

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:PSI:B07:MHBeker
POSTN-107174-15

Third Party Communication: None
Date of Communication: Not Applicable

UILC: 4261.00-00, 6415.00-00

date: May 26, 2015

to: Barbara J. Fiebich
Director, Specialty Exam Policy and Quality, SB/SE Examination

from: Charles J. Langley, Jr.
Senior Technician Reviewer, Branch 7
(Passthroughs & Special Industries)

subject: Third-party air transportation excise tax refund claims

This memorandum responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

Processor = [REDACTED]

Airline = [REDACTED]

Bank = [REDACTED]

ISSUE

Whether, in the circumstances described below, a third-party credit card processor (Processor) is eligible for a refund of the taxes imposed by § 4261 of the Internal Revenue Code (Code) on amounts paid for taxable transportation (air transportation excise taxes).

CONCLUSION

In the circumstances described below, [REDACTED]
[REDACTED]

FACTS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

LAW AND ANALYSIS

Section 4261(a) imposes a tax on the amount paid for taxable transportation (as defined in § 4262) of any person by air and § 4261(b) imposes a tax on the amount paid for each domestic segment of taxable transportation. The § 4261(a) tax is a percentage of the amount paid and the § 4261(b) tax is a fixed dollar amount for each segment. "Taxable transportation" generally includes air transportation that begins and ends in the United States.

Section 4261(d) provides that the tax imposed by § 4261 shall be paid by the person making the payment subject to tax and § 4291 generally provides that any person receiving any payment for taxable air transportation must collect the amount of the tax from the person making the payment. The collector is generally required by regulations to make deposits, file returns, and pay over the tax to the government.

Rev. Rul. 2006-52, 2006-2 C.B. 761, holds that an airline's customer is the taxpayer and the airline the collector of air transportation excise taxes, rather than an unrelated third-party intermediary that merely assists in processing the transaction for the customer and airline.

S. Rep. No. 105-33, at 158 (1997), 1997-4 C.B. 1067, 1238 (relating to the legislation that became Pub. L. 105-94, 1997-4 (Vol. 1) C.B. 1, which made numerous changes to the air transportation tax), notes that the "air passenger transportation excise taxes are imposed on passengers; transportation providers (generally airlines) are responsible for collecting and remitting the taxes to the Federal Government."

Under the facts described above, [REDACTED]

[REDACTED] Brennan v. Southwest Airlines, 134 F.3d 1405 (9th Cir. 1998), and Sigmon v. Southwest Airlines, 110 F.3d 1200 (5th Cir. 1997) [REDACTED]

[REDACTED] First, both of the cited cases stand for the proposition that the Code does not create a private action for erroneously or illegally collected air transportation excise tax. [REDACTED]

[REDACTED] econd, both cases reinforce the principle that the proper claimant in a refund action for air transportation excise taxes is generally the taxpayer. See Brennan at 1412 and Sigmon at 1204. These cases do not indicate that the proper claimant would be a tangentially related third party intermediary [REDACTED]

Section 6415(a) allows a refund of any overpayment of tax imposed by § 4261 to the person who collected the tax and paid it to the Secretary if certain conditions are met. [REDACTED]

Based on a plain reading of Code, legislative history to the Code, and related administrative guidance and case law, we conclude that, in the circumstances described above, [REDACTED]

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call Mike Beker at (202) 317-6855 if you have any further questions.