

ACTION ON DECISION

SUBJECT: Royal Caribbean Cruises, Ltd. V. United States
108 F.3d 290 (11th Cir. 1997), aff'g 95-2 USTC
¶ 70,050 (S.D. Fla. 1995).

ISSUE: Whether I.R.C. § 4471, which imposes a one-excise tax of \$3.00 for each passenger who "embarks" or "disembarks" a commercial vessel in the United States, but makes intermediate stops in the United States, where passengers temporarily leave the ship.

DISCUSSION: Section § 4471 imposes an excise tax of \$3.00 per passenger on a "covered voyage," which is defined in section 4472(1)(A)(i) as a voyage of a commercial passenger vessel which extends over one or more nights during which passengers embark or disembark the vessel in the United States. The tax is imposed only once for each passenger "at the time of first embarkation or disembarkation in the United States. " Section 4471(c).

The government's position at trial and on appeal was that "first embarkation or disembarkation" is meant to include an intermediary stop of the vessel. The taxpayer's position is that those terms were meant only to include the beginning or end of a voyage.

The ultimate litigation of this issue in both the district court and the Eleventh Circuit was unfavorable to the government. In both cases, the court found that the terms "embarkation" and "disembarkation" were ambiguous, and construed them in favor of the taxpayer. The Eleventh Circuit specifically found that the regulations under section 4471 favored the taxpayer's interpretation.

While we continue to believe that the terms are not ambiguous and that our reading of the statute and legislative history is correct, we do not believe that it will be productive history is correct, we do not believe that it will be productive to attempt to create a conflict of circuits. However, because the impact of this case is limited in scope, the Service will no longer litigate cases involving the tax imposed on passengers making only intermediary stops in the United States, but who begin and end their voyages outside the United States.

RECOMMENDATION: Acquiescence.

/s/

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REVIEWERS:

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/s/

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