

**INTERNAL REVENUE SERVICE**  
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

8/5/ 2004

Third Party Communication: None  
Date of Communication: Not Applicable

Number: **200530026**  
Release Date: 7/29/2005  
Index (UIL) No.: 4261.00-00  
CASE-MIS No.: TAM-169499-03/CC:PSI:B08

Area Director

Taxpayer's Name:  
Taxpayer's Address:

Taxpayer's Identification No  
Years Involved:  
Date of Conference:

LEGEND:

Air Carrier =  
City A =  
City B =  
X =  
Y =  
Z =  
Q =

ISSUE:

Whether, under the facts described below, the Air Carrier is liable for tax under § 4263(c) of the Internal Revenue Code on amounts paid to it for flights between City A and City B.

CONCLUSION:

The Air Carrier, under the facts described below, is not liable for tax under § 4263(c) on amounts paid to it for flights between City A and City B.

## FACTS:

The Air Carrier provides taxable air transportation between City A and City B, and collects payments from persons making payments subject to the air transportation taxes. Both City A and City B are within the United States.

Each of the Air Carrier's nonstop flights between City A and City B is composed of a non-domestic portion (which meets the requirements of § 4262(b)) and a domestic portion. According to the Air Carrier, the actual route flown between City A and City B varies based on flight traffic, weather, and other safety considerations as determined by the flight crews. Thus, it is not possible to determine the exact route to be flown at the time the ticket is purchased and the air transportation tax is imposed.

The Air Carrier uses the Great Circle route to calculate the distance flown between City A and City B. The Great Circle route is, generally speaking, the shortest distance between two points on the globe, and it is typically used to save both flying time and fuel. Of X Great Circle miles on the Great Circle route between City A and City B, the Air Carrier considers Y miles to be non-domestic and Z miles to be domestic. These domestic miles are Q percent of the total flight miles; therefore, the Air Carrier collects the § 4261(a) tax on Q percent of the amount paid for taxable transportation.

## LAW AND ANALYSIS:

Section 4261(a) imposes a tax on the amount paid for taxable transportation (as defined in § 4262) of any person. Section 4262 defines "taxable transportation" to include transportation by air that begins and ends in the United States.

Section 4262(b) provides that "taxable transportation" does not include the portion of any transportation by air that meets the following requirements:

- (1) the portion is outside the United States (US);
- (2) neither the portion nor any segment of it is directly or indirectly—
  - (A) between (i) a point where the route of the transportation leaves or enters the continental US, or (ii) a port or station in the 225-mile zone, and
  - (B) a port or station in the 225-mile zone;
- (3) the portion—
  - (A) begins at either (i) the point where the route of the transportation leaves the US, or (ii) a port or station in the 225-mile zone, and
  - (B) ends at either (i) the point where the route of the transportation enters the US, or (ii) a port or station in the 225-mile zone; and
- (4) a direct line from the point (or the point or station) specified in

§ 4262(b)(3)(A), to the point (or port or station) specified in § 4262(3)(B), passes through or over a point that is not within 225 miles of the US.

Section 49.4262(b)-1(c)(1)(i) of the Facilities and Services Excise Taxes Regulations provides that when a portion of transportation is excluded under § 4262(b), the tax may be computed on that portion of the total amount paid that the mileage of the taxable portion of the transportation bears to the mileage of the entire trip. Under § 49.4262(b)-1(c)(2), the basis for determining these proportions is the average mileage of the established route traveled by the carrier between given points under normal circumstances.

Section 4261(d) generally provides that taxes imposed by § 4261 shall be paid by the person making the payment subject to the tax and § 4291 generally provides that every person receiving any payment for taxable transportation on which a tax is imposed upon the payer thereof under § 4261 shall collect the amount of the tax from the person making the payment.

If any tax imposed by § 4261 is not paid at the time payment for transportation is made, § 4263(c) requires the carrier to pay the tax, subject to certain limitations not applicable herein.

Because a portion of the transportation between City A and City B meets all of the § 4262(b) requirements, such portion is exempt from the § 4261(a) tax. The methodology used by the Air Carrier to calculate the basis for the tax imposed by § 4261(a) is consistent with the requirements of § 49.4262(b)-1(c) because the Great Circle route is the route that a carrier would travel in a nonstop flight under normal circumstances. Calculating the miles in a nonstop flight between City A and City B using the Great Circle route, where variations in the actual flight path taken are de minimis, is not contrary to the requirements of these regulations.

#### CAVEATS:

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) provides that it may not be used or cited as precedent. Under § 6110(c), names, addresses, and identifying numbers have been deleted.