



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

OFFICE OF
CHIEF COUNSEL

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[REDACTED]

Attention: [REDACTED]

Dear [REDACTED]:

I am responding to your July 30, 2001, inquiry on behalf of your constituent, [REDACTED], in which he expressed concerns about the application of the segment tax to on-demand air charter flights in a recent technical advice memorandum (TAM) issued by the IRS. I hope that the following information will be helpful to you in responding to [REDACTED].

The air transportation excise taxes are user fees, and the amounts collected are paid into the Airport and Airway Trust Fund (the Trust Fund). The Trust Fund uses these funds to plan, construct, develop, operate, and maintain the United States' airport and airway system. In addition, the Trust Fund covers the portion of the Department of Transportation's budget dealing with air transportation and air safety. This includes over one-half of the operating costs of the Federal Aviation Administration.

Prior to the Taxpayer Relief Act of 1997, 1997-4 (Vol. 1) C.B. 2, (the Act), air transportation providers calculated the excise tax on domestic air transportation solely as a percentage of the amount paid for that transportation. In addition, providers of international air transportation beginning or ending in the United States calculated an international travel facilities tax as a fixed amount applicable to any amount paid for that air transportation. Under the Act, the Congress enacted legislation to decrease this percentage and add a new tax on each segment of taxable transportation. The Act states the segment tax is imposed "on the amount paid for each domestic segment of taxable transportation." In the context of commercial air transportation, the segment tax applies to each passenger who pays any amount for a segment. The term "domestic segment" is defined as one takeoff and one landing, which is taxable transportation described in section 4262(a)(1) of the Internal Revenue Code [section 4261(b)(2) of the Code].

The international travel facilities tax 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. Revenue Ruling 72-309, 1972-1 C.B. 348, shows how to calculate the international travel facilities tax when the purchaser makes a single payment for a charter. That revenue ruling concluded that when an individual or organization pays a single amount 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 segment tax should apply in the same way as the international travel facilities tax. Thus, although the IRS has not issued guidance on the segment tax specifically, the guidance for the similar international travel facilities tax clearly suggests the segment tax should also apply per passenger. The per-passenger application means all users of the airport and airway system will share equally in the cost, rather than commercial air passengers bearing a higher share of those costs than passengers in chartered aircraft.

The Secretary of the Treasury can prescribe the extent, if any, to which any ruling applies without retroactive effect [Section 7805(b)(8) of the Code]. 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 about the same matter under consideration in the TAM [Revenue Procedure 2001-2, 2001-1 I.R.B. 79, 104]. The IRS has not issued any regulation or revenue ruling on the segment tax. Thus, because the IRS had not issued a letter ruling to the taxpayer before issuing the TAM, it would generally not be appropriate to apply the TAM nonretroactively simply because the taxpayer disagreed 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, where taxpayers are unclear on the application of a particular tax, they can request a letter ruling rather than wait for published guidance from the IRS. The letter ruling program provides guidance to taxpayers when they are unclear on the application of the Code. 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,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure