Unibody SUVs May Qualify for Exemption from Luxury Car Depreciation Caps

In Rev. Proc. 2003-75, 2003-2 CB 1018, the IRS announced a separate set of "luxury car" depreciation limitations for trucks or vans that do not have a gross vehicle weight in excess of 6,000 pounds. In this revenue procedure, the IRS stated: "For purposes of this revenue procedure, the term "trucks and vans" refers to passenger automobiles that are built on a truck chassis, including minivans and sport utility vehicles (SUVs) that are built on a truck chassis."

Although Section 2.01 of Rev. Proc. 2003-75 states that the definition applies "for purposes of this revenue procedure," the same definition subsequently appeared in the instructions for Form 4562, Depreciation and Amortization, and in IRS Publication 463, How to Depreciate Property, in the context of determining whether an SUV with a GVWR in excess of 6,000 pounds is a truck that is exempt from the luxury car depreciation caps. Generally, under Code Sec. 280F(d)(5)(B), only trucks and vans in excess of 6,000 GVWR are exempt from the caps.

By extending the definition in this manner, the IRS seemed to imply that SUVs and vans built on a car chassis (i.e., unibody) were not eligible for the exemption from the annual depreciation caps under the luxury car rules. Consequently, many practitioners who are aware of this background have not claimed exemption from the luxury car deprecation caps for a heavy SUV built on a unibody.

That may now change.

The IRS announced the applicable 2008 luxury car depreciation caps in Rev. Proc. 2008-22, I.R.B. 2008-12, 658. For the first time since the release of Rev. Proc. 2003-75, the language indicating that an SUV should be considered to be a truck if it was built on a truck chassis was omitted.

In an informal response to a CCH inquiry, the IRS indicated that the language in Rev. Proc. 2003-75 (and the subsequent annual depreciation cap update) was only intended to represent a safe harbor that taxpayers could use to determine whether an SUV qualifies for the higher depreciation caps that apply to trucks and vans with a GVWR of 6000 pounds or less. The IRS either has or will eliminate language in its publications and form instructions that equate an SUV to a truck if it is built on a truck chassis.

The IRS has no immediate plans to provide a specific definition of a truck for purposes of the exemption from the depreciation caps for trucks with a GVWR in excess of 6,000 pounds but did indicate that one common-sense approach is to base the definition of a truck on Department of Transportation guidelines.

Unfortunately, the Department of Transportation appears to provide several definitions of a truck for various purposes. The question then arises: "Which definition should apply for purposes of the Code Sec. 280F depreciation caps?"

The best answer may be to use the definition of a truck that applies for purposes of the gas guzzler tax under Code Sec. 4064. First, there is a certain logic to using consistent definitions of the same term within the Internal Revenue Code whenever possible. More importantly, however, Code Sec. 4064(b)(1); and Code Sec. 280F(d)(5) share an essentially common definition of the term passenger automobiles, which is also included in the regulations at Reg. §1.280F-6(c)and Reg. §48.4064-1(b)(3). The gas guzzler tax does not apply to nonpassenger automobiles, which includes light trucks. Reg. §48.4064-1(b)(3)(iv) states that the definition of a light truck for gas guzzler tax purposes is contained at 49 CFR 523.5 (1978).

Those regulations, which are issued by the National Highway Traffic Safety Administration (an agency of the DOT) in connection with CAFÉ (Corporate Average Fuel Economy) standards define a light truck as a four-wheel vehicle that is designed for off-road operation (has four-wheel drive or is more than 6,000 lbs. GVWR and has physical features consistent with those of a truck); or that is designed to perform at least one of the following functions: (1) transport more than 10 people; (2) provide temporary living quarters; (3) transport property in an open bed; (4) permit greater cargo-carrying capacity than passenger-carrying volume; or (5) can be converted to an open bed vehicle by removal of rear seats to form a flat continuous floor with the use of simple tools.

Applying this definition (and to the dismay of environmentalists), virtually every, if not all, heavy SUVs qualify as light trucks exempt from the gas guzzler tax. Annual lists of vehicles subject to the gas guzzler tax are located on the Environmental Protection Agency's website at http://www.epa.gov/fueleconomy/guzzler/index.htm.

Given the absence of any specific IRS definition of a truck for purposes of Code Sec. 280F (despite the specific regulatory authority granted in Code Sec. 280F(d)(5)(B)(iii)), it seems unlikely that the IRS would retroactively apply any definition that it may ultimately adopt. Thus, it appears reasonable to claim exemption from the depreciation caps if the manufacturer has or is entitled to categorize an SUV in excess of 6,000 GVWR as a light truck for purposes of the gas guzzler tax.

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REVISED
7:13 pm, Dec 12, 2008