

**Office of Chief Counsel
Internal Revenue Service
*memorandum***

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Third Party Communication: None
Date of Communication: Not Applicable

UILC: 4281.00-00

date: July 25, 2012

to: Holly L. McCann
Chief, Excise Tax Program

from: Frank Boland
Chief, Branch 7
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

subject: Application of new § 4281 jet aircraft provision to helicopters

This Chief Counsel Advice responds to your request for assistance dated May 22, 2012. This advice may not be used or cited as precedent.

ISSUE

Whether § 4281 of the Internal Revenue Code (Code) exempts from the taxes imposed by §§ 4261 and 4271 amounts paid for air transportation provided in jet-powered helicopters that have a maximum certified takeoff weight of 6,000 pounds or less.

CONCLUSION

Section 4281 does not exempt from the taxes imposed by §§ 4261 and 4271 amounts paid for air transportation provided in jet-powered helicopters that have a maximum certified takeoff weight of 6,000 pounds or less.

FACTS

A helicopter is an aircraft in which lift and thrust are supplied by one or more engine-driven rotors.

In a piston-driven engine, fuel and air are mixed and ignited in a combustion chamber. The combustion results in pressure that drives a reciprocating piston to create a rotating motion. In contrast, a turbine engine has an upstream rotating compressor coupled to a downstream turbine, and a combustion chamber in between. A turboshaft engine is a type of turbine engine that is optimized to produce turbine shaft power rather than jet thrust. Turboshaft engines are commonly used in helicopters.

LAW AND ANALYSIS

Section 4281 exempts from the taxes imposed by §§ 4261 and 4271 transportation by an aircraft having a maximum certificated takeoff weight of 6,000 pounds or less, except when such aircraft is operated on an established line or when such aircraft is a jet aircraft.

The phrase “or when such aircraft is a jet aircraft” was added to § 4281 by section 1107 of the FAA Modernization and Reform Act of 2012 (Act) (Pub. L. 112-95) and applies after March 31, 2012. The conference report to the Act, H.R. Conf. Rep. 112-381, 281 (Conference Report), explains that the provision repeals the exemption provided by § 4281 as it “applies to turbine engine powered aircraft (jet aircraft).”

You asked whether § 4281 exempts from the taxes imposed by §§ 4261 and 4271 amounts paid for air transportation provided in jet-powered helicopters that have a maximum certified takeoff weight of 6,000 pounds or less. The answer to your question turns on whether the term “jet aircraft” includes jet-powered helicopters.

A helicopter that is powered by a turboshaft engine, which is a type of turbine engine, is powered by a jet engine. Thus, such helicopter is a “jet aircraft” as that term is used in § 4281.

Accordingly, we conclude that § 4281 does not exempt from the taxes imposed by §§ 4261 and 4271 transportation provided in a jet-powered helicopter.

Please call Michael Beker at (202) 622-3130 if you have any further questions.