentives offered to businesses to voluntarily comply, so states,

in varying degrees, will negotiate terms for voluntary compliance. These terms range from waiver of penalties to shortened look back periods, so holders need to investigate their options with relevant states prior to their first report filing.

Because states have varying exemptions, holders need to do research. One trend is for states to allow a "business to business" exemption on the theory that these laws are designed to protect consumers. Another is to provide varying degrees of exemption for gift certificates. However, at the other extreme is a state trend to disallow expiration dates for gift certificates while deeming them to expire in, e.g., three years. Holders need to become familiar with the escheat laws for all states in which businesses are located with which they have affected unclaimed property owners.