

INTERNAL REVENUE SERVICE

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Attn: [REDACTED]

Dear [REDACTED]:

I am responding to your March 21, 2001, letter on behalf of your constituent, [REDACTED], office manager of the [REDACTED]. [REDACTED] wrote about the federal excise tax on charges for flight time and other flight charges related to exclusive use contracts for aircraft that the Forest Service awards to private companies for smokejumpers and their cargo. He points out:

- The smokejumper aircraft charges should not be subject to tax because charges for air tanker service are not taxed and in both cases contractors are providing the service to the Forest Service.
- The tax produces no net gain because a federal agency pays the tax to a contractor who then pays it to the IRS.
- The charges create a tremendous amount of paperwork.

I hope the following information is helpful to you in responding to [REDACTED].

Tax Treatment of Aviation Fuel

The Internal Revenue Code imposes a tax on:

- The sale of aviation fuel by the producer or importer thereof or by any producer of aviation fuel [Section 4091(a)].
- The sale or use of fuel in an aircraft in noncommercial aviation where there was no taxable sale of the fuel under section 4091 [Section 4041(c)]. For purposes of section 4041(c), the term noncommercial aviation means any use other than use in a business of transporting persons or property for compensation or hire by air.

- The amounts paid for the taxable transportation of persons by air [Section 4261(a)].
- The amounts paid to a person engaged in the business of the taxable transportation of property by air for hire [Section 4271(a)].

Section 4291 provides, in general, that every person receiving any payment for facilities and services on which the tax is imposed upon the payor thereof shall collect the amount of the tax from the person making the payment (this includes sections 4261 and 4271).

The Airport and Airway Revenue Act of 1970 imposed aviation-related fuel taxes only on noncommercial aviation (such as aircraft used for pleasure or not-for-hire business travel) and not on commercial aviation. The Senate Finance Committee Report accompanying the law noted that the use of an aircraft is subject to either the taxes on the transportation of persons and freight or to the fuel taxes, but not to both on any one trip. Currently however, aviation fuel used in commercial aviation is also taxed under section 4091, although at a reduced rate.

Tax Treatment of Air Tanker Service

██████████ said air tanker service is not subject to the air transportation taxes. In a situation where an air tanker company contracts with various governmental agencies to provide aerial firefighting protection for public lands and forests, the firefighting protection service involving the dispersing of fire retardant is considered to be similar to a cropdusting service and is not transportation of property by air. Additionally, since the pilots are company personnel, and no persons are transported to fight the fire, the tax on the transportation of persons is also not applicable. However, the firefighting service is the use of an aircraft in noncommercial aviation and sales of aviation fuel for use in the aircraft furnishing this service are subject to the tax imposed by section 4041(c). [Under current law, the fuel tax under section 4091 applies]. (Rev. Rul. 72-156, 1972-2 C.B. 331).

Tax Treatment of Smokejumper Aircraft Charges

In regard to the taxability of charges related to the smokejumper aircraft, prior to 1944 a number of Internal Revenue Code sections provided exemptions from excise tax for articles or services furnished to the U.S. Government. Section 307 of the Revenue Act of 1943 (the Act) eliminated most of those exemptions, including exemptions for the taxes on the transportation of persons and property furnished to the Government. However, the Act also empowered the Secretary of the Treasury to authorize exemption for certain excise taxes, including the transportation taxes, for any particular articles or services, or class of articles or services purchased for the exclusive use of the United States, if the Secretary determined the imposition of the tax on the articles or services would cause substantial burden or expense that could be avoided by granting tax exemption and that the full benefit of the exemption, if granted, would accrue to the United States. Soon after, the Secretary issued an authorization, dated April 29, 1944, granting the exemptions for transportation of Government employees on a Government

transportation request and for payments for the transportation of property to or from the Government shipped on a Government bill of lading. Those exemptions were to expire at the end of World War II, but the Secretary's Authorization of June 20, 1947, extended them. Pursuant to the authority granted under section 4293, a Secretary's Authorization of March 31, 1967, was issued that provided that amounts paid by the Department of the Interior for fire prevention and control activities of range and forest fires were exempt from the tax on the transportation of persons by air. Subsequent to that authorization, the Congress, in the Airport and Airway Revenue Act of 1970, amended section 4293 by striking out language that allowed the Secretary to authorize exemption for the air transportation taxes, thus voiding the Secretary's Authorization of March 31, 1967.

Use of Revenue Generated from Transportation Taxes

In amending section 4293, the Congress believed that it was inappropriate to continue a special exemption for the Government because the air transportation taxes are considered as user charges and there was no reason why the Government should not pay for its share of the use of the airway facilities. Revenues from the transportation taxes are deposited in the Airport and Airway Trust Fund for use in the expansion and development of our air transportation system.

If you have any questions, please contact me at [REDACTED].

Sincerely,

Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)