

Rev. Rul. 75-296, 1975-2 C.B. 440, 1975 WL 35039 (IRS RRU)

Internal Revenue Service (I.R.S.)

Revenue Ruling

**TRANSPORTATION OF PERSONS BY AIR;
TRAVEL AGENCIES**

Published: 1975

SECTION 4291.-CASES WHERE PERSONS RECEIVING PAYMENT MUST COLLECT TAX, 26 CFR 42.4291-1: Duty to collect tax

(Also Section 4261; 49.4261-7.)

Transportation of persons by air; travel agencies. A travel agency that is an independent broker licensed by the ICC and sells tours in aircraft it charters is required to collect the transportation tax, file returns, and pay the tax to the Government. However, a travel agency that sells tours as the agent of an airline must collect the tax and remit it to the airline for the filing of returns and payment of the tax.

Advice has been requested as to the responsibility of travel agencies with respect to the excise tax on amounts paid for the transportation of persons by air, imposed by section 4261 of the Internal Revenue Code of 1954.

An airline has varying contractual arrangements with travel agencies selling tours. The airline operates and maintains the aircraft, supplies the fuel and oil, and furnishes the pilots under these arrangements.

One travel agency is an independent broker that is licensed by the Interstate Commerce Commission. It sells tours to individuals and to groups and charters the aircraft from any airline that has the required franchise rights to operate the aircraft. The

agency is not under the supervision or control of any airline or other operator and it prescribes the time of departure and the origin and destination of flights.

Another travel agency is not licensed as a broker but represents the airline and is under the airline's control and supervision. It sells tours and remits all monies to the airline company, after retaining a commission.

Section 4261(a) of the Code imposes a tax upon the amount paid within the United States for taxable transportation of any person by air.

Under the provisions of section 4291 of the Code every person receiving any payment for facilities or services on which a tax is imposed upon the payor by section 4261 must collect the amount of tax from the person making such payment.

The question in the instant case is whether the travel agency that collects the transportation tax should file returns and pay the tax to the Government or remit the tax to the airline company for payment to the Government.

When selling taxable transportation, a travel agency is acting either as a principal or as an agent for an airline company.

Where independent travel agencies, such as the independent broker described above, sell tours to be taken on aircraft chartered from a carrier, the travel agencies are acting as principals and are required to collect the transportation tax, file returns, and pay the tax to the Government.

However, where travel agencies sell taxable tours as representatives of the airlines, they are acting as agents of the airlines. As agents they are required to collect the transportation tax and remit the tax to the airlines. The airlines, in turn, are required to file returns and pay the tax to the Government.

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