

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

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date: October 01, 2012

to: Holly L. McCann
Chief, Excise Tax Program

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

subject: Seaplane Exemption to the Air Transportation Excise Taxes

This Chief Counsel Advice responds to your request for assistance dated September 10, 2012. This advice may not be used or cited as precedent.

ISSUES

Whether § 4261(i) of the Internal Revenue Code (Code) exempts from the taxes imposed by § 4261 amounts paid for air transportation by seaplane in the circumstances described below.

CONCLUSIONS

Section 4261(i) does not exempt from the taxes imposed by § 4261 amounts paid for air transportation by seaplane in the circumstances described below.

FACTS

An air transportation services provider (Provider) offers air transportation within the United States by seaplane from a seaplane base (Base). All flights offered by Provider either originate from or return to Base. All flights offered by Provider takeoff and land on water. Base received financial assistance from the Airport and Airways Trust Fund in years 1, 2, 3, and 6. Base did not receive financial assistance from the Airport and

Airways Trust Fund in years 4 and 5. The places other than Base at which Provider takes off and lands have never received such financial assistance.

LAW AND ANALYSIS

Section 4261(a) of the Code imposes a tax on the amount paid for the taxable transportation of any person. "Taxable transportation" is defined in § 4262(a)(1) to generally include transportation by air that begins and ends in the United States. 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(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(i) exempts from the taxes imposed by § 4261 amounts paid for any air transportation by a seaplane with respect to any segment consisting of a takeoff from, and a landing on, water, but only if the places at which such takeoff and landing occur have not received and are not receiving financial assistance from the Airport and Airways Trust Fund.

Under § 4261(i), amounts paid for air transportation are exempt from the taxes imposed by § 4261 only if:

1. the air transportation is provided on a seaplane;
2. the seaplane takes off from water;
3. the seaplane lands on water;
4. the places at which the takeoff and landing occur have not received financial assistance from the Airport and Airways Trust Fund; and
5. the places at which the takeoff and landing occur are not receiving financial assistance from the Airport and Airways Trust Fund.

If any of the five conditions described above are not satisfied, then amounts paid for the air transportation are not exempted by § 4261(i) from the taxes imposed by § 4261. You asked whether amounts paid for air transportation described in the facts above are exempt from the taxes imposed by § 4261.

Amounts paid for air transportation described above and provided during years 1, 2, 3, and 6 are not exempt from the taxes imposed by § 4261 because Base received financial assistance from the Airport and Airways Trust Fund during those years. Thus, condition 5, described above, is not satisfied. Amounts paid for air transportation provided during years 4 and 5 are also not exempt from the taxes imposed by § 4261 because Base received financial assistance in years 1, 2, and 3. Thus, condition 4, described above, is not satisfied. Because all five § 4261(i) conditions are not satisfied

in years 1, 2, 3, 4, 5, and 6, amounts paid for air transportation during those years are not exempted by § 4261(i) from the taxes imposed by § 4261.

Please call Michael Beker at (202) 622-3130 if you have any further questions.