

## Part III - Administrative, Procedural, and Miscellaneous

### Air transportation and aviation fuels excise taxes

Notice 2011-69

#### SECTION 1. OVERVIEW

This notice describes the relief the IRS will provide in connection with the retroactive extension of certain aviation related excise taxes by the Airport and Airway Extension Act of 2011, Part IV (Extension Act, Part IV) (Pub. L. 112-27).

#### SECTION 2. BACKGROUND

Before July 23, 2011, the Internal Revenue Code (Code) imposed excise taxes on amounts paid for taxable air transportation of persons (§ 4261) and property (§ 4271). In addition, the Code imposed excise taxes on certain removals, entries, and sales of aviation gasoline and aviation fuel (§ 4081). On July 23, 2011, the taxes imposed by §§ 4261 and 4271 expired under the terms of the Airport and Airway Extension Act of 2011, Part III (Pub. L. 112-21) and did not apply to amounts paid on and after that date. Air transportation providers were not authorized to collect these taxes for air transportation services purchased on and after July 23, 2011. Also under

the Airport and Airway Extension Act of 2011, Part III, the tax rates for aviation gasoline and aviation fuel taxes were reduced beginning on July 23, 2011.

On August 5, 2011, the President signed the Extension Act, Part IV, into law, reinstating the taxes imposed by §§ 4261 and 4271, and the pre-July 23, 2011, tax rates for aviation gasoline and aviation fuel as if they had never expired.

In an August 5, 2011, statement made pursuant to its authority under § 7805(a) (relating to prescribing rules as may be necessary by reason of any alteration of internal revenue laws), the IRS announced that it intends to provide relief for passengers and airlines with respect to ticket taxes that were not paid or collected on or after July 23, 2011, and before August 8, 2011. The IRS also announced that persons who purchased airline tickets before July 23, 2011, and traveled on or after July 23, 2011, and before the reinstatement of the taxes, are not entitled to a refund of the air transportation taxes imposed by § 4261.

### SECTION 3. AIR TRANSPORTATION TAXES

The air transportation excise taxes under §§ 4261 and 4271 of the Code are imposed on the person making the payment for the air transportation services and collected and paid over to the government by the person receiving that payment.

To relieve the administrative burden that would be associated with payment and collection of air transportation excise taxes on purchases that have already occurred, the IRS is providing the following relief with respect to these taxes:

1. Purchasers of air transportation services (including individuals who purchase frequent flyer miles for their own use) will not be required to pay, and air

transportation providers and other collectors of air transportation excise taxes will not be required to collect and pay over, taxes imposed by §§ 4261 and 4271 on purchases of air transportation services (or frequent flyer miles) for which payment was made after July 22, 2011, and before August 8, 2011.

2. Persons required to make deposits of tax in accordance with the rules provided under §§ 40.6302(c)-1 and 40.6302(c)-3 of the Excise Tax Procedural Regulations (Regulations) may treat the taxes imposed by §§ 4261 and 4271 as being in effect after July 22, 2011, and before August 8, 2011, for purposes of determining whether the safe harbor rules provided in § 40.6302(c)-1(b)(2) apply and in determining the amount of the net tax liability that is taken into account in applying those rules.

The relief granted in paragraph 1 of this section does not apply to any amount paid (and the value of any other benefit provided) to an air carrier (or any related person) for the right to provide mileage awards for (or other reductions in the cost of) any transportation of persons by air under § 4261(e)(3) (right to provide free or reduced rate air transportation). Purchases of the right to provide free or reduced rate air transportation made after July 22, 2011, and before August 8, 2011, are subject to the taxes imposed by § 4261. Accordingly, purchasers of the right to provide free or reduced rate air transportation are required to pay the taxes imposed by § 4261 on purchases made after July 22, 2011, and before August 8, 2011.

The relief provided in paragraph 1 applies only to amounts paid after July 22, 2011, and before August 8, 2011. Accordingly, purchasers of air transportation services

are required to pay, and air transportation providers and other collectors of air transportation excise taxes are required to collect taxes on air transportation services for which payment is made on or after 12:01 am, August 8, 2011. In addition, persons who purchased air transportation services (including purchasers of the right to provide free or reduced rate air transportation) before July 23, 2011, for travel after that date are not entitled to refunds of taxes paid on those purchases (other than refunds allowable under the law in effect after the enactment of the Extensions Act, Part IV).

#### SECTION 4. DEPOSITS OF TAX ON AVIATION GASOLINE AND KEROSENE FOR USE IN AVIATION

Section 4081 of the Code imposes excise taxes on certain removals, entries, and sales of aviation gasoline and aviation kerosene. On July 23, 2011, the tax imposed by § 4081(a)(2)(A)(ii) on aviation gasoline was reduced from 19.4 cents per gallon to 4.4 cents per gallon, but was reinstated by the Extension Act, Part IV, at 19.4 cents per gallon effective July 23, 2011. Also on July 23, 2011, the tax imposed by § 4081(a)(2)(C)(ii) on kerosene removed from any refinery or terminal directly into the fuel tank of an aircraft for use in noncommercial aviation (aviation kerosene) was reduced from 21.9 cents per gallon to 4.4 cents per gallon, but was reinstated by the Extension Act, Part IV at 21.9 cents per gallon tax effective July 23, 2011. Under § 40.6302(c)-1(b)(1) of the Regulations, persons required to make semimonthly deposits of tax on aviation gasoline and aviation kerosene generally must deposit at least 95 percent of the net tax liability incurred during the semimonthly period. The IRS will not impose § 6656 penalties with respect to semimonthly deposits made in August

2011 if the taxpayer made a timely deposit of at least 95 percent of the net tax liability for the semimonthly period determined without regard to the reinstated rates. The penalty relief provided in this section does not apply to taxpayers that deposit under the safe harbor rules of § 40.6302(c)-1(b)(2) (relating to depositing 1/6 of net tax liability reported for a look-back quarter).

#### SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Michael H. Beker of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Michael H. Beker at (202) 622-3130 (not a toll-free call).