



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

Number: **INFO 2001-0190**

Release Date: 9/28/2001

Index No.: 4261.00-00

July 17, 2001

[REDACTED]

Dear [REDACTED]:

I am responding to your June 14, 2001, inquiry on behalf of your constituents, [REDACTED] and [REDACTED]. Both constituents requested information on the application of the air transportation excise taxes to the on-demand air charter industry. As you requested, we responded directly to both [REDACTED] and [REDACTED].

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

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By:
Richard A. Kocak
Chief, Branch 8

Enclosures



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

July 17, 2001

Index No.: 4261.00-00
[REDACTED]

[REDACTED]

Dear [REDACTED]

I am responding to your letter to [REDACTED] requesting information about the application of the segment tax to on-demand air charter flights in a recent technical advice memorandum (TAM) issued by the IRS. [REDACTED] asked us to respond to you.

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 is similar to the segment tax because both are calculated not as a percentage of the amount paid but as a fixed amount applicable to any 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 sections 4261(b) and 4261(c) supports the conclusion that the Code should apply to the segment tax in the same way as in the revenue ruling for the international travel facilities tax. Thus, while the IRS has not issued guidance on the segment tax specifically, the guidance for the similar international travel facilities tax suggests the segment tax also applies per passenger.

The Secretary can prescribe the extent, if any, to which any ruling shall be applied without retroactive effect [Section 7805(b)(8)]. The holding of a TAM applies retroactively unless the Secretary exercises this discretionary authority. 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 the IRS has issued a letter ruling to a taxpayer before issuing 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.

I recognize the application of the segment tax to each passenger may be the subject of disagreement. However, if a taxpayer is unclear on the application of a particular tax, he or she can request a private letter ruling rather than wait for published guidance from us. We have a letter ruling program to provide guidance to taxpayers in situations where the application of the Code is unclear. Each year we announce the procedures for requesting a letter ruling in the first revenue procedure published in the Internal Revenue Bulletin. This year's procedures are in Rev. Proc. 2001-1, 2001-1 I.R.B. 1 (copy enclosed).

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

Sincerely,

Richard A. Kocak
Chief, Branch 8
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