

INTERNAL REVENUE SERVICE

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Dear 

I am responding to your April 30, 2001, inquiry to Commissioner Rossotti concerning a certain technical advice memorandum (TAM) that you state was issued to a member of your association. Section 6103 of the Internal Revenue Code prohibits our addressing particular TAMs with any person except the taxpayer whose liability is discussed in that TAM. Further, we cannot confirm the existence of a TAM concerning the application of the air transportation excise tax at this time. However, in an attempt to provide you with as much assistance as possible, we will treat your letter as a request for general information regarding the air transportation excise tax and on the limited circumstances in which the IRS will generally apply a TAM without the normal retroactive effect.

Prior to the Taxpayer Relief Act of 1997, 1997-4 (Vol. 1) C.B. 2, (the Act), the excise tax on domestic air transportation of persons was calculated solely as a percentage of the amount paid for that transportation. In addition, an international travel facilities tax, calculated as a fixed amount, was imposed on any amount paid for air transportation beginning or ending in the United States. Under the Act, this percentage was decreased and a new tax on each segment of taxable transportation was added. The Act states that the segment tax is imposed "on the amount paid for each domestic segment of taxable transportation." The term "domestic segment" is defined in § 4261(b)(2) as consisting of one takeoff and one landing and which is taxable transportation described in § 4262(a)(1).

The international travel facilities tax imposed by § 4261(c) is similar to the § 4261(b) segment tax inasmuch as it is not calculated as a percentage of the amount paid, but is a fixed amount imposed on an amount paid for the transportation. Rev. Rul. 72-309, 1972-1 C.B. 348, addresses the calculation of the international travel facilities tax in the context of a single payment for a charter. That revenue ruling concluded that when a single amount is paid for a charter, "implicit in the charter fee is an amount paid for the transportation of each passenger actually on the flight." The similar language in the § 4261(b) segment tax supports a conclusion for the segment tax similar to that reached in the revenue ruling for the international travel facilities tax. Thus, while there is no guidance by the IRS on the segment tax specifically, guidance relating to an analogous tax would suggest a per passenger application of the segment tax.

Section 7805(b)(8) allows the Secretary to prescribe the extent, if any, to which any ruling shall be applied without retroactive effect. The holding of a TAM applies retroactively unless the Secretary exercises the discretionary authority granted under § 7805(b)(8). Generally, a TAM will not apply retroactively where the IRS has a contrary regulation or revenue ruling on point, or where the IRS has issued an earlier TAM or letter ruling to the taxpayer concerning the same matter under consideration in the TAM. Rev. Proc. 2001-2, 2001-1 I.R.B. 79, 104. The IRS has not issued any regulation or revenue ruling on the segment tax. Thus, unless a letter ruling had been issued to a taxpayer prior to the issuance of a TAM, it would generally not be an appropriate exercise of discretion to apply a TAM nonretroactively simply because the taxpayer disagrees with the position reached in that TAM.

We recognize that the application of the segment tax to each passenger may be the subject of disagreement. We also recognize that a taxpayer has no control over whether the IRS issues regulations or revenue rulings on a particular topic. However, where a taxpayer is unclear as to the application of a particular tax, it has an option other than waiting for published guidance from the IRS. The IRS has a letter ruling program that provides guidance to taxpayers in situations where the application of the Code is unclear. The provisions for requesting a letter ruling are set forth each year in the first revenue procedure published in the Internal Revenue Bulletin. Provisions applicable this year are found in Rev. Proc. 2001-1, 2001-1 I.R.B. 1 (copy enclosed).

If you have any questions, please contact either me or [REDACTED]
[REDACTED]

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By:
Richard A. Kocak
Chief, Branch 8

Enclosure