

INTERNAL REVENUE SERVICE

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Dear

This is in response to a request for a ruling that Taxpayer's sales of the X and Y articles described below are not subject to the excise tax imposed on sport fishing equipment by § 4161(a) of the Internal Revenue Code. This request was submitted on your behalf by your authorized representative.

Taxpayer manufactures the X and Y articles of equipment. The X is an unenclosed carrying cart made of aluminum tubing and equipped with inflatable wheels, a handle to pull the cart, fishing rod-holders, and a removable cutting board and tray. Taxpayer represents that the X is designed and marketed as a product to transport various items used in the sport of fishing, such as tackle boxes, coolers, fishing poles, and bait containers. The Y is an aluminum device designed for use in catching sand fleas that are used as fishing bait. It consists of a long metal handle with a perforated metal box attached to the end.

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 4162(a) lists the items that come within the term "sport fishing equipment" for purposes of § 4161. Fishing rods and poles (and component parts therefor) are listed under § 4162(a)(1). Section 4162(a)(6) lists specific items of fishing supplies and accessories that are sport fishing equipment. Included therein are creels; tackle boxes; bags, baskets, and other containers designed to hold fish; portable bait containers; and landing nets. Section 4162(a)(8) lists fishing rod-holders.

Rev. Rul. 88-52, 1988-1 C.B. 356, defines the aforementioned items, among other definitions, of sport fishing equipment listed in § 4162(a) as follows:

A fishing rod or pole is any tube or shaft-like device (regardless of size or

length) made of natural, synthetic, or other material that is designed or used to cast, troll, or otherwise present a bait or lure to fish. The term "fishing rods and poles" does not include bamboo poles that are not designed or intended for use in fishing. Any pole intended for attaching a fishing line to or through is considered a fishing rod or pole. Jigsticks and other similar devices used in ice fishing are considered fishing rods or poles.

A creel is any portable container designed for storing and carrying fish from the time they are caught until the time they are removed from the container for consumption or preservation. A creel can be made of any material.

A tackle box is a portable container primarily designed, intended for use, or sold as an item in which to store or organize fishing paraphernalia like hooks, lures, flies, sinkers, or bobbers, until the items are placed on a fishing line, rod, or reel. A tackle box can be made of any material.

A bag, basket, or other container designed to hold fish is a container designed to be hung over the side of a boat or other structure to keep fish captive and alive in the water. These containers may be made of any material. The term includes collapsible baskets or any similar device designed for the same purpose.

A portable bait container is any portable device designed or sold as an article to hold or transport bait in connection with recreational fishing activities. Examples of portable bait containers are minnow buckets, killy cars (floating cages), and grasshopper cages.

A landing net consists 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. Any fishing net is taxable as a landing net if it can be used as a landing net and if it incorporates in its design the three major components of a landing net -- a handle, a hoop, and a bag-type net. A landing net may have a telescoping handle or may be made of material that floats.

A fishing rod-holder is a device that is portable and can be inserted into a beach, clamped onto a boat, or mounted onto any structure. A fishing rod-holder holds a rod or pole in a stationary position relative to the beach, boat, or structure. A storage rack for rods, generally known as a rod rack, is not considered a fishing rod-holder for this purpose.

Inasmuch as the X is designed and marketed as a transporter of items used in the sport of fishing, we must determine whether it falls within any of the definitions of the items of taxable sport fishing equipment that are designed for transportation, containerization, or storage. A creel is a portable container designed for storing and carrying fish subsequent to being caught. The X is not designed for storing or carrying

fish. A tackle box is designed to store or organize fishing paraphernalia. The X is designed to carry items such as a tackle box but is not itself a tackle box. The X, by its very design, is not a container designed to hold fish captive and alive while hung over the side of a boat or other structure. A portable bait container is designed to hold or transport bait in connection with recreational fishing activities. The X is a fairly large, two-wheeled carting device that is designed to transport items of sport fishing equipment, and although it has a fish cutting board and tray, it is not designed to hold or transport bait. Lastly, a fishing rod-holder is a device that is portable and can be inserted into a beach, clamped onto a boat, or mounted onto any structure. A fishing rod-holder holds a rod or pole in a stationary position relative to the beach, boat, or structure. The X is not designed to be inserted into a beach or installed on a boat or other structure. Neither is it designed to hold a rod or pole in a stationary position.

Since the Y is an item designed for bait collection, it must also be determined whether it falls within the definition of any of the items of sport fishing equipment that possess a retrieval or collection capability. A fishing rod or pole is designed to cast or troll or otherwise present a bait or lure to fish. The Y is not designed to cast or troll or to be used with bait. It is designed specifically to collect sand fleas from a beach. A portable bait container is designed to hold or transport bait. The Y, however, is designed merely to catch sand fleas for storage in a bucket or other suitable bait container. A landing net is comprised of a handle, hoop, and bag-type net and is designed for scooping fish out of the water. The Y is not equipped with a hoop or net. It uses a perforated metal box at the end of a metal handle and is not designed to scoop fish out of the water.

Accordingly, neither the X nor the Y falls within any of the definitions of taxable sports fishing equipment listed in § 4162(a). Taxpayer's sales of those articles are not subject to the tax imposed by § 4161(a)(1).

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that this document may not be used or cited as precedent.

Sincerely,
Associate Chief Counsel
(Passthroughs and Special Industries)
By: Richard A. Kocak
Chief, Branch 8

Enclosures (2):
Copy of this letter
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