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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40 and 49

[TD 9948]

RIN 1545-BP37

Excise Taxes; Transportation of Persons by Air; Transportation of Property by Air;

Aircraft Management Services

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the excise taxes imposed on certain amounts paid for transportation of persons and property by air. Specifically, the final regulations relate to the exemption for amounts paid for certain aircraft management services. The final regulations also amend, revise, redesignate, and remove provisions of existing regulations that are out-of-date or obsolete and generally update the existing regulations to incorporate statutory changes, case law, and other published guidance. The final regulations affect persons that provide air transportation of persons and property, and persons that pay for those services.

DATES: Effective Date: These regulations are effective [**INSERT DATE OF FILING FOR PUBLIC INSPECTION**].

Applicability Dates: For dates of applicability, see §§40.0-1(e), 49.4261-1(g), 49.4261-2(d), 49.4261-3(e), 49.4261-7(k), 49.4261-9(c), 49.4261-10(i), 49.4262-1(f), 49.4262-2(e), 49.4262-3(e), 49.4281-1(e), 49.4263-1(b), 49.4263-3(b), 49.4271-1(g), and 49.4721-2.

FOR FURTHER INFORMATION CONTACT: Michael H. Beker at (202) 317-6855 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Facilities and Services Excise Tax Regulations (26 CFR part 49) under sections 4261, 4262, 4263, 4264, 4271, 4281, and 4282 of the Internal Revenue Code (Code). This document also amends the Excise Tax Procedural Regulations (26 CFR part 40).

Sections 4261 and 4271 impose excise taxes on certain amounts paid for transportation of persons or property, respectively, by air, collectively referred to herein as “air transportation excise tax.” Section 13822 of Public Law 115-97, 131 Stat. 2054, 2182 (2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA), added an exception to the air transportation excise tax in new section 4261(e)(5). Specifically, section 4261(e)(5)(A) provides that “[n]o tax shall be imposed by [section 4261] or section 4271 on any amounts paid by an aircraft owner for aircraft management services related to – (i) maintenance and support of the aircraft owner's aircraft, or (ii) flights on the aircraft owner's aircraft.”

Section 4261(e)(5)(B) defines the term “aircraft management services” to include: (a) assisting an aircraft owner with administrative and support services, such as scheduling, flight planning, and weather forecasting; (b) obtaining insurance; (c) maintenance, storage, and fueling of aircraft; (d) hiring, training, and provision of pilots and crew; (e) establishing and complying with safety standards; and (f) such other services as are necessary to support flights operated by an aircraft owner.

Section 4261(e)(5)(C)(i) provides that the term “aircraft owner” includes a person who leases an aircraft other than under a “disqualified lease.” Section 4261(e)(5)(C)(ii) defines the term “disqualified lease” for purposes of section 4261(e)(5)(C)(i) as “a lease from a person providing aircraft management services with respect to the aircraft (or a related person (within the meaning of section 465(b)(3)(C)) to the person providing such services), if the lease is for a term of 31 days or less.”

Finally, section 4261(e)(5)(D) provides that in the case of amounts paid to any person which (but for section 4261(e)(5)) are subject to air transportation excise tax, a portion of which consists of amounts described in section 4261(e)(5)(A), section 4261(e)(5) “shall apply on a pro rata basis only to the portion which consists of amounts described in” section 4261(e)(5)(A). The Conference Report accompanying the TCJA, H.R. Rep. No. 115-466, at 536 (2017) (Conference Report), provides that in the event that a monthly payment made to an aircraft management company is allocated in part to exempt services and flights on the aircraft owner's aircraft, and in part to flights on aircraft other than that of the aircraft owner, air transportation excise tax must be collected on that portion of the payment attributable to flights on aircraft not owned by the aircraft owner.

On July 31, 2020, a notice of proposed rulemaking (REG-112042-19) was published in the **Federal Register** (85 FR 46032) under sections 4261, 4262, 4263, 4264, 4271, 4281, and 4282 of the Code, and part 40 of the Excise Tax Procedural Regulations (proposed regulations). No public hearing was requested or held. The Department of the Treasury (Treasury Department) and the IRS received three comments in response to the proposed regulations. The comments addressing the proposed regulations are summarized in the Summary of Comments and Explanation of Revisions section of this preamble. All comments were considered and are available at www.regulations.gov or upon request. After full consideration of the comments received, this Treasury decision adopts as final regulations the proposed regulations with the modifications described in the Summary of Comments and Explanation of Revisions section of this preamble.

Summary of Comments and Explanation of Revisions

I. Overview

The final regulations retain the basic approach and structure of the proposed regulations, with certain revisions and modifications. This Summary of Comments and Explanation of Revisions discusses these revisions and modifications as well as the comments received in response to the proposed regulations. The final regulations provide guidance under sections 4261, 4262, 4263, 4264, 4271, 4281, and 4282 of the Code related to air transportation excise tax. The final regulations also provide guidance under part 40 of the Excise Tax Procedural Regulations.

Part II of this Summary of Comments and Explanation of Revisions discusses rules related to the exemption from air transportation excise tax for amounts paid for

certain aircraft management services provided in section 4261(e)(5) of the Code (aircraft management services exemption). Part III of this Summary of Comments and Explanation of Revisions discusses §49.4261-1 and other rules of general applicability related to the excise tax on amounts paid for the transportation of persons by air imposed by section 4261, as well as rules in §49.4261-7(h)(2) related to aircraft charters. See the Explanation of Provisions section of the proposed regulations for a discussion of the rules under 26 CFR part 40 and 26 CFR part 49 that were included in the proposed regulations, for which no comments were received. Those proposed rules are adopted by this Treasury decision – except as discussed in parts II and III of this Summary of Comments and Explanation of Revisions – without change.

II. Aircraft Management Services Exemption Rules

a. Definition of Aircraft Management Services

Proposed §49.4261-10(b)(1) defined the term “aircraft management services” to mean the services listed in section 4261(e)(5)(B), as well as “other services.” Proposed §49.4261-10(b)(1)(ii) defined “other services” as any service (including, but not limited to, purchasing fuel, purchasing aircraft parts, and arranging for the fueling of an aircraft owner’s aircraft) provided directly or indirectly by an aircraft management services provider to an aircraft owner, that is necessary to keep the aircraft owner’s aircraft in an airworthy state or to provide air transportation to the aircraft owner on the aircraft owner’s aircraft at a level and quality of service required under the agreement between the aircraft owner and the aircraft management services provider.

A commenter stated that the term “airworthy” generally indicates that an aircraft – or one or more of its component parts – meets its type design and is in a condition of

safe operations. The commenter noted that some services provided by an aircraft management services provider in maintaining an aircraft do not directly pertain to the airworthiness of an aircraft. These services include, but are not limited to, upgrades in equipment, installation of optional equipment, optional modifications, refurbishment of an aircraft interior, and painting of an aircraft's exterior. The commenter suggested that the final regulations remove the phrase "that is necessary to keep the aircraft owner's aircraft in an airworthy state" from the definition of "other services."

The Treasury Department and the IRS agree with the commenter that the final regulations should clarify that the definition of aircraft management services is not limited to those services necessary to keep an owner's aircraft in an airworthy state. As a result, the final regulations adopt the change suggested by the commenter and remove the phrase "that is necessary to keep the aircraft owner's aircraft in an airworthy state" from final §49.4261-10(b)(1)(ii).

b. Definition of Aircraft Owner

i. Leases

Proposed §49.4261-10(b)(3)(i) provided that the term "aircraft owner" means an individual or entity that leases or owns (that is, holds title to or substantial incidents of ownership in) an aircraft managed by an aircraft management services provider, commonly referred to as a "managed aircraft." Proposed §49.4261-10(b)(3)(i) further provided that the term "aircraft owner" does not include a lessee of an aircraft under a disqualified lease, as defined in proposed §49.4261-10(b)(4).

Regarding leases that qualify a person as an aircraft owner under proposed §49.4261-10(b)(3)(i), a commenter noted that while many aircraft leases are in writing

and contain provisions that make it clear that the arrangement constitutes a lease, that is not the case for all aircraft leasing arrangements. The commenter further noted that courts have found that the basic attributes of a lease are “the right to possess, use, and control the aircraft” (citing Petit Jean Air Service, Inc v. U.S., 74-1 U.S.T.C. 16, 135 (E.D. Ark. 1974)). To this end, the commenter suggested that the final regulations add to the end of §49.4261-10(b)(3)(i) the sentence “An arrangement (whether written, oral, or implied) that transfers the right to possess, use, and control an aircraft to an individual or entity qualifies as a lease for the purposes of determining whether that individual or entity meets the definition of aircraft owner.”

The Treasury Department and the IRS note that the suggested “right to possess, use, and control an aircraft” language from the commenter is nearly identical to the possession, command, and control test created through existing published guidance. As described in the preamble to the proposed regulations, possession, command, and control is a facts-and-circumstances analytical framework that is used to determine whether a person is providing taxable transportation to another person in cases where each of the parties contribute some, but not all, of the elements necessary for complete air transportation services. The possession, command, and control test has caused confusion and uncertainty in the air transportation excise tax area for decades; in fact, it is partly for that reason – and disagreements between the IRS and taxpayers over the application of the possession, command, and control test to aircraft management services arrangements – that section 4261(e)(5) was added to the Code. See, e.g., Conference Report at 535. As explained in the preamble to the proposed regulations, section 4261(e)(5) directly addresses a situation that, but for section 4261(e)(5), would

be analyzed using the possession, command, and control test. The preamble to the proposed regulations further explained that in situations to which the aircraft management services exemption applies, the possession, command, and control test is not relevant.

As a result, the Treasury Department and the IRS decline to introduce into the final regulations a test that is similar to a test that has been the source of confusion, uncertainty, disagreement, and difficulties in administration. Therefore, the final regulations do not adopt the language the commenter proposed to be added to the end of §49.4261-10(b)(3)(i) and do not provide a special definition of the term “lease” solely for purposes of the aircraft management services exemption.

ii. Owner trusts

A commenter requested clarification regarding whether trustees and beneficiaries of “owner trusts” qualify as aircraft owners for purposes of the aircraft management services exemption. The commenter described an owner trust as an ownership structure used for the limited purpose of registering an aircraft in the U.S. with the Federal Aviation Administration (FAA). The structure, which is sanctioned by the FAA, is commonly used by non-U.S. persons to satisfy the U.S. citizenship requirements applicable to registering an aircraft with the FAA. Most owner trusts are established using one of a small number of U.S.-based aviation trust companies – which are not related to the trust beneficiary – as trustee. The trustee holds legal title to the aircraft and satisfies the U.S. citizenship requirement for purposes of registering the aircraft with the FAA, thereby permitting registration in the U.S. of an aircraft that would otherwise be ineligible for such registration.

The commenter stated that an owner trust agreement works in conjunction with an operating agreement that, generally, is separate from, but closely related to, the trust agreement. The operating agreement may contain explicit lease language or may instead use the term "license to use" and provides that the beneficiary holds the exclusive right to lease or license and to possess, use, and operate the aircraft (typically requiring a nominal rent or license payment to the trustee, or in some cases, no payment at all). Regardless of how the transfer of control is described in the operating agreement, the result is that the beneficiary holds the exclusive right to lease or license the aircraft, and to possess, use, and operate the aircraft. An operating agreement will usually require that the beneficiary retain the crew and maintain the aircraft per FAA guidance and manufacturer's recommendations. The commenter stated that the relationship created through the operating agreement is consistent with the trustee's status as a holder of only bare legal title, sometimes referred to as "nominal title," to the aircraft.

In addition, the commenter explained that the beneficiary of an owner trust holds many of the attributes of aircraft ownership, other than legal title. The attributes of aircraft ownership that the beneficiary possesses include: the right to any income generated by – and obligation to pay all expenses associated with – the aircraft; the upside benefit or downside risk as to the aircraft's value; bearing the risk of loss; being considered the owner of the aircraft for Federal income tax purposes; and discretion as to when to sell the aircraft. The commenter noted that since both the trustee and the beneficiary of an owner trust are owners of interests in the aircraft, payments for aircraft management services from either party should be eligible for the aircraft management

services exemption. The commenter further noted that regardless of whether the operating agreement is written in terms of a lease or a license, the arrangement is not a disqualified lease (as that term was defined in proposed §49.4261-10(b)(4)).

For purposes of section 4261(e)(5), such an operating agreement between the trustee and the beneficiary of an owner trust is treated as a lease, regardless of whether the document expressly refers to the arrangement as a lease. Therefore, under the terms of the operating agreement, the beneficiary of an owner trust is the lessee of the aircraft held in trust. Both section 4261(e)(5)(C) and proposed §49.4261-10(b)(3) recognize lessees, other than lessees under a disqualified lease, as an aircraft owner.

Based on the foregoing, the final regulations include a definition of “owner trust.” The final regulations also clarify that the beneficiary of an owner trust is an “aircraft owner” so long as the lease is not a disqualified lease.

iii. Affiliated groups, disregarded entities, and other close relationships

As discussed in the preamble to the proposed regulations, the proposed regulations applied the principle of statutory interpretation that, as matters of legislative grace, exemptions to tax should be narrowly construed. Therefore, the proposed regulations defined “aircraft owner” as an individual or entity that leases (other than under a disqualified lease) or owns (that is, holds title to or substantial incidents of ownership in) an aircraft managed by an aircraft management services provider. The proposed regulations did not include in the definition of “aircraft owner” persons that are related to the aircraft owner (for example, another member of the same affiliated group (as defined in section 4282 of the Code)), but are not the aircraft owner itself. As a result, under the proposed regulations, the aircraft management services exemption

applied only to payments for aircraft management services that are made by the actual aircraft owner or lessee.

A commenter disagreed with the assertion in the preamble to the proposed regulations that treating payments from parties who are directly related to an aircraft owner as though they were from the aircraft owner, and thus exempt from air transportation excise tax, “would effectively expand the exemption [provided in section 4261(e)(5)] in a manner not authorized by Congress.” The commenter claimed that this assertion is at odds with other Code provisions and implies an unduly narrow and formalistic interpretation of the statute that is inconsistent with the flexible approach otherwise evinced in the proposed regulations. The commenter further claimed that the assertion has no basis in the legislative history, but rather the legislative history implies that at least some related-party payments of aircraft management fees should be excluded from air transportation excise tax under section 4261(e)(5).

The commenter noted that while the statute and legislative history are relatively silent about who or what the term “aircraft owner” includes, the legislative history enumerates several examples of what the term *does not* include. Specifically, the legislative history states that the term “aircraft owner” does not include ownership of stock in a commercial airline or participation in a fractional aircraft ownership program. The commenter stated that the legislative history expresses Congress’s concern about the use of the aircraft management services exemption to circumvent the ordinary application of air transportation excise tax as contemplated in other Code provisions. By negative inference, the commenter reasoned, Congress did not express any similar concerns if the aircraft management services exemption applied to payments made by a

party related to the aircraft owner. The commenter asserted that the narrow interpretation of “aircraft owner” in the proposed regulations does nothing to further Congress’s goal of preventing arrangements designed to circumvent the ordinary application of air transportation excise tax.

The commenter asserted that when an affiliated corporation in a corporate group pays for aircraft management services on behalf of an aircraft owning corporate entity within the group, there is no avoidance of air transportation excise tax. Further, the commenter asserted that there is statutory precedent for ignoring the distinction among corporate entities in the air transportation excise tax area; specifically, the commenter pointed to the affiliated group exemption provided in section 4282 of the Code. Under section 4282(a), if one member of an affiliated group is the owner or lessee of an aircraft, and such aircraft is not available for hire by persons who are not members of such group, air transportation excise tax does not apply to any payment received by one member of the affiliated group from another member of such group for services furnished to such other member in connection with the use of such aircraft. Citing the legislative history to section 4282 (see S. Rep. No. 91-706 at 17-18, 1970-1 C.B. 386), the commenter asserted that section 4282 captures Congress’s general approach to related-party payments in the area of air transportation excise tax; that is, Congress decided to ignore nominal ownership of an aircraft by one member of an affiliated group and instead looked to the true economic ownership of the aircraft by the group. The commenter asserted that the final regulations should do the same and ignore the formalities of nominal ownership of an aircraft and apply the aircraft management

services exemption to payments by any party that is the true economic owner of the aircraft.

The commenter requested that the Treasury Department and the IRS consider expanding the definition of “aircraft owner” to include disregarded entities, members of an affiliated group, and family members. The commenter also noted that it is not uncommon for an individual to operate an aircraft but place title to the aircraft in a single member limited liability company (SMLLC) and that such arrangement is, in effect, a constructive lease, but that state law concepts of constructive leases will result in needless and complex controversy.

Another commenter similarly requested that the Treasury Department and the IRS consider expanding the definition of “aircraft owner” to include the single member of a SMLLC that holds title to an aircraft. The commenter reasoned that if the member pays an aircraft management services provider for aircraft management services on behalf of the SMLLC, it is economically indistinguishable from a case in which the individual first transfers funds into the SMLLC and then the SMLLC pays the aircraft management services provider. In either situation, the commenter asserted, there is no circumvention of air transportation excise tax; the only difference is who writes the check paying the aircraft management services provider.

The Treasury Department and the IRS continue to have the concerns described in the preamble to the proposed regulations. Specifically, the Treasury Department and the IRS are concerned that extending the aircraft management services exemption to payments made by certain related parties – as suggested by the commenters – would effectively ignore the requirement that payments be made by the “aircraft owner.” Such

an interpretation would be inconsistent with a plain reading of the statute and would violate a fundamental principle of statutory construction – that effect must be given, if possible, to every word Congress uses in the statute. See U.S. v. Menasche, 348 U.S. 528, 538–539 (1955).

Further, as described in the preamble to the proposed regulations, a fundamental aspect of administering the Federal excise tax laws is respecting each entity as an entity separate from its owner. See §1.1361-4(a)(8) of the Income Tax Regulations and §301.7701-2(c)(2)(v) of the Procedure and Administration Regulations. This longstanding treatment of a wholly-owned entity as an entity separate from its owner for Federal excise tax purposes applies even though the entity may not be viewed as separate from its owner for Federal income tax purposes. Consistent with this longstanding treatment, final §40.0-1(d) of the Excise Tax Procedural Regulations makes it clear that each business unit that is required to have a separate Employer Identification Number is treated as a separate person. The Treasury Department and the IRS decline to create what would effectively be an exception to the way certain entities are treated for Federal excise tax purposes because this would create unnecessary confusion among taxpayers and IRS examiners. For example, it would not be appropriate to respect an entity for fuel excise tax liability and reporting purposes but then disregard the same entity for purposes of the aircraft management services exemption even though a transaction may involve the same aircraft.

Based on the foregoing, the final regulations do not generally incorporate the commenters' request to expand the definition of "aircraft owner" to include disregarded entities, members of an affiliated group, or family members of the owner. Instead, the

final regulations clarify that amounts paid for aircraft management services by a party related to the aircraft owner (including members of an affiliated group, members of a limited liability company, disregarded entities, and family members) are not amounts paid by the aircraft owner solely by virtue of the relationship between the aircraft owner and the related party. The final regulations further clarify that if one related party leases an aircraft to another related party, amounts paid by the lessee to an aircraft management services provider for aircraft management services related to the leased aircraft qualify for the aircraft management services exemption, provided the lease is not a disqualified lease and all other requirements of section 4261(e)(5) are satisfied.

v. Principal-agent

Proposed §49.4261-10(a)(1) provided, in relevant part, that the aircraft management services exemption does not apply to amounts paid to an aircraft management services provider on behalf of an aircraft owner (other than in a principal-agent scenario in which the aircraft owner is the principal).

A commenter requested that the final regulations clarify what relationships qualify as a “principal-agent scenario” for purposes of qualifying payments for the aircraft management services exemption. The commenter noted that all entities, depending on the type of entity formation, have one or more officers, directors, managers, members or partners that may be in a principal-agent relationship with an aircraft owner. Therefore, the commenter suggested that the final regulations clarify that for purposes of §49.4261-10(a)(1), officers and directors of corporations, managers and members of limited liability companies (LLCs), and partners of a partnership are deemed agents when such corporations, LLCs, or partnerships are the aircraft owner. Alternatively, the

commenter suggested that the final regulations clarify that the agency laws of the individual fifty states should be recognized for purposes of determining whether a principal-agent relationship exists between an aircraft owner and another person.

As a general matter, for Federal tax purposes, state agency law applies in determining whether a principal-agent relationship exists. Likewise, in the context of the aircraft management services exemption, state law applies in determining whether the relationship between the aircraft owner and another person is a principal-agent relationship. Therefore, the final regulations adopt the principal-agent language from the proposed regulations as written. The Treasury Department and the IRS will consider providing additional guidance on this issue and invite comments regarding whether a principal-agent rule that relates specifically to the aircraft management services exemption is necessary. Any comments that favor additional guidance should include suggestions for how a more detailed principal-agent rule should be structured. Unless and until the Treasury Department and the IRS provide additional guidance, state agency law applies in determining whether a principal-agent relationship exists between the aircraft owner and another person.

vi. Evidence that payments are made by the aircraft owner

Regarding proposed §49.4261-10(a)(3), a commenter requested that the final regulations clarify what facts or evidence are sufficient to show that the aircraft owner is the party making the payments to the aircraft management services provider so that those payments qualify for the aircraft management services exemption. The commenter suggested that the final regulations provide that “reasonable documentation” from the aircraft owner stating that payments for aircraft management

services originate from a source covered by the aircraft management services exemption will satisfy the aircraft management services provider's obligation to determine whether a payment comes from a permissible source and constitutes adequate documentation thereof. The commenter believes that including this rule in the final regulations will improve administrability for both aircraft management services providers and the IRS.

The task of verifying the source of every payment received by an aircraft management services provider for services related to an aircraft owner's aircraft is a burdensome one for aircraft management services providers. Verification is important because if a payment is received from someone other than the aircraft owner (as that term is defined in the final regulations), the aircraft management services exemption does not apply and the aircraft management services provider must collect any applicable air transportation tax on the amount paid. If the aircraft management services provider fails to do so, section 4263(c) applies. See also §49.4261-1(b)(2).

The Treasury Department and the IRS recognize that in the context of the aircraft management services exemption, it is important for aircraft management services providers to understand their obligations with regard to verifying that payments are made by aircraft owners and that failure to verify may trigger the application of section 4263(c). However, because section 4263(c) has broad implications for all members of the air transportation industry, issues related to section 4263(c) require additional study and input from a broader cross-section of stakeholders in the air transportation industry. Accordingly, these issues should be addressed in a separate published guidance project.

vii. Substantial incidents of ownership

Proposed §49.4261-10(b)(3)(i) provided, in relevant part, that the term “aircraft owner” means an individual or entity that leases or owns (that is, holds title to or substantial incidents of ownership in) an aircraft managed by an aircraft management services provider, commonly referred to as a “managed aircraft.” The Treasury Department and IRS did not receive comments specifically relating to the “substantial incidents of ownership” language. However, the “substantial incidents of ownership” language is problematic because, among other things, it creates an opportunity for abuse by providing a mechanism by which parties can circumvent the disqualified lease rule in section 4261(e)(5)(C). For example, parties that wish to enter into an aircraft lease for 31 days or less could structure the transaction as a transfer of substantial incidents of ownership in the aircraft for a period of 31 days or less. By doing so, the parties could avoid creating a disqualified lease while still availing themselves of the exemption in section 4261(e)(5). Congress clearly did not intend for the aircraft management services exemption to apply in such situations as evidenced by the disqualified lease language in section 4261(e)(5)(C). Because of these concerns, the final regulations clarify that the phrase “substantial incidents of ownership” in §49.4261-10(b)(3)(i) does not apply to an interest with a duration of 31 days or less.

viii. Other Changes Related to the Definition of Aircraft Owner

As stated earlier, proposed §49.4261-10(b)(3)(i) defined “aircraft owner”, in relevant part, in terms of “an individual or entity.” Final §49.4261-10(b)(3)(i) replaces the phrase “individual or entity” with the word “person.” This change improves the precision of the aircraft owner definition because the Code provides a generally

applicable definition of “person” in section 7701(a)(1). This change also makes §49.4261-10(b)(3)(i) easier to read.

b. Fractional Ownership Aircraft and Other Arrangements

Proposed §49.4261-10(b)(3)(ii) provided that a participant in a fractional aircraft ownership program, as defined in section 4043(c)(2) of the Code, does not qualify as an aircraft owner of the program’s managed aircraft if the amount paid for such person’s participation is exempt from air transportation excise tax by reason of section 4261(j). Proposed §49.4261-10(b)(3)(ii), referred to herein as the “other arrangements anti-abuse rule,” further provided that a participant in a business arrangement that seeks to circumvent the surtax imposed by section 4043 by operating outside of subpart K of 14 CFR part 91, and that allows an aircraft owner the right to use any of a fleet of aircraft (through an aircraft interchange agreement, through holding nominal shares in a fleet of aircraft, or any other similar arrangement), is not an aircraft owner with respect to any of the aircraft owned or leased as part of that business arrangement.

A commenter observed that the other arrangements anti-abuse rule appears to be aimed at persons who create a structure providing access to a fleet of aircraft that fails to meet the definition of “fractional ownership aircraft program” in section 4043 in an effort to avoid the fuel surtax imposed by section 4043, while retaining the right to claim the aircraft management services exemption to also avoid paying air transportation excise tax. The commenter further observed that the phrase “seeking to circumvent the surtax imposed by section 4043” in the other arrangements anti-abuse rule indicates that for the rule to apply, the primary intent in creating the arrangement must be to avoid the section 4043 surtax. Thus, the commenter noted, if there is a

legitimate non-tax business purpose for creating the structure, the other arrangements anti-abuse rule should not apply, and the aircraft management services exemption should apply to amounts paid for aircraft management services relating to the aircraft in the structure. The commenter also observed that the phrase “right to use any of a fleet of aircraft (through an aircraft interchange agreement, through holding nominal shares in a fleet of aircraft, or any other similar arrangement)” in the proposed rule appears to apply to structures that are akin to fractional programs, but do not meet the definition of a fractional program in section 4043(c)(2).

Based on the foregoing observations, the commenter disagreed with several aspects of the other arrangements anti-abuse rule. First, the commenter disagreed with the proposed rule as unclear regarding how it would apply to structures that provide access to a fleet of aircraft that exist for reasons unrelated to the applicability of the fuel surtax imposed by section 4043. The commenter further disagreed with the proposed rule for failing to define the point at which a structure becomes enough like a fractional ownership aircraft program for the rule to apply. Finally, the commenter disagreed with the proposed rule because the commenter believes that it can be misinterpreted to include various legitimate structures in which aircraft management services are provided, including (a) instances where a substitute aircraft is provided from the aircraft management services provider's charter fleet (which is addressed in proposed §49.4261-10(c)); (b) leasing structures where a lessor is providing an insured and maintained aircraft but no pilots (which would not have previously been subject to the tax under the possession, command and control test); and (c) the routine use of interchange agreements between aircraft owners.

The Treasury Department and the IRS share the concerns of the commenter that the proposed other arrangements anti-abuse rule may capture aircraft ownership structures and leasing arrangements that are legitimate and not created for purposes of circumventing the fuel surtax imposed by section 4043. The Treasury Department and the IRS are further concerned that the other arrangements anti-abuse rule would create too much taxpayer uncertainty and confusion, which would be compounded by the similarly worded rule in proposed §49.4261-10(i) (see later discussion of this rule). As a result, the final regulations in §49.4261-10(b)(3)(ii) do not include the other arrangements anti-abuse rule. Therefore, the final regulations in §49.4261-10(b)(3)(ii) merely clarify and confirm that a participant in a fractional ownership aircraft program is not an aircraft owner for purposes of the exemption in section 4261(e)(5) if the amount paid for such person's participation is exempt from the tax imposed by section 4261 by reason of section 4261(j).

c. Definition of Disqualified Lease

Proposed §49.4261-10(b)(4) provided that the term "disqualified lease" has the meaning given to it by section 4261(e)(5)(C)(ii). Proposed §49.4261-10(b)(4), referred to herein as the "disqualified lease anti-abuse rule," further provided that a disqualified lease also includes any arrangement that seeks to circumvent the rule in section 4261(e)(5)(C)(ii) by providing a lease term that is greater than 31 days but does not provide the lessee with exclusive and uninterrupted access and use of the leased aircraft, as identified by the aircraft's airframe serial number and tail number. In addition, proposed §49.4261-10(b)(4) provided that the fact that a lease permits the lessee to use the aircraft for for-hire flights, as defined in §49.4261-10(b)(5), when the

lessee is otherwise not using the aircraft does not, because of this fact alone, cause a lease with a term that is greater than 31 days to be a disqualified lease.

A commenter disagreed with the disqualified lease anti-abuse rule as a general matter, because, in the commenter's opinion, it significantly expands the definition of "disqualified lease" beyond the definition provided in the statute, ensnaring common non-abusive situations that should not be subject to the rule, and frustrating the intended purpose of the statute. The commenter also disagreed with several specific aspects of the disqualified lease anti-abuse rule. First, the commenter disagreed with the disqualified lease anti-abuse rule for not including language limiting its application to only a lease of an aircraft from a person providing aircraft management services for such aircraft.

Second, the commenter disagreed with the requirement in the disqualified lease anti-abuse rule that the lease should provide the lessee with exclusive and uninterrupted access and use of the leased aircraft as overly broad. The commenter stated that the problem with this aspect of the disqualified lease anti-abuse rule is that many aircraft are leased on a non-exclusive basis for valid business purposes, such as liability protection, state sales and use tax compliance, and FAA regulatory requirements.

Third, the commenter disagreed with the disqualified lease anti-abuse rule as improperly subjecting entity-based co-ownership structures to air transportation excise tax. To illustrate this concern, the commenter offered as an example a situation in which two pilots form a limited liability company to purchase an aircraft. For FAA regulatory compliance reasons, the LLC enters into non-exclusive aircraft dry leases

with each of the pilots who will operate the aircraft. Since neither lessee in such an arrangement would have exclusive and uninterrupted use of the aircraft, the proposed disqualified lease anti-abuse rule would cause those otherwise qualified leases to be disqualified leases.

Fourth, the commenter observed that the “for hire” language in the disqualified lease anti-abuse rule allows a lessee to use the leased aircraft to provide “for hire” flights. The commenter disagreed with this aspect of the rule, stating that an aircraft must typically be leased to an on-demand air taxi operator to conduct such for-hire flights. Therefore, the commenter continued, an aircraft owner may lease its aircraft without a crew on a non-exclusive basis directly to an on-demand air taxi operator in addition to leasing its aircraft without a crew pursuant to a separate non-exclusive lease to a related party for reasons unrelated to air transportation excise tax; in such a case, the aircraft will be leased to each lessee on a non-exclusive basis. The commenter concluded that, based on the language of the disqualified lease anti-abuse rule, these facts could cause the non-exclusive leases to be disqualified leases.

Finally, the commenter disagreed with the disqualified lease anti-abuse rule because the commenter believes that it is possible that an aircraft owner that provides limited services relating to the aircraft could be deemed an aircraft management services provider based on the broad definitions of the terms “aircraft management services” and “aircraft management services provider.” The commenter explained that most business aircraft owners provide at least some services, such as insurance, hangarage, or maintenance, when they lease their aircraft for valid business reasons

such as liability protection planning, maintenance consistency, insurance requirements, and state sales and use tax compliance.

To illustrate the commenter's concern, the commenter offered the example of an entity that purchases an aircraft and enters into two non-exclusive leases to its parent company and to a sister company with a term greater than 31 days. The lessor may obtain the hangar and the insurance for the aircraft since there is typically one hangar and one insurance policy covering the aircraft even if there is more than one non-exclusive aircraft lessee. Applying the proposed disqualified lease anti-abuse rule to this situation, the commenter concluded that the lessor could be viewed as an aircraft management services provider and the arrangement would be subject to the disqualified lease anti-abuse rule. The commenter further concluded that this scenario would inappropriately broaden the scope of the disqualified lease anti-abuse rule since the statutory language was not meant to apply the disqualified lease provision to lessors that provide only partial or limited services.

The commenter suggested that final §49.4261-10(b)(4) remove the disqualified lease anti-abuse rule in its entirety so that the regulatory definition of "disqualified lease" merely restates the statutory definition of the term.

The Treasury Department and the IRS share the concerns of the commenter, particularly that the disqualified lease anti-abuse rule may capture common, legitimate leasing arrangements. Therefore, the final regulations remove the disqualified lease anti-abuse language from the definition of "disqualified lease" in §49.4261-10(b)(4). As a result, the final version of §49.4261-10(b)(4) simply defines "disqualified lease" by reference to its statutory definition in section 4261(e)(5)(C)(ii).

d. Definition of Private Aviation

Proposed §49.4261-10(a)(2) limited the aircraft management services exemption to aircraft management services related to aircraft used in private aviation. Proposed §49.4261-10(b)(6) defined the term “private aviation” as the use of an aircraft for civilian flights except scheduled passenger service. A commenter observed that the apparent intent of proposed §49.4261-10(a)(2), when read in combination with the definition of “private aviation” in proposed §49.4261-10(b)(6), is to prevent the aircraft management services exemption from applying to amounts paid for aircraft management services related to scheduled commercial airline aircraft and flights. The commenter also observed that proposed §49.4261-10(d) makes clear that the aircraft management services exemption is available for aircraft and flights operated under the charter services rules of part 135 of the FAA regulations (14 CFR part 135). The commenter suggested that the final regulations clarify that “scheduled passenger service” refers to flights conducted by airlines that sell tickets on an individual seat basis to the general public. The commenter also suggested that the final regulations further clarify that the term “private aviation” includes charter flights operated under part 135 of the FAA regulations.

The Treasury Department and the IRS agree with the commenter that the final regulations should clarify the types of flight operations permitted under the private aviation rule in §49.4261-10(a)(2). Therefore, the final regulations incorporate the commenter’s suggested changes to the definition of private aviation provided in §49.4261-10(b)(8). Specifically, the final regulations clarify that “scheduled passenger service” refers to flights for which tickets are sold on an individual seat basis to the

general public. In addition, the definition of private aviation is modified to explicitly include operations conducted under part 135 of the FAA regulations.

e. Section 4261(e)(5)(D)

Section 4261(e)(5)(D) provides that in the case of amounts paid to any person which (but for section 4261(e)(5)) are subject to air transportation excise tax, a portion of which consists of amounts described in section 4261(e)(5)(A), section 4261(e)(5) “shall apply on a pro rata basis only to the portion which consists of amounts described in” section 4261(e)(5)(A). The Conference Report provides that in the event that a monthly payment made to an aircraft management company is allocated in part to exempt services and flights on the aircraft owner's aircraft, and in part to flights on aircraft other than that of the aircraft owner, air transportation excise tax must be collected on that portion of the payment attributable to flights on aircraft not owned by the aircraft owner.

Proposed §49.4261-10(c)(1), which generally tracked the pro rata allocation language in the Conference Report, provided that if an aircraft management services provider provides flight services to an aircraft owner on a substitute aircraft during a calendar quarter, air transportation excise tax applies to that portion of the amounts paid by the aircraft owner to the aircraft management services provider, determined on a pro rata basis, that are related to the flight services provided on the substitute aircraft. Stated differently, the proposed regulations provided that when an aircraft owner is provided flights on a substitute aircraft by an aircraft management services provider (for example, when the aircraft owner's aircraft is unavailable due to maintenance), a portion

of the amounts paid by the aircraft owner to the aircraft management services provider is subject to air transportation excise tax.

Proposed §49.4261-10(c)(2) proposed a method, based on the ratio of flight hours provided on a substitute aircraft compared to the total flight hours provided to the aircraft owner on the aircraft owner's aircraft and on substitute aircraft during a calendar quarter, for calculating the taxable portion of the amount paid to the aircraft management services provider.

A commenter objected to proposed §49.4261-10(c) as unnecessary; the commenter reasoned that – assuming flights provided on a substitute aircraft are treated as charter flights provided by the aircraft management services provider to the aircraft owner and subject to air transportation excise tax – there is no need for a special calculation to determine the amount paid for such flights. Similarly, again assuming flights provided on a substitute aircraft are treated as charter flights provided by the aircraft management services provider to the aircraft owner and subject to air transportation excise tax, multiple commenters objected to proposed §49.4261-10(c) because it could result in air transportation excise tax being applied to the same air transportation twice - once on the amount paid for the charter on the substitute aircraft and then again on a portion of the amount paid for aircraft management services to the aircraft management services provider providing the substitute aircraft.

One commenter offered several comments regarding the allocation methodology in proposed §49.4261-10(c)(2). First, the commenter disagreed with the proposed allocation methodology because it may result in air transportation excise tax being imposed on amounts paid for non-transportation items. Second, the commenter

disagreed with the proposed allocation methodology because it may result in the application of air transportation excise tax to an amount disproportionate to the fair market value of the transportation services actually provided on the substitute aircraft. Third, the commenter disagreed with the proposed allocation methodology because it promotes a loss of revenue to aircraft management services providers. The commenter explained that to avoid having to pay air transportation excise tax on an allocated portion of the amount paid for aircraft management services, the aircraft owner need only hire the replacement aircraft from an operator different than the one that provides aircraft management services to the aircraft owner. Thus, the commenter asserted that the proposed rule incentivizes aircraft owner behavior that will result in lost revenue to the aircraft management services provider. Fourth, the commenter disagreed with the proposed allocation methodology as increasing taxpayer uncertainty because the amount of air transportation excise tax that results from the method will not be known at the time an aircraft management services provider would invoice an aircraft owner for services provided on a substitute aircraft.

A third commenter disagreed with the allocation methodology in proposed §49.4261-10(c) because the calculation, in the commenter's view, will ordinarily produce nonsensical results since the cost profile of a substitute aircraft will likely be different from the cost profile for the aircraft owner's aircraft. The commenter asserted that averaging the costs of two aircraft with different cost profiles will produce an arbitrary result with no rational relationship to a reasonable, fair market charter rate for flights on the substitute aircraft. The commenter further asserted that the allocation methodology calculation will be further skewed if the aircraft owner-taxpayer owns multiple aircraft

with varying flight hours from one quarter to the next, buys or sells aircraft during the quarter, or pays multiple aircraft management services providers rather than a single aircraft management services provider.

All three commenters suggested that the final regulations either completely remove §49.4261-10(c), as drafted in the proposed regulations, or that the final regulations adopt a different approach than the proposed allocation methodology. All three commenters also suggested that in situations where a substitute aircraft is provided to an aircraft owner, air transportation excise tax should be calculated based on the amount paid by the aircraft owner for the substitute aircraft (that is, in a manner similar to how air transportation excise tax is calculated on amounts paid for charter flights). A commenter also suggested that if an aircraft owner pays less than fair market value for the use of the substitute aircraft, then air transportation excise tax should be calculated on the fair market value rather than the actual amount paid for the substitute aircraft.

In the alternative, if the proposed allocation methodology is incorporated into the final regulations, a commenter suggested that the final regulations provide that when an aircraft owner pays for a substitute aircraft, then the aircraft owner will receive a credit for any air transportation excise tax that it paid in relation to hiring a substitute aircraft against the amount of tax calculated under the allocation methodology. Another commenter suggested that if the proposed allocation methodology is incorporated into the final regulations, then the final regulations provide that an aircraft owner may elect to pay air transportation excise tax on the fair market value of the flight provided on the

substitute aircraft rather than pay the air transportation excise tax calculated using the proposed methodology.

The comments prompted the Treasury Department and the IRS to reevaluate the approach taken in the proposed regulations with regard to section 4261(e)(5)(D). Based on this reevaluation, the Treasury Department and the IRS reached two conclusions.

First, section 4261(e)(5)(D) has broader applicability than just the provision of substitute aircraft as evidenced by the plain language of that provision.

Second, the allocation methodology in the proposed regulation is problematic. Specifically, the Treasury Department and the IRS share the concerns expressed by the commenters, particularly with regard to the potential for double taxation and uncertainty under the proposed rule.

For these reasons, the final regulations adopt the general approach suggested by the commenters. Specifically, final §49.4261-10(c)(1) restates section 4261(e)(5)(D) as a generally applicable rule. Final §49.4261-10(c)(1) further provides that the tax base for the portion that is subject to the tax imposed by section 4261(a) is the amount paid for such flights or services, provided the amount paid is separable and shown in exact amounts in the records pertaining to the charge. This rule is consistent with commenter suggestions and also reflects the general approach in the air transportation excise tax area that the section 4261(a) tax is imposed on the actual amount paid for taxable transportation. The separability element of the rule is consistent with the rule in §49.4261-2(c) regarding situations in which a payment covers charges for transportation and nontransportation services. If the portion of the amount paid that is subject to the

tax imposed by section 4261(a) is not separable and is not shown in exact amounts in the records pertaining to the charge, the tax base is the fair market value of the flights or services; however, the tax base does not exceed the total amount paid (that is, the sum of the portion that is subject to the tax imposed by section 4261(a) and the portion that consists of amounts described in section 4261(e)(5)(A)). For clarity, the final regulations also include a definition of “fair market value” that applies to allocations. The definition of “fair market value” is consistent with commenter suggestions.

In addition, final §49.4261-10(c)(2) treats the provision of a flight on a substitute aircraft to the aircraft owner by an aircraft management services provider as an aircraft charter, with the aircraft owner as the charterer. The final regulations further provide that the allocation rule in final §49.4261-10(c)(1) applies in determining the tax base.

The final regulations also provide guidance for situations in which a substitute aircraft is used to provide a for-hire flight. In that instance, the final regulations instruct taxpayers and collectors to follow the aircraft charter rules in §49.4261-7(h)(2).

The final regulations update the first example and add a second example in §49.4261-10(h) to illustrate these rules.

f. Aircraft Available for Hire

Proposed §49.4261-10(e)(1) provided that whether an aircraft owner permits an aircraft management services provider or other person to use its aircraft to provide for-hire flights (for example, when the aircraft is not being used by the aircraft owner or when the aircraft is being moved in deadhead service) does not affect the application of the aircraft management services exemption. Proposed §49.4261-10(e)(1) further provided that an amount paid for for-hire flights on the aircraft owner’s aircraft does not

qualify for the aircraft management services exemption. Therefore, under proposed §49.4261-10(e)(1), an amount paid for a for-hire flight on an aircraft owner's aircraft is subject to air transportation excise tax unless the amount paid is otherwise exempt from air transportation excise tax other than by reason of the aircraft management services exemption.

A commenter expressed concern that the wording of proposed §49.4261-10(e)(1) may cause confusion and result in the misapplication of air transportation excise tax to amounts paid that should qualify for the aircraft management services exemption. Specifically, the commenter's concern relates to the second and third sentences of proposed §49.4261-10(e)(1), which explain that amounts paid for for-hire flights are subject to air transportation excise tax. The commenter observed that under section 4261(e)(5), amounts paid by an aircraft owner for flights on the aircraft owner's aircraft are exempt from air transportation excise tax. The commenter further observed that under proposed §49.4261-10(d), operating an aircraft owner's aircraft under part 135 of the FAA regulations does not affect the application of the aircraft management services exemption. The commenter's concern is that aircraft operations conducted under part 135 of the FAA regulations could arguably be considered for-hire flights; however, proposed §49.4261-10(e)(1) does not provide a carve-out for part 135 flights paid for by the aircraft owner. Therefore, in order to clarify that amounts paid by an aircraft owner for flights operated under part 135 are not subject to air transportation excise tax, the commenter suggested that the final regulations incorporate a carve-out by modifying the second sentence of proposed §49.4261-10(e)(1) to read: "However, an amount paid for for-hire flights on the aircraft owner's aircraft, *except payments made by such aircraft*

owner, does not qualify for the section 4261(e)(5) exemption.” (emphasis added to denote new wording).

The Treasury Department and the IRS agree with the commenter. As a result, final §49.4261-10(e) incorporates the commenter’s suggested change.

g. Coordination with Fuel Tax Provisions

Proposed §49.4261-10(g) provided that taxable fuel (as defined in section 4083(a)) or any liquid taxable under section 4041(c) that is used as fuel on a flight for which amounts paid are exempt from air transportation excise tax by reason of the aircraft management services exemption is not fuel used in commercial aviation, as that term is defined in section 4083(b). Thus, under the proposed rule, if the aircraft management services exemption applies to amounts paid in relation to a flight, then the higher noncommercial fuel tax rate (as compared to the commercial fuel tax rate) automatically applies to fuel used during such flight.

A commenter stated that proposed §49.4261-10(g) is inconsistent with the air transportation excise tax-fuel tax statutory scheme and contrary to Congressional intent with regard to that scheme. The commenter asserted that if Congress had intended that all flights qualifying for the aircraft management services exemption be treated as non-commercial flights for fuel tax purposes, Congress could have adopted a corresponding code section to that effect as it did with other exemptions to air transportation excise tax. Specifically, the commenter pointed to the exemptions to air transportation excise tax provided in sections 4261(h) (skydiving), 4261(i) (seaplanes), 4281 (small aircraft on nonestablished lines), and 4282 (affiliated group members), each of which section 4083(b) explicitly excludes from the definition of “commercial aviation”

for purposes of determining applicable fuel tax rates. By not providing a similar, explicit definitional exclusion in section 4083(b) (or other Code section) for the aircraft management services exemption, the commenter asserted, Congress left the determination of which fuel tax rate – commercial or non-commercial – applies to a particular flight to the application of the general definition of “commercial aviation” in section 4083(b). Therefore, the commenter suggested that the final regulations provide that if the aircraft management services exemption applies to amounts paid for a flight, the determination of whether fuel used during the flight is subject to commercial or non-commercial fuel tax rates is made simply through an application of the definition of commercial aviation provided in section 4083(b).

The Treasury Department and the IRS agree with the commenter that proposed §49.4261-10(g) is inconsistent with the air transportation excise tax-fuel excise tax statutory scheme. As a result, the final regulations do not adopt the rule in proposed §49.4261-10(g). The rule in proposed §49.4261-10(e)(2) relating to fuel used in for-hire flights is similarly inconsistent with the air transportation excise tax-fuel excise tax statutory scheme. Therefore, the final regulations also do not adopt the rule proposed in §49.4261-10(e)(2). Because final §49.4261-10 does not provide fuel excise tax guidance related to the exemption in section 4261(e)(5), persons affected by the aircraft management services exemption should continue to follow current statutory, regulatory, and administrative guidance related to the rates of tax for aviation fuel.

h. Coordination with Fractional Ownership Aircraft Exemption; Anti-Abuse Rule

Proposed §49.4261-10(i) provided, in relevant part, that the aircraft management services exemption does not apply to any amount paid for aircraft management services

by a participant in any transaction or arrangement, or through other means, that seeks to circumvent the surtax imposed by section 4043. A commenter expressed concern that confusion could result from the phrasing of the first sentence of proposed §49.4261-10(i) because it is essentially identical to the phrasing of the second sentence of proposed §49.4261-10(b)(3)(ii) (excluding fractional aircraft ownership programs and similar arrangements from the definition of “aircraft owner”). The commenter suggested that the first sentence in the final version of §49.4261-10(i) simply cross-reference §49.4261-10(b)(3)(ii), rather than repeating the similar language. Specifically, the commenter suggested the following language for the first sentence of final §49.4261-10(i): “The aircraft management services exemption does not apply to any amount paid for aircraft management services by a participant in the type of business arrangement described in [§49.4261-10(b)(3)(ii)] that does not qualify the participant as an aircraft owner.”

The Treasury Department and the IRS believe that the rule in proposed §49.4261-10(i) is problematic for the same reasons as the other arrangements anti-abuse rule in proposed §49.4261-10(b)(3)(ii) (discussed earlier); specifically, it may capture aircraft ownership structures that are legitimate and not created for purposes of circumventing the fuel surtax imposed by section 4043. The Treasury Department and the IRS further believe that, like the other arrangements anti-abuse rule in proposed §49.4261-10(b)(3)(ii), the rule in proposed §49.4261-10(i) would have created taxpayer uncertainty and confusion. Because the final regulations in §49.4261-10(b)(3)(ii) clarify that a participant in a fractional ownership aircraft program is not an aircraft owner for

purposes of the exemption in section 4261(e)(5), an additional coordination rule is redundant. As a result, the final regulations do not adopt proposed §49.4261-10(i).

i. Adequate records

Proposed §49.4261-10(a)(3) stated that in order to qualify for the aircraft management services exemption, an aircraft owner and aircraft management services provider must maintain adequate records to show that the amounts paid by the aircraft owner to the aircraft management services provider relate to aircraft management services for the aircraft owner's aircraft or for flights on the aircraft owner's aircraft.

A commenter requested that the final regulations provide guidance on the types of records required to satisfy this requirement. The Treasury Department and the IRS agree. Accordingly, the final regulations add language to §49.4261-10(a)(3) stating that such records may include the agreement, if any, between the aircraft owner and the aircraft management services provider, evidence of aircraft ownership, evidence that amounts paid for aircraft management services came from the aircraft owner, the aircraft management services provider's fee schedule, and documents to support any allocations required under the pro rata allocation rule.

j. Examples

Proposed §49.4261-10(j) included two examples illustrating certain aspects of the rules in proposed §49.4261-10. Proposed §49.4261-10(j)(1) (Example 1) illustrated the substitute aircraft allocation methodology in proposed §49.4261-10(c)(1) and (2). Proposed §49.4261-10(j)(1)(i) (presenting the facts of Example 1) stated, in relevant part, that:

An aircraft owner, which is organized as corporation under state law, pays a monthly fee of \$1,000 to an aircraft management services provider for the

provision of a pilot for flights on the aircraft owner's aircraft to transport employees of the aircraft owner's business to business meetings. The flights constitute taxable transportation, as that term is defined in section 4262(a), and no exemptions (other than section 4261(e)(5)) apply.

A commenter stated that it interpreted the foregoing language as saying that if a company hires an aircraft management company to provide only pilot services to the aircraft owner, then – but for the aircraft management services exemption – air transportation excise tax would apply to the amounts paid by the aircraft owner to the aircraft management services provider. Based on its interpretation, the commenter expressed its opinion that the example presents an extreme position with regard to the application of air transportation excise tax to an aircraft owner-aircraft management services provider relationship. The commenter further stated that the second sentence in proposed §49.4261-10(j)(1)(i) may cause confusion regarding the application of the possession, command, and control test in cases that are not governed by section 4261(e)(5). In addition, the commenter stated that the second sentence in proposed §49.4261-10(j)(1)(i) is irrelevant to the rest of the example, thereby compounding the other problems that the commenter mentioned. The commenter suggested that the final regulations remove the second sentence from §49.4261-10(j)(1)(i).

As noted earlier, the final regulations include a revised pro rata allocation rule. The final regulations also revise the first example (including deletion of the second sentence) and add a second example to illustrate the revised pro rata allocation rule. In addition, the final regulations revise the third example (proposed §49.4261-10(j)(2)) to remove the fuel references in light of the decision not to adopt proposed §49.4261-10(e)(2) and (g) in the final regulations.

III. Generally Applicable Air Transportation Excise Tax Rules and Aircraft Charter Rules

a. Payment and Collection Obligations

Proposed §49.4261-1(b)(1) restated, in general terms, statutory provisions and existing regulations related to the duties and obligations of a person that makes a payment subject to the taxes imposed by section 4261 (that is, the taxpayer) and a person that receives such payments (that is, the collector). The duties and obligations include those imposed on the collector to collect the applicable tax from the taxpayer, to report the tax on Form 720, *Quarterly Federal Excise Tax Return*, and to remit the tax to the IRS. The duties and obligations enumerated in the proposed regulations also include the requirement that the collector make semimonthly deposits of the taxes imposed by section 4261.

Proposed §49.4261-1(b)(2) restated the rule in section 4263(c), which provides that if any tax imposed by section 4261 is not paid at the time payment for transportation is made, then, to the extent the tax is not collected under any other provision of subchapter C of chapter 33 of the Code, the tax must be paid by the carrier providing the initial segment of transportation that begins or ends in the United States.

Regarding proposed §49.4261-1(b)(1), a commenter expressed concern that current published guidance (primarily in the form of revenue rulings) does not adequately address the duties and obligations of charter brokers with regard to collecting and reporting air transportation excise tax. The commenter described a charter broker as an intermediary that charters aircraft from a certificated air carrier (who actually provides the flight services), and that may act as an agent of the air

carrier, an agent of the passengers, or as a principal in the chartering transaction. The commenter stated that the lack of guidance related to charter brokers has created considerable confusion in the charter broker industry. Further, the commenter stated that the need for clear and precise guidance is compounded by the aircraft charter rules provided in proposed §49.4261-7(h) (discussed later) and section 4263(c), which imposes liability on the air carrier providing the initial segment of transportation that begins or ends in the U.S. in cases where any tax imposed by section 4261 is not paid at the time the payment for transportation is made. Therefore, the commenter requested that the final regulations provide guidance regarding the circumstances in which a charter broker (rather than an air carrier) is obligated to collect air transportation excise tax and file Forms 720. The commenter suggested that such guidance should be consistent with the approaches taken in Rev. Rul. 68-256, 1968-1 C.B. 489; Rev. Rul. 75-296, 1975-2 C.B. 440; and Rev. Rul. 2006-52, 2006-2 C.B. 761.

Regarding proposed §49.4261-1(b)(2), a commenter stated that the obligation placed on the air carrier to pay the tax imposed by section 4261 if the party responsible for collecting it fails to do so creates confusion and unfair liability exposure for the air carrier. Further, the commenter stated, as an example, that an IRS examiner could assert tax liability on the air carrier for uncollected tax when the air carrier has no means to determine whether another responsible party, such as a charter broker, had collected and paid over the tax. To alleviate these concerns, the commenter suggested that the final regulations provide that if an air carrier documents that it informed the charter broker of its obligation to collect the taxes imposed by section 4261 and file Forms 720 (see the discussion of proposed §49.4261-7(h) later), then the air carrier will not be

liable for uncollected tax under section 4263(c). The commenter also suggested that the final regulations provide that if the IRS asserts liability on an air carrier under section 4263(c) (irrespective of whether the air carrier can show that it informed the charter broker of its obligations to collect and report) during an examination, then the air carrier should be entitled to obtain information from the IRS on whether the tax was paid by the charter broker or any other party.

The Treasury Department and the IRS understand and share the commenters' concerns related to uncertainty and the possibility of surprise that may result from another party's IRS examination because of the rules in section 4263(c) and proposed §49.4261-1(b)(2). Because the interactions between section 4263(c) and other air transportation excise tax rules are complex and have broad implications for other members of the air transportation industry, the Treasury Department and the IRS believe that these issues require additional study and input from a broader cross-section of the air transportation industry. Further, the Treasury Department and the IRS believe that section 4263(c) issues should be addressed in a separate published guidance project that could also potentially consider the interplay between section 4263(c) and the existing regulatory rules in §49.4261-7(h) and §49.4291-1.

However, because, as mentioned earlier, proposed §49.4261-1(b)(1) merely restated currently applicable statutory and regulatory rules, the final regulations adopt proposed §49.4261-1(b)(1) without change. In addition, the final regulations do not adopt the second sentence of proposed §49.4261-1(b)(2) so that the final regulations simply track the language of section 4263(c), as currently written, without further comment. The Treasury Department and the IRS believe it is necessary to finalize

these rules because the existing regulations related to section 4263(c) reflect prior law, which has created widespread confusion among taxpayers and collectors in the air transportation area.

b. Aircraft Charters

Proposed §49.4261-7(h), which generally restated existing rules in §49.4261-7(h), provided rules related to the application of the taxes imposed by section 4261 to situations in which a person provides air transportation services on an aircraft that was chartered from – and operated by – another party, commonly referred to as a “wet lease.” Proposed §49.4261-7(h)(2) provided that the charterer of an aircraft who sells transportation to other persons must collect and account for the tax with respect to all amounts paid to the charterer by such other persons. The proposed rule further provided that, in such a case, no tax will be due on the amount paid by the charterer for the charter of the aircraft but that it is the duty of the owner of the aircraft to advise the charterer of the charterer’s obligation for collecting, accounting for, and paying over the tax to the IRS. This requirement is intended to ensure the parties communicate with each other regarding air transportation excise tax and prevent misunderstandings about which party is responsible for collecting tax under the arrangement.

Two commenters requested clarification regarding the duty of the “owner of the aircraft to advise the charterer of the charterer’s obligations for collecting, accounting for, and paying over the tax” to the IRS imposed under the proposed rule. A commenter stated that in the air charter industry, the air carrier does not typically own the aircraft used to provide charter flights. Because the proposed rule imposes on the aircraft owner the duty to advise the charterer of its obligations, the commenter stated that

confusion about which party must advise the charterer may result from the phrasing of the proposed rule. The commenter suggested the proposed rule use the phrase “air carrier” rather than “owner of the aircraft.”

A commenter also requested clarification about how and when the duty to advise the charterer of its obligations with regard to air transportation excise tax must be satisfied. Specifically, the commenter asked whether the duty to advise applies separately to each specific charter flight, or whether the duty may be satisfied as part of a long-term underlying agreement between the aircraft owner and the charterer such as a lease agreement for the aircraft owner’s aircraft entered into by the aircraft owner and the charterer. The commenter also requested clarification regarding whether the duty to advise the charterer of its obligations with regard to air transportation excise tax creates an obligation on the part of the aircraft owner to collect the tax if the charterer fails to do so.

The Treasury Department and the IRS understand and share the commenters’ concern that, because the owner of a chartered aircraft may not be the party that operates the aircraft, the phrasing of the proposed rule may cause confusion. In addition, the Treasury Department and the IRS understand the need for clarification regarding the duty of the aircraft owner to advise the charterer of its collection obligations. However, because these rules are complex and have broad applicability to the air transportation industry, additional study and stakeholder input is required. Accordingly, a separate published guidance project is necessary to address: (a) the possible shifting of the duty to advise the charterer about its obligations for collecting, accounting for, and paying over the tax to the IRS to the air carrier operating the

chartered aircraft instead of the owner of the chartered aircraft; (b) whether the duty to advise applies separately to each specific charter flight, or whether the duty may be satisfied as part of a long-term agreement between the aircraft owner and the charterer; and (c) whether the duty to advise the charterer of its obligations with regard to air transportation excise tax creates an obligation on the part of the aircraft owner to collect the tax if the charterer fails to do so.

Because proposed §49.4261-7(h) merely restated currently applicable rules, the final regulations adopt proposed §49.4261-7(h) without change. Until additional guidance is issued, §49.4261-7(h), as finalized, and other existing published guidance apply.

Effect on Other Documents

Revenue Ruling 67-414 (1967-2 C.B. 382), Revenue Ruling 72-309 (1972-1 C.B. 348), and Revenue Ruling 2002-34 (2002-1 C.B. 1150) are obsoleted on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability Dates

For dates of applicability, see §§40.0-1(e), 49.4261-1(g), 49.4261-2(d), 49.4261-3(e), 49.4261-7(k), 49.4261-9(c), 49.4261-10(i), 49.4262-1(f), 49.4262-2(e), 49.4262-3(e), 49.4281-1(e), 49.4263-1(b), 49.4263-3(b), 49.4271-1(g), and 49.4721-2.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Although the rule may affect a substantial number of small entities, the economic impact of the regulations is not likely to be significant. Data are not readily available about the number of taxpayers affected, but the number is likely to be substantial for both large and small entities because the rule may affect entities that serve as holding companies for aircraft that do not have many revenues or employees. The economic impact of these regulations is not likely to be significant, however, because these final regulations primarily clarify the application of the aircraft management services exception added to the Code by the TCJA. These final regulations will assist taxpayers in understanding the rules to qualify for the exemption under section 4261(e)(5) and make it easier for taxpayers to comply and IRS examiners to administer the exemption. Accordingly, the Secretary of the Treasury's delegate certifies that the rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding this certification, the Treasury Department and the IRS welcome comments on the impact of these regulations on small entities.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices and other guidance cited in this document are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

Drafting Information

The principal author of these regulations is Michael H. Beker, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 49

Excise taxes, Reporting and recordkeeping requirements, Telephone, Transportation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 40 and 49 are amended as follows:

PART 40--EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 is amended by removing the entry for §40.6071(a)-3 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 40.0-1 is amended by redesignating paragraph (d) as paragraph (e), adding a new paragraph (d), and revising newly redesignated paragraph (e) to read as follows:

§40.0-1 Introduction.

* * * * *

(d) Person. For purposes of this part, each business unit that has, or is required to have, a separate employer identification number is treated as a separate person. Thus, business units (for example, a parent corporation and a subsidiary corporation, a partner and the partner's partnership, or the various members of a consolidated group), each of which has, or is required to have, a different employer identification number, are separate persons.

(e) Applicability date--(1) Paragraphs (a), (b), and (c) of this section. Paragraphs (a), (b), and (c) of this section apply to returns for periods beginning after March 31, 2013. For rules that apply before that date, see 26 CFR part 40, revised as of April 1, 2012.

(2) Paragraph (d) of this section. Paragraph (d) of this section applies to returns for periods beginning on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before that date, see 26 CFR part 40, revised as of April 1, 2020.

§40.6071(a)-3 [Removed]

Par. 3. Section 40.6071(a)-3 is removed.

PART 49--FACILITIES AND SERVICES EXCISE TAX REGULATIONS

Par. 4. The authority citation for part 49 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 5. Section 49.4261-1 is revised to read as follows:

§49.4261-1 Imposition of tax; in general.

(a) In general. Section 4261 of the Internal Revenue Code (Code) imposes three separate taxes on amounts paid for certain transportation of persons by air. Tax attaches at the time of payment for any transportation taxable under section 4261. The applicability of each section 4261 tax is generally determined on a flight-by-flight basis.

(1) Percentage tax. Section 4261(a) imposes a 7.5 percent tax on the amount paid for the taxable transportation of any person. See section 4262(a) of the Code and §49.4262-1(a) for the definition of the term *taxable transportation*.

(2) Domestic segment tax. Section 4261(b)(1) imposes a \$3 tax (indexed annually for inflation pursuant to section 4261(e)(4)) on the amount paid for each domestic segment of taxable transportation. See section 4261(b)(2) for the definition of the term *domestic segment*. The domestic segment tax does not apply to a domestic segment beginning or ending at an airport that is a rural airport for the calendar year in which the segment begins or ends (as the case may be). See section 4261(e)(1)(B) for the definition of the term *rural airport*.

(3) International travel facilities tax. Section 4261(c) imposes a \$12 tax (indexed annually for inflation pursuant to section 4261(e)(4)) on any amount paid (whether within or without the United States) for any transportation by air that begins or ends in the United States. The international travel facilities tax does not apply to any transportation that is entirely taxable under section 4261(a) (determined without regard to sections 4281 and 4282). See section 4261(c)(2). A special rule applies to Alaska and Hawaii flights. See section 4261(c)(3).

(b) Payment and collection obligations--(1) In general. The taxes imposed by section 4261 are collected taxes. In general, the person making the payment subject to

tax is the taxpayer. See section 4261(d). The person receiving the payment is the collector (also commonly referred to as the collecting agent). See section 4291 of the Code. The collector must collect the applicable tax from the taxpayer, report the tax on Form 720, Quarterly Federal Excise Tax Return, and remit the tax to the Internal Revenue Service. See sections 4291, 6011, and 7501 of the Code. See §40.6011(a)-1 of this chapter and §49.4291-1. The collector must also make semimonthly deposits of the taxes imposed by section 4261. See section 6302(e) of the Code. See §§40.0-1(c), 40.6302(c)-1, and 40.6302(c)-3 of this chapter. See section 4263(a) and (c) of the Code for special rules relating to the payment and collection of tax.

(2) Failure to collect tax. If any tax imposed by section 4261 is not paid at the time payment for transportation is made, then, to the extent the tax is not collected under any other provision of subchapter C of chapter 33 of the Code, the tax must be paid by the carrier providing the initial segment of transportation that begins or ends in the United States. See section 4263(c). See section 6672 of the Code for rules relating to the application of the trust fund recovery penalty.

(c) Type of aircraft. The taxes imposed by section 4261 generally apply regardless of the type of aircraft on which the transportation is provided, provided all of the other conditions for liability are present and no specific statutory exemption applies. See paragraph (f) of this section for a list of statutory exemptions from tax. Amounts paid for the transportation of persons by air cushion vehicles, also known as hovercraft, are not subject to the taxes imposed by section 4261.

(d) Purpose of transportation. The purpose of the transportation (for example, business or pleasure) is not a factor in determining taxability under section 4261.

(e) Routes. Amounts paid for transportation may be taxable even if the transportation is not between two definite points. Unless otherwise exempt, a payment for continuous transportation that begins and ends at the same point is subject to tax. See section 4281 of the Code and §49.4281-1 for the exemption for small aircraft on nonestablished lines.

(f) Exemptions from tax; cross-references--(1) Aircraft management services. For the exemption for certain aircraft management services, see section 4261(e)(5) of the Code and §49.4261-10.

(2) Hard minerals, oil, and gas. For the exemption for certain uses related to the exploration, development, or removal of hard minerals, oil, or gas, see section 4261(f)(1).

(3) Trees and logging operations. For the exemption for certain uses related to trees and logging operations, see section 4261(f)(2).

(4) Air ambulances. For the exemption for air ambulances providing certain emergency medical transportation, see section 4261(g).

(5) Skydiving. For the exemption for certain skydiving uses, see section 4261(h).

(6) Seaplanes. For the exemption for certain seaplane segments, see section 4261(i).

(7) Fractionally-owned aircraft. For the exemption for certain aircraft in fractional ownership aircraft programs, see section 4261(j).

(8) Small aircraft on nonestablished lines. For the exemption for certain small aircraft on nonestablished lines, see section 4281 of the Code and §49.4281-1.

(9) Affiliated groups. For the exemption for certain transportation of members of an affiliated group, see section 4282.

(10) United States and territories. For exemptions authorized by the Secretary of the Treasury or his delegate for the exclusive use of the United States, see section 4293.

(g) Applicability date. This section applies to amounts paid on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before that date, see 26 CFR part 49, revised as of April 1, 2020.

Par. 6. Section 49.4261-2 is amended by:

1. Revising paragraphs (a) and (b).
2. Adding paragraph (d).

The revisions and addition read as follows:

§49.4261-2 Application of tax.

(a) Tax on total amount paid. The tax imposed by section 4261(a) of the Internal Revenue Code (Code) is measured by the total amount paid for taxable transportation, whether paid in cash or in kind.

(b) Tax on transportation of each person. The taxes imposed by section 4261(b) and (c) of the Code are head taxes and, therefore, apply on a per-passenger basis. The taxes apply to each passenger for whom an amount is paid, regardless of whether the payment is made as a single lump sum or is made individually for each passenger. In the case of charter flights for which a fixed amount is paid, the section 4261(b) and (c) taxes are computed by multiplying the applicable rate of tax by the number of passengers transported on the aircraft.

* * * * *

(d) Applicability date. Paragraphs (a) and (b) of this section apply to amounts paid on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before that date, see 26 CFR part 49, revised as of April 1, 2020.

Par. 7. Section 49.4261-3 is amended by:

1. Removing “§49.4262(c)-1” wherever it appears and adding “§49.4262-3” in its place.

2. In the first sentence of paragraph (a), removing “The tax imposed by section 4261(a)” and adding “The taxes imposed by section 4261(a) and (b) of the Internal Revenue Code (Code)” in its place.

3. In the second sentence of paragraph (a), adding “under section 4261(a) and (b)” at the end of the sentence.

4. Removing (b) introductory text and (b)(1) and redesignating paragraph (b)(2) as paragraph (b).

5. Revising newly redesignated paragraph (b).

6. Revising paragraph (c).

7. In paragraph (d), removing “section 4262(b) and §49.4262(b)-1” and adding “section 4262(b) of the Code and §49.4262-2” in its place.

8. Adding paragraph (e).

The revisions and additions read as follows:

§49.4261-3 Payments made within the United States.

* * * * *

(b) Other transportation. In the case of transportation, other than that described in paragraph (a) of this section, for which payment is made in the United States, the taxes imposed by section 4261(a) and (b) apply with respect to the amount paid for that portion of such transportation by air which is directly or indirectly from one port or station in the United States to another port or station in the United States, but only if such portion is not a part of uninterrupted international air transportation within the meaning of section 4262(c)(3) of the Code and §49.4262-3(c). Transportation that:

(1) Begins in the United States or the 225-mile zone and ends outside such area,

(2) Begins outside the United States or the 225-mile zone and ends inside such area, or

(3) Begins outside the United States and ends outside such area, is taxable only with respect to the portion of the transportation by air which is directly or indirectly from one port or station in the United States to another port or station in the United States, but only if such portion is not a part of “uninterrupted international air transportation” within the meaning of section 4262(c)(3) and §49.4262-3(c). Thus, on a trip by air from Chicago to London, England, with a stopover at New York, for which payment is made in the United States, if the portion from Chicago to New York is not a part of “uninterrupted international air transportation” within the meaning of section 4262(c)(3) and §49.4262-3(c), the taxes would apply to the part of the payment which is applicable to the transportation from Chicago to New York. However, if the portion from Chicago

to New York is a part of “uninterrupted international air transportation” within the meaning of section 4262(c)(3) and §49.4262-3(c), the taxes would not apply.

(c) Method of computing tax on taxable portion. Where a payment is made for transportation which is partially taxable under paragraph (b) of this section, the tax imposed by section 4261(a) may be computed on that proportion of the total amount paid which the mileage of the taxable portion of the transportation bears to the mileage of the entire trip.

* * * * *

(e) Applicability date. This section applies to amounts paid on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before that date, see 26 CFR part 49, revised as of April 1, 2020.

§49.4261-4 [Amended]

Par. 8. Section 49.4261-4 is amended by:

1. In paragraph (a), removing the first “4261(a)” and adding “4261 of the Internal Revenue Code (Code)” in its place.
2. In paragraph (a), removing “section 4261(a) (see section 4264(d))” and adding “section 4261 (see section 4263(d) of the Code)” in its place.
3. In paragraph (b), removing “§49.4262(c)-1” and adding “§49.4262-3” in its place.
4. In the first sentence of paragraph (d), removing “§49.4262(c)-1” and adding “§49.4262-3” in its place.
5. In the first sentence of paragraph (d), removing “six-hour” and adding “12-hour” in its place.

§49.4261-5 [Amended]

Par. 9. Section 49.4261-5 is amended as follows:

1. In paragraph (a), removing “4261(b)” wherever it appears and adding “4261(a) and (b)” in its place.
2. In paragraph (c), removing “§49.4262(b)-1” and adding “§49.4262-2” in its place.

Par. 10. Section 49.4261-7 is amended by:

1. In the introductory paragraph, removing “4263, 4292, 4293, or 4294” and adding “4261, 4281, 4282, or 4293 of the Internal Revenue Code,” in its place.
2. Removing and reserving paragraphs (b), (d), (e), and (g).
3. Revising paragraph (h).
4. In paragraph (i), removing “paragraph (c) of §49.4261-2 and paragraph (f)(4) of §49.4261-8” and adding “§§49.4261-2(c) and 49.4261-8(f)(4)” in its place.
5. Adding paragraph (k).

The revision and addition read as follows:

§49.4261-7 Examples of payments subject to tax.

* * * * *

(h) Aircraft charters--(1) When no charge is made by the charterer of an aircraft to the persons transported, the amount paid by the charterer for the charter of the aircraft is subject to tax.

(2) The charterer of an aircraft who sells transportation to other persons must collect and account for the tax with respect to all amounts paid to the charterer by such other persons. In such case, no tax will be due on the amount paid by the charterer for

the charter of the aircraft but it shall be the duty of the owner of the aircraft to advise the charterer of the charterer's obligation for collecting, accounting for, and paying over the tax to the Internal Revenue Service.

* * * * *

(k) Applicability date. Paragraph (h) of this section applies to amounts paid on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before that date, see 26 CFR part 49, revised as of April 1, 2020.

§49.4261-8 [Amended]

Par. 11. Section 49.4261-8 is amended as follows:

1. In the introductory paragraph, removing “4263, 4292, 4293, or 4294” and adding “4261, 4281, 4282, or 4293 of the Internal Revenue Code” in its place.

2. Paragraphs (f)(2), (3), and (5) are removed and reserved.

Par. 12. Section 49.4261-9 is revised to read as follows:

§49.4261-9 Mileage awards.

(a) Tax imposed. 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 is an amount paid for taxable transportation and is therefore subject to the tax imposed by section 4261(a) of the Internal Revenue Code. See section 4261(e)(3)(A).

(b) [Reserved]

(c) Applicability date. This section applies to amounts paid on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Par. 13. Section 49.4261-10 is revised to read as follows:

§49.4261-10 Aircraft management services.

(a) In general--(1) Overview. This section prescribes rules relating to the exemption under section 4261(e)(5) of the Internal Revenue Code (Code) for amounts paid (in cash or in kind) by an aircraft owner to an aircraft management services provider for certain aircraft management services (aircraft management services exemption). Pursuant to section 4261(e)(5), the tax imposed by section 4261 of the Code does not apply to amounts paid by an aircraft owner to an aircraft management services provider for aircraft management services related to maintenance and support of the aircraft owner's aircraft; or related to flights on the aircraft owner's aircraft (flight services). The aircraft management services exemption applies to amounts paid by an aircraft owner to an aircraft management services provider for flight services on the aircraft owner's aircraft, even if the aircraft owner is not on the flight. The aircraft management services exemption does not apply to amounts paid to an aircraft management services provider by another person on behalf of an aircraft owner (other than in a principal-agent scenario in which the aircraft owner is the principal). In addition, amounts paid for aircraft management services by a party related to the aircraft owner are not amounts paid by the aircraft owner solely by virtue of the relationship between the aircraft owner and the related party. However, if an aircraft owner leases an aircraft to another person, including a related party, amounts paid by the lessee to an aircraft management services provider for aircraft management services related to the leased aircraft qualify for the aircraft management services exemption, provided the lease is not a disqualified lease and all other requirements of section 4261(e)(5) are satisfied. For example, amounts paid for aircraft management

services by one member of an affiliated group (as that term is defined in section 4282 of the Code) for flights on an aircraft owned by another member of the affiliated group are not amounts paid by the aircraft owner unless the member owning the aircraft leases the aircraft to the member of the affiliated group that pays for the aircraft management services. See paragraph (b) of this section for definitions of terms used in this section.

(2) Private aviation. The aircraft management services exemption is limited to aircraft management services related to aircraft used in private aviation.

(3) Adequate records required. In order to qualify for the aircraft management services exemption, an aircraft owner and aircraft management services provider must maintain adequate records to show that the amounts paid by the aircraft owner to the aircraft management services provider relate to aircraft management services specifically for the aircraft owner's aircraft or for flights on the aircraft owner's aircraft and to support any allocations required under paragraph (c) under of this section. Such records may include the agreement, if any, between the aircraft owner and the aircraft management services provider, evidence of aircraft ownership, evidence that amounts paid for aircraft management services came from the aircraft owner, and the aircraft management services provider's fee schedule.

(b) Definitions. This paragraph provides definitions applicable to this section.

(1) Aircraft management services. The term *aircraft management services* means--

(i) Statutory services. The services listed in section 4261(e)(5)(B)(i)-(v); and

(ii) Other services. Any service (including, but not limited to, purchasing fuel, purchasing aircraft parts, and arranging for the fueling of an aircraft owner's aircraft)

provided directly or indirectly to an aircraft owner in order to provide air transportation to the aircraft owner on the aircraft owner's aircraft at a level and quality of service required under the agreement between the aircraft owner and the aircraft management services provider.

(2) Aircraft management services provider. The term *aircraft management services provider* means a person that provides aircraft management services to an aircraft owner.

(3) Aircraft owner--(i) In general. Except as otherwise provided in this section, the term *aircraft owner* means a person that owns an aircraft managed by an aircraft management services provider (commonly referred to as a managed aircraft), or a person that leases a managed aircraft (lessee) pursuant to a lease that is not a disqualified lease. A person owns a managed aircraft if the person holds legal title to the aircraft, or if the person holds substantial incidents of ownership in the aircraft for a period of more than 31 days. A lessee includes the beneficiary of an owner trust that holds legal title to the managed aircraft.

(ii) Persons not included in the definition of aircraft owner. A lessee of an aircraft under a disqualified lease cannot be an aircraft owner with respect to the aircraft leased pursuant to the disqualified lease. A person that owns stock in a commercial airline does not qualify as an aircraft owner of that commercial airline's aircraft. A participant in a fractional aircraft ownership program, as defined in section 4043(c)(2) of the Code, does not qualify as an aircraft owner of the program's managed aircraft if the amount paid for such person's participation is exempt from the tax imposed by section 4261 reason of section 4261(j).

(4) Disqualified lease. The term *disqualified lease* has the meaning given to it by section 4261(e)(5)(C)(ii).

(5) Fair market value. The term *fair market value* means the value of comparable flights or services provided with respect to a comparable aircraft as of the date such flights or services are provided. The aircraft management services provider's published fee schedule in effect on the date(s) the flights or services are provided may be used as evidence of fair market value.

(6) For-hire flight. The term *for-hire flight* means the use of an aircraft to transport passengers for compensation that is paid in cash or in kind. The term includes, but is not limited to, charter flights, air taxi flights, and sightseeing flights (commonly referred to as flightseeing flights).

(7) Owner trust. The term *owner trust* means an arrangement in which legal title of an aircraft is held in the name of the trustee of the trust for the limited purpose of registering the aircraft in the United States with the Federal Aviation Administration pursuant to the registration requirements in 49 U.S.C. sections 40102(a) and 44102(a), and 14 CFR part 47.

(8) Private aviation. The term *private aviation* means the use of an aircraft for civilian flights, except scheduled passenger service for which tickets (or substitutes equivalent to tickets) are sold on a seat-by-seat basis to the general public. The term includes, but is not limited to, civilian flights operated under Part 135 (14 CFR Part 135) of the Federal Aviation Regulations prescribed by the Federal Aviation Administration (FARs).

(9) Substitute aircraft. The term *substitute aircraft* means an aircraft, other than the aircraft owner's aircraft, that is provided by an aircraft management services provider to the aircraft owner when the aircraft owner's aircraft is not available, regardless of the reason for the unavailability.

(c) Pro rata allocation--(1) In general. Except as provided in paragraph (c)(2)(iii) of this section, when an amount paid to an aircraft management services provider includes a portion that is subject to the tax imposed by section 4261 and a portion that consists of amounts described in section 4261(e)(5)(A), the exception in section 4261(e)(5) applies on a pro rata basis only to the portion that consists of amounts described in section 4261(e)(5)(A). See section 4261(e)(5)(D). In such case, the tax base for the portion that is subject to the tax imposed by section 4261(a) is the amount paid for the flights or services, provided the amount paid is separable and shown in exact amounts in the records pertaining to the charge. If the portion of the amount paid that is subject to the tax imposed by section 4261(a) is not separable, the tax base is the fair market value of the flights or services. However, the tax base determined in the previous sentence may not exceed the total amount paid (that is, the sum of the portion that is subject to the tax imposed by section 4261(a) and the portion that consists of amounts described in section 4261(e)(5)(A)).

(2) Substitute aircraft--(i) Flight treated as a charter. If an aircraft management services provider provides a flight to an aircraft owner on a substitute aircraft, the flight is treated as a charter flight provided by the aircraft management services provider to the aircraft owner, regardless of whether the aircraft owner is on the flight, and the aircraft owner is treated as the charterer of such flight. If the flight constitutes taxable

transportation, as defined in section 4262 of the Code, the tax imposed by section 4261(a) applies, unless the flight is exempt from such tax by reason of an exemption other than the aircraft management services exemption. See section 4261(b) and (c) for other taxes that may apply to flights provided by an aircraft management services provider to an aircraft owner on substitute aircraft.

(ii) General rule for flights provided on substitute aircraft. In cases where an aircraft management services provider provides a flight to an aircraft owner on a substitute aircraft and an allocation is required, the rule in paragraph (c)(1) of this section applies in determining the tax base. In all other cases, the tax base and the tax imposed by section 4261(a) thereon must be determined in accordance with the rules of §49.4261-7(h)(1), unless the flight is otherwise exempt from such tax by reason of an exemption other than the aircraft management services exemption.

(iii) Special rule for for-hire flights provided on substitute aircraft. In cases where a substitute aircraft is used to provide a for-hire flight and an amount is paid for the flight by someone other than the aircraft owner, the tax base and the tax imposed by section 4261(a) thereon must be determined in accordance with the rules in §49.4261-7(h)(2), unless the flight is otherwise exempt from such tax by reason of an exemption other than the aircraft management services exemption.

(d) Choice of flight rules. Whether a flight on an aircraft owner's aircraft operates pursuant to the rules under FARs Part 91 (14 CFR part 91) or pursuant to the rules under FARs Part 135 does not affect the application of section 4261(e)(5).

(e) Aircraft available for hire. Whether an aircraft owner permits an aircraft management services provider or other person to use its aircraft to provide for-hire

flights (for example, when the aircraft is not being used by the aircraft owner or when the aircraft is being moved in deadhead service) does not affect the application of section 4261(e)(5). However, an amount paid for for-hire flights on the aircraft owner's aircraft, except payments made by the aircraft owner, does not qualify for the aircraft management services exemption under section 4261(e)(5). Therefore, an amount paid by someone other than the aircraft owner for a for-hire flight on the aircraft owner's aircraft is subject to the tax imposed by section 4261 unless the flight is otherwise exempt from such tax by reason of an exemption other than the aircraft management services exemption. See §49.4261-7(h) for rules relating to the application of the tax imposed by section 4261 on amounts paid for certain charter flights.

(f) Billing methods. Except as otherwise provided in this section, the method an aircraft management services provider bills, invoices, or otherwise charges an aircraft owner for aircraft management services, whether by specific itemization of costs, flat monthly or hourly fee, or otherwise, does not affect the application of section 4261(e)(5).

(g) Multiple aircraft management services providers not disqualifying. Whether an aircraft owner pays amounts to more than one aircraft management services provider for aircraft management services does not affect the application of section 4261(e)(5).

(h) Examples. The following examples illustrate the provisions of this section.

(1) Example 1--(i) Facts. During the first quarter of 2021, an aircraft owner pays a \$3,000 monthly management fee to an aircraft management services provider for services related to operating the aircraft owner's aircraft. The aircraft owner used its own aircraft for all but one of the flights the owner took during the period. On the one occasion that the aircraft owner's aircraft was unavailable when the aircraft owner wanted to fly, the aircraft management services provider used a substitute aircraft to transport the aircraft owner. The flight was within the continental United States and the aircraft owner received no compensation for the transportation of other passengers on

the flight. The aircraft owner paid \$1,000 for the flight on the substitute aircraft. The aircraft management services provider included the \$1,000 charge for the substitute aircraft as a separate line item on the monthly management fee invoice.

(ii) Analysis. The tax imposed by section 4261(a) applies to services that do not qualify for the section 4261(e)(5) exemption; in this case, the flight provided on the substitute aircraft. The flight provided on the substitute aircraft is treated as a charter flight for purposes of the tax imposed by section 4261(a), and the owner is treated as the charterer of the flight. The amount paid by the aircraft owner for the flight on the substitute aircraft is the section 4261(a) tax base. The monthly invoice from the aircraft management services provider to the aircraft owner included a line item in the amount of \$1,000 for the charter flight. Because \$1,000 is the actual amount paid for the flight, this amount is the section 4261(a) tax base. The tax imposed by section 4261(b) also applies to the flight on a per-passenger basis. See §49.4261-2(b) for rules regarding the application of the tax imposed by section 4261(b).

(2) Example 2--(i) Facts. Same facts as in paragraph (h)(1) of this section (Example 1), except the invoice does not show the amount paid for the flight on the substitute aircraft and that amount is not otherwise separable from the monthly management fee. The fair market value of the flight on the substitute aircraft is \$1,000.

(ii) Analysis. The tax imposed by section 4261(a) applies to the flight provided on the substitute aircraft. The amount paid for the flight on the substitute aircraft is not otherwise separable from the monthly management fee. Because \$1,000 is the fair market value of the flight, and such amount does not exceed the \$3,000 monthly management fee paid by the aircraft owner, this amount is the section 4261(a) tax base. The tax imposed by section 4261(b) also applies to the flight on a per-passenger basis. See §49.4261-2(b) for rules regarding the application of the tax imposed by section 4261(b).

(3) Example 3--(i) Facts. An aircraft owner pays a monthly management fee to an aircraft management services provider for aircraft management services related to the aircraft owner's aircraft. When the aircraft is not being used by the owner, the owner sometimes permits a charter company to use the aircraft to provide charter flights. At other times when the aircraft is not being used by the owner, the owner permits a tour operator to use the aircraft for flightseeing tours. All charter and flightseeing flights on the aircraft constitute taxable transportation, as that term is defined in section 4262, and no exemptions (other than section 4261(e)(5)) apply. No charter or flightseeing flights are provided on a substitute aircraft. The aircraft's maximum certificated takeoff weight is 7,000 pounds.

(ii) Analysis. Amounts paid by the aircraft owner to the aircraft management services provider for aircraft management services related to the aircraft owner's aircraft are exempt under section 4261(e)(5). Amounts paid by the charterer or passengers for the charter flights are subject to tax under section 4261(a) and (b). See §49.4261-7(h) for rules relating to the application of the tax imposed by section 4261 on amounts paid

for charter flights. See §49.4261-2(b) for rules regarding the application of the tax imposed by section 4261(b). Amounts paid by flightseeing customers for flightseeing tours are also subject to tax under section 4261(a) and (b). If a payment for a flightseeing tour includes charges for nontransportation services, the charges for the nontransportation services may be excluded in computing the tax payable provided the payments are separable and provided in exact amounts. See §49.4261-2(c).

(i) Applicability date. This section applies to amounts paid on and after [INSERT

DATE OF PUBLICATION IN THE FEDERAL REGISTER].

§49.4262(a)-1 [Redesignated]

Par. 14. Section 49.4262(a)-1 is redesignated as §49.4262-1.

Par. 15. Newly redesignated §49.4262-1 is amended:

1. In paragraph (a) introductory text, removing “section 4262(b) (see §49.4262(b)-1)” and adding “section 4262(b) of the Internal Revenue Code (Code) (see §49.4262-2)” in its place.

2. In the first sentence of paragraph (a)(1), removing “Transportation” and adding “Transportation by air” in its place.

3. In the first sentence of paragraph (a)(1), removing “(the “225-mile zone”)” and adding “(225-mile zone)” in its place.

4. Revising paragraph (a)(2).

5. In paragraph (b), removing “subparagraphs (1) and (5) of this paragraph” and adding “paragraph (b)(1) and (5) of this section” in its place.

6. In paragraph (b), removing “subject to the tax” and adding “subject to the taxes imposed by section 4261(a) and (b)” in its place.

7. Revising paragraph (b)(2).

8. Removing and reserving paragraph (c).

9. Revising introductory paragraph (d); designating Example (1) as paragraph (d)(1) and revising newly designated paragraph (d)(1).

10. In paragraph (d), designating Example (2) as paragraph (d)(2) and removing and reserving newly designated paragraph (d)(2).

11. In paragraph (d), designating Example (3) as paragraph (d)(3) and removing “6 hours” wherever it appears and adding “12 hours” in its place and also removing “subject to tax” wherever it appears and adding “subject to the taxes imposed by section 4261(a) and (b)” in its place.

12. In paragraph (d), designating Example (4) as paragraph (d)(4), and removing “six hours” wherever it appears and adding “12 hours” in its place and also removing “subject to tax” wherever it appears and adding “subject to the taxes imposed by section 4261(a) and (b)” in its place.

13. Revising paragraph (e).

14. Adding paragraph (f).

The revisions and addition read as follows:

§49.4262-1 Taxable transportation.

(a) * * *

(2) In the case of any other transportation by air, that portion of such transportation that is directly or indirectly from one port or station in the United States to another port or station in the United States, but only if such transportation is not part of *uninterrupted international air transportation* within the meaning of section 4262(c)(3) of the Code and §49.4262-3(c). Transportation from one port or station in the United States occurs whenever a carrier, after leaving any port or station in the United States,

makes a regularly scheduled stop at another port or station in the United States irrespective of whether stopovers are permitted or whether passengers disembark.

* * * * *

(b) * * *

(2) New York to Vancouver, Canada, with a stop at Toronto, Canada;

* * * * *

(d) Examples. The following examples illustrate the application of section 4262(a)(2) and the taxes imposed by section 4261(a) and (b) of the Code:

(1) Example (1). A purchases in New York a ticket for air transportation from New York to Nassau, Bahamas, with a scheduled stopover of 14 hours in Miami. The part of the transportation from New York to Miami is taxable transportation as defined in section 4262(a) because such transportation is from one station in the United States to another station in the United States and the trip is not uninterrupted international air transportation (because the scheduled stopover interval in Miami is greater than 12 hours). Therefore, the amount paid for the transportation from New York to Miami is subject to the taxes imposed by section 4261(a) and (b).

* * * * *

(e) Examples of transportation that is not taxable transportation. The following examples illustrate transportation that is not taxable transportation:

(1) New York to Trinidad with no intervening stops;

(2) Minneapolis to Edmonton, Canada, with a stop at Winnipeg, Canada;

(3) Los Angeles to Mexico City, Mexico, with stops at Tijuana and Guadalajara, Mexico;

(4) New York to Whitehorse, Yukon Territory, Canada, by air with a scheduled stopover in Chicago of five hours. Amounts paid for the transportation referred to in examples set forth in paragraphs (e)(1), (2), and (3) of this section are not subject to the tax regardless of where payment is made, since none of the trips:

(i) Begin in the United States or in the 225-mile zone and end in the United States or in the 225-mile zone, nor

(ii) Contain a portion of transportation which is directly or indirectly from one port or station in the United States to another port or station in the United States. The amount paid within the United States for the transportation referred to in the example set forth in paragraph (4) of this section is not subject to tax since the entire trip (including the domestic portion thereof) is *uninterrupted international air transportation* within the meaning of section 4262(c)(3) and §49.4262-3(c). In the event the transportation is paid for outside the United States, no tax is due since the transportation does not begin and end in the United States.

* * * * *

(f) Applicability date. This section applies to amounts paid on and after [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**]. For rules that apply before that date, see 26 CFR part 49, revised as of April 1, 2020.

§49.4262(b)-1 [Redesignated]

Par. 16. Section 49.4262(b)-1 is redesignated as §49.4262-2.

Par. 17. Newly redesignated §49.4262-2 is amended as follows:

1. In paragraph (a), “section 4262(b)” is removed and “section 4262(b) of the Internal Revenue Code” is added in its place.

2. In paragraph (b)(2), Example (2) is removed and reserved.

3. Revise paragraph (d).

4. Add paragraph (e).

The revisions and additions read as follows:

§49.4262-2 Exclusion of certain travel.

* * * * *

(d) Example. The application of paragraph (c) of this section may be illustrated by the following example: A purchases in San Francisco a ticket for transportation by air to Honolulu, Hawaii. The portion of the transportation which is outside the continental United States and is outside Hawaii is excluded from taxable transportation. The tax applies to that part of the payment made by A which is applicable to the portion of the transportation between the airport in San Francisco and the three-mile limit off the coast of California (a distance of 15 miles) and between the three-mile limit off the coast of Hawaii and the airport in Honolulu (a distance of 5 miles). The part of the payment made by A which is applicable to the taxable portion of his transportation and the tax due thereon are computed in accordance with paragraph (c)(1) as follows:

Mileage of entire trip (San Francisco airport to Honolulu airport) (miles).....	2,400
Mileage in continental United States (miles).....	15
Mileage in Hawaii (miles).....	5
	<hr/>
	20
Fare from San Francisco to Honolulu.....	\$168.00
Payment for taxable portion (20/2400 x \$168).....	\$1.40
Tax due (7.5% (rate in effect on date of payment) x \$1.40)...	\$0.11

(All distances and fares assumed for purposes of this example. This example addresses only the computation of the tax imposed by section 4261(a). It does not

address the computation of any other tax imposed by section 4261 that may apply to these facts.)

(e) Applicability date. This section applies to amounts paid on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before that date, see 26 CFR part 49, revised as of April 1, 2020.

§49.4262(c)-1 [Redesignated]

Par. 18. Section 49.4262(c)-1 is redesignated as §49.4262-3.

Par. 19. Newly redesignated §49.4262-3 is amended as follows:

1. In the first sentence of paragraph (a), removing “includes only the 48 States existing on July 25, 1956 (the date of the enactment of the Act of July 25, 1956 (Pub. L. 796, 84th Cong., 70 Stat. 644)) and the District of Columbia” and adding “means the District of Columbia and the States other than Alaska and Hawaii” in its place.

2. In paragraph (a), the last sentence is removed.

3. In paragraph (c), removing “six hours” wherever it appears and adding “12 hours” in its place.

4. In paragraph (c), removing “6 hours” wherever it appears and add “12 hours” in its place.

5. In paragraph (c), removing “six-hour” wherever it appears and adding “12-hour” in its place.

6. In paragraph (c)(2), removing “paragraph (a)(2) of §49.4264(c)-1” and adding “§49.4263-3(a)(2)” in its place.

7. Adding paragraphs (d) and (e).

The additions read as follows:

§49.4262-3 Definitions.

* * * * *

(d) Transportation. For purposes of the regulations in this subpart, the term *transportation* includes layover or waiting time and movement of the aircraft in deadhead service.

(e) Applicability date. This section applies to amounts paid on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before that date, see 26 CFR part 49, revised as of April 1, 2020.

§49.4263-5 [Redesignated]

Par. 20. Section 49.4263-5 is redesignated as §49.4281-1.

Par. 21. Newly redesignated §49.4281-1 is amended by:

1. Revising paragraphs (a) and (b).
2. In paragraph (c), adding a sentence at the end of the paragraph.
3. Adding paragraphs (d) and (e).

The revisions and additions read as follows:

§49.4281-1 Small aircraft on nonestablished lines.

(a) In general. Amounts paid for the transportation of persons on a small aircraft of the type sometimes referred to as air taxis shall be exempt from the tax imposed under section 4261 of the Internal Revenue Code provided the aircraft has a maximum certificated takeoff weight of 6,000 pounds or less determined as provided in paragraph (b) of this section. The exemption does not apply, however, when the aircraft is operated on an established line or when the aircraft is a jet aircraft.

(b) Maximum certificated takeoff weight. The term *maximum certificated takeoff weight* means the maximum certificated takeoff weight shown in the type certificate or airworthiness certificate issued by the Federal Aviation Administration.

(c) * * * An aircraft is not considered as operated on an established line at any time during which the aircraft is being operated on a flight the sole purpose of which is sightseeing.

(d) Jet aircraft. For purposes of this section, the term *jet aircraft* does not include any aircraft which is a rotorcraft (such as a helicopter) or propeller aircraft.

(e) Applicability date. This section applies to amounts paid on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before that date, see 26 CFR part 49, revised as of April 1, 2020.

§49.4264(a)-1 [Redesignated]

Par. 22. Section 49.4264(a)-1 is redesignated as §49.4263-1.

Par. 23. Newly redesignated §49.4263-1 is revised to read as follows:

§49.4263-1 Duty to collect the tax; payments made outside the United States.

(a) Duty to collect tax. Where payment upon which tax is imposed by section 4261 of the Internal Revenue Code is made outside the United States for a prepaid order, exchange order, or similar order, the person furnishing the initial transportation pursuant to such order must collect the applicable tax. See section 4291 and the regulations under section 4291 for cases where persons receiving payment must collect

the tax. See section 6672 for rules relating to the application of the trust fund recovery penalty.

(b) Applicability date. This section applies to amounts paid on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before that date, see 26 CFR part 49, revised as of April 1, 2020.

§49.4264(b)-1 [Redesignated]

Par. 24. Section 49.4264(b)-1 is redesignated as §49.4263-2.

§49.4263-2 [Amended]

Par. 25. Newly redesignated §49.4263-2 is amended as follows:

1. In the first sentence of paragraph (a), removing “4264(b)” and adding “4263(b) of the Internal Revenue Code (Code)” in its place.

2. In the last sentence of paragraph (a), removing “office of the district director for the district in which the person making the report is located,” and adding “Commissioner” in its place.

3. In paragraph (b), adding “of the Code” at the end of the paragraph.

4. In paragraph (c), removing “Illustration.” and adding “Example.” in its place.

5. In the last sentence of paragraph (c), removing “office of the district director of internal revenue for the district in which the carrier is located,” and adding in its place “Commissioner”.

§49.4264(c)-1 [Redesignated]

Par. 26. Section 49.4264(c)-1 is redesignated as §49.4263-3.

Par. 27. Newly redesignated §49.4263-3 is amended by:

1. Revising paragraph (a).

2. In paragraph (b), removing the second sentence.
3. In paragraph (b), removing “4264” wherever it appears and adding “4263” in its place.
4. In paragraph (b), adding “of the Code” after “4291” in the first sentence.
5. Removing and reserving paragraph (c).
6. Adding paragraph (d).

The revisions and additions read as follows:

§49.4263-3 Special rule for the payment of tax.

(a) In general. For the rules applicable under section 4263(c) of the Internal Revenue Code, see §49.4261-1(b)(2).

* * * * *

(d) Applicability date. This section applies to amounts paid on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before that date, see 26 CFR part 49, revised as of April 1, 2020.

§49.4264(d)-1 [Redesignated]

Par. 28. Section 49.4264(d)-1 is redesignated as §49.4263-4.

§49.4263-4 [Amended]

Par. 29. Newly redesignated §49.4263-4 is amended by removing “4264(d)” and adding “4263(d)” in its place.

§49.4264(e)-1 [Redesignated]

Par. 30. Section 49.4264(e)-1 is redesignated as §49.4263-5.

§49.4264(f)-1 [Redesignated]

Par. 31. Section 49.4264(f)-1 is redesignated as §49.4263-6.

§49.4263-6 [Amended]

Par. 32. Newly redesignated §49.4263-6 is amended by removing and reserving paragraph (b).

Par. 33. Section 49.4271-1 is amended by revising paragraphs (a) and (b) and adding paragraph (g) to read as follows:

§49.4271-1 Tax on transportation of property by air.

(a) Purpose of this section. Section 4271 of the Internal Revenue Code (Code) imposes a 6.25 percent tax on amounts paid within or without the United States for the taxable transportation of property (as defined in section 4272 of the Code). This section sets forth rules as to the general applicability of the tax. This section also sets forth rules authorized by section 4272(b)(2) which exempt from tax payments for the transportation of property by air in the course of exportation (including shipment to a possession of the United States) by continuous movement, and in due course so exported.

(b) Imposition of tax--(1) The tax imposed by section 4271 applies only to amounts paid to persons engaged in the business of transporting property by air for hire.

(2) The tax imposed by section 4271 does not apply to amounts paid for the transportation of property by air if such transportation is furnished on an aircraft having a maximum certificated takeoff weight (as defined in section 4281(b) of the Code) of 6,000 pounds or less, unless such aircraft is operated on an established line or when such aircraft is a jet aircraft. The tax imposed by section 4271 also does not apply to any payment made by one member of an affiliated group (as defined in section 4282(b)

of the Code) to another member of such group for services furnished in connection with the use of an aircraft if such aircraft is owned or leased by a member of the affiliated group and is not available for hire by persons who are not members of such group.

* * * * *

(g) Applicability date. This section applies to amounts paid on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before that date, see 26 CFR part 49, revised as of April 1, 2020.

Par. 34. Section 49.4271-2 is added to read as follows:

§49.4271-2 Aircraft management services.

For rules regarding the exemption for certain amounts paid by aircraft owners for aircraft management services, see §49.4261-10. This section applies to amounts paid on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before that date, see 26 CFR part 49, revised as of April 1, 2020.

§49.4282-1 [Reserved]

Par. 35. Add and reserve §49.4282-1.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: January 10, 2021

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy)