

M e m o r a n d u m**295.1245**

To: Mr. J. D. Dotson

Date: March 11, 1983

From: John H. Murray

Subject: Surface Transportation Assistance Act of 1982-Title V
Highway Revenue Act of 1982

Your memorandum of January 17, 1983, has been referred to me for reply. The Surface Transportation Assistance Act of 1982, Public Law 97-424 (H.R. 6211), was enacted January 6, 1983. Title V of that act amends or adds provisions to Title 26 United States Code (Internal Revenue Code of 1954) relating to fuel and other highway taxes.

Section 511 of the act increases the rate of tax on gasoline, diesel, and special fuels from 4 cents a gallon to 9 cents a gallon effective April 1, 1983.

The tax on gasoline imposed by Title 26 United States Code Section 4081 is imposed upon the producer or importer. The imposition of the tax upon the producer or importer is not changed by the Surface Transportation Assistance Act of 1982. Accordingly, the amount of this tax is included within the meaning of "gross receipts" in Section 6012(a) (4) and in "sales price" under Section 6011 (b) (3).

Section 521 of the Surface Transportation Assistance Act imposes a floor stocks tax on gasoline subject to tax under Section 4081, which "on April 1, 1983, is held by a dealer for sale" at the rate of 5 cents a gallon. This floor stocks tax is not a tax upon the retail sale of the gasoline but is an expense of the retailer and, accordingly, would properly be included in the measure of his sales or use tax.

The federal tax on diesel fuel is imposed by 26 U.S.C. Section 4041. This tax is imposed upon the fuel "sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle, for use as a fuel in such vehicle..."

Section 4041 is amended by the Surface Transportation Assistance Act by deleting paragraphs (a) and (b) of that section and inserting new sections providing for the imposition of the tax on diesel fuel and other special fuels at the rate of 9 cents a gallon "sold by any person to

an owner lessee, or other operator of a diesel-powered highway vehicle for use as a fuel in such vehicle..." The same general language is used with respect to special motor fuels. The new sections also provide for various exemptions for off-highway use and exemptions for alcohol fuels. These do not affect our taxes.

The Surface Transportation Assistance Act of 1982 does not change the incidence of the diesel and special motor fuels tax from that which existed prior to the adoption of that act. Accordingly, the act does not affect our present method of taxing fuels for sales and use tax purposes.

Section 512 of the act adds Sections 4051 and following to 26 U.S.C. which impose a tax on the retail sales of federal taxes on trucks and trailers and terminates, as of April 1, 1983, the manufacturer's excise tax on trucks and trailers and terminates the federal manufacturer's tax on parts and accessories operative the day after the date of the enactment of the act.

The act imposes a 12 percent tax on the first retail sale of (a) automobile truck chassis; (b) automobile truck bodies; (c) truck, trailer, and semitrailer chassis; (d) truck trailer and semitrailer bodies; and (e) tractors of the kind chiefly used for highway transportation, in combination with a trailer or semitrailer and parts and accessories sold with these vehicles. The tax does not apply to the sale of automobile truck chassis and automobile truck bodies suitable for use with a vehicle chassis with a gross weight of 33,000 pounds or less. Also excluded from the tax are truck trailers and semitrailer chassis and bodies suitable for use with a trailer or semitrailer which has a gross vehicle weight of 26,000 pounds or less.

The tax applies to parts and accessories which are purchased separately from the purchase of the truck chassis or body and installed on the vehicle within six months after the vehicle is placed in service.

The manufacturer's excise tax on trucks, trailers, etc., shall not apply on and after April 1, 1983. The manufacturer's excise tax on parts and accessories shall not apply the day after the date of the enactment of the act.

Under new Section 4051(d), a transitional rule is set forth "in the case of any article taxable under subsection (a) [truck chassis, bodies, etc.] on which tax was imposed under Section 4061(a) [the prior manufacturer's excise tax], subsection (a) shall be applied by substituting '2 percent' for '12 percent.'"

The effect of these changes is to eliminate the manufacturer's excise tax on truck chassis, bodies, etc., and to impose a tax on the retail sale of these items.

The old manufacturer's excise tax was properly included in the measure of the sales and use tax. However, under the Surface Transportation Assistance Act of 1982, the 12 percent and the transitional 2 percent tax are excluded from the measure of our sales and use tax as these are taxes imposed on the retail sale or purchase of the taxed vehicles, etc.

Section 515 of the act repeals the manufacturer's excise tax on lubricating oil. No new tax is substituted for that tax.

Section 514 of the Surface Transportation Assistance Act amends subsection (a) of Section 4071, relating to the manufacturer's excise tax on tires and tubes to read: "(a) IMPOSITION AND RATE OF TAX.--There is hereby imposed on tires of the type used on highway vehicles, if wholly or in part made of rubber, sold by the manufacturer, producer, or importer a tax at the following rates:" varying from no tax on tires weighing not more than 40 pounds, to 15 cents per pound for tires weighing in excess of 40 pounds, to 50 cents per pound for tires weighing in excess of 90 pounds.

This amendment applies to articles sold on and after January 1, 1984. Section 521 imposes a floor stocks tax on those tires effective January 1, 1984. This floor stocks is imposed upon tires held by a dealer and which tires have not been used and are intended for sale.

This modification of the tax on tires does not affect the incidence of the federal tax. The tax is properly included in the measure of the sales and use tax.

If you have any further questions concerning this, please let me know.

cc: Mr. Douglas D. Bell
Mr. Robert Nunes
Mr. Arthur B. Skaggs
Mr. James J. Delaney
Mr. Gary J. Jugum
Mr. Donald J. Hennessy
Mr. W. E. Burkett