

INTERNAL REVENUE SERVICE

Number: **INFO 2002-0124**
Release Date: 9/30/2002
Index No.: 4261.00-00

GENIN-129756-02
CC:PSI:B8

[REDACTED]

June 25, 2002

Dear [REDACTED]

This replies to your May 6, 2002, letter wherein you submit some additional questions in regard to this office's response to Senator [REDACTED] inquiry on your behalf regarding your agency's contracts with private companies to provide aircraft for smokejumpers and their cargo. Our April 26, 2001, letter to Senator [REDACTED] addressed the application of certain federal excise taxes to the use of chartered aircraft when used to provide aerial firefighting protection or for the transportation of smokejumpers. Specifically, you would like to know whether charges for any of the following invoiced items are subject to excise tax:

- Exclusive daily availability of the aircraft.
- Flight time billed on an hourly basis.
- Overnight expenses for the crew away from home base.
- Crew standby beyond the ordinary duty day.

You also inquire whether a domestic segment fee is applicable to amounts paid for the transportation of smokejumpers.

Where, as in this case, a taxpayer requests a written response regarding the application of tax law to its specific set of facts, a request to this office for a letter ruling is appropriate. If you would like a letter ruling in this matter, please follow the instructions in Revenue Procedure 2002-1, 2002-1 I.R.B. 1 (copy enclosed). In the meantime, we hope the following general information will be useful to you.

As indicated in our letter to Senator [REDACTED], federal excise taxes are imposed on amounts paid for the taxable transportation of persons by air (section 4261(a) of the Internal Revenue Code) and for amounts paid to a person engaged in the business of the taxable transportation of property by air for hire (section 4271(a)). Rev. Rul. 72-156, 1972-2 C.B. 331, provides that where an air tanker company contracts with a government agency to provide aerial firefighting protection, specifically the dispersal of

fire retardant, neither of the above taxes is applicable. The tax on the transportation of property does not apply inasmuch as the aerial service is similar to a nontaxable cropdusting service wherein the air service provider does not transport property for the customer. Furthermore, 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, where a government agency contracts with an aircraft service provider for the transportation of persons (including smokejumpers) or property (other than the fire retardant), either or both of the air transportation taxes are applicable. In a situation where both taxes would be applicable, Rev. Rul. 72-585, 1972-2 C.B. 578, provides that if a single amount is paid for air transportation of a mixed load of persons and property, tax must be paid under § 4261 on that part of the payment that represents the amount charged for transportation of persons, and tax must also be paid under § 4271 on that part of the charge that represents a payment for transportation of property. An allocation of the single charge must be made on a fair and reasonable basis, and must be supportable by adequate records.

Pursuant to § 4261(b)(1), if tax is imposed on the transportation of persons by air, a separate domestic segment tax of \$3.00 per segment (defined as one takeoff and one landing) is also imposed. The segment tax is not imposed on any domestic segment beginning or ending at an airport that is a rural airport. See Rev. Proc. 98-18, 1998-1 C.B. 435, for a listing of rural airports for purposes of the segment tax. Rev. Rul. 2002-34, 2002-24 I.R.B. 1150, holds that if an aircraft is chartered and one or more persons are transported on that aircraft, for each segment the tax under § 4261(b) is calculated by multiplying the amount of tax by the number of passengers transported on the aircraft.

Section 4281 provides that the taxes imposed by sections 4261 and 4271 do not apply to transportation by an aircraft having a maximum certificated takeoff weight of 6,000 pounds or less, except when the aircraft is operated on an established line.

Section 4262(d) provides that, for purposes of the tax on the transportation of persons by air, the term "transportation" includes layover or waiting time and movement in deadhead service. A similar provision is provided under § 4272 for the transportation of property.

Rev. Rul. 76-556, 1976-2 354, holds that hourly and flat rates, which include charges for layover time and movement of aircraft in deadhead service as well as for actual flight time, charged by an aircraft rental company for piloted aircraft having maximum certificated takeoff weights in excess of 6,000 pounds to a company for the transportation of employees to and from their jobsites are subject to the tax imposed under § 4261.

Rev. Rul. 72-565, 1972-2 C.B. 578, holds that charges in connection with layover time of chartered aircraft consisting of an hourly rate plus the expenses of the pilot and

crew for salaries, lodging, ground transportation, food, and entertainment are charges subject to both air transportation taxes.

Rev. Rul. 75-535, 1975-2 C.B. 438, considers whether amounts paid to a nonprofit organization are subject to tax. In holding that there is no exemption for air transportation provided on a nonprofit basis, the ruling also holds that amounts paid for air flight and standby time furnished by the organization in connection with its unscheduled U.S. air ambulance service, using aircraft having maximum certificated weights in excess of 6,000 pounds, are subject to the § 4261(a) tax.

Amounts paid for daily availability of aircraft are considered to be amounts paid for standby time and subject to tax. It has been a longstanding position of the Internal Revenue Service that amounts paid for the right to air transportation service are taxable regardless of whether the actual service is used.

If you have any questions about this, please contact the person whose name appears above.

Sincerely,
Associate Chief Counsel
(Passthroughs and Special Industries)

By:

Richard A. Kocak
Chief, Branch 8

Enclosure