

Internal Revenue Service, Treasury

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trip from New York to Panama and separate trip from Panama to New Orleans, since the distance between the points of the open jaw (i.e., New York and New Orleans) is shorter than the distance between Panama and New Orleans (the shorter of the two segments traveled). Both trips would be non-taxable. On the other hand, transportation from New York to Miami via Bermuda does not qualify as “open jaw” transportation (since the points of the open jaw are in the United States and the distance between them is greater than the shorter segment traveled) and therefore would be considered a single trip from New York to Miami and would be taxable.

[T.D. 6430, 24 FR 9665, Dec. 3, 1959. Redesignated by T.D. 9948, 86 FR 5007, Jan. 19, 2021]

§ 49.4263-6 Transportation outside the northern portion of the Western Hemisphere.

(a) *Transportation which leaves and re-enters the northern portion of the Western Hemisphere.* For purposes of the regulations in this subpart, transportation, any part of which is outside the northern portion of the Western Hemisphere (as defined in paragraph (c) of this section) shall, if the route of the transportation leaves and re-enters the northern portion of the Western Hemisphere, be considered to consist of transportation to the point outside such northern portion and of separate transportation thereafter. The amount paid for such transportation will be considered to be a payment made for two trips and the taxability of the payment will be determined accordingly. Thus, an amount paid for transportation from New York to San Francisco with a stop at Caracas, Venezuela, will be considered an amount paid for a trip from New York to Caracas and for a separate trip from Caracas to San Francisco, neither of which is taxable transportation.

(b) [Reserved]

(c) *Northern portion of the Western Hemisphere.* For purposes of the regulations in this subpart, the term “northern portion of the Western Hemisphere” means the area lying west of the 30th meridian west of Greenwich, east of the International Date Line,

and north of the equator, but not including any country of South America.

[T.D. 6430, 24 FR 9665, Dec. 3, 1959, as amended by T.D. 6618, 27 FR 11227, Nov. 14, 1962. Redesignated and amended by T.D. 9948, 86 FR 5007, Jan. 19, 2021]

Subpart E—Transportation of Property

§ 49.4271-1 Tax on transportation of property by air.

(a) *Purpose of this section.* Section 4271 of the Internal Revenue Code (Code) imposes a 6.25 percent tax on amounts paid within or without the United States for the taxable transportation of property (as defined in section 4272 of the Code). This section sets forth rules as to the general applicability of the tax. This section also sets forth rules authorized by section 4272(b)(2) which exempt from tax payments for the transportation of property by air in the course of exportation (including shipment to a possession of the United States) by continuous movement, and in due course so exported.

(b) *Imposition of tax*—(1) The tax imposed by section 4271 applies only to amounts paid to persons engaged in the business of transporting property by air for hire.

(2) The tax imposed by section 4271 does not apply to amounts paid for the transportation of property by air if such transportation is furnished on an aircraft having a maximum certificated takeoff weight (as defined in section 4281(b) of the Code) of 6,000 pounds or less, unless such aircraft is operated on an established line or when such aircraft is a jet aircraft. The tax imposed by section 4271 also does not apply to any payment made by one member of an affiliated group (as defined in section 4282(b) of the Code) to another member of such group for services furnished in connection with the use of an aircraft if such aircraft is owned or leased by a member of the affiliated group and is not available for hire by persons who are not members of such group.

(c) *Property exported or imported entirely by air.* (1) The tax does not apply to amounts paid for transportation entirely by air which begins in the United States and ends outside the United

States, or which begins outside the United States and ends in the United States. Transportation of property by air will be considered to begin and end at the points of origin and destination shown on a through airwaybill covering shipment of the property, even though there may be stopovers in the United States (such as, for example, to consolidate cargo at a "gateway" city). If a through airwaybill is issued by a person other than a person engaged in the business of transporting property by air for hire (for example, by a freight forwarder), the air carrier may accept an air freight manifest listing the article to be shipped by weight and destination as evidence of the existence of a through airwaybill.

(2) If a through airwaybill covering air transportation from its beginning in the United States to a foreign destination, or from its beginning abroad to a U.S. destination, has not been issued, then the export or import character of the shipment must be evidenced by a contract or other written evidence clearly showing the beginning point and ending point of the air transportation.

(3) If a through airwaybill has been issued covering air transportation to a foreign destination, but the transportation nevertheless ends in the United States (for example, because the foreign consignee cancels the order before the shipment leaves a gateway city), then the amount paid for air transportation is taxable. In such a case the air carrier must collect the tax from the shipper or other person who paid for the air transportation.

(4) Any transportation of property by air shipped by the Department of Defense through an aerial port of embarkation and debarkation on a U.S. Government bill of lading shall be considered to:

(i) Begin in the United States and end outside the United States if the bill of lading states that the shipment is "For Export", or

(ii) Begin outside the United States and end in the United States if the bill of lading states that the shipment is "Imported by Air".

If a U.S. Government bill of lading stating that a shipment is "For Export" has been issued but the shipment

nevertheless ends in the United States, then the amount paid for air transportation is taxable. In such a case the Department of Defense shall notify the air carrier that the shipment is taxable and shall pay the tax to such carrier.

(d) *Exportation involving two or more modes of transportation.* (1) Even though transportation of property by air begins and ends in the United States, the tax does not apply if the property is being transported in the course of exportation by continuous movement and in due course is so exported, provided the requirements of this paragraph are satisfied. For example, the tax does not apply to air transportation from Chicago to New York if the property is in the course of exportation, by continuous movement, by boat from New York to Europe and in due course is so exported. Delays caused by circumstances beyond the control of the shipper (such as labor disputes or natural disasters) will not interrupt continuous movement. Property arriving at a gateway city by air may be repacked or consolidated with other property without interrupting continuous movement.

(2)(i) Continuous movement in the course of exportation shall be evidenced by (a) the execution of the Export Exemption Certificate, Form 1363, and (b) proof that exportation has actually occurred.

(ii) Form 1363 may be used in connection with a separate payment otherwise subject to tax or it may be used, with the permission of the district director, as a blanket exemption certificate by a person who expects to make payments for numerous export shipments over an indefinite period of time. If used in connection with a separate payment, the certificate shall be executed, in duplicate, by the shipper or other person making the payment subject to tax. Such person shall retain the duplicate with the shipping papers for at least 3 years from the last day of the month during which the shipment was made from the point of origin, and shall file the original with the carrier at the time of payment of the transportation charge. The carrier receiving the original certificate shall retain it along with the document showing payment of the transportation charge, for

a period of at least 3 years from the last day of the month during which the shipment was made from the point of origin.

(iii) Form 1363 may be used as a blanket exemption certificate by a person who demonstrates to the satisfaction of the district director that it is impracticable to execute a separate Form 1363 for each payment. Permission to execute a blanket exemption certificate shall be requested, in writing, from the district director for the district in which is located the principal place of business or principal office or agency of the shipper or other person seeking permission. If permission is granted a separate certificate shall be executed in duplicate, by the shipper or other person making the payments, for each air carrier to be used in making export shipments. Such person shall retain the duplicate together with all shipping papers, and shall file the original with the air carrier with or before payment of the first transportation charge to be covered by the certificate. The air carrier shall retain the original certificate together with all documents showing payment of the transportation charges. Permission to execute a blanket exemption certificate if granted, shall remain in force until withdrawn by the person who requested such permission or until withdrawn by the district director who granted such permission. Each person shall retain the certificate for at least 3 years after the last day of the month during which the final shipment covered by the certificate was made from the point of origin. Each person shall retain the shipping and payment documents for at least 3 years after the last day of the month during which the shipment was made from the point of origin.

(3) The filing of a properly executed Form 1363 with the carrier suspends liability for the payment of the tax for a period of 6 months from the date of shipment from the point of origin. If the person who is liable for the tax has not provided evidence to the carrier of the actual exportation of a shipment within such period, then the temporary suspension of the liability for the payment of the tax ceases and the carrier shall collect the tax from the person

who paid the carrier for the transportation charge. If, after collection of the tax by the carrier, proof of exportation is subsequently received by the carrier, credit or refund of the tax may be obtained under the terms set forth in section 6415 of the Internal Revenue Code of 1954.

(4) Documentary evidence of the exportation of the property may consist of a copy of export bill of lading, memorandum from the captain of the vessel, customs official, or a foreign consignee, shipper's export declaration, or other evidence sufficient to establish that the property has actually been exported. The person making the payment subject to tax shall furnish the appropriate documentary evidence to the carrier, or a statement that he holds such documentary evidence. In the latter case, the statement must: (i) Certify that the property covered by the Export Exemption Certificate, Form 1363 was exported; (ii) identify the evidence of exportation; (iii) specify the foreign destination or the possession of the United States to which the property was shipped; and (iv) show the place where such evidence will be available for inspection by internal revenue officers. Any documentary evidence or statement, as the case may be, shall be retained by the carrier and the person making the payment subject to tax for a period of three years from the last day of the month during which the shipment was made from the point of origin. If the person making the payment subject to tax is not the actual exporter and is unable to obtain documentary evidence of exportation, such person shall obtain from the person having custody of the documentary evidence a statement containing the same facts as listed above for a statement furnished to the carrier by the person liable for the tax. The person making the payment subject to tax shall furnish the original of such statement to the carrier and shall retain a copy in his records. The statement shall be retained for the same three year period as the evidence of exportation is to be retained.

(e) *Definitions*—(1) *Property*. The term "property" does not include excess baggage accompanying a passenger

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traveling on an aircraft operated on an established line.

(2) *Transportation*. The term “transportation” includes layover or waiting time and movement of the aircraft in deadhead service.

(3) *Taxable transportation*. The term “taxable transportation” is defined in section 4272.

(f) *Collection of tax*. The tax imposed by section 4271 shall be paid by the person making the payment subject to tax and shall be collected by the person engaged in the business of transporting property by air for hire who receives such payment, except that in the case of amounts subject to tax which are paid by the U.S. Postal Service, the tax shall not be collected by the person engaged in the business of transporting property by air for hire who receives such payment, but instead shall be paid directly by such Service as if it were a collecting agent.

(g) *Applicability date*. This section applies to amounts paid on and after January 19, 2021. For rules that apply before that date, see 26 CFR part 49, revised as of April 1, 2020.

[T.D. 7054, 35 FR 12117, July 29, 1970, as amended by T.D. 7190, 37 FR 12794, June 29, 1972; T.D. 7316, 39 FR 21126, June 19, 1974; T.D. 7517, 42 FR 58935, Nov. 14, 1977; T.D. 7953, Redesignated and amended by T.D. 8328, 56 FR 190, Jan. 3, 1991; T.D. 8442, 57 FR 48186, Oct. 22, 1992; T.D. 9948, 86 FR 5007, Jan. 19, 2021]

§ 49.4271-2 Aircraft management services.

For rules regarding the exemption for certain amounts paid by aircraft owners for aircraft management services, see § 49.4261-10. This section applies to amounts paid on and after January 19, 2021. For rules that apply before that date, see 26 CFR part 49, revised as of April 1, 2020.

[T.D. 9948, 86 FR 5008, Jan. 19, 2021]

§ 49.4281-1 Small aircraft on nonestablished lines.

(a) *In general*. Amounts paid for the transportation of persons on a small aircraft of the type sometimes referred to as air taxis shall be exempt from the tax imposed under section 4261 of the Internal Revenue Code provided the aircraft has a maximum certificated takeoff weight of 6,000 pounds or less

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determined as provided in paragraph (b) of this section. The exemption does not apply, however, when the aircraft is operated on an established line or when the aircraft is a jet aircraft.

(b) *Maximum certificated takeoff weight*. The term *maximum certificated takeoff weight* means the maximum certificated takeoff weight shown in the type certificate or airworthiness certificate issued by the Federal Aviation Administration.

(c) *Established line*. The term “operated on an established line” means operated with some degree of regularity between definite points. It does not necessarily mean that strict regularity of schedule is maintained; that the full run is always made; that a particular route is followed; or that intermediate stops are restricted. The term implies that the person rendering the service maintains and exercises control over the direction, route, time, number of passengers carried, etc. An aircraft is not considered as operated on an established line at any time during which the aircraft is being operated on a flight the sole purpose of which is sightseeing.

(d) *Jet aircraft*. For purposes of this section, the term *jet aircraft* does not include any aircraft which is a rotorcraft (such as a helicopter) or propeller aircraft.

(e) *Applicability date*. This section applies to amounts paid on and January 19, 2021. For rules that apply before that date, see 26 CFR part 49, revised as of April 1, 2020.

[T.D. 6430, 24 FR 9665, Dec. 3, 1959. Redesignated by T.D. 6618, 27 FR 11226, Nov. 14, 1962. Further redesignated and amended by T.D. 9948, 86 FR 5007, Jan. 19, 2021]

§ 49.4282-1 [Reserved]

Subpart F—Collection of Tax By Persons Receiving Payment

§ 49.4291-1 Persons receiving payment must collect tax.

Except as otherwise provided in section 4263(a), every person receiving any payment for facilities or services on which a tax is imposed upon the payor thereof under chapter 33 shall collect the amount of the tax from the person making that payment. Under section