



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

November 06, 2024

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MEMORANDUM FOR: DIRECTOR, SPECIALTY EXAMINATION, CHIEF, ESTATE &
GIFT/EXCISE TAX EXAM, AND EXCISE TAX EXAMINATION
MANAGERS

FROM: Daniel R. Lauer, Director, Examination Headquarters

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Date: 2024.11.06
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SUBJECT: Interim Guidance for Extending the Period of Limitations to Assess Air
Transportation Taxes

This memorandum issues interim guidance for extending the period of limitations to assess air transportation excise taxes until IRM 4.24.6 is revised. Please ensure this information is distributed to all affected employees within your organization.

Purpose: To clarify the use of language required to appear on Form 872-B, Consent to Extend the Time to Assess Miscellaneous Excise Taxes, when extending the period of limitations to assess air transportation excise taxes under Internal Revenue Code (IRC) sections 4043, 4261, 4263, 4271, and 6672.

Background/Source(s) of Authority: On January 5, 2001, IRS Chief Counsel issued Field Service Advice (FSA) Memorandum 200101032 which provided advice regarding the proper method for examiners to use when extending the periods of limitation for assessment of collected excise taxes. On May 23, 2001, SBSE Examination management issued supplemental advice, which identified the appropriate forms and language to use when extending periods of limitation for the assessment of collected excise taxes.

The advice in FSA 200101032 remains accurate; however, parts of the advice in the SBSE Examination management memo regarding taxes under IRC 4261 are obsolete.

Procedural Change: This memo clarifies, but does not change, existing procedures governing period of limitations extensions in the context of air transportation excise taxes.

Effect on Other Documents: This guidance will be incorporated into IRM 4.24.6 by a date not to exceed two years from the date of this memo.

Effective Date: This guidance is effective immediately upon issuance of this memo.

Contact: If you have any questions regarding this memorandum, you may contact Kellie M. Torri, Program Manager, Excise Tax Policy, or Richard Sorrell, Excise Tax Policy Analyst.

Attachment: Interim Guidance for Extending the Period of Limitations to Assess Air Transportation Taxes

Distribution:
IRS.gov (<https://www.irs.gov>)

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The following changes are effective immediately for IRM 4.24.6.

4.24.6.3.1 Extending the Period of Limitations to Assess Air Transportation Taxes

- (1) With collected taxes, special care is needed to ensure all aspects of the period of limitations (also referred to as the statute of limitations or SOL) for filed returns are protected. On January 5, 2001, IRS Chief Counsel issued Field Service Advice Memorandum 200101032 followed by supplemental guidance later that same year, which provided language required for extending SOLs for collected taxes. The forms to accomplish this task depend on the function of the entity under examination (i.e., collector, taxpayer, or air carrier), and the appropriate language must be used on Form 872-B, Consent to Extend the Time to Assess Miscellaneous Excise Taxes.
- (2) In cases where the entity under examination acted in more than one function or there is any uncertainty about whether it did, a separate Form 872-B should be secured by the excise examiner to cover each scenario described in paragraphs (5), (6), and (8) of this IRM 4.24.6.3.1. For example, where an entity has failed to collect tax, purportedly bore the economic burden of such tax, and provided relevant air carrier services, securing SOL extensions for that entity as a collector, taxpayer, and air carrier protects the interests of the government.
- (3) In cases where the collector failed to charge and collect tax from the customer, a penalty under IRC 6672 (Failure to collect and pay over tax, or attempt to evade or defeat tax) can be asserted against the collector to recoup the taxes the collector failed to collect. Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty, extends the SOL for this penalty. Refer to IRM 20.1.11.4, IRC 6672 Failure to Collect and Pay Over Tax, or Attempt to Evade or Defeat Tax, for more detailed guidance.
- (4) In cases where the entity acts as a collector, the following forms should be secured by the excise examiner:
 - Form 2750 for each tax period under examination. The form can be prepared for the entity or for each responsible official depending on the facts and circumstances of the case. This form protects the IRC 6672 penalty SOL.
 - Form 872-B to protect the SOL for the collected taxes under IRC 7501 (Liability for taxes withheld or collected).
- (5) When using Form 872-B in cases where the entity under examination acted as a collector by collecting air transportation taxes, the wording depends on whether the tax at issue is for the transportation of persons by air or for the transportation of property by air. The language below are the entries that must be entered on the form:
 - For the transportation of persons by air tax, use the following bolded language: The amount of liability for **collecting/remitting IRC 4261 Transportation by Air** tax, imposed on the taxpayer(s) by sections **7501 and 4291** of the **Internal Revenue Code**.
 - For the taxable transportation of property by air tax, use the following bolded language: The amount of liability for **collecting/remitting IRC 4271 Taxable Transportation by**

Air tax, imposed on the taxpayer(s) by sections **7501** and **4291** of the **Internal Revenue Code**.

(6) In cases where the entity under examination did not collect the tax but rather paid (or purports to have paid) the tax out of its own funds, Form 872-B should be secured by the excise examiner to protect the SOL for the taxes imposed under IRC 4261 (Imposition of tax) or IRC 4271 (Imposition of tax), as appropriate. The wording depends on the type of tax at issue. The language below are the entries that must be entered on the form:

- For the transportation of persons by air tax, use the following bolded language: The amount of liability for **Transportation of Persons by Air** tax, imposed on the taxpayer(s) by section **4261** of the **Internal Revenue Code**.
- For the taxable transportation of property by air tax, use the following bolded language: The amount of liability for **Taxable Transportation of Property by Air** tax, imposed on the taxpayer(s) by section **4271** of the **Internal Revenue Code**.

(7) In cases where the tax was not collected, the excise examiner determined not to pursue the IRC 6672 penalty, and the entity that paid for taxable transportation of property by air is under examination, Form 872-B should be secured by the excise examiner to protect the SOL for the taxes imposed under IRC 4271 (Imposition of tax). The following bolded language must be entered on the form: The amount of liability for **Taxable Transportation of Property by Air** tax, imposed on the taxpayer(s) by section **4271** of the **Internal Revenue Code**.

(8) In cases where tax was not collected at the time payment was made for the air transportation and the entity under examination provided the initial segment beginning or ending in the United States of that transportation (i.e., acted as an air carrier), Form 872-B should be secured by the excise examiner to protect the SOL for the tax imposed on the air carrier under IRC 4263 (Special rules). The following bolded language must be entered on the form: The amount of liability for **IRC 4261 Taxes Not Paid or Collected under Any Other Provision** tax, imposed on the taxpayer(s) by section **4263** of the **Internal Revenue Code**.

Note: Because IRC 4263 applies only to the transportation of persons by air tax, the language above should not be used in cases involving IRC 4271.

(9) While the surcharge on fuel used in an aircraft that is part of a fractional ownership program is not a collected tax, specific language is required to protect this SOL. Form 872-B should be secured by the excise examiner to protect the SOL for the tax imposed on the fractional program manager of a fractional program aircraft under IRC 4043 (Surtax on fuel used in an aircraft part of a fractional ownership program). The following bolded language must be entered on the form: The amount of liability for **Fractional Aircraft Ownership Programs Fuel Surtax** tax, imposed on the taxpayer(s) by section **4043**, of the **Internal Revenue Code**.