

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

July 09, 2004

Third Party Communication: None
Date of Communication: Not Applicable

Number: **200446023**
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Index (UIL) No.: 4261.00-00
CASE-MIS No.: TAM-161588-03/CC:PSI:B8

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No
Years Involved:
Date of Conference: No Conference Held

LEGEND

Air Carrier =

ISSUE

When does Air Carrier incur an obligation to report and deposit the tax imposed by § 4261 of the Internal Revenue Code under the circumstances described below?

CONCLUSION

Air Carrier incurs an obligation to report and deposit the tax imposed by § 4261 when the charterer's payments are disbursed to Air Carrier under the circumstances described below.

FACTS

Air Carrier is a certificated air carrier as defined in 14 CFR § 212.2 (Department of Transportation Regulations). Air Carrier leases aircraft and supplies the crews for these aircraft. Air Carrier uses these aircraft and crews to provide single entity charter air service to the public. This service is taxable air transportation. A single entity charter is a charter the cost of which is borne by the charterer and not by the individual passengers, directly or indirectly. See 14 CFR § 212.2. The Department of Transportation (DOT) regulates Air Carrier's charter flights.

Applicable DOT regulations require Air Carrier's charterer to pay for its charter by making a check, money order, or credit card draft payable to a bank with whom Air Carrier has a depository escrow account as described in 14 CFR § 212.8. These regulations also prescribe the conditions Air Carrier must meet before the bank disburses the deposited payments to Air Carrier. Section 212.8(a)(2) provides that a carrier must certify in writing to the bank that a charter has been completed before the bank will pay to the carrier the escrowed funds with respect to that charter. In the case of a round-trip charter, the regulations provide for payment upon completion of the outbound segment. Section 212.8(a)(3) provides for refunds of escrowed payments (less any cancellation penalties as provided in the charter contract) in the event a charter is cancelled. These regulatory requirements are intended to protect charterer's payments until Air Carrier furnishes the services for which payment is made.

Air Carrier collects and pays over the § 4261 tax with respect to amounts paid to it for taxable air transportation. Air Carrier uses the regular method, rather than the alternative method, for depositing the § 4261 tax. See §§ 40.6302(c)-1 and 40.6302(c)-3 of the of the Excise Tax Procedural Regulations.

The IRS office that submitted this request for technical advice suggests that Air Carrier incurs an obligation to report and deposit the § 4261 tax when Air Carrier's bank credits Air Carrier's depository escrow account with a charterer's payment because, the office believes, this deposit constitutes payment for the charter. Air Carrier argues, on the other hand, that until it receives payment for air transportation (as a disbursement by its bank from the depository escrow account) there is not an obligation to report and deposit the § 4261 tax.

LAW AND ANALYSIS

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

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

Section 40.6011(a)-1(a)(2)(i) provides that a return for the tax imposed by § 4261 must be made for a period of one calendar quarter. A return must be filed for each calendar quarter in which the tax must be collected and paid over. Section 40.6011(a)-1(a)(3) provides that in the case of a tax required to be collected and paid over, the person required to collect the tax (and not the person incurring the liability) must file the return.

Section 40.6302(c)-1(a)(1) generally provides that each person required to file a quarterly return must make a deposit of tax for each semimonthly period in which tax liability is incurred. Section 40.6302(c)-1(a)(2)(i) provides that, with respect to the regular method for depositing, the tax imposed by § 4261 is treated as a tax liability incurred during the semimonthly period in which that tax is collected.

As noted, DOT regulations require that a bank hold a charterer's payment until Air Carrier furnishes the services for which payment is made. A bank receives the charter payment in its limited capacity as custodian of the Air Carrier's depository account. The bank ultimately disburses the deposited payments to Air Carrier or returns the deposited payments to the charterer depending on whether Air Carrier meets the DOT regulatory requirements for receipt of the deposited payments. Therefore, payment for a charter flight is neither collected nor received by Air Carrier until the bank disburses to Air Carrier the deposited payment. On the date of the bank's disbursement Air Carrier incurs the obligation to report and deposit the § 4261 tax because that is the date on which the tax is collected. See § 40.6302(c)-1(a)(2)(ii).

CAVEATS

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) provides that it shall not be used or cited as precedent. In accordance with § 6110(c) names, addresses, and other identifying numbers have been deleted.