

Office of Chief Counsel
Internal Revenue Service
memorandum

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to: Daniel R. Lauer
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Small Business/Self-Employed

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

subject: Taxpayer Specific Advice - [REDACTED]

This responds to your request for taxpayer specific legal advice. 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]

ISSUES

1. Whether, in the situations described below, [REDACTED] the taxes imposed by § 4261 (air transportation of persons excise tax) or § 4271 (air transportation of property excise tax) of the Internal Revenue Code (Code).
2. Whether the same conclusions would be reached as those for *Issue 1* if the services addressed in *Issue 1* are provided by [REDACTED].

FACTS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

LAW

Section 4261(a) of the Code imposes a tax on the amount paid for the taxable transportation of any person.

Section 4261(b) (domestic segment tax) imposes a tax on amounts paid for each domestic segment of taxable transportation. A "domestic segment" is defined in § 4261(b)(2) as any segment consisting of one takeoff and one landing and which is taxable transportation.

Section 4261(c)(1) imposes a tax of \$12.00 (adjusted annually for inflation) on any amount paid (whether within or without the U.S.) for any transportation of any person by air, if such transportation begins or ends in the U.S.

Section 4261(c)(2) provides that § 4261(c)(1) does not apply to any transportation all of which is taxable under § 4261(a) (determined without regard to §§ 4281 and 4282).

Section 4261(d) provides that the tax is paid by the person making the payment subject to tax and § 4291 provides that the tax is collected by the person receiving the payment.

Section 4261(e)(1)(A) exempts from the domestic segment tax amounts paid for segments beginning or ending at rural airports. Section 4261(e)(1)(B) defines the term “rural airport” as any airport if:

(i) there were fewer than 100,000 commercial passengers departing by air (in the case of any airport not connected by paved roads to another airport, on flight segments of at least 100 miles) during the second preceding calendar year from such airport; and

(ii) such airport: (I) is not located within 75 miles of another airport which is not described in § 4261(e)(1)(B)(i), (II) is receiving essential air service subsidies as of the date of the enactment of § 4261(e)(1), or (III) is not connected by paved roads to another airport.

Section 4262(a)(1) defines “taxable transportation” for purposes of § 4261 as (1) transportation by air that begins in the U.S. 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 U.S.) and ends in the U.S. 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 U.S. to another port or station in the U.S., but only if such portion is not a part of uninterrupted international air transportation.

Section 4262(c)(1) defines the term “continental United States” as meaning the District of Columbia and the States other than Alaska and Hawaii.

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

Section 4263(e) provides that a round trip consists of transportation from the point of departure to the destination, and consists of separate transportation thereafter.

Section 4271(a) imposes a tax on the amount paid for the taxable transportation of property if the amount is paid to a person engaged in the business of transporting property by air for hire.

Section 4272(a) defines “taxable transportation” to include transportation by air that begins and ends in the continental U.S.

Section 4272(d) defines the term “transportation” to include layover or waiting time and movement of the aircraft in deadhead service.

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. 72-309, 1972-1 C.B. 348, concludes that if a single amount is paid for chartered air transportation carrying one or more passengers, the international facilities tax applies with respect to each passenger because implicit in the charter fee is an amount paid for the transportation of each passenger actually on the flight. In other words, the revenue ruling concludes that the § 4261(c) tax is computed on a per-passenger basis.

Rev. Rul. 79-355, 1979-2 C.B. 385, holds that the tax on air transportation of persons does not apply to transactions between state agencies in which one agency provides air transportation services to other agencies for official business on state owned aircraft. The revenue ruling reasons that since the agencies in the revenue ruling are administrative divisions of the state, rather than separate entities apart from the state, the state is supplying the transportation to itself and the air transportation transactions between the agencies are merely allocations to measure operating costs of each division. Thus, such transactions are not “amounts paid” within the meaning of § 4261(a).

Rev. Rul. 83-143, 1983-2 C.B. 196, holds that the tax imposed by § 4261(c) applies to amounts paid for helicopter transportation of persons from the U.S. to semi-submersible or floating drilling rigs and to other vessels moving or being moved through international waters. The revenue ruling reasons that the tax imposed by § 4261(c) applies to amounts paid for any transportation of persons by air that begins in the U.S. and not all of which is subject to the tax imposed under § 4261(a). The tax imposed by § 4261(a) does not apply to amounts paid for the transportation of persons by air between the U.S. and semi-submersible or floating drilling rigs or other vessels moving or being moved through international waters.

Rev. Rul. 83-143 is distinguished from Rev. Rul. 77-197, 1977-1 C.B. 344, which holds that the tax imposed by § 4261(a) applies to amounts paid for the transportation of persons by air from the U.S. to a fixed drilling platform located on the Continental Shelf. Rev. Rul. 83-143 is also distinguished from Rev. Rul. 81-257, 1981-2 C.B. 214, which amplified Rev. Rul. 77-197 to include as taxable under § 4261(a) amounts paid for transportation to, from and between semi-submersible and other floating drilling rigs when they are temporarily attached to the seabed of the Outer Continental Shelf.

Rev. Rul. 2002-34, 2002-1 C.B. 1150, holds that if an aircraft is chartered and one or more persons are transported on that aircraft, the tax imposed by § 4261(b) for each segment is calculated by multiplying the amount of tax by the number of passengers transported on the aircraft. In other words, the revenue ruling concludes that the § 4261(b) segment tax is calculated on a per-passenger basis.

ANALYSIS AND CONCLUSIONS

Issue 1

You first ask whether amounts paid for the flight services described above are subject to the taxes imposed by §§ 4261 and 4271. The taxability of air transportation services is determined on a flight-by-flight basis. Further, in the case of a round trip, § 4263(e) provides that the taxability of air transportation services under § 4261 is determined on a segment-by-segment basis.

As an initial matter, generally, amounts paid for taxable transportation by the U.S. government are not exempt from the taxes imposed by §§ 4261 and 4271 unless a waiver is authorized by the Secretary of the Treasury pursuant to the rules provided by § 4293. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] A repositioning flight is synonymous with “deadhead service”. Under § 4262(d), the term “transportation” includes the movement of an aircraft in deadhead service. Therefore, transportation by air is “taxable transportation” under § 4262(a) if it is a repositioning flight that begins and ends in the U.S. [REDACTED]

[REDACTED]

[REDACTED] Section 4261(b)(2) defines a “domestic segment” as any segment consisting of one takeoff and one landing and which is taxable transportation.

[REDACTED] Rev. Rul. 2002-34 holds that the tax imposed by § 4261(b) is calculated on a per-passenger basis; therefore, the tax applies only when an aircraft transports passengers. [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

■

■ [REDACTED]

[REDACTED]

[REDACTED] Rev. Rul. 72-309 holds that the tax imposed by § 4261(c) is calculated on a per-passenger basis; therefore, the tax applies only when an aircraft transports passengers. [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED] The § 4261(c) tax is calculated on a per-passenger basis; therefore, the tax applies only when an aircraft transports passengers. [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

C. [REDACTED]

[REDACTED]

[REDACTED] the tax imposed by § 4261(b) is calculated on a per-passenger basis; therefore, the tax applies only when an aircraft transports passengers. [REDACTED]

[REDACTED]

A. [REDACTED]

[REDACTED]

[REDACTED] the tax imposed by § 4261(b) is calculated on a per-passenger basis; therefore, the tax applies only when an aircraft

transports passengers. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

B. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

C. [REDACTED]

[REDACTED]
[REDACTED] Under § 4262(d), taxable
transportation includes waiting time. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

D. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED] However, the tax imposed by § 4261(b) is calculated on a per-passenger basis; therefore, the tax applies only when an aircraft transports passengers. [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] Under § 4262(d), taxable transportation includes waiting time. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED] However, the tax imposed by § 4261(b) is calculated on a per-passenger basis; therefore, the tax applies only when an aircraft transports passengers. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Issue 2

You next ask whether the same conclusions would be reached as those for *Issue 1* if those services are provided by [REDACTED]. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Accordingly, we conclude that if the services addressed in *Issue 1* are provided by [REDACTED], the taxes imposed by §§ 4261 and 4271 would not apply to any amounts paid by [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 contact Michael Beker at (202) 317-6855 if you have any further questions.