

not filed unless it contains all the information required by paragraph (e) of this section and is filed at the place required by the form.

(g) *Effective date.* This section is applicable after March 30, 2000.

[T.D. 8879, 65 FR 17162, Mar. 31, 2000, as amended by T.D. 8879, 65 FR 26489, May 8, 2000]

#### § 48.6715-1 Penalty for misuse of dyed fuel.

(a) *In general.* If any person willfully alters, or attempts to alter, the strength or composition of any dye or marking done pursuant to § 48.4082-1 in any dyed fuel, then section 6715(a)(3) provides that such person shall pay a penalty in addition to any tax. The penalty imposed by section 6715(a)(3) will not apply in the following cases:

(1) Diesel fuel or kerosene that satisfies the dyeing and marking requirements of § 48.4082-1 (b) and (c) is blended with any undyed liquid and the resulting product satisfies the dyeing and marking requirements of § 48.4082-1 (b) and (c).

(2) Diesel fuel or kerosene that satisfies the dyeing and marking requirements of § 48.4082-1 (b) and (c) is blended with any other liquid (other than diesel fuel or kerosene) that contains the type and amount of dye and marker required for diesel fuel or kerosene dyed and marked in accordance with § 48.4082-1 (b) and (c).

(3) The alteration or attempted alteration occurs in an exempt area of Alaska after September 30, 1996.

(4) Diesel fuel or kerosene that does not satisfy the dyeing and marking requirements of § 48.4082-1 (b) and (c) is blended with diesel fuel or kerosene that satisfies the dyeing and marking requirements of § 48.4082-1 (b) and (c) and the blending occurs as part of a use described in § 48.4082-4(c) or § 48.6427-8(b)(1)(vii)(C) or (D).

(b) *Effective date.* This section is effective January 1, 1994.

[T.D. 8659, 61 FR 10465, Mar. 14, 1996, as amended by T.D. 8685, 61 FR 58007, Nov. 12, 1996; T.D. 8748, 63 FR 26, Jan. 2, 1998; T.D. 8879, 65 FR 17163, Mar. 31, 2000]

## PART 49—FACILITIES AND SERVICES EXCISE TAXES

### Subpart A—Introduction

Sec.

49.0-1 Introduction.

49.0-2 General definitions and use of terms.

### Subpart B [Reserved]

### Subpart C—Communications

49.4251-1 Imposition of tax.

49.4251-2 Rate and application of tax.

49.4251-3 [Reserved]

49.4251-4 Prepaid telephone cards.

49.4252-1 [Reserved]

49.4252-2 Toll telephone service.

49.4252-3 [Reserved]

49.4252-4 Provisions common to telephone and telegraph services.

49.4252-5 Teletypewriter exchange service.

49.4253-1 Exemption for certain coin-operated service.

49.4253-2 Exemption for news services.

49.4253-3 Exemption for certain organizations.

49.4253-4 Exemption for servicemen in combat zone.

49.4253-5 Exemption for items otherwise taxed.

49.4253-6 Exemption for common carriers and communications companies.

49.4253-7 Exemption for installation charges.

49.4253-8—49.4253-9 [Reserved]

49.4253-10 Exemption for certain private communications services.

49.4253-11 Use and retention of exemption certificates.

49.4253-12 Cross reference.

49.4254-1 Computation of tax.

49.4254-2 Payment for toll telephone service or telegraph service in coin-operated telephones.

### Subpart D—Transportation of Persons

49.4261-1 Imposition of tax; in general.

49.4261-2 Application of tax.

49.4261-3 Payments made within the United States.

49.4261-4 Payments made within the United States; evidence of nontaxability.

49.4261-5 Payments made outside the United States.

49.4261-6 Payments made outside the United States; evidence of nontaxability.

49.4261-7 Examples of payments subject to tax.

49.4261-8 Examples of payments not subject to tax.

49.4261-9 Mileage awards.

49.4261-10 Aircraft management services.

49.4262-1 Taxable transportation.

49.4262-2 Exclusion of certain travel.

## § 49.0-1

- 49.4262-3 Definitions.
- 49.4264-1 Duty to collect the tax; payments made outside the United States.
- 49.4264-2 Duty to collect the tax in the case of certain refunds.
- 49.4264-3 Special rule for the payment of tax.
- 49.4264-4 Cross reference.
- 49.4264-5 Round trips.
- 49.4264-6 Transportation outside the northern portion of the Western Hemisphere.

### Subpart E—Transportation of Property

- 49.4271-1 Tax on transportation of property by air.
- 49.4271-2 Aircraft management services.
- 49.4281-1 Small aircraft on nonestablished lines.
- 49.4282-1 [Reserved]

### Subpart F—Collection of Tax by Persons Receiving Payment

- 49.4291-1 Persons receiving payment must collect tax.

### Subpart G—Indoor Tanning Services

- 49.5000B-1 Indoor tanning services.

AUTHORITY: 26 U.S.C. 7805.  
Section 49.4251-4 also issued under 26 U.S.C. 4251(d).

## Subpart A—Introduction

SOURCE: T.D. 6430, 24 FR 9664, Dec. 3, 1959, unless otherwise noted.

### § 49.0-1 Introduction.

The regulations in this part 49 are designated “Facilities and Services Excise Tax Regulations.” The regulations relate to the taxes on communications and transportation by air imposed by chapter 33 of the Internal Revenue Code and the taxes on indoor tanning services imposed by section 5000B. See part 40 of this chapter for regulations relating to returns, payments, and deposits of these taxes.

[T.D. 9621, 78 FR 34876, June 11, 2013]

### § 49.0-2 General definitions and use of terms.

As used in the regulations in this part, unless otherwise expressly indicated:

(a) The terms defined in the provisions of law contained in the regulations in this part shall have the meanings so assigned to them.

## 26 CFR Ch. I (4-1-25 Edition)

(b) The Internal Revenue Code of 1954 means the Act approved August 16, 1954 (68A Stat.), entitled “An Act to revise the internal revenue laws of the United States”, as amended.

(c) District director means district director of internal revenue. The term also includes the Director of International Operations in all cases where the authority to perform the functions which may be performed by a district director has been delegated to the Director of International Operations.

(d) Calendar quarter means a period of 3 calendar months ending on March 31, June 30, September 30, or December 31.

## Subpart B [Reserved]

## Subpart C—Communications

SOURCE: T.D. 6664, 28 FR 7252, July 16, 1963, unless otherwise noted.

### § 49.4251-1 Imposition of tax.

(a) *In general.* Section 4251 imposes a tax on amounts paid for general telephone service; toll telephone service; telegraph service; teletypewriter exchange service; wire mileage service; and wire and equipment service. See § 49.4251-2 for rate and application of tax.

(b) *Termination of tax on general telephone service.* (1) Except as otherwise provided in subparagraph (2) of this paragraph, no tax is imposed on amounts paid on or after July 1, 1965, for general telephone service rendered on or after such date.

(2) In the case of amounts paid pursuant to bills rendered on or after July 1, 1965, for general telephone service for which no previous bill was rendered, no tax is imposed on that portion of the amount paid pursuant to such bill or bills as is attributable to general telephone service rendered subsequent to April 30, 1965. However, the tax applies to that portion of the amount paid pursuant to any such bill or bills as is attributable to general telephone service rendered prior to May 1, 1965. The tax also applies to amounts paid for general telephone service pursuant to bills rendered before July 1, 1965, without

regard to when the payment is made or the service is rendered.

[T.D. 6664, 28 FR 7252, July 16, 1963, as amended by T.D. 6694, 28 FR 12929, Dec. 5, 1963; T.D. 6753, 29 FR 12718, Sept. 9, 1964]

#### § 49.4251-2 Rate and application of tax.

(a) *Rate of tax.* Tax is imposed on amounts paid for each of the following services rendered at the rate specified below:

Taxable service	Rate of tax (percent)
General telephone service .....	10
Toll telephone service .....	10
Telegraph service .....	10
Teletypewriter exchange service .....	10
Wire mileage service .....	10
Wire and equipment service .....	8

(b) *Amounts paid.* The term “amounts paid” means the amounts collected for the communication services specified in paragraph (a) of this section, without regard to whether the charge therefor is paid or satisfied in money, service, or other valuable consideration. For additional provisions relating to the term “amounts paid” see the section of the regulations relating to the particular taxable service listed in paragraph (a) of this section.

(c) *Liability for, and return of, tax.* The taxes imposed by section 4251 are payable by the person paying for the services rendered, and must be paid to the person rendering the services who is required to collect the tax and return and pay over the tax.

[T.D. 6664, 28 FR 7252, July 16, 1963, as amended by T.D. 8442, 57 FR 48186, Oct. 22, 1992]

#### § 49.4251-3 [Reserved]

#### § 49.4251-4 Prepaid telephone cards.

(a) *In general.* In the case of communications services acquired by means of a prepaid telephone card (PTC), the face amount of the PTC is treated as an amount paid for communications services and that amount is treated as paid when the PTC is transferred by any carrier to any person that is not a carrier. This section provides rules for the application of the section 4251 tax to PTCs.

(b) *Definitions.* The following definitions apply to this section:

*Carrier* means a telecommunications carrier as defined in 47 U.S.C. 153.

*Comparable PTC* means a currently available dollar card or tariffed unit card (other than a PTC transferred in bulk or under special circumstances, such as for promotional purposes) that provides the same type and amount of communications services as the PTC to which it is being compared.

*Dollar card* means a PTC the value of which is designated by the carrier in dollars (even if also designated in units of service), provided that the designated value is not less than the amount for which the PTC is expected to be sold to a holder.

*Holder* means a person that purchases other than for resale.

*Prepaid telephone card (PTC)* means a card or similar arrangement that permits its holder to obtain a fixed amount of communications services by means of a code (such as a personal identification number (PIN)) or other access device provided by the carrier and to pay for those services in advance.

*Tariff* means a schedule of rates and regulations filed by a carrier with the Federal Communications Commission.

*Tariffed unit card* means a unit card that is transferred by a carrier—

(1) To a holder at a price that does not exceed the designated number of units on the PTC multiplied by the carrier's tariffed price per unit; or

(2) To a transferee reseller subject to a contractual or other arrangement under which the price at which the PTC is sold to a holder will not exceed the designated number of units on the PTC multiplied by the carrier's tariffed price per unit.

*Transferee* means the first person that is not a carrier to whom a PTC is transferred by a carrier.

*Transferee reseller* means a transferee that purchases a PTC for resale.

*Unit card* means a PTC other than a dollar card.

*Untariffed unit card* means a unit card other than a tariffed unit card.

(c) *Determination of face amount*—(1) *Dollar card.* The face amount of a dollar card is the designated dollar value.

(2) *Tariffed unit card.* The face amount of a tariffed unit card is the designated number of units on the PTC

multiplied by the tariffed price per unit.

(3) *Untariffed unit card*—(i) *Transfer to holder*. The face amount of an untariffed unit card transferred by a carrier to a holder is the amount for which the carrier sells the PTC to the holder.

(ii) *Transfer to transferee reseller*—(A) *In general*. The face amount of an untariffed unit card transferred by a carrier to a transferee reseller is at the option of the carrier—

(1) The highest amount for which the carrier sells a PTC that provides the same type and amount of communications services to a holder that ordinarily would not be expected to buy more than one such PTC at a time (if the carrier makes such sales on a regular and arm's-length basis) or the face amount of a comparable PTC (if the carrier does not make such sales on a regular and arm's-length basis);

(2) 135 percent of the amount for which the carrier sells the PTC to the transferee reseller (including in that amount, in addition to any sum certain fixed at the time of the sale, any contingent amount per unit multiplied by the designated number of units on the PTC); or

(3) If the PTC is of a type that ordinarily is used entirely for domestic communications service, the maximum number of minutes of domestic communications service on the PTC multiplied by the applicable rate.

(B) *Applicable rate*. The applicable rate under paragraph (c)(3)(ii)(A)(3) of this section with respect to a PTC is \$0.30 reduced (but not below \$0.20) by \$0.01 for each full 20 minutes by which the maximum number of minutes of domestic communications service on the PTC exceeds 40 minutes.

(C) *Sales not at arm's length*. In the case of a transfer of an untariffed unit card by a carrier to a transferee reseller otherwise than through an arm's-length transaction, the fair market retail value of the PTC shall be substituted for the amount determined in paragraph (c)(3)(ii)(A)(2) of this section.

(4) *Exclusion*. The amount of any state or local tax imposed on the furnishing or sale of communications services that is separately stated in the

bill or on the face of the PTC and the amount of any section 4251 tax separately stated in the bill or on the face of the PTC are disregarded in determining, for purposes of this paragraph (c), the amount for which a PTC is sold.

(d) *Liability for tax*—(1) *In general*. Under section 4251(d), the section 4251(a) tax is imposed on the transfer of a PTC by a carrier to a transferee. The person liable for the tax is the transferee. Except as provided in paragraph (d)(2) of this section, the person responsible for collecting the tax is the carrier transferring the PTC to the transferee. If a holder purchases a PTC from a transferee reseller, the amount the holder pays for the PTC is not treated as an amount paid for communications services and thus tax is not imposed on that payment.

(2) *Effect of statement that purchaser is a carrier*—(i) *On transferor*. A carrier that transfers a PTC to a purchaser is not responsible for collecting the tax if, at the time of transfer, the transferor carrier has received written notification from the purchaser that the purchaser is a carrier, and the transferor has no reason to believe otherwise. The notification to be provided by the purchaser is a statement, signed under penalties of perjury by a person with authority to bind the purchaser, that the purchaser is a carrier (as defined in paragraph (b) of this section). The statement is not required to take any particular form.

(ii) *On purchaser*. If a purchaser that is not a carrier provides the notification described in paragraph (d)(2)(i) of this section to the carrier that transfers a PTC, the purchaser remains liable for the tax imposed on the transfer of the PTC.

(3) *Exemptions*. Any exemptions available under section 4253 apply to the transfer of a PTC from a carrier to a holder. Section 4253 does not apply to the transfer of a PTC from a carrier to a transferee reseller.

(e) *Examples*. The following examples illustrate the provisions of this section:

*Example 1. Unit card; sold to individual.* (i) On May 1, 2000, A, a carrier, sells a card it calls a prepaid telephone card at A's retail

store to P, an individual, for P's use in making telephone calls. A provides P with a PIN. The value of the card is not denominated in dollars, but the face of the card is marked 30 minutes. The sales price is \$9. A tariff has not been filed for the minutes on the card. The toll telephone service acquired by purchasing the card will be obtained by entering the PIN and the telephone number to be called.

(i) Because P purchased from a carrier other than for resale, P is a holder. The card provides its holder, P, with a fixed amount of communications services (30 minutes of toll telephone service) to be obtained by means of a PIN, for which P pays in advance of obtaining service; therefore, the card is a PTC. Because the value of the PTC is not designated in dollars and a tariff has not been filed for the minutes on the PTC, the PTC is an untariffed unit card. Because it is transferred by the carrier to the holder, the face amount is the sales price (\$9).

(iii) The card is a PTC; thus, under section 4251(d), the face amount is treated as an amount paid for communications services and that amount is treated as paid when the PTC is transferred from A to P. Accordingly, at the time of transfer, P is liable for the 3 percent tax imposed by section 4251(a). The amount of the tax is \$0.27 (3% × the \$9 face amount). Thus, the total paid by P is \$9.27, the \$9 sales price plus \$0.27 tax. A is responsible for collecting the tax from P.

*Example 2. Unit card; given to individual.* (i) The facts are the same as in *Example 1*, except that instead of selling a card, A gives a 30 minute card to P.

(ii) Although the card provides P with a fixed amount of communications services (30 minutes of toll telephone service) to be obtained by means of a PIN, P does not pay for the service. Therefore, the card is not a PTC, even though it is called a prepaid telephone card by A.

(iii) Because the card is not a PTC, section 4251(d) does not apply. Furthermore, no tax is imposed by section 4251(a) because no amount is paid for the communications services.

*Example 3. Unit card; adding value.* (i) After using the card described in *Example 2*, P arranges with A by telephone to have 30 minutes of toll telephone service added to the card. The sales price is \$9. P is told to continue using the PIN provided with the card.

(ii) Because P purchased from a carrier other than for resale, P is a holder. The arrangement provides its holder, P, with a fixed amount of communications services (30 minutes of toll telephone service) to be obtained by means of a PIN, for which P pays in advance of obtaining service; therefore, the arrangement is a PTC. Because the value of the PTC is not designated in dollars and a tariff has not been filed for the minutes on the PTC, the PTC is an untariffed unit card.

Because it is transferred by the carrier to the holder, the face amount is the sales price (\$9).

(iii) The arrangement is a PTC; thus, under section 4251(d), the face amount is treated as an amount paid for communications services and that amount is treated as paid when the PTC is transferred from A to P. Accordingly, at the time of transfer, P is liable for the 3 percent tax imposed by section 4251(a). The amount of the tax is \$0.27 (3% × the \$9 face amount). Thus, the total paid by P is \$9.27, the \$9 sales price plus \$0.27 tax. A is responsible for collecting the tax from P.

*Example 4. Dollar card; sold other than for resale.* (i) On May 1, 2000, B, a carrier, sells 100,000 cards it calls prepaid telephone cards to Q, an auto dealer, for \$50,000. Q will give away a card to each person that visits Q's dealership. B provides Q with a PIN for each card. The face of each card is marked \$3. The toll telephone service acquired by purchasing the card will be obtained by entering the PIN and the telephone number to be called.

(ii) Because Q purchased from a carrier other than for resale, Q is a holder. Each card provides its holder, Q, with a fixed amount of communications services (\$3 of toll telephone service) to be obtained by means of a PIN, for which Q pays in advance of obtaining service; therefore, each card is a PTC even though Q's visitors do not pay for the cards. The value of each PTC is designated in dollars; therefore, each PTC is a dollar card. Because the PTC is a dollar card, the face amount is the designated dollar value (\$3).

(iii) The cards are PTCs; thus, under section 4251(d), the face amount is treated as an amount paid for communications services and that amount is treated as paid when the PTCs are transferred from B to Q. Accordingly, at the time of transfer, Q is liable for the 3 percent tax imposed by section 4251(a). The amount of the tax is \$9,000 (3% × the \$3 face amount × 100,000 PTCs). Thus, the total paid by Q is \$59,000, the \$50,000 sales price plus \$9,000 tax. B is responsible for collecting the tax from Q.

*Example 5. Tariffed unit card; sold to transferee reseller.* (i) On May 1, 2000, C, a carrier, sells 1,000 cards it calls prepaid telephone cards to R, a convenience store owner, for \$7,000. C provides R with a PIN for each card. The value of the cards is not denominated in dollars, but the face of each card is marked 30 minutes and a tariff of \$0.33 per minute has been filed for the minutes on each card. R agrees that it will sell the cards to individuals for their own use and at a price that does not exceed \$0.33 per minute. R actually sells the cards for \$9 each (that is, at a price equivalent to \$0.30 per minute). The toll telephone service acquired by purchasing the card will be obtained by entering the PIN and the telephone number to be called.

(ii) Because R purchased from a carrier for resale, R is a transferee reseller. Because R's customers will purchase other than for resale, they will be holders. Each card sold by R provides its holder, R's customer, with a fixed amount of communications services (30 minutes of toll telephone service) to be obtained by means of a PIN provided by the carrier, for which R's customer pays in advance of obtaining service; therefore, each card is a PTC. Because the value of each PTC is not designated in dollars and C sells the PTCs to R subject to an arrangement under which the price at which the PTCs are sold to holders will not exceed the designated number of minutes on the PTC multiplied by C's tariffed price per minute, each PTC is a tariffed unit card. Because the PTCs are tariffed unit cards, the face amount of each PTC is \$9.90, the designated number of minutes on the PTC multiplied by the tariffed price per minute ( $30 \times \$0.33$ ), even though the retail sale price of each card is \$9.

(iii) The cards are PTCs; thus, under section 4251(d), the face amount is treated as an amount paid for communications services and that amount is treated as paid when the PTC is transferred from C to R. Accordingly, at the time of transfer, R is liable for the 3 percent tax imposed by section 4251(a). The amount of the tax is \$297 ( $3\% \times$  the \$9.90 face amount  $\times 1,000$  PTCs). Thus, the total paid by R is \$7,297, the \$7,000 sales price plus \$297 tax. C is responsible for collecting the tax from R.

*Example 6. Unit card; sold to transferee reseller.* (i) On May 1, 2000, D, a carrier, sells 10,000 cards it calls prepaid telephone cards to S, a convenience store owner, for \$60,000. D provides S with a PIN for each card. The value of the cards is not denominated in dollars, but the face of each card is marked 30 minutes. A tariff has not been filed for the minutes on each card. S will sell the cards to individuals for their own use for \$9 each. D also sells a card that provides 30 minutes of the same type of communications service at its retail store for \$9. The toll telephone service acquired by purchasing the card will be obtained by entering the PIN and the telephone number to be called.

(ii) Because S purchased from a carrier for resale, S is a transferee reseller. Because S's customers will purchase other than for resale, they will be holders. Each card sold by S provides its holder, S's customer, with a fixed amount of communications services (30 minutes of toll telephone service) to be obtained by means of a PIN provided by the carrier, for which S's customer pays in advance of obtaining service; therefore, each card is a PTC. Because the value of each PTC is not designated in dollars and a tariff has not been filed for the minutes on the PTC, each PTC is an untariffed unit card.

(iii) The PTCs are untariffed unit cards transferred by the carrier to a transferee re-

seller. Thus, the face amount is determined under paragraph (c)(3)(ii) of this section, which permits D to choose from three alternative methods. Under paragraph (c)(3)(ii)(A)(1) of this section, the face amount of each PTC would be \$9, the highest amount for which D sells to holders purchasing a single PTC. Alternatively, under paragraph (c)(3)(ii)(A)(2) of this section, the face amount of each PTC would be \$8.10, computed as follows:  $135\% \times$  the \$60,000 sales price  $\div 10,000$  PTC's. Finally, under paragraph (c)(3)(ii)(A)(3) of this section (assuming the PTCs are of a type that ordinarily is used entirely for domestic communications services), the face amount of each PTC would be \$9 ( $\$0.30 \times 30$  minutes).

(iv) The cards are PTCs; thus, under section 4251(d), the face amount is treated as an amount paid for communications services and that amount is treated as paid when the PTCs are transferred from D to S. Accordingly, at the time of transfer, S is liable for the 3 percent tax imposed by section 4251(a). Assuming that D chooses to determine the face amount as provided in paragraph (c)(3)(ii)(A)(2) of this section, the amount of the tax is \$2,430 ( $3\% \times$  the \$8.10 face amount  $\times 10,000$  PTCs). Thus, the total paid by S is \$62,430, the \$60,000 sales price plus \$2,430 tax. D is responsible for collecting the tax from S.

*Example 7. Transfer of card that is not a PTC.*

(i) On May 1, 2000, E, a carrier, provides a telephone card to T, an individual, for T's use in making telephone calls. E provides T with a PIN. The card provides access to an unlimited amount of communications services. E charges T \$0.25 per minute of service, and bills T monthly for services used. The communications services acquired by using the card will be obtained by entering the PIN and the telephone number to be called.

(ii) Although the communications services will be obtained by means of a PIN, T does not receive a fixed amount of communications services. Also, T cannot pay in advance since the amount of T's payment obligation depends upon the number of minutes used. Therefore, the card is not a PTC.

(iii) Because the card is not a PTC, section 4251(d) does not apply. However, the 3 percent tax imposed by section 4251(a) applies to the amounts paid by T to E for the communications services. Accordingly, at the time an amount is paid for communications services, T is liable for tax. E is responsible for collecting the tax from T.

(f) *Effective date.* This section is applicable with respect to PTCs transferred by a carrier on or after the first day of the first calendar quarter beginning after January 7, 2000.

[T.D. 8855, 64 FR 1057, Jan. 7, 2000; 65 FR 10153, Feb. 25, 2000]

## § 49.4252-1 [Reserved]

## § 49.4252-2 Toll telephone service.

(a) *In general.* The term “toll telephone service” means any telephone or radio telephone message or conversation for which there is a toll charge, and the charge is paid within the United States. A toll charge is a charge made for such a message or conversation to a place beyond the local service area. For the meaning of the term “United States”, see paragraph (d) of § 49.4252-4.

(b) *Amounts paid.* (1) The tax in respect of toll telephone service is imposed on the total amount paid for the service, including any charge, in addition to the basic toll charge, made for “overtime” in connection with a telephone or radio telephone message or conversation.

(2) The tax attaches to the total charge made to a hotel or similar subscriber for toll telephone service furnished to the hotel or its guests, but no tax attaches to any charge made by the hotel for service rendered in placing the calls for its guests.

(c) *Cross reference.* For provisions relating to toll telephone messages communicated through the use of coin-operated telephones, see section 4253(a) and § 49.4253-1. For other provisions relating to toll telephone service, see § 49.4252-4.

## § 49.4252-3 [Reserved]

## § 49.4252-4 Provisions common to telephone and telegraph services.

(a) *In general.* The tax applies to all amounts paid for services rendered which are incidental to the transmission of a message or conversation. Where dispatches, messages, or conversations are transmitted by telephone, radio telephone, telegraph, cable, or radio free of any charge whatsoever, no tax attaches, but where the carrier in fact makes some charge for the transmission, either in money, service, or other valuable consideration, such charge is subject to the tax upon the basis of the amount of the charge computed in money or money’s worth. The tax is payable by the person paying the transmission charge and is to be collected by the person receiving

the payment. If a message, dispatch, or conversation is transmitted “collect”, the person who pays the charge therefor is liable for the tax. All telephone and telegraph transmission services when rendered for hire are subject to tax whether or not the agency furnishing such services is a common carrier. For provisions relating to the computation of tax with respect to charges for telephone and telegraph services, see section 4254 and §§ 49.4254-1 and 49.4254-2.

(b) *When transmission begins and ends.* Transmission begins when the message is delivered by the sender to the carrier, or its agent, and continues until receipt by the addressee or his agent. Thus, an amount paid to a telephone, telegraph, radio, or cable company for messenger service in bringing the recipient of a message to the telephone, or in delivering a dispatch or message, must be included in determining the total amount subject to tax. However, an amount paid for messenger service rendered by a hotel or similar establishment is not to be included in the total charge on which the tax is computed.

(c) *Services rendered under contract.* (1) Except as an exemption may otherwise be specifically provided for in this part, where, under the provisions of a contract, dispatches, messages, or conversations are transmitted by telephone, radio telephone, telegraph, cable, or radio in consideration of the payment of a lump sum of money or the performance of services, the amounts paid for such transmissions are subject to tax regardless of whether such dispatches, messages, or conversations relate to the operation of the business of a common carrier and whether they are “on line” or “off line”.

(2) Where a telegraph company agrees to transmit over its wires dispatches or messages relating to the business of a carrier free or at reduced rates in consideration of services to be performed by the carrier in transporting men or materials of the telegraph company, all such dispatches or messages are subject to tax.

(d) *Meaning of the term “United States”.* For purpose of section 4252 (b)

**§ 49.4252-5**

**26 CFR Ch. I (4-1-25 Edition)**

and (c), the term “United States” includes the States and the District of Columbia. Such term also includes inland waters (such as rivers, lakes, bays, etc.) lying wholly within the United States, and, where an international boundary line divides inland waters, such parts of such inland waters as lie within the boundary of the United States, and also the waters known as a marine league from low tide on the coast line. Ships within these limits whether of foreign or domestic registry are considered to be within the United States.

(e) *Exemptions.* For exemptions from the taxes imposed on amounts paid for telephone and telegraph services, see sections 4253, 4292, 4293, and 4294, and the regulations thereunder contained in this part.

**§ 49.4252-5 Teletypewriter exchange service.**

(a) *In general.* The term “teletypewriter exchange service” means any service where a teletypewriter (or similar device) may be connected, directly or indirectly, to an exchange operated by a person engaged in the business of furnishing communication service, if by means of such connection communication may be established with any other teletypewriter (or similar device). If the teletypewriter or similar device used in conjunction with such service may be connected to such an exchange, the service constitutes teletypewriter exchange service whether or not it is the practice of the subscriber to the service to make such connection, and whether or not the person engaged in the business of furnishing communication service permits the subscriber to make such connection.

(b) *Amounts paid.* In determining the amount of tax due, the amount paid for the service shall include all charges made in connection with the furnishing of any teletypewriter exchange service, such as salaries of operators, if in the employ of the person furnishing such service, charges for equipment, instruments, and other apparatus. In cases where a person leases lines or channels, equipment, and other facilities used in conjunction with teletypewriter exchange service, the amounts paid by such person for such lines or channels,

equipment, and other facilities constitute amounts paid for teletypewriter exchange service, notwithstanding the fact that the lines or channels, equipment, and other facilities used in conjunction with such service are supplied by different persons or in part by the user of such service.

(c) *Exemptions.* For exemptions from the tax imposed on amounts paid for teletypewriter exchange service, see sections 4253, 4292, 4293, and 4294, and the regulations thereunder contained in this part.

**§ 49.4253-1 Exemption for certain coin-operated service.**

(a) *In general.* Except as provided in paragraph (b) of this section, the tax imposed on amounts paid for general telephone service is not applicable to a single telephone conversation paid for by inserting coins in a public coin-operated telephone. The tax imposed on amounts paid for toll telephone service or telegraph service is not applicable to a single telephone conversation for which a toll charge is made (see paragraph (a) of § 49.4252-2), or to a telegraph message, if the charge for such toll telephone service (including any additional charge for overtime) or telegraph service is less than 25 cents and is paid for by inserting coins in a public coin-operated telephone.

(b) *Exception where service furnished for a guaranteed amount.* Where a coin-operated telephone service is furnished for a guaranteed amount, the amount paid under such guarantee plus any fixed monthly or other periodic charge is subject to the tax imposed on amounts paid for general telephone service. The tax applies to the full amount of the guarantee whether such amount is paid out of receipts from the coin-box of the telephone or from funds of the subscriber.

**§ 49.4253-2 Exemption for news services.**

(a) *In general.* The exemption for news services provided by section 4253(b) is applicable to payments for services of the kind listed in section 4251, except general telephone service. The exemption will apply only with respect to payments for services which are utilized exclusively:

(1) In the collection of news for the public press or radio or television broadcasting or in the dissemination of news through the public press or by means of radio or television broadcasting; or

(2) In the collection or dissemination of news by a news ticker service furnishing a general news service similar to that of the public press.

For the exemption to apply, the charge for the services must be billed in writing to the person paying for the services and such person must certify in writing that the services are so utilized.

(b) *Scope of the exemption.* (1) The exemption applies to amounts charged for messages from any newspaper, press association, radio or television news broadcasting agency, or news ticker service, to any other newspaper, press association, radio or television news broadcasting agency, or news ticker service or to or from their bona fide correspondents, which messages deal exclusively with the collection of news items for, or the dissemination of news items through, the public press, radio or television broadcasting, or a news ticker service furnishing a general news service similar to that of the public press. The exemption does not extend to messages of an administrative nature such as messages transmitting funds to correspondents, messages to correspondents relating to assignments or hotel accommodations, etc.

(2) The exemption does not extend to the collection and dissemination of information or matters for publication in magazines, periodicals, and trade and scientific publications issued to supply information on certain subjects of interest to particular groups; or to amounts paid by newspapers, press associations, radio or television news broadcasting agencies or networks, or news ticker services, for general telephone service taxable under section 4251.

**§ 49.4253-3 Exemption for certain organizations.**

(a) *The American National Red Cross.* The taxes imposed by section 4251 do not apply to amounts paid for services furnished to the American National Red Cross.

(b) *International organizations.* The taxes imposed by section 4251 do not apply to amounts paid for services furnished to an international organization. See section 7701(a) (18) for the definition of "international organization". An international organization is designated as such by the President of the United States through an Executive order or orders. When an organization has been designated by the President as entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act, or part thereof, including exemption from tax, the exemption applies to the taxes imposed by section 4251 on amounts paid for services unless the President otherwise provides. The exemption is subject to withdrawal or revocation by the President. In case of withdrawal or revocation, unless otherwise provided by the President, the exemption is inapplicable to payments made on or after the date of issuance of the order of withdrawal or the date of revocation.

(c) *Exemption certificate.* (1) No exemption certificate is required under this section where the payment for the services furnished is made by the American National Red Cross direct to the person furnishing the services. In all other cases the right to exemption under section 4253(c) shall be evidenced by properly executed exemption certificates in substantially the following form:

EXEMPTION OF CERTIFICATE

(Date) \_\_\_\_\_ 19\_\_

I certify that \_\_\_\_\_  
 (Name of service)

have been furnished by \_\_\_\_\_  
 (Telephone, telegraph company, etc.)

to \_\_\_\_\_ (International Organization, etc.); that the charges of \$\_\_\_\_\_ will be paid from \_\_\_\_\_ (International Organization, etc.) funds; and that the charges are exempt from tax under section 4253(c) of the Internal Revenue Code.

\_\_\_\_\_  
 (Signature of officer or employee)

\_\_\_\_\_  
 (Address)

\_\_\_\_\_  
 (Title)

NOTE: Penalty for fraudulent use, \$10,000 or imprisonment or both.

§ 49.4253-4

26 CFR Ch. I (4-1-25 Edition)

§ 49.4253-4 Exemption for servicemen in combat zone.

(a) In general. The exemption provided by section 4253(d) is applicable to any payment received for any telephone or radio telephone message or call which originates within a combat zone, as defined in section 112, from a member of the Armed Forces of the United States performing service in such combat zone, if a properly executed certificate of exemption substantially in the form shown in paragraph (c) of this section is furnished to the person receiving such payment.

(b) Service in combat zone. Service is performed in a combat zone only if it is performed in an area which the President of the United States has designated by Executive order, for the purpose of section 112, as an area in which Armed Forces of the United States are or have engaged in combat, and only if it is performed on or after the date designated by the President by Executive order as the date of the commencing of combatant activities in such zone and on or before the date designated by the President by Executive order as the date of the termination of combatant activities in such zone.

(c) Exemption certificate. (1) The exemption certificate shall be in substantially the following form:

EXEMPTION CERTIFICATE

(Overseas Telephone Calls)

(Date) \_\_\_\_\_ 19\_\_\_\_

I certify that the toll charges of \$ \_\_\_\_\_ are for telephone or radio telephone messages originating at \_\_\_\_\_

(Point of origin)

within a combat zone from \_\_\_\_\_

(Name)

a member of the Armed Forces of the United States performing service in such combat zone; that the transmission facilities were furnished by \_\_\_\_\_ (Name of carrier); and that the charges are exempt from tax under section 4253(d) of the Internal Revenue Code.

\_\_\_\_\_  
(Signature of subscriber)

\_\_\_\_\_  
(Address)

NOTE: Penalty for fraudulent use, \$10,000 or imprisonment or both.

(2) See § 49.4253-11 for further provisions relating to exemption certificates.

§ 49.4253-5 Exemption for items otherwise taxed.

A dispatch, message, or conversation transmitted by toll telephone, telegraph, or teletypewriter exchange over the combined facilities of several lines or stations of one or more persons is considered to be one dispatch, message, or conversation, and is subject to only one payment of tax under section 4251.

§ 49.4253-6 Exemption for common carriers and communications companies.

(a) In general. (1) The taxes imposed by section 4251 on amounts paid for wire mileage service and wire and equipment service do not apply to amounts paid for any such services to the extent that the amounts paid are for services utilized by a common carrier, telephone or telegraph company, or television or radio broadcasting station or network in the conduct of its business as such.

(2) The tax imposed by section 4251 on amounts paid for general telephone service does not apply to amounts paid for the use of a continuous telephone or radio telephone line or channel to the extent that the amounts paid are for use by a common carrier, telephone or telegraph company, or television or radio broadcasting station or network in the conduct of its business as such, if such line or channel connects stations between any two of which there would otherwise be a toll charge. A line or channel connects stations between which there would otherwise be a toll charge if the telephone company makes a toll charge for a single message transmitted between the two stations in the case of the ordinary residential and business or commercial telephone service. A line or channel connecting two stations is considered a continuous line or channel if such line or channel does not connect with any switchboard interposed between the two stations, which makes it possible to carry on two or more independent conversations simultaneously. Where a line or channel connects with such a

switchboard, the exemption is inapplicable to so much of the amount paid as is attributable to the portion of the line or channel which extends from a station to a switchboard located in the same local service area.

(b) *Exemption inapplicable.* This particular exemption is not applicable in the case of the taxes imposed on amounts paid for other services by section 4251, even though such services are utilized by the companies described in the conduct of their business as such.

**§ 49.4253-7 Exemption for installation charges.**

(a) *In general.* The taxes imposed by section 4251 do not apply to any amount paid as is properly attributable to the installation of any instrument, wire, pole, switchboard, apparatus, or equipment.

(b) *Maintenance charges subject to tax.* The exemption provided by section 4253(g) and paragraph (a) of this section is applicable only to amounts paid for installation. Amounts paid for the repair or replacement of instruments, wires, poles, switchboards, apparatus, or equipment, incidental to ordinary maintenance, are subject to tax.

**§§ 49.4253-8—49.4253-9 [Reserved]**

**§ 49.4253-10 Exemption for certain private communications services.**

(a) *In general.* The tax imposed by section 4251 on amounts paid for general telephone service does not apply to amounts paid for any such service furnished on or after January 1, 1963, to the extent that the amounts paid are for use of any telephone or radio telephone line or channel (including equipment, instruments, and other apparatus furnished exclusively for use in connection with the line or channel) in the conduct of a trade or business when such line or channel is furnished between specified locations in different States or between specified locations in different counties, municipalities, or similar political subdivisions of a State. The term "trade or business" as used in this section includes activities of organizations which are conducted with no purpose of gain or profit. A line or channel is considered to be furnished between specified locations only

when the line or channel connects preselected points without the use of switching functions performed by a communications company exchange. Where an amount is paid which includes a charge for such a line or channel and also a charge for the service provided by means of switching functions performed by a communications company exchange, the exemption is applicable only to that portion of the amount so paid as is attributable to such a line or channel. The preselected points must be located in different States or in different counties or municipalities of the same State. If the preselected points are located in a State in which the political subdivisions are not denominated as counties or municipalities, then the preselected points must be in different political subdivisions of such State which correspond to counties or municipalities. For purposes of this paragraph the term "municipality" means the largest political subdivision of a State below the level of county or similar subdivision. For the exemption to apply, the charge for the service must be billed in writing to the person paying for the service and such person must certify in writing that the service is for use in the conduct of a trade or business.

(b) *Exemption inapplicable.* This particular exemption is not applicable in the case of taxes imposed on amounts paid for other services by section 4251, even though such services are utilized in the conduct of a trade or business.

**§ 49.4253-11 Use and retention of exemption certificates.**

A separate exemption certificate (as required by §§ 49.4253-3 and 49.4253-4) shall be furnished for each message paid for as a separate item, but where periodic payments are made, a blanket certificate (for a period not to exceed four calendar quarters) may be accepted as evidence of the right to exemption. An agent of a telegraph, telephone, radio, or cable company should not accept an exemption certificate unless satisfied, on the basis of proper credentials or otherwise, that the person who signed it is the person whom he represents himself to be and that the exemption claimed is allowable under the law. Exemption certificates

## § 49.4253-12

should be retained with the record of the services rendered for inspection by internal revenue officers as provided in section 6001 and the regulations in Subpart G of this part.

### § 49.4253-12 Cross reference.

For exemptions applicable to amounts received as payment for services furnished to the government of any State or political subdivision of a State, to the District of Columbia, to the government of the United States, or to certain nonprofit educational organizations, see sections 4292, 4293, and 4294, and the regulations thereunder contained in Subpart F of this part.

### § 49.4254-1 Computation of tax.

(a) *General rule.* Except as provided in paragraph (b) of this section, when a bill is rendered to the taxpayer covering charges for general telephone service, toll telephone service, or telegraph service, with respect to which a tax is imposed by section 4251, the amount upon which the tax with respect to such services shall be based shall be the sum of all such charges for such services included in the bill.

(b) *Special rule in certain cases.* When a bill is rendered to the taxpayer covering charges for general telephone service, toll telephone service, or telegraph service, with respect to which a tax is imposed by section 4251, by a person who groups individual items for purposes of rendering the bill and computing the tax, then the amount on which the tax with respect to each such group shall be based shall be the sum of all items within that group, and the tax on remaining items not included in any such group shall be based on the charge for each item separately.

### § 49.4254-2 Payment for toll telephone service or telegraph service in coin-operated telephones.

Where the tax on a toll telephone or radio telephone message or conversation, or a telegraph, cable, or radio dispatch or message is paid by inserting coins in a coin-operated telephone, the tax shall be computed to the nearest multiple of 5 cents, and where the tax is midway between multiples of 5 cents, the next highest multiple shall apply. In other words, one-half or a greater

## 26 CFR Ch. I (4-1-25 Edition)

fraction of 5 cents shall be treated as 5 cents and a smaller fraction shall be ignored.

### Subpart D—Transportation of Persons

SOURCE: T.D. 6430, 24 FR 9665, Dec. 3, 1959, unless otherwise noted.

NOTE: For exemption from tax on transportation of persons by air of amounts paid by the Department of the Interior for fire prevention and control activities, see 32 FR 5457, April 1, 1967.

### § 49.4261-1 Imposition of tax; in general.

(a) *In general.* Section 4261 of the Internal Revenue Code (Code) imposes three separate taxes on amounts paid for certain transportation of persons by air. Tax attaches at the time of payment for any transportation taxable under section 4261. The applicability of each section 4261 tax is generally determined on a flight-by-flight basis.

(1) *Percentage tax.* Section 4261(a) imposes a 7.5 percent tax on the amount paid for the taxable transportation of any person. See section 4262(a) of the Code and § 49.4262-1(a) for the definition of the term *taxable transportation*.

(2) *Domestic segment tax.* Section 4261(b)(1) imposes a \$3 tax (indexed annually for inflation pursuant to section 4261(e)(4)) on the amount paid for each domestic segment of taxable transportation. See section 4261(b)(2) for the definition of the term *domestic segment*. The domestic segment tax does not apply to a domestic segment beginning or ending at an airport that is a rural airport for the calendar year in which the segment begins or ends (as the case may be). See section 4261(e)(1)(B) for the definition of the term *rural airport*.

(3) *International travel facilities tax.* Section 4261(c) imposes a \$12 tax (indexed annually for inflation pursuant to section 4261(e)(4)) on any amount paid (whether within or without the United States) for any transportation by air that begins or ends in the United States. The international travel facilities tax does not apply to any transportation that is entirely taxable under section 4261(a) (determined without regard to sections 4281 and 4282). See section 4261(c)(2). A special rule applies to

Alaska and Hawaii flights. *See* section 4261(c)(3).

(b) *Payment and collection obligations*—(1) *In general.* The taxes imposed by section 4261 are collected taxes. In general, the person making the payment subject to tax is the *taxpayer*. *See* section 4261(d). The person receiving the payment is the *collector* (also commonly referred to as the collecting agent). *See* section 4291 of the Code. The collector must collect the applicable tax from the taxpayer, report the tax on Form 720, *Quarterly Federal Excise Tax Return*, and remit the tax to the Internal Revenue Service. *See* sections 4291, 6011, and 7501 of the Code. *See* § 40.6011(a)-1 of this chapter and § 49.4291-1. The collector must also make semimonthly deposits of the taxes imposed by section 4261. *See* section 6302(e) of the Code. *See* §§ 40.0-1(c), 40.6302(c)-1, and 40.6302(c)-3 of this chapter. *See* section 4263(a) and (c) of the Code for special rules relating to the payment and collection of tax.

(2) *Failure to collect tax.* If any tax imposed by section 4261 is not paid at the time payment for transportation is made, then, to the extent the tax is not collected under any other provision of subchapter C of chapter 33 of the Code, the tax must be paid by the carrier providing the initial segment of transportation that begins or ends in the United States. *See* section 4263(c). *See* section 6672 of the Code for rules relating to the application of the trust fund recovery penalty.

(c) *Type of aircraft.* The taxes imposed by section 4261 generally apply regardless of the type of aircraft on which the transportation is provided, provided all of the other conditions for liability are present and no specific statutory exemption applies. *See* paragraph (f) of this section for a list of statutory exemptions from tax. Amounts paid for the transportation of persons by air cushion vehicles, also known as hovercraft, are not subject to the taxes imposed by section 4261.

(d) *Purpose of transportation.* The purpose of the transportation (for example, business or pleasure) is not a factor in determining taxability under section 4261.

(e) *Routes.* Amounts paid for transportation may be taxable even if the

transportation is not between two definite points. Unless otherwise exempt, a payment for continuous transportation that begins and ends at the same point is subject to tax. *See* section 4281 of the Code and § 49.4281-1 for the exemption for small aircraft on nonestablished lines.

(f) *Exemptions from tax; cross-references*—(1) *Aircraft management services.* For the exemption for certain aircraft management services, see section 4261(e)(5) of the Code and § 49.4261-10.

(2) *Hard minerals, oil, and gas.* For the exemption for certain uses related to the exploration, development, or removal of hard minerals, oil, or gas, see section 4261(f)(1).

(3) *Trees and logging operations.* For the exemption for certain uses related to trees and logging operations, see section 4261(f)(2).

(4) *Air ambulances.* For the exemption for air ambulances providing certain emergency medical transportation, see section 4261(g).

(5) *Skydiving.* For the exemption for certain skydiving uses, see section 4261(h).

(6) *Seaplanes.* For the exemption for certain seaplane segments, see section 4261(i).

(7) *Fractionally-owned aircraft.* For the exemption for certain aircraft in fractional ownership aircraft programs, see section 4261(j).

(8) *Small aircraft on nonestablished lines.* For the exemption for certain small aircraft on nonestablished lines, see section 4281 of the Code and § 49.4281-1.

(9) *Affiliated groups.* For the exemption for certain transportation of members of an affiliated group, see section 4282.

(10) *United States and territories.* For exemptions authorized by the Secretary of the Treasury or his delegate for the exclusive use of the United States, see section 4293.

(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. 9948, 86 FR 5001, Jan. 19, 2021]

**§ 49.4261-2 Application of tax.**

(a) *Tax on total amount paid.* The tax imposed by section 4261(a) of the Internal Revenue Code (Code) is measured by the total amount paid for taxable transportation, whether paid in cash or in kind.

(b) *Tax on transportation of each person.* The taxes imposed by section 4261(b) and (c) of the Code are head taxes and, therefore, apply on a per-passenger basis. The taxes apply to each passenger for whom an amount is paid, regardless of whether the payment is made as a single lump sum or is made individually for each passenger. In the case of charter flights for which a fixed amount is paid, the section 4261(b) and (c) taxes are computed by multiplying the applicable rate of tax by the number of passengers transported on the aircraft.

(c) *Charges for nontransportation services.* Where a payment covers charges for nontransportation services as well as for transportation of a person, such as charges for meals, hotel accommodations, etc., the charges for the nontransportation services may be excluded in computing the tax payable with respect to such payment, provided such charges are separable and are shown in the exact amounts thereof in the records pertaining to the transportation charge. If the charges for nontransportation services are not separable from the charge for transportation of the person, the tax must be computed upon the full amount of the payment.

(d) *Applicability date.* Paragraphs (a) and (b) of this section apply 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. 6430, 24 FR 9665, Dec. 3, 1959, as amended by T.D. 6518, 25 FR 13134, Dec. 21, 1960, as amended by T.D. 6618, 27 FR 11222, Nov. 14, 1962; T.D. 9948, 86 FR 5001, Jan. 19, 2021]

**§ 49.4261-3 Payments made within the United States.**

(a) *Transportation beginning and ending in the United States or the 225-mile zone.* The taxes imposed by section 4261(a) and (b) of the Internal Revenue Code (Code) applies to payments made within the United States for transpor-

tation which begins in the United States or in the 225-mile zone and ends in the United States or in the 225-mile zone. For example, an amount paid within the United States for transportation between New York and Montreal, Canada; between Vancouver, Canada, and Windsor, Canada; or between Nogales, Mexico, and Hermosillo, Mexico, would be fully taxable under section 4261(a) and (b). See section 4262(c) (2) and paragraph (b) of § 49.4262-3 for the definition of the term “225-mile zone”.

(b) *Other transportation.* In the case of transportation, other than that described in paragraph (a) of this section, for which payment is made in the United States, the taxes imposed by section 4261(a) and (b) apply with respect to the amount paid for that portion of such transportation by air which is directly or indirectly from one port or station in the United States to another port or station in the United States, but only if such portion is not a part of uninterrupted international air transportation within the meaning of section 4262(c)(3) of the Code and § 49.4262-3(c). Transportation that:

(1) Begins in the United States or the 225-mile zone and ends outside such area,

(2) Begins outside the United States or the 225-mile zone and ends inside such area, or

(3) Begins outside the United States and ends outside such area, is taxable only with respect to the portion of the transportation by air which is directly or indirectly from one port or station in the United States to another port or station in the United States, but only if such portion is not a part of “uninterrupted international air transportation” within the meaning of section 4262(c)(3) and § 49.4262-3(c). Thus, on a trip by air from Chicago to London, England, with a stopover at New York, for which payment is made in the United States, if the portion from Chicago to New York is not a part of “uninterrupted international air transportation” within the meaning of section 4262(c)(3) and § 49.4262-3(c), the taxes would apply to the part of the payment which is applicable to the transportation from Chicago to New York. However, if the portion from Chicago

to New York is a part of “uninterrupted international air transportation” within the meaning of section 4262(c)(3) and § 49.4262-3(c), the taxes would not apply.

(c) *Method of computing tax on taxable portion.* Where a payment is made for transportation which is partially taxable under paragraph (b) of this section, the tax imposed by section 4261(a) may be computed on that proportion of the total amount paid which the mileage of the taxable portion of the transportation bears to the mileage of the entire trip.

(d) *Cross reference.* See section 4262(b) of the Code and § 49.4262-2 for a partial exclusion with respect to amounts paid for certain transportation.

(e) *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. 6430, 24 FR 9665, Dec. 3, 1959, as amended by T.D. 6618, 27 FR 11222, Nov. 14, 1962; T.D. 9948, 86 FR 5001, Jan. 19, 2021]

**§ 49.4261-4 Payments made within the United States; evidence of nontaxability.**

(a) *Presumption of taxability.* The tax imposed by section 4261 of the Internal Revenue Code (Code) shall apply to any amount paid within the United States for the transportation of any person, unless the taxpayer establishes in accordance with the provisions of this section that at the time of payment the transportation is not transportation in respect of which tax is imposed by section 4261 (see section 4263(d) of the Code).

(b) *Through tickets.* In the case of transportation which is wholly or in part not taxable transportation, the issuance of one ticket (commonly known as a “through ticket”) covering such transportation will be sufficient to establish that the amount paid for such transportation is wholly or in part not subject to tax. Thus, if A purchases a through ticket in the United States for transportation by air which begins before November 16, 1962, from Chicago to Edmonton, Canada, with a stopover in Minneapolis, no further evidence will be required to establish that no tax applies with respect to the

amount paid for the portion of transportation between Minneapolis and Edmonton. A similar result will be reached if a through ticket is purchased for the same air transportation which begins after November 15, 1962, and the trip is not “uninterrupted international air transportation” within the meaning of section 4262(c)(3) and paragraph (c) of § 49.4262-3. See paragraph (d) of this section for the information to be inscribed on all tickets issued for uninterrupted international air transportation.

(c) *Separate tickets.* Where a separate ticket or order is issued for taxable transportation as defined in section 4262 (a) (1) (referred to in this subpart as the “domestic ticket or order”), but the domestic ticket or order is to be used in conjunction with a ticket or order for additional transportation (referred to in this subpart as the “international ticket or order”) which changes the tax consequences, unless the domestic ticket or order and the international ticket or order are purchased from a single agency or carrier at the same time, the person making payment for the domestic ticket or order shall at the time of payment exhibit the international ticket or order to the agency or carrier receiving such payment. The agency or carrier which receives the payment for the domestic ticket or order shall inscribe the tickets or orders for the entire journey in the following manner:

(1) The international ticket or order shall be inscribed or stamped with an appropriate legend (for example, “Cannot be reused to obtain any tax exemption on a domestic ticket or order”) to show that a domestic ticket or order has been purchased wholly or partially tax free for use in conjunction therewith.

(2) The domestic ticket or order shall be inscribed to show (i) the identity of the agency or carrier which received payment therefor (unless otherwise shown on the ticket or order), (ii) the origin and destination of the additional transportation, (iii) the identity of the carrier furnishing the additional transportation, and (iv) the serial number of the ticket or order covering such additional transportation. If the domestic ticket or order is not large enough to

accommodate the prescribed inscription, a statement setting forth the required information shall be attached to such ticket or order.

(d) *Tickets issued for uninterrupted international air transportation.* All tickets issued for “uninterrupted international air transportation” within the meaning of section 4262(c) (3) and paragraph (c) of § 49.4262-3, whether through tickets or separate tickets, must have inscribed thereon, in addition to the other information required in the regulations in this subpart, sufficient information from which may be ascertained the scheduled arrival and departure time at each stopover to which the 12-hour scheduled interval requirement of section 4262(c)(3) applies. It will be sufficient, for example, if the airline ticket or tickets show the trip number and the date and time of departure of the aircraft from each such stopover point, provided the published airline schedules show the scheduled time of arrival at each such stopover point.

[T.D. 6430, 24 FR 9665, Dec. 3, 1959, as amended by T.D. 6618, 27 FR 11223, Nov. 14, 1962; T.D. 9948, 86 FR 5003, Jan. 19, 2021]

**§ 49.4261-5 Payments made outside the United States.**

(a) *In general.* The tax imposed by section 4261(a) and (b) applies to amounts paid outside the United States for the taxable transportation of persons, but only if such transportation begins and ends in the United States. Thus, in addition to the exclusion provided for certain travel under section 4261(a) and (b), the tax imposed by section 4261(a) and (b), shall not apply unless the transportation both begins and ends within the United States. Accordingly, the tax does not apply to a payment made outside the United States for one-way or round-trip transportation between a point within the United States and a point outside the United States.

(b) *Transportation between two or more points in the United States.* (1) For purposes of this section, a payment made outside the United States for transportation between two or more points in the United States is a payment for transportation which begins and ends in the United States, even though additional transportation to or from a

point outside the United States is involved in the entire journey, if at the time of making payment for the transportation between two or more points in the United States it is not definitely established, under the rules set forth in § 49.4261-6, that such transportation is purchased for use in making the journey from or to a point outside the United States. The fact that the entire journey includes transportation from or to a point outside the United States is not in itself determinative of the liability for tax.

(2) The following examples illustrate the application of this paragraph:

*Example (1).* W travels from Havana, Cuba to New York by way of Miami. He purchases in Havana a steamship ticket for his transportation from Havana to Miami and an exchange order for air transportation from Miami to New York. The ticket for the connecting transportation from Havana to Miami, and the order for the transportation from Miami to New York were not appropriately inscribed by the agency or carrier which received the payment for the air transportation involved at the time such payment was received so as to clearly show that the ticket and order were purchased for use in conjunction with each other. Therefore, the agency or carrier which accepts the exchange order and issues the ticket for the transportation from Miami to New York is required to collect the tax which applies to the amount paid outside the United States for such transportation.

*Example (2).* X travels on a round trip from Montreal, Canada, to Los Angeles by way of New York. He purchases in Montreal air transportation for the round trip between New York and Los Angeles, and uses a private automobile for transportation from Montreal to New York and return to Montreal. The amount paid in Montreal for the round-trip transportation between New York and Los Angeles is a payment for transportation which begins and ends in the United States and is therefore subject to tax.

(c) *Cross reference.* See section 4262(b) and § 49.4262-2 for a partial exclusion with respect to amounts paid for certain transportation.

[T.D. 6430, 24 FR 9665, Dec. 3, 1959, as amended at T.D. 9948, 86 FR 5003, Jan. 19, 2021]

**§ 49.4261-6 Payments made outside the United States; evidence of nontaxability.**

(a) *In general.* The tax does not apply to a payment made outside the United States for transportation which begins

or ends outside the United States. For purposes of the preceding sentence, a payment made outside the United States for transportation between two or more points within the United States (such transportation being referred to hereinafter in this section as "the United States portion"), which is part of transportation from or to a point outside the United States is a payment for transportation which begins or ends outside the United States, where it is definitely established at the time of making payment for the United States portion that such portion is purchased for use in making the journey from or to a point outside the United States. The nontaxable character of the payment made outside the United States for the United States portion shall be established under the rules set forth in paragraphs (b) through (e) of this section.

(b) *Through tickets.* Where one ticket (commonly known as a "through ticket") is issued to cover all of the United States portion of a journey which begins or ends outside the United States and to cover also the connecting transportation from or to a point outside the United States, no further evidence of the nontaxable character of the transportation covered by such ticket will be required.

(c) *Separate tickets.* Where separate tickets or orders are issued for the United States portion of a journey which begins or ends outside the United States, the agency or carrier which receives payment for such tickets or orders shall definitely determine at the time of receiving the payment that the United States portion is being purchased for use in conjunction with connecting transportation from or to a point outside the United States, and shall appropriately inscribe the tickets or orders issued outside the United States for the United States portion and for the connecting transportation from or to a point outside the United States to show clearly that such tickets or orders are purchased for use in conjunction with each other. Such tickets or orders shall be inscribed in the following manner:

(1) The ticket or order for the connecting transportation from or to a point outside the United States shall

be inscribed or stamped with an appropriate legend (for example, "Not to be used again for purchase of tax-free United States transportation") to show that the United States portion has been purchased tax free for use in conjunction therewith.

(2) Where the ticket for the United States portion is issued outside the United States, it shall be inscribed to show (i) the identity of the agency or carrier which received payment therefor (unless otherwise shown on the ticket), (ii) the origin and destination of the connecting transportation, (iii) the identity of the carrier furnishing the connecting transportation, and (iv) the serial number of the ticket or order covering such connecting transportation. If the ticket is not large enough to accommodate the prescribed inscription, a statement setting forth the required information shall be attached to such ticket.

(3) Where an order for the United States portion is issued outside the United States, it shall be inscribed to show (i) the origin and destination of the connecting transportation, (ii) the identity of the carrier furnishing the connecting transportation, and (iii) the serial number of the ticket or order covering such connecting transportation.

(d) *Ticket issued pursuant to inscribed order.* Where the ticket for the United States portion is issued in the United States pursuant to an order which was purchased and properly inscribed outside the United States under the rules set forth in paragraph (c)(3) of this section, liability for payment or collection of tax will not be incurred upon the issuance of the ticket provided the agency or carrier issuing such ticket stamps or inscribes thereon an appropriate legend, for example, "Tax not paid—furnished on order", or "Exempt—order".

(e) *Maintenance of records.* In any case where a payment for the United States portion is not subject to tax under the rules set forth in this section, the carrier furnishing transportation for the United States portion shall procure and maintain appropriate evidence which will clearly show that the tickets or orders for such transportation were purchased for use in conjunction

with connecting transportation from or to a point outside the United States.

(f) *Examples.* The following are examples of nontaxable transportation:

*Example (1).* Y travels from London, England, to San Francisco by way of New York. He purchases from an agency or carrier in England all of the transportation involved in such journey, which includes air transportation from London to New York and from New York to San Francisco, for which separate tickets are issued. The agency or carrier which receives the payment for Y's transportation from New York to San Francisco will not be required to collect tax with respect to the payment, provided it determines at the time such payment is received that the transportation in question is being purchased for use in conjunction with the connecting transportation from London to New York and it appropriately inscribes both of the tickets for the journey.

*Example (2).* Z travels from Havana, Cuba, to New York by way of Miami. He purchases in Havana a ticket for his transportation by water from Havana to Miami, and later purchases from a travel agency in Havana air transportation from Miami to New York for which the travel agency issues an exchange order. To establish the nontaxable character of the payment for Z's transportation from Miami to New York the travel agency shall determine at the time payment is received by it that the transportation is being purchased for use in conjunction with the connecting transportation from Havana to Miami, and shall make the appropriate inscription on the ticket and the order. The carrier which accepts the exchange order and issues the ticket for the transportation from Miami to New York will not be required to collect tax with respect to the ticket so issued if it appropriately inscribes the ticket as provided in paragraph (d) of this section.

**§ 49.4261-7 Examples of payments subject to tax.**

The following are examples of payments for transportation which, unless otherwise exempt under section 4261, 4281, 4282, or 4293 of the Internal Revenue Code are subject to tax:

(a) *Cash fares.* The tax applies to payments of so-called "cash fares" where no ticket or other evidence of the right to transportation is issued to the passenger.

(b) [Reserved]

(c) *Additional charges.* Amounts paid as additional charges for changing the class of accommodations, changing the destination or route, extending the time limit of a ticket, as "extra fare",

or for exclusive occupancy of a section, etc., are subject to the tax.

(d)-(e) [Reserved]

(f) *Prepaid orders, exchange orders, or similar orders.* The tax applies to the amounts paid for prepaid orders, exchange orders, or similar orders for transportation. Additional amounts paid in procuring transportation in connection with the use of prepaid orders, exchange orders, or similar orders, are likewise subject to tax.

(g) [Reserved]

(h) *Aircraft charters.* (1) When no charge is made by the charterer of an aircraft to the persons transported, the amount paid by the charterer for the charter of the aircraft is subject to tax.

(2) The charterer of an aircraft who sells transportation to other persons must collect and account for the tax with respect to all amounts paid to the charterer by such other persons. In such case, no tax will be due on the amount paid by the charterer for the charter of the aircraft but it shall be the duty of the owner of the aircraft to advise the charterer of the charterer's obligation for collecting, accounting for, and paying over the tax to the Internal Revenue Service.

(i) *All-expense tours.* Amounts paid for all-expense tours are subject to tax with respect to that portion representing transportation which is subject to tax. See §§ 49.4261-2(c) and 49.4261-8(f)(4).

(j) *Payments remitted to foreign countries by persons in the United States.* Payments for transportation tickets, prepaid orders, exchange orders, or similar orders are subject to the tax where the payment for such tickets or orders is accomplished by the purchaser either (1) by transmission from within the United States via telegraph or mail of cash, checks, postal or telegraphic money orders, and similar drafts to ticket offices or travel agencies, etc., located in any place without the United States, or (2) by the delivery of the funds to an agency located in the United States for transmission to ticket offices, or travel agencies, etc., without the United States. Such payments are considered to be payments made within the United States.

(k) *Applicability date.* Paragraph (h) of this section applies to amounts paid on

## Internal Revenue Service, Treasury

## § 49.4261-10

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. 6430, 24 FR 9665, Dec. 3, 1959, as amended by T.D. 6618, 27 FR 11223, Nov. 14, 1962; T.D. 9948, 86 FR 5003, Jan. 19, 2021]

### § 49.4261-8 Examples of payments not subject to tax.

In addition to a payment specifically exempt under section 4261, 4281, 4282, or 4293 of the Internal Revenue Code the following are examples of payments not subject to tax:

(a) *Exchange of prepaid order, scrip, etc., for tickets.* A ticket issued pursuant to an exchange order, prepaid order, airline pilot order, or scrip, is not subject to tax where the tax is paid at the time of payment for the order or scrip.

(b) *Caretakers and messengers accompanying freight shipments.* The tax on the transportation of persons does not apply to amounts paid for transportation of freight that includes also the transportation of caretakers or messengers for which no specific charge as such is made.

(c) *Special baggage transportation equipment.* An amount paid for special baggage transportation equipment is not subject to the tax on the transportation of persons if separable from the payment for transportation of persons and if shown in the exact amount of the charge on the records covering the taxable transportation payment.

(d) *Circus or show conveyances.* The amount paid pursuant to a contract for the movement of a circus or show conveyance where the amount covers only the transportation of the performers, laborers, animals, equipment, etc., by such conveyances is not subject to the tax on the transportation of persons imposed by section 4261. However, if the contract payment also covers the issuance to advance agents, bill posters, etc., of circus or show scrip books, or other evidence of the right to transportation, for use on regular passenger conveyances, that portion of the contract payment properly allocable to such scrip books or other evidence is subject to the tax on the transportation of persons.

(e) *Corpses.* The tax on the transportation of persons does not apply to the

amount paid for the transportation of a corpse, but does apply to the amount paid for the transportation of any person accompanying the corpse.

(f) *Miscellaneous charges.* Where the charge is separable from the payment for the transportation of a person and is shown in the exact amount thereof on the records pertaining to the transportation payment, the tax on the transportation of persons does not apply to the following and similar charges:

(1) Charges for transportation of baggage, including incidental charges such as excess value, storage, transfer, parcel checking, special delivery, etc.

(2)-(3) [Reserved]

(4) Charges for admissions, guides, meals, hotel accommodations, and other nontransportation services, for example, where such items are included in a lump sum payment for an all-expense tour.

(5) [Reserved]

[T.D. 6430, 24 FR 9665, Dec. 3, 1959, as amended by T.D. 6618, 27 FR 11223, Nov. 14, 1962; T.D. 9948, 86 FR 5003, Jan. 19, 2021]

### § 49.4261-9 Mileage awards.

(a) *Tax imposed.* Any amount paid (and the value of any other benefit provided) to an air carrier (or any related person) for the right to provide mileage awards for or other reductions in the cost of any transportation of persons by air is an amount paid for taxable transportation and is therefore subject to the tax imposed by section 4261(a) of the Internal Revenue Code. See section 4261(e)(3)(A).

(b) [Reserved]

(c) *Applicability date.* This section applies to amounts paid on and after January 19, 2021.

[T.D. 9948, 86 FR 5003, Jan. 19, 2021]

### § 49.4261-10 Aircraft management services.

(a) *In general—(1) Overview.* This section prescribes rules relating to the exemption under section 4261(e)(5) of the Internal Revenue Code (Code) for amounts paid (in cash or in kind) by an aircraft owner to an aircraft management services provider for certain aircraft management services (aircraft

management services exemption). Pursuant to section 4261(e)(5), the tax imposed by section 4261 of the Code does not apply to amounts paid by an aircraft owner to an aircraft management services provider for aircraft management services related to maintenance and support of the aircraft owner's aircraft; or related to flights on the aircraft owner's aircraft (flight services). The aircraft management services exemption applies to amounts paid by an aircraft owner to an aircraft management services provider for flight services on the aircraft owner's aircraft, even if the aircraft owner is not on the flight. The aircraft management services exemption does not apply to amounts paid to an aircraft management services provider by another person on behalf of an aircraft owner (other than in a principal-agent scenario in which the aircraft owner is the principal). In addition, amounts paid for aircraft management services by a party related to the aircraft owner are not amounts paid by the aircraft owner solely by virtue of the relationship between the aircraft owner and the related party. However, if an aircraft owner leases an aircraft to another person, including a related party, amounts paid by the lessee to an aircraft management services provider for aircraft management services related to the leased aircraft qualify for the aircraft management services exemption, provided the lease is not a disqualified lease and all other requirements of section 4261(e)(5) are satisfied. For example, amounts paid for aircraft management services by one member of an affiliated group (as that term is defined in section 4282 of the Code) for flights on an aircraft owned by another member of the affiliated group are not amounts paid by the aircraft owner unless the member owning the aircraft leases the aircraft to the member of the affiliated group that pays for the aircraft management services. See paragraph (b) of this section for definitions of terms used in this section.

(2) *Private aviation.* The aircraft management services exemption is limited to aircraft management services related to aircraft used in private aviation.

(3) *Adequate records required.* In order to qualify for the aircraft management services exemption, an aircraft owner and aircraft management services provider must maintain adequate records to show that the amounts paid by the aircraft owner to the aircraft management services provider relate to aircraft management services specifically for the aircraft owner's aircraft or for flights on the aircraft owner's aircraft and to support any allocations required under paragraph (c) under of this section. Such records may include the agreement, if any, between the aircraft owner and the aircraft management services provider, evidence of aircraft ownership, evidence that amounts paid for aircraft management services came from the aircraft owner, and the aircraft management services provider's fee schedule.

(b) *Definitions.* This paragraph provides definitions applicable to this section.

(1) *Aircraft management services.* The term *aircraft management services* means—

(i) *Statutory services.* The services listed in section 4261(e)(5)(B)(i)-(v); and

(ii) *Other services.* Any service (including, but not limited to, purchasing fuel, purchasing aircraft parts, and arranging for the fueling of an aircraft owner's aircraft) provided directly or indirectly to an aircraft owner in order to provide air transportation to the aircraft owner on the aircraft owner's aircraft at a level and quality of service required under the agreement between the aircraft owner and the aircraft management services provider.

(2) *Aircraft management services provider.* The term *aircraft management services provider* means a person that provides aircraft management services to an aircraft owner.

(3) *Aircraft owner—(i) In general.* Except as otherwise provided in this section, the term *aircraft owner* means a person that owns an aircraft managed by an aircraft management services provider (commonly referred to as a managed aircraft), or a person that leases a managed aircraft (lessee) pursuant to a lease that is not a disqualified lease. A person owns a managed aircraft if the person holds legal title to the aircraft, or if the person holds

substantial incidents of ownership in the aircraft for a period of more than 31 days. A lessee includes the beneficiary of an owner trust that holds legal title to the managed aircraft.

(ii) *Persons not included in the definition of aircraft owner.* A lessee of an aircraft under a disqualified lease cannot be an aircraft owner with respect to the aircraft leased pursuant to the disqualified lease. A person that owns stock in a commercial airline does not qualify as an aircraft owner of that commercial airline's aircraft. A participant in a fractional aircraft ownership program, as defined in section 4043(c)(2) of the Code, does not qualify as an aircraft owner of the program's managed aircraft if the amount paid for such person's participation is exempt from the tax imposed by section 4261 reason of section 4261(j).

(4) *Disqualified lease.* The term *disqualified lease* has the meaning given to it by section 4261(e)(5)(C)(ii).

(5) *Fair market value.* The term *fair market value* means the value of comparable flights or services provided with respect to a comparable aircraft as of the date such flights or services are provided. The aircraft management services provider's published fee schedule in effect on the date(s) the flights or services are provided may be used as evidence of fair market value.

(6) *For-hire flight.* The term *for-hire flight* means the use of an aircraft to transport passengers for compensation that is paid in cash or in kind. The term includes, but is not limited to, charter flights, air taxi flights, and sightseeing flights (commonly referred to as flightseeing flights).

(7) *Owner trust.* The term *owner trust* means an arrangement in which legal title of an aircraft is held in the name of the trustee of the trust for the limited purpose of registering the aircraft in the United States with the Federal Aviation Administration pursuant to the registration requirements in 49 U.S.C. 40102(a) and 44102(a), and 14 CFR part 47.

(8) *Private aviation.* The term *private aviation* means the use of an aircraft for civilian flights, except scheduled passenger service for which tickets (or substitutes equivalent to tickets) are sold on a seat-by-seat basis to the gen-

eral public. The term includes, but is not limited to, civilian flights operated under Part 135 (14 CFR part 135) of the Federal Aviation Regulations prescribed by the Federal Aviation Administration (FARs).

(9) *Substitute aircraft.* The term *substitute aircraft* means an aircraft, other than the aircraft owner's aircraft, that is provided by an aircraft management services provider to the aircraft owner when the aircraft owner's aircraft is not available, regardless of the reason for the unavailability.

(c) *Pro rata allocation*—(1) *In general.* Except as provided in paragraph (c)(2)(iii) of this section, when an amount paid to an aircraft management services provider includes a portion that is subject to the tax imposed by section 4261 and a portion that consists of amounts described in section 4261(e)(5)(A), the exception in section 4261(e)(5) applies on a pro rata basis only to the portion that consists of amounts described in section 4261(e)(5)(A). See section 4261(e)(5)(D). In such case, the tax base for the portion that is subject to the tax imposed by section 4261(a) is the amount paid for the flights or services, provided the amount paid is separable and shown in exact amounts in the records pertaining to the charge. If the portion of the amount paid that is subject to the tax imposed by section 4261(a) is not separable, the tax base is the fair market value of the flights or services. However, the tax base determined in the previous sentence may not exceed the total amount paid (that is, the sum of the portion that is subject to the tax imposed by section 4261(a) and the portion that consists of amounts described in section 4261(e)(5)(A)).

(2) *Substitute aircraft*—(i) *Flight treated as a charter.* If an aircraft management services provider provides a flight to an aircraft owner on a substitute aircraft, the flight is treated as a charter flight provided by the aircraft management services provider to the aircraft owner, regardless of whether the aircraft owner is on the flight, and the aircraft owner is treated as the charterer of such flight. If the flight constitutes taxable transportation, as defined in section 4262 of the Code, the tax imposed by section 4261(a) applies,

unless the flight is exempt from such tax by reason of an exemption other than the aircraft management services exemption. See section 4261(b) and (c) for other taxes that may apply to flights provided by an aircraft management services provider to an aircraft owner on substitute aircraft.

(ii) *General rule for flights provided on substitute aircraft.* In cases where an aircraft management services provider provides a flight to an aircraft owner on a substitute aircraft and an allocation is required, the rule in paragraph (c)(1) of this section applies in determining the tax base. In all other cases, the tax base and the tax imposed by section 4261(a) thereon must be determined in accordance with the rules of § 49.4261-7(h)(1), unless the flight is otherwise exempt from such tax by reason of an exemption other than the aircraft management services exemption.

(iii) *Special rule for for-hire flights provided on substitute aircraft.* In cases where a substitute aircraft is used to provide a for-hire flight and an amount is paid for the flight by someone other than the aircraft owner, the tax base and the tax imposed by section 4261(a) thereon must be determined in accordance with the rules in § 49.4261-7(h)(2), unless the flight is otherwise exempt from such tax by reason of an exemption other than the aircraft management services exemption.

(d) *Choice of flight rules.* Whether a flight on an aircraft owner's aircraft operates pursuant to the rules under FARs Part 91 (14 CFR part 91) or pursuant to the rules under FARs Part 135 does not affect the application of section 4261(e)(5).

(e) *Aircraft available for hire.* Whether an aircraft owner permits an aircraft management services provider or other person to use its aircraft to provide for-hire flights (for example, when the aircraft is not being used by the aircraft owner or when the aircraft is being moved in deadhead service) does not affect the application of section 4261(e)(5). However, an amount paid for for-hire flights on the aircraft owner's aircraft, except payments made by the aircraft owner, does not qualify for the aircraft management services exemption under section 4261(e)(5). Therefore, an amount paid by someone other than

the aircraft owner for a for-hire flight on the aircraft owner's aircraft is subject to the tax imposed by section 4261 unless the flight is otherwise exempt from such tax by reason of an exemption other than the aircraft management services exemption. See § 49.4261-7(h) for rules relating to the application of the tax imposed by section 4261 on amounts paid for certain charter flights.

(f) *Billing methods.* Except as otherwise provided in this section, the method an aircraft management services provider bills, invoices, or otherwise charges an aircraft owner for aircraft management services, whether by specific itemization of costs, flat monthly or hourly fee, or otherwise, does not affect the application of section 4261(e)(5).

(g) *Multiple aircraft management services providers not disqualifying.* Whether an aircraft owner pays amounts to more than one aircraft management services provider for aircraft management services does not affect the application of section 4261(e)(5).

(h) *Examples.* The following examples illustrate the provisions of this section.

(1) *Example 1—(i) Facts.* During the first quarter of 2021, an aircraft owner pays a \$3,000 monthly management fee to an aircraft management services provider for services related to operating the aircraft owner's aircraft. The aircraft owner used its own aircraft for all but one of the flights the owner took during the period. On the one occasion that the aircraft owner's aircraft was unavailable when the aircraft owner wanted to fly, the aircraft management services provider used a substitute aircraft to transport the aircraft owner. The flight was within the continental United States and the aircraft owner received no compensation for the transportation of other passengers on the flight. The aircraft owner paid \$1,000 for the flight on the substitute aircraft. The aircraft management services provider included the \$1,000 charge for the substitute aircraft as a separate line item on the monthly management fee invoice.

(ii) *Analysis.* The tax imposed by section 4261(a) applies to services that do

not qualify for the section 4261(e)(5) exemption; in this case, the flight provided on the substitute aircraft. The flight provided on the substitute aircraft is treated as a charter flight for purposes of the tax imposed by section 4261(a), and the owner is treated as the charterer of the flight. The amount paid by the aircraft owner for the flight on the substitute aircraft is the section 4261(a) tax base. The monthly invoice from the aircraft management services provider to the aircraft owner included a line item in the amount of \$1,000 for the charter flight. Because \$1,000 is the actual amount paid for the flight, this amount is the section 4261(a) tax base. The tax imposed by section 4261(b) also applies to the flight on a per-passenger basis. See § 49.4261-2(b) for rules regarding the application of the tax imposed by section 4261(b).

(2) *Example 2*—(i) *Facts*. Same facts as in paragraph (h)(1) of this section (Example 1), except the invoice does not show the amount paid for the flight on the substitute aircraft and that amount is not otherwise separable from the monthly management fee. The fair market value of the flight on the substitute aircraft is \$1,000.

(ii) *Analysis*. The tax imposed by section 4261(a) applies to the flight provided on the substitute aircraft. The amount paid for the flight on the substitute aircraft is not otherwise separable from the monthly management fee. Because \$1,000 is the fair market value of the flight, and such amount does not exceed the \$3,000 monthly management fee paid by the aircraft owner, this amount is the section 4261(a) tax base. The tax imposed by section 4261(b) also applies to the flight on a per-passenger basis. See § 49.4261-2(b) for rules regarding the application of the tax imposed by section 4261(b).

(3) *Example 3*—(i) *Facts*. An aircraft owner pays a monthly management fee to an aircraft management services provider for aircraft management services related to the aircraft owner's aircraft. When the aircraft is not being used by the owner, the owner sometimes permits a charter company to use the aircraft to provide charter flights. At other times when the aircraft is not being used by the owner, the owner permits a tour operator to

use the aircraft for flightseeing tours. All charter and flightseeing flights on the aircraft constitute taxable transportation, as that term is defined in section 4262, and no exemptions (other than section 4261(e)(5)) apply. No charter or flightseeing flights are provided on a substitute aircraft. The aircraft's maximum certificated takeoff weight is 7,000 pounds.

(ii) *Analysis*. Amounts paid by the aircraft owner to the aircraft management services provider for aircraft management services related to the aircraft owner's aircraft are exempt under section 4261(e)(5). Amounts paid by the charterer or passengers for the charter flights are subject to tax under section 4261(a) and (b). See § 49.4261-7(h) for rules relating to the application of the tax imposed by section 4261 on amounts paid for charter flights. See § 49.4261-2(b) for rules regarding the application of the tax imposed by section 4261(b). Amounts paid by flightseeing customers for flightseeing tours are also subject to tax under section 4261(a) and (b). If a payment for a flightseeing tour includes charges for nontransportation services, the charges for the nontransportation services may be excluded in computing the tax payable provided the payments are separable and provided in exact amounts. See § 49.4261-2(c).

(i) *Applicability date*. This section applies to amounts paid on and after January 19, 2021.

[T.D. 9948, 86 FR 5003, Jan. 19, 2021]

#### § 49.4262-1 Taxable transportation.

(a) *In general*. Unless excluded under section 4262(b) of the Internal Revenue Code (Code) (see § 49.4262-2), taxable transportation means:

(1) Transportation by air which begins in the United States or in that portion of Canada or Mexico which is not more than 225 miles from the nearest point in the continental United States (225-mile zone) and ends in the United States or in the 225-mile zone; and

(2) In the case of any other transportation by air, that portion of such transportation that is directly or indirectly from one port or station in the United States to another port or station in the United States, but only if

such transportation is not part of *uninterrupted international air transportation* within the meaning of section 4262(c)(3) of the Code and § 49.4262-3(c). Transportation from one port or station in the United States occurs whenever a carrier, after leaving any port or station in the United States, makes a regularly scheduled stop at another port or station in the United States irrespective of whether stopovers are permitted or whether passengers disembark.

The provisions of this paragraph are applicable whether the transportation is by rail, motor vehicle, water, or air, or any combination thereof, except that with respect to transportation which begins after November 15, 1962, the tax, if applicable, applies only to the amount paid for that portion of the transportation which is by air.

(b) *Illustrations of taxable transportation under section 4262(a) (1)*. In each of the following examples the transportation is taxable transportation and the amount paid within the United States for such transportation is subject to the taxes imposed by section 4261(a) and (b):

- (1) New York to Seattle;
- (2) New York to Vancouver, Canada, with a stop at Toronto, Canada;
- (3) Chicago to Monterrey, Mexico;
- (4) Montreal, Canada, to Toronto, Canada; and
- (5) Miami to Los Angeles via Panama. If in the examples in paragraph (b)(1) and (5) of this section, payment for the transportation had been made outside the United States, such payment would nevertheless have been subject to tax since in each case the transportation begins and ends in the United States.

(c) [Reserved]

(d) *Examples*. The following examples illustrate the application of section 4262(a)(2) and the taxes imposed by section 4261(a) and (b) of the Code:

(1) *Example (1)*. A purchases in New York a ticket for air transportation from New York to Nassau, Bahamas, with a scheduled stopover of 14 hours in Miami. The part of the transportation from New York to Miami is taxable transportation as defined in section 4262(a) because such transportation is from one station in the United States to another station in the

United States and the trip is not uninterrupted international air transportation (because the scheduled stopover interval in Miami is greater than 12 hours). Therefore, the amount paid for the transportation from New York to Miami is subject to the taxes imposed by section 4261(a) and (b).

(2) [Reserved]

(3) A purchases a through ticket for air transportation from San Francisco to London with stopovers at Denver, Chicago, Philadelphia, and New York. At each stopover the air carrier has scheduled his arrival and departure within 12 hours. After arriving in Philadelphia, A, for his own convenience, decides to stopover for more than 12 hours. The total amount paid by A for his transportation from San Francisco to New York is subject to the taxes imposed by section 4261(a) and (b) since the scheduled interval between the beginning or end and the end or beginning of any two segments of the domestic portion of international air transportation exceeded 12 hours. If the stopover interval in Philadelphia is extended for more than 12 hours by the carrier solely for its own convenience such as making repairs to the aircraft, the domestic portion of A's trip will not become taxable, provided A continues his international air transportation no later than on the first available flight offered by the carrier.

(4) A purchases a through ticket for transportation by air from Los Angeles to Barbados with stopovers at Houston, Mexico City, Mexico, and Miami. At each stopover, except Mexico City, A's scheduled time of arrival and departure is within 12 hours. At Mexico City, A's scheduled time of arrival and departure exceeds 12 hours. The total amount paid by A for his transportation from Los Angeles to Miami, including that part of the transportation to and from Mexico City, is subject to tax since the transportation includes a portion which is indirectly from one port or station in the United States to another port or station in the United States (Houston to Miami via Mexico City) and the scheduled interval in Mexico City between two segments of such portion exceeds 12 hours. If A's scheduled arrival and departure at each stopover of his transportation which is directly

or indirectly between ports or stations in the United States, including that at Mexico City, had been within a 12 hours interval and A had arrived and departed at each such stopover within that period, the transportation would have qualified as uninterrupted international air transportation and no part of the amount paid for the transportation by air from Los Angeles to Barbados would be subject to the taxes imposed by section 4261(a) and (b).

(e) *Examples of transportation that is not taxable transportation.* The following examples illustrate transportation that is not taxable transportation:

(1) New York to Trinidad with no intervening stops;

(2) Minneapolis to Edmonton, Canada, with a stop at Winnipeg, Canada;

(3) Los Angeles to Mexico City, Mexico, with stops at Tijuana and Guadalajara, Mexico;

(4) New York to Whitehorse, Yukon Territory, Canada, by air with a scheduled stopover in Chicago of five hours. Amounts paid for the transportation referred to in examples set forth in paragraphs (e)(1), (2), and (3) of this section are not subject to the tax regardless of where payment is made, since none of the trips:

(i) Begin in the United States or in the 225-mile zone and end in the United States or in the 225-mile zone, nor

(ii) Contain a portion of transportation which is directly or indirectly from one port or station in the United States to another port or station in the United States. The amount paid within the United States for the transportation referred to in the example set forth in paragraph (4) of this section is not subject to tax since the entire trip (including the domestic portion thereof) is *uninterrupted international air transportation* within the meaning of section 4262(c)(3) and § 49.4262-3(c). In the event the transportation is paid for outside the United States, no tax is due since the transportation does not begin and end in the United States.

(f) *Applicability date.* This section applies to amounts paid on and after January 19, 2021. For rules that apply be-

fore that date, see 26 CFR part 49, revised as of April 1, 2020.

[T.D. 6430, 24 FR 9665, Dec. 3, 1959, as amended by T.D. 6618, 27 FR 11223, Nov. 14, 1962. Redesignated and amended by T.D. 9948, 86 FR 5005, Jan. 19, 2021]

#### § 49.4262-2 Exclusion of certain travel.

(a) *In general.* Under section 4262(b) of the Internal Revenue Code taxable transportation does not include that portion of any transportation which meets all four of the following requirements:

(1) Such portion is outside the United States;

(2) Neither such portion nor any segment thereof is directly or indirectly:

(i) Between (a) a point where the route of the transportation leaves or enters the continental United States, or (b) a port or station in the 225-mile zone, and

(ii) A port or station in the 225-mile zone;

(3) Such portion:

(i) Begins at either (a) the point where the route of the transportation leaves the United States, or (b) a port or station in the 225-mile zone, and

(ii) Ends at either (a) the point where the route of the transportation enters the United States, or (b) a port or station in the 225-mile zone; and

(4) A direct line from the point (or the port or station) specified in subparagraph (3) (i) of this paragraph, to the point (or the port or station) specified in subparagraph (3) (ii) of this paragraph, passes through or over a point which is not within 225 miles of the United States. For purposes of this section, the route of the transportation shall be deemed to leave or enter the United States when it passes over (i) the international boundary line between any part of the United States and a contiguous foreign country, or (ii) a point three nautical miles (3.45 statute miles) from low tide on the coast line.

(b) *Transportation to or from Alaska or Hawaii.* (1) Under the provisions of section 4262(b) transportation between the continental United States or the 225-mile zone and Alaska or Hawaii will be partially exempt from the tax. The portion of such transportation which (i) is outside the United States, (ii) is not

transportation between ports or stations within the continental United States or the 225-mile zone, and (iii) is not transportation between ports or stations within Alaska or Hawaii, meets all the requirements set forth in section 4262(b) and is excluded from taxable transportation.

(2) The provisions of subparagraph (1) of this paragraph may be illustrated by the following examples:

*Example (1).* A buys a ticket for transportation by air from Seattle to Fairbanks, Alaska, via Ketchikan and Juneau, Alaska, and Whitehorse, Yukon Territory, Canada. The portion of the transportation between the point where the route of the transportation leaves the continental United States and the point where it first enters Alaska (the three-mile limit or the international boundary) is not subject to tax.

*Example (2).* [Reserved]

*Example (3).* C purchases a ticket in the United States for transportation by air from Vancouver, Canada, to Honolulu, Hawaii. No part of the route followed by the carrier passes through or over any part of the continental United States. The only part of the payment made by C for this transportation which is subject to the tax is that applicable to the portion of the transportation between the three-mile limit off the coast of Hawaii and the airport in Honolulu.

(c) *Method of computing tax on travel not excluded.* (1) Where a payment is made for transportation which includes transportation excluded under the provisions of section 4262(b):

(i) The tax may be computed on that proportion of the total amount paid which the mileage of the taxable portion of the transportation bears to the mileage of the entire trip, or

(ii) If the taxable portion of the transportation includes transportation from one port or station to another port or station for which an applicable local fare of a like class is available, the tax may be computed on the amount of such local fare, plus an amount equivalent to that proportion of the remainder of the total amount

paid which the mileage of the remainder of the taxable portion of the transportation bears to the remainder of the mileage of the entire trip. If the taxable transportation includes a leg from a station to a coastal gateway point of embarkation for which a uniform fare is charged regardless of the gateway point actually used, the tax on such a leg may be computed on the basis of such uniform fare. In the absence of a fare described in this subparagraph, the tax must be determined in accordance with subdivision (i) of this subparagraph. If the taxable portion of the transportation includes a leg between coastal gateway points of embarkation for which no additional fare is charged no tax shall be applicable to such leg of the transportation.

(2) The basis for determining the proportions described in subdivisions (i) and (ii) of subparagraph (1) of this paragraph shall be the average mileage of the established route traveled by the carrier between given points under normal circumstances.

(d) *Example.* The application of paragraph (c) of this section may be illustrated by the following example: A purchases in San Francisco a ticket for transportation by air to Honolulu, Hawaii. The portion of the transportation which is outside the continental United States and is outside Hawaii is excluded from taxable transportation. The tax applies to that part of the payment made by A which is applicable to the portion of the transportation between the airport in San Francisco and the three-mile limit off the coast of California (a distance of 15 miles) and between the three-mile limit off the coast of Hawaii and the airport in Honolulu (a distance of 5 miles). The part of the payment made by A which is applicable to the taxable portion of his transportation and the tax due thereon are computed in accordance with paragraph (c)(1) as follows:

TABLE 1 TO PARAGRAPH (d)

Mileage of entire trip (San Francisco airport to Honolulu airport) (miles) .....	2,400
Mileage in continental United States (miles) .....	15
Mileage in Hawaii (miles) .....	5
	20

TABLE 1 TO PARAGRAPH (d)—Continued

Fare from San Francisco to Honolulu .....	\$168.00
Payment for taxable portion (20/2400 × \$168) .....	\$1.40
Tax due (7.5% (rate in effect on date of payment) × \$1.40) .....	\$0.11

(All distances and fares assumed for purposes of this example. This example addresses only the computation of the tax imposed by section 4261(a). It does not address the computation of any other tax imposed by section 4261 that may apply to these facts.)

(e) *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. 6430, 24 FR 9665, Dec. 3, 1959, as amended by T.D. 6618, 27 FR 11224, Nov. 14, 1962. Re-designated and amended by T.D. 9948, 86 FR 5006, Jan. 19, 2021]

#### § 49.4262-3 Definitions.

(a) *The continental United States.* For purposes of the regulations in this subpart, the term “continental United States” means the District of Columbia and the States other than Alaska and Hawaii, including inland waters (such as rivers, lakes, bays, etc.) lying wholly therein, and, where an international boundary line divides inland waters, such parts of such inland waters as lie within the boundary of the United States, and also the waters 3 nautical miles (3.45 statute miles) from low tide on the coast line.

(b) *The 225-mile zone.* For purposes of the regulations in this subpart, the term “225-mile zone” means that portion of Canada and Mexico which is not more than 225 miles from the nearest point in the continental United States. Whether any point in Canada or Mexico is more than 225 miles from the continental United States is to be determined by measuring the distance from such point to the nearest point on the boundary of the continental United States.

(c) *Uninterrupted International air transportation.* (1) For the purpose of the regulations in this subpart, the term “uninterrupted international air transportation” means transportation entirely by air which does not begin in the United States or in the 225-mile

zone and end in the United States or in the 225-mile zone provided that:

(i) Where the transportation within the United States involves one stop, the scheduled interval between the beginning or end of the United States portion of such air transportation and the end or beginning of the remainder of the air transportation, and

(ii) Where the United States portion of such transportation involves two or more stops, the scheduled interval between the beginning or end of one segment and the end or beginning of the continuing segment of such portion does not exceed 12 hours. The transportation is considered to be entirely by air even though the passenger may use other means of transportation between two airports provided the scheduled 12-hour limitation for his continuing air transportation is complied with. Transportation which otherwise is uninterrupted international air transportation does not cease to be such because of the use of non-air transportation between ports or stations which are outside the United States, provided the non-air transportation is not part of transportation which is indirectly from one port or station in the United States to another port or station in the United States.

(2) Where the interval between arrival and departure time at any stop-over point in the United States exceeds 12 hours, such transportation is not uninterrupted international air transportation even though the schedules of the air lines do not make possible a scheduling within the 12-hour limit. Where any interval scheduled for 12 hours or less is increased to exceed 12 hours, the transportation will continue to be uninterrupted international air transportation if the increase in time is attributable to delays in the arrival or departure of the scheduled air transportation. In such case the transportation shall continue to be uninterrupted international air transportation if the passenger continues his transportation

**§ 49.4263-1**

**26 CFR Ch. I (4-1-25 Edition)**

no later than on the first available flight offered by the continuing carrier which affords the passenger substantially the same accommodations as originally purchased. However, if for any other reason such interval at any stopover is increased to more than 12 hours, the transportation will lose its classification of uninterrupted international air transportation. The tax applicable in such case shall be paid as provided in § 49.4263-3(a)(2). The transportation from the point of origin in the United States to a port or station outside the United States and the 225-mile zone, with a stopover in the United States, must be scheduled before the time the initial transportation commences in order for the United States portion of such transportation to qualify as uninterrupted international air transportation. For example, where transportation by air from Chicago to New York only is scheduled in Chicago and transportation by air from New York to London, England, is scheduled by the passenger after his arrival in New York, the Chicago to New York trip does not qualify as uninterrupted international air transportation even though the passenger may depart on the London flight within 12 hours after arrival in New York.

(d) *Transportation.* For purposes of the regulations in this subpart, the term *transportation* includes layover or waiting time and movement of the aircraft in deadhead service.

(e) *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. 6430, 24 FR 9665, Dec. 3, 1959, as amended by T.D. 6618, 27 FR 11225, Nov. 14, 1962; 27 FR 11691, Nov. 28, 1962. Redesignated and amended by T.D. 9948, 86 FR 5007, Jan. 19, 2021]

**§ 49.4263-1 Duty to collect the tax; payments made outside the United States.**

(a) *Duty to collect tax.* Where payment upon which tax is imposed by section 4261 of the Internal Revenue Code is made outside the United States for a prepaid order, exchange order, or similar order, the person furnishing the initial transportation pursuant to such

order must collect the applicable tax. See section 4291 and the regulations under section 4291 for cases where persons receiving payment must collect the tax. See section 6672 for rules relating to the application of the trust fund recovery penalty.

(b) *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. 9948, 86 FR 5007, Jan. 19, 2021]

**§ 49.4263-2 Duty to collect the tax in the case of certain refunds.**

(a) *Special rule for collection of tax.* Section 4263(b) of the Internal Revenue Code (Code) provides a special rule for the collection of the tax where an unused ticket or order (or portion thereof) purchased without payment of tax is presented for refund and, as a result of the use of only a portion of the transportation purchased in connection with such ticket or order, liability for payment of tax has been incurred. In such a case, the person making the refund shall deduct the amount of the tax due, to the extent available, from the amount which would otherwise be refundable. If the redemption value of the unused ticket or order (or portion thereof) is less than the amount of the tax due on the amount paid for the travel actually performed, the person redeeming the unused ticket or order (or portion thereof) shall make no refund but shall apply the entire amount against the tax due and shall collect any additional tax due or, within 90 days, shall make a report of the amount of the tax remaining uncollected, together with the name and address of the person who sought the refund. The report shall be made to the Commissioner, and a copy of the report shall be furnished to the person presenting the unused ticket or order for redemption.

(b) *Return of tax.* Any person who has made a collection of tax in accordance with the preceding paragraph shall include such amount in his regular return of taxes required to be collected under section 4291 of the Code.

(c) *Example.* A carrier receives for redemption a ticket purchased in the United States for transportation from

Calgary, Canada, to Edmonton, Canada, which the purchaser bought for use in conjunction with a ticket for nonstop transportation from Seattle to Calgary. The person applying for the refund does not establish to the satisfaction of the carrier that the tax on the Seattle-Calgary ticket has been paid or that the Seattle-Calgary ticket has been redeemed. The carrier, before making any refund for the unused ticket, is required to deduct from the amount otherwise refundable the tax applicable to the amount paid by the purchaser for the transportation from Seattle to Calgary and to report the tax so collected in its quarterly return of Form 720. In the event that the redemption value of the unused Calgary to Edmonton ticket is less than the amount of the tax due on the amount paid for the transportation from Seattle to Calgary, the carrier should not make any refund but should apply against the outstanding tax the entire amount refundable and should either collect the balance of the tax due or make a report, within 90 days, to the Commissioner, setting forth the name and address of the person seeking the refund and the amount of the tax remaining uncollected.

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

**§ 49.4263-3 Special rule for the payment of tax.**

(a) *In general.* For the rules applicable under section 4263(c) of the Internal Revenue Code, see § 49.4261-1(b)(2).

(b) *Relationship to other sections.* Section 4263(c) and this section are not intended in any way to relieve the person receiving the payment for taxable transportation of persons from his duty under section 4291 of the Code of collecting the tax at the time such payment is received by him.

(c) [Reserved]

(d) *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. 6430, 24 FR 9665, Dec. 3, 1959, as amended by T.D. 6618, 27 FR 11226, Nov. 14, 1962. Redesignated and amended by T.D. 9948, 86 FR 5007, Jan. 19, 2021]

**§ 49.4263-4 Cross reference.**

For the rules applicable under section 4263(d) see § 49.4261-4 relating to payments made within the United States.

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

**§ 49.4263-5 Round trips.**

(a) *In general.* For purposes of the regulations in this subpart, a round trip shall be considered to consist of two separate trips, i.e., one trip from the point of departure to the destination and a second trip in returning from the destination. A round trip includes certain journeys in which the same routing is not followed on the return trip from the destination to the point of departure as was taken on the going trip (sometimes referred to as “circle trips”). In the case of a cruise or tour (i.e., transportation to no set destination but with one or more intermediate stops en route) the point farthest from the point of departure will be regarded as the destination for purposes of applying the term “round trip”. If a cruise or tour ends at a point other than the one at which it began, the rules of “open jaw” transportation set forth in paragraph (b) of this section apply.

(b) *Open jaw transportation.* Transportation which qualifies under this paragraph as “open jaw” transportation will be treated in the same manner as a round trip. For purposes of the regulations in this subpart, “open jaw” transportation means (1) transportation from the point of departure to a specified destination and return from the specified destination to a point other than the original point of departure, or (2) transportation from the point of departure to a specified destination and return from a point other than the specified destination to the original point of departure, provided that where the points of the open jaw are within the continental United States or the 225-mile zone, the distance between the points of the open jaw does not exceed the distance of the shorter segment traveled. For example, a trip from New York to New Orleans via Panama would be considered as one

**§ 49.4263-6**

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,

**26 CFR Ch. I (4-1-25 Edition)**

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 re-packed 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

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

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

7501, all taxes collected in this manner are held by the collecting agent in trust for the United States. If the person from whom the tax is required to be collected refuses to pay it or if for any reason it is impossible for the collecting agent to collect the tax from that person, the collecting agent is required to report to the Commissioner the name and address of that person, the nature of the facility provided or service rendered, the amount paid therefore, and the date on which paid. Applicable October 1, 2004, this report must be made on or before the report due date. Upon receipt of this report the Commissioner will proceed against the person to whom the facilities were provided or the services rendered to assert the amount of tax due, affording that person the same conference, protest, and appellate rights as are available to other excise taxpayers. In addition, when a field or office audit of a collecting agent's records, or of a taxpayer's records, discloses that the collecting agent failed during prior reporting periods to collect taxes due, the Commissioner may assert those taxes directly against the person to whom the facilities were provided or the services rendered, whether or not the collecting agent had attempted collection or the person liable for the tax had refused payment thereof. For purposes of this section, the report due date is—

(a) In the case of a person using the alternative method of making deposits described in § 40.6302(c)-3 of this chapter, the due date of the return on which the item of adjustment relating to the uncollected tax would be reflected if items of adjustment were determined without regard to the limitation in § 40.6302(c)-3 of this chapter; and

(b) In any other case, the due date of the return on which the tax would have been reported but for the refusal to pay or inability to collect.

[T.D. 8685, 61 FR 58007, Nov. 12, 1996, as amended by T.D. 9051, 68 FR 15942, Apr. 2, 2003; T.D. 9149, 69 FR 48394, Aug. 10, 2004; T.D. 9221, 70 FR 49870, Aug. 25, 2005]

**Subpart G—Indoor Tanning Services**

**§ 49.5000B-1 Indoor tanning services.**

(a) *Overview.* This section provides rules for the tax imposed by section 5000B on any indoor tanning service.

(b) *Imposition of tax—(1) General rule.* Tax is imposed by section 5000B at the time of payment for any indoor tanning service.

(2) *Undesignated payment cards—In general.* Payment for indoor tanning services is made when an undesignated payment card is redeemed, in whole or in part, to pay for indoor tanning services (and not when a payment is made to purchase the undesignated payment card).

(c) *Definitions—(1) The term indoor tanning service* means a service employing any electronic product designed to incorporate one or more ultraviolet lamps and intended for the irradiation of an individual by ultraviolet radiation, with wavelengths in air between 200 and 400 nanometers, to induce skin tanning. The term does not include phototherapy service performed by, and on the premises of, a licensed medical professional (such as a dermatologist, psychologist, or registered nurse).

(2) The term *other goods and services* includes, but is not limited to, protective eyewear, footwear, towels, and tanning lotions; manicures, pedicures, and other cosmetic or spa treatments; and access to sport or exercise facilities.

(3) The term *phototherapy service* means a service that exposes an individual to specific wavelengths of light for the treatment of—

- (i) Dermatological conditions (such as acne, psoriasis, and eczema);
- (ii) Sleep disorders;
- (iii) Seasonal affective disorder or other psychiatric disorder;
- (iv) Neonatal jaundice;
- (v) Wound healing; or
- (vi) Other medical condition determined by a licensed medical professional to be treatable by exposing the individual to specific wavelengths of light.

(4) The term *provider* means a person that provides an indoor tanning service as defined in paragraph (c)(1) of this section.

(5) The term *qualified physical fitness facility* means a facility—

(i) In which the predominant business or activity is providing equipment and services to its members for purposes of exercise and physical fitness (determined by taking into consideration all of the facts and circumstances, such as the cost of the equipment, variety of services offered, actual usage of services by customers, revenue generated by different services, and how the entity holds itself out to the public through advertising or other means);

(ii) In which providing indoor tanning services is not a substantial part of the business or activity; and

(iii) That does not sell indoor tanning services for a fee to the public or otherwise offer different pricing options to its members based in whole or in part on access to indoor tanning services.

(6) The term *undesigned payment card* means a gift certificate, gift card, or similar item that can be redeemed for goods or services that may, but do not necessarily, include indoor tanning services.

(d) *Application of tax*—(1) *Tax on total amount paid for indoor tanning services*—

(i) *In general.* The tax is imposed on the total amount paid for indoor tanning services, including any amount paid by insurance. The total amount paid is presumed to include the tax if the tax is not separately stated.

(ii) *Free services and reduced rates.* The tax does not apply to indoor tanning services that are provided free of charge. Indoor tanning services are provided free of charge if no one pays anything of value to the provider of the service for the indoor tanning service. Thus, for example, tax is not imposed on the redemption of a promotional coupon for indoor tanning services if the coupon is provided at no cost and at no obligation to purchase anything. If indoor tanning services are provided at a reduced rate, the tax applies to the amount actually paid for the services.

(iii) *Bonus points.* The redemption of benefits such as “bonus points” under a loyalty program or similar program or promotion is not a payment for indoor tanning services. Thus, for example, in a promotion that entitles a customer to a “free” tan with the purchase of four tans, tax is not imposed

on the redemption of the fifth tan because the amount paid for the four tans included a reduced price for the fifth tan.

(iv) *Other fees.* Fees for starting, joining, registering, enrolling, and similar fees paid to a provider to join a monthly (or other periodic) membership program that provides indoor tanning services are amounts paid for indoor tanning services. Similarly, amounts paid to a provider that temporarily suspend a periodic membership program are amounts paid for indoor tanning services.

(2) *Charges for other goods and services; tanning services separately stated.* If a payment covers charges for indoor tanning services as well as other goods and services, the charges for other goods and services may be excluded in computing the tax payable on the amount paid, if the charges—

(i) Are separable (regardless of the manner of invoicing the charges);

(ii) Do not exceed the fair market value of such other goods and services; and

(iii) Are shown in the exact amounts in the provider’s records pertaining to the indoor tanning services charge.

(3) *Charges for other goods and services; tanning services bundled.* This paragraph (d)(3) applies if paragraph (d)(2) of this section does not apply. If a provider offers indoor tanning services (whether of a specified or unlimited amount, including “free” or reduced-rate indoor tanning services) bundled with other goods and services, the payment for the bundled services includes an amount paid for indoor tanning services. The tax applies to that portion of the amount paid to the provider that is reasonably attributable to indoor tanning services. The amount reasonably attributable to indoor tanning services may be determined by—

(i) Applying to the total amount paid a ratio determined by comparing—

(A) The provider’s charge for indoor tanning services not in bundled services or, if the provider only charges for indoor tanning services as part of bundled services, the fair market value of similar indoor tanning services (based on the amount charged by comparable providers in the same geographic area); to

(B) The charge determined in paragraph (d)(3)(i)(A) of this section plus the provider's charge for the other goods and services in the bundled services or, if the provider only charges for other goods and services as part of bundled services, the fair market value of similar goods and services (based on the amount charged by comparable providers in the same geographic area); or

(ii) Any other method allowed in guidance published in the Internal Revenue Bulletin.

(4) *Exemption; qualified physical fitness facilities.* No portion of a payment to a qualified physical fitness facility (within the meaning of paragraph (c)(5) of this section) that includes access to indoor tanning services is treated as a payment for indoor tanning services.

(e) *Person liable for the tax—(1) General rule.* The person who pays for the indoor tanning service is deemed to be the person on whom the service is performed for purposes of collecting the tax. Thus, the person paying for the indoor tanning service is liable for the tax at the time of payment.

(2) *Undesignated payment cards—(i) In general.* In the case of a payment made with an undesignated payment card (as defined in paragraph (c)(6) of this section), the person who redeems the card, in whole or in part, to pay specifically for indoor tanning services is the person who pays for the indoor tanning services. Thus, the person who redeems an undesignated payment card, in whole or in part, to pay specifically for indoor tanning services is liable for the tax at the time such payment is made (as described in paragraph (b)(2) of this section).

(ii) *Alternative treatment.* The Treasury Department and IRS may provide additional options for the treatment of undesignated payment cards in guidance published in the Internal Revenue Bulletin.

(3) *Tax not collected at time of payment.* If the person paying for the indoor tanning services does not pay the tax to the person receiving the payment for the services at the time of payment for the services, the person receiving the payment is liable for the tax.

(f) *Persons receiving payment must collect tax.* Every person receiving a pay-

ment for indoor tanning services on which a tax is imposed under this section must collect the amount of the tax from the person making that payment.

(g) *Examples.* The following examples illustrate the application of section 5000B and this section.

*Example 1: Imposition of tax; general rule.* (i) P is a nail salon that also provides indoor tanning service incidental to its primary business of providing nail salon services. P advertises a price of \$15.00 (exclusive of the tax imposed by section 5000B) for one 10-minute indoor tanning service. During a period when the tax is 10 percent of the amount paid, P calculates the section 5000B tax on \$15.00 as provided by paragraph (d)(1) of this section. Thus, the tax is \$1.50 ( $\$15.00 \times 10\%$ ). The person paying for the service is liable for the tax when that person pays for the services. If P does not collect the tax from the person at the time of the payment for the services, P is liable for the tax.

(ii) The facts are the same as in paragraph (i) of this example except that P's advertised price of \$15.00 includes the tanning tax. In this case, the tax is \$1.36 ( $\$15.00 \times 10\%/110\%$ ) under the second sentence of paragraph (d)(1) of this section.

*Example 2: Charges for other goods and services; tanning services separately stated.* P provides indoor tanning services and other goods and services. On July 1, 2013, A, an individual, pays P for one 10-minute indoor tanning service and one pair of protective eyewear. P charges \$15.00 for the 10-minute indoor tanning service and \$2.00 for a pair of protective eyewear. The \$2.00 charge for the protective eyewear does not exceed its fair market value. The invoice from P is \$17.00 (exclusive of the tax imposed by section 5000B) and separately states the cost of the protective eyewear. Because the cost of the protective eyewear is separately stated, P calculates the section 5000B tax on \$15.00 as provided by paragraph (d)(2) of this section. A is liable for the tax when A pays for the services. If P does not collect the tax from A at the time A pays for the services, P is liable for the tax.

*Example 3: Charges for other goods and services; tanning services bundled.* P provides indoor tanning services and other goods and services and offers bundled services. On July 1, 2013, A, an individual, buys bundled service from P that includes 10 swimming lessons, the use of towels while on P's premises, one pair of protective eyewear, and 2 "free" 10-minute indoor tanning services. P charges \$252.00 (exclusive of the tax imposed by section 5000B) for the bundled services. If these services are purchased separately, P charges (exclusive of the tax imposed by section 5000B) \$25.00 per swimming lesson, \$15.00 for a

10-minute indoor tanning service, \$2.00 for the protective eyewear, and does not charge for the use of towels while on P's premises. As determined under paragraph (d)(3) of this section, the section 5000B tax applies to the amount reasonably attributable to the indoor tanning service, which is \$26.81  $((\$30.00/\$282.00) \times \$252.00)$ .

*Example 4: Person liable for the tax.* On July 1, 2013, A buys bundled services (described in *Example 3*) from P as a gift for B. Under paragraph (e)(1) of this section, A is deemed to be the person on whom the indoor tanning services are performed for purposes of collecting the tax. Therefore, under paragraph (b)(1) of this section, A is liable for the tax when A pays for the services. The tax will be computed under the rules of paragraph (d)(3) of this section. If A does not pay the tax at the time A pays for the services, P is liable for the tax.

*Example 5: Undesignated payment cards.* (i) P operates a spa that provides a variety of cosmetic goods and services, including indoor tanning services. On July 1, 2013, A buys a gift certificate in the amount of \$100.00 from P as a gift for B. The gift certificate may be redeemed by B for B's choice among several services offered by P, including indoor tanning services. On July 15, 2013, B partially redeems the gift certificate to pay for one 10-minute indoor tanning service.

(ii) Under paragraph (b)(2) of this section, a payment for indoor tanning services is made, and the tax under section 5000B is imposed, on July 15, 2013, when B partially redeems the gift certificate to pay for one indoor tanning service. Under paragraph (e)(2) of this section, B is the person who pays for the indoor tanning services. Therefore, B is liable for the tax, computed under the rules of paragraph (d) of this section, and pays the tax by permitting P to debit the amount of the tax from the balance of the gift certificate or by paying the amount of the tax to P in cash. If B does not pay the tax at the time B partially redeems the gift certificate to pay for the indoor tanning services, P is liable for the tax.

*Example 6: Charges for other goods and services; tanning services bundled; amount attributable to tanning services.* On July 1, 2013, A pays \$1,000.00 (exclusive of the tax imposed by section 5000B) to spa P for the right to use the following equipment and services during the month of July: up to four massages or facials, unlimited use of a sauna, steam room, showers, and towel service, and unlimited indoor tanning services. If the services are purchased separately, P charges (exclusive of

the tax imposed by section 5000B) \$150.00 for unlimited indoor tanning services during the month of July, and \$900.00 for the other equipment and services during the month of July, not including indoor tanning services. Under paragraph (b) of this section, A has made a payment for indoor tanning services and the tax will be computed under the rules of paragraph (d)(3) of this section. As determined under paragraph (d)(3) of this section, the section 5000B tax applies to the amount reasonably attributable to the indoor tanning services, which is \$142.86  $((\$150.00/\$1050.00) \times \$1000.00)$ . If A does not pay the tax at the time A pays for the bundled services, P is liable for the tax.

*Example 7: Payments to qualified physical fitness facilities.* P operates a full-service gym facility that offers fitness classes, multiple exercise machines (such as treadmills, stationary bicycles, weight training machines, and free weights), and has as its predominant business providing these facilities, equipment, and services to members for purposes of exercise and physical fitness. P provides its members with access to indoor tanning services, comprised of two tanning beds that meet the definition of indoor tanning services under paragraph (c)(1) of this section. P generally charges its members a fee for monthly usage of its facilities, equipment, and services, but also offers short-term or free trial memberships and allows non-members to purchase individual or a series of exercise classes. P does not charge any fee for the indoor tanning services, does not offer indoor tanning services separately from its other services, and has no membership tier or category that differs from others based on access to the indoor tanning services. P holds itself out to the public through advertising and marketing as providing equipment and services to improve physical fitness. On July 1, 2013, A pays a membership fee to P in return for use of P's facility during the month of July. Under paragraph (d)(4) of this section, no portion of A's membership fee payment is treated as a payment made for indoor tanning services, because A is a qualified physical fitness facility under paragraph (c)(5) of this section. Therefore, no liability for tax arises under section 5000B.

(h) *Effective/applicability date.* This section applies to amounts paid on or after June 11, 2013. For rules that apply before that date, see 26 CFR part 49 (revised as of April 1, 2013).

[T.D. 9621, 78 FR 34876, June 11, 2013]