

Rev. Rul. 72-219, 1972-1 C.B. 350, 1972 WL 29900 (IRS RRU)

Internal Revenue Service (I.R.S.)

Revenue Ruling

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The exemption from tax on transportation of persons by air provided by section 4281 of the Code does not apply to unscheduled flights by an airline that operates a regularly scheduled air service between the same two points.

Advice has been requested whether the exemption from the excise tax on the transportation of persons by air, provided by section 4281 of the Internal Revenue Code of 1954, is applicable under the circumstances described below.

An airline operates a regularly scheduled passenger air service between two points within the United States. The airline uses various sizes of aircraft, some of which have a maximum certificated takeoff weight of 6,000 pounds or less.

Although most of the airline's flights are on a scheduled basis, it also offers additional passenger air service on an unscheduled basis between the same two points that it furnishes its regular service. The size of the aircraft used for such unscheduled flights varies with the requirements of the particular flight. In some cases the regular individual passenger fare is charged and in other cases the aircraft is chartered on a flat fee basis.

The specific question is whether the above-described unscheduled service is operated on an 'established line,' within the meaning of section 4281 of the Code.

Section 4261 of the Code imposes a tax upon the amount paid for taxable transportation of any per-

son by air. Section 4262 of the Code defines the term 'taxable transportation,' in general, as transportation by air which begins and ends in the United States.

Under the provisions of section 4281 of the Code, the tax imposed by section 4261 shall not apply to transportation of persons by an aircraft having a maximum certificated takeoff weight (as defined in section 4492(b)) of 6,000 pounds or less, except when such aircraft is operated on an established line.

Section 4492(b) of the Code defines the term 'maximum certificated take-off weight' as meaning the maximum such weight contained in the type certificate or airworthiness certificate.

Section 49.4263-5(c) of the Facilities and Services Excise Tax Regulations defines the term 'operated on an established line' as meaning 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.

The fact that the airline in question operates extra flights between the same two points on an unscheduled basis, does not affect the regularity of its scheduled flights between these two points. The operation of both types of flights, scheduled and unscheduled, viewed together, is conducted 'with some degree of regularity between definite points,' within the meaning of the regulations. Furthermore, the airline, in rendering the extra flights between these two points, 'maintains and exercises control over the direction, route, time, number of passengers carried. etc.'

Therefore, the aircraft used in providing the addi-

tional unscheduled passenger service in question are 'operated on an established line' within the meaning of the law and regulations. Accordingly, it is held that amounts paid for such service do not qualify for the exemption provided by section 4281 of the Code without regard to the certificated takeoff weight of the aircraft employed.

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