

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

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date: October 20, 2017

to: Alfredo Valdespino
Director, Examination - Specialty Policy
Small Business/Self-Employed, IRS

from: Stephanie Bland
Branch Chief, Branch 7
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

subject: Taxpayer Specific Advice - [REDACTED] Air Transportation Services

This Chief Counsel Advice responds to your request for assistance dated July 20, 2017.
This advice may not be used or cited as precedent.

LEGEND

[REDACTED] = [REDACTED]

[REDACTED] = [REDACTED]
[REDACTED]

[REDACTED] = [REDACTED]
[REDACTED]

[REDACTED] = [REDACTED]
[REDACTED]

[REDACTED] = [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] = [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

ISSUE

[REDACTED]

FACTS

[REDACTED]

[REDACTED]

- | [REDACTED]
- | [REDACTED]
- | [REDACTED]

[REDACTED]

[REDACTED]

all amounts paid to the charterer for the transportation. In such case, no tax will be due on the amount paid by the charterer to the charter provider for the charter of the conveyance.

Section 4262(a)(1) defines “taxable transportation” for purposes of § 4261 as (1) transportation by air that begins in the United States or in the 225-mile zone (that portion of Canada and Mexico that is not more than 225 miles from the nearest point in the continental United States) and ends in the United States or in the 225-mile zone, and (2) in the case of transportation other than transportation described in (1), that portion of such transportation that is directly or indirectly from one port or station in the United States to another port or station in the United States, but only if such portion is not a part of uninterrupted international air transportation.

Section 4262(c)(3) defines the term “uninterrupted international air transportation” as any transportation by air which is not transportation described in § 4262(a)(1) and in which – (A) the scheduled interval between (i) the beginning or end of the portion of such transportation which is directly or indirectly from one port or station in the United States to another port or station in the United States and (ii) the end or beginning of the other portion of such transportation is not more than twelve hours, and (B) the scheduled interval between the beginning or end and the end or beginning of any two segments of the portion of such transportation referred to in § 4262(c)(3)(A)(i) is not more than twelve hours.

Section 49.4262(c)-1(c) provides rules relating to the term “uninterrupted international air transportation”. Section 49.4262(c)-1(c)(2) provides, in relevant part, that where the interval between arrival and departure time at any stopover point in the United States exceeds twelve¹ hours, such transportation is not uninterrupted international air transportation even though the schedules of the airlines do not make possible a scheduling within the twelve-hour limit. Where any interval scheduled for twelve hours or less is increased to exceed twelve hours, the transportation will continue to be uninterrupted international air transportation if the increase in time is attributable to delays in the arrival or departure of the scheduled air transportation. In such case the transportation shall continue to be uninterrupted international air transportation if the passenger continues the passenger’s transportation no later than on the first available flight offered by the continuing carrier which affords the passenger substantially the same accommodations as originally purchased. However, if for any other reason such interval at any stopover is increased to more than twelve hours, the transportation will lose its classification as uninterrupted international air transportation.

¹ Section 281A of the Tax Equity and Fiscal Responsibility Act of 1982, P.L. 97-248, 96 Stat 324, increased the allowable interval in § 4262(c)(3) from six hours to twelve hours effective for transportation beginning after August 31, 1982. The regulations were not updated to reflect this change. To avoid confusion, in this memorandum we substituted “twelve” for “six” when the cited published guidance still references a six-hour interval.

The regulations further provide that transportation from the point of origin in the United States to a port or station outside the United States and the 225-mile zone, with a stopover in the United States, must be scheduled before the time the initial transportation commences in order for the United States portion of such transportation to qualify as uninterrupted international air transportation.

Section 4262(d) defines the term "transportation" to include layover or waiting time and movement of the aircraft in deadhead service.

Section 4263(c) provides, in relevant part, that where any tax imposed by § 4261 is not paid at the time payment for transportation is made, then such tax shall be paid by the carrier providing the initial segment of such transportation which begins or ends in the United States.

Section 4281 provides that the taxes imposed by § 4261 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 or when such aircraft is a jet aircraft.

Rev. Rul. 64-6, 1964-1 C.B. 397, which involves the international travel of a military service member and his dependent, applies § 49.4262(c)-1(c)(2) in a two-step analysis. First, the revenue ruling examines whether the entire trip is scheduled prior to the time the initial transportation commences. Second, the revenue ruling examines whether the scheduled interval between the foreign and domestic portions is twelve hours or less. If both of these inquiries are answered in the affirmative, then the domestic portion of the air transportation is part of uninterrupted international air transportation. Importantly, the revenue ruling performs this analysis on a passenger-by-passenger basis (that is, on each individual passenger's travel itinerary).

ANALYSIS AND CONCLUSIONS

[REDACTED]

As an initial matter, generally, amounts paid for taxable transportation by the United States government are not exempt from the air transportation of persons excise taxes unless a waiver is authorized by the Secretary of the Treasury pursuant to the rules provided in § 4293. [REDACTED]

[REDACTED]

[REDACTED]

Further, under § 49.4261-7(h)(2), a charterer of a conveyance that sells transportation to other persons must collect and account for the air transportation excise taxes with respect to all amounts paid to the charterer for transportation. In such case, no tax will be due on the amount paid by the charterer to the charter provider for the charter of the conveyance. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The percentage tax applies to amounts paid for taxable transportation of any person. Taxable transportation is transportation by air that begins and ends in the United States or in the 225-mile zone, unless it is part of uninterrupted international air transportation.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

Future Considerations

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

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