



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

OCT 30 2014

Mr. Danny Seybert
President
Alaska Air Carriers Association
2301 Merrill Field Driver A-3
Anchorage, AK 99501

Dear Mr. Seybert:

I am following up on a letter I sent you dated August 14, 2014, which responded to a memo you wrote to Senator Murkowski, Senator Begich, and Congressman Young and that was forwarded to us.

Our response explained how the air transportation excise taxes applied to various fact patterns. On page 19, Question Set 5 of our August 14 response, we wrote that we were working on a flow chart to assist operators in determining if amounts paid for a particular flight are subject to air transportation tax.

We have completed that flow chart and I am enclosing it with this letter.

I hope this information is helpful. I have also provided copies to Senator Murkowski, Senator Begich, and Congressman Young. If you have questions, please contact Rachel Smith at (202) 317-6855.

Sincerely,

A handwritten signature in black ink, appearing to read "Curt Wilson".

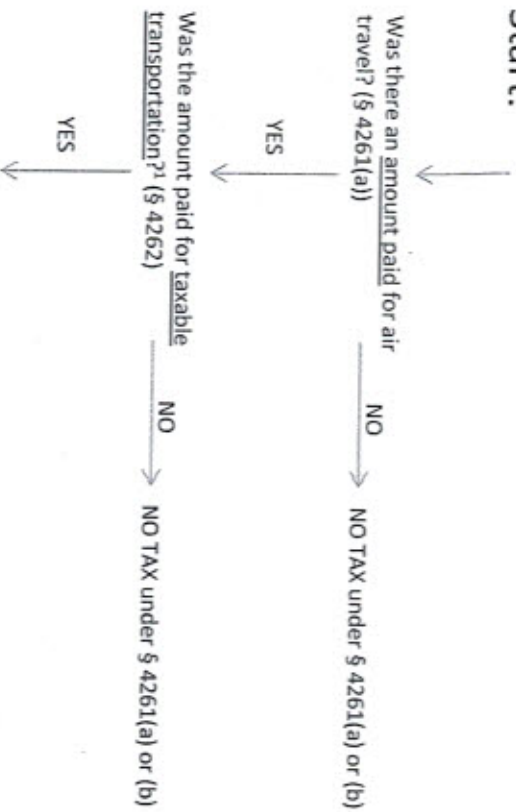
Curt Wilson
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

cc: The Honorable Mark Begich
The Honorable Lisa Murkowski
The Honorable Don Young

Chart 1: Air Travel Tax for Persons under Section 4261(a) and (b)

Start:



The person receiving an amount for taxable transportation must collect taxes imposed by §§ 4261(a) and (b) unless an exception applies. See Charts 2 and 3 to determine whether an exception applies.

1. Definition: Section 4262 generally defines taxable transportation as transportation by air which begins in the United States or in the 225-mile zone and ends in the United States or the 225-mile zone. For more information, please see § 4262.

How to use this guide: The Internal Revenue Code (IRC), Treasury Regulations, revenue rulings and procedures, and court opinions are the governing authorities in determining the application of air transportation taxes to specific flights. This guide, although based on those authorities, was designed as a visual “quick reference” for the purpose of facilitating conversations between operators and their professional tax advisors. This guide is not authoritative. Therefore, operators and their tax advisors must look to the governing authorities to determine whether the facts and circumstances of their flight operations give rise to any air transportation tax obligations.

Notes:

- Tax under § 4261 includes both a percentage tax (§ 4261(a)) and a segment tax (§ 4261(b)).
- The person who pays for the transportation is the taxpayer and the person to whom the amount is paid is the collector. The collector must file Form 720 and remit the tax collected to the IRS.
- Consider each flight independently, that is, on a flight-by-flight basis.
- Operator’s status under the FAA’s Federal Aviation Regulations is not determinative for purposes of applying air transportation tax rules.
- See IRS Publication 510 for more information about air transportation excise taxes generally.
- This document reflects the state of the law as of October 24, 2014.

Chart 2: Exceptions to Section 4261(a) and (b)

Start: ↓

Do any of the general exceptions apply?

- § 4261(f) Certain uses for hard minerals, oil/gas, or logging
- § 4261(g) Air ambulance
- § 4261(h) Skydiving
- § 4261(i) Seaplanes that take off (T/O) and land from water, and T/O and landing locations have not received (and are not currently receiving) financial assistance from the Airport and Airways Trust Fund
- § 4261(j) Aircraft in fractional ownership programs; tax is imposed under § 4043
- § 4282 Affiliated group using aircraft exclusively within group

YES →

NO TAX under §§ 4261(a) or (b)

Is the aircraft <6,000 lbs? (§ 4281)

YES ↓

COLLECT TAX under § 4261(a); continue to Chart 3 to determine if § 4261(b) segment tax applies.

NO →

COLLECT TAX under § 4261(a); continue to Chart 3 to determine if § 4261(b) segment tax applies.

Is the aircraft jet powered?

NO ↓

COLLECT TAX under § 4261(a); continue to Chart 3 to determine if § 4261(b) segment tax applies.

YES →

Is the sole purpose of the trip sightseeing?²

NO ↓

NO TAX under § 4261(a) or (b)

YES →

Is the aircraft operated on an established line?³

YES ↓

NO TAX under § 4261(a) or (b)

NO →

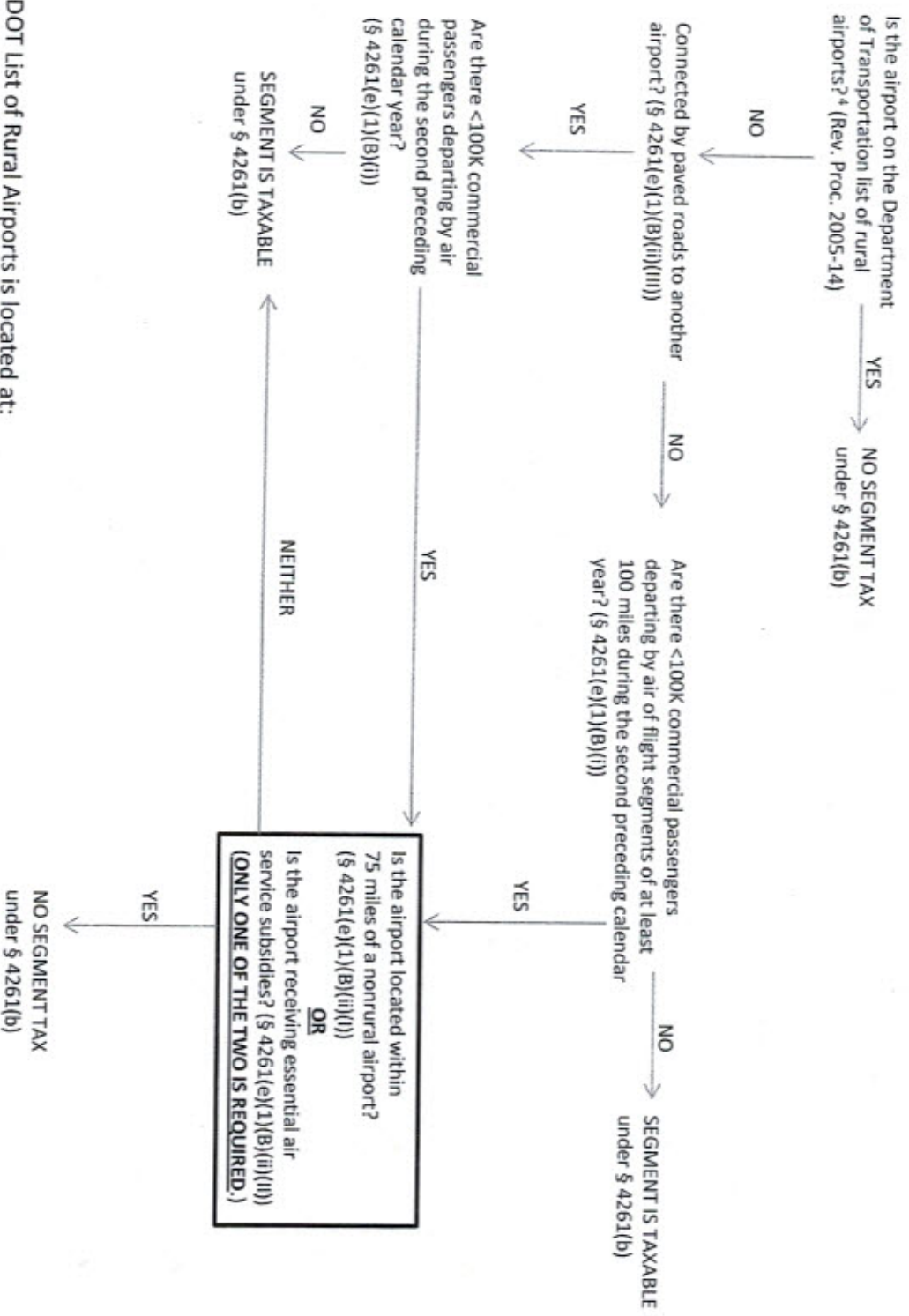
COLLECT TAX under § 4261(a); continue to Chart 3 to determine if § 4261(b) segment tax applies.

Definitions

2. Sightseeing.
 - Must be limited to 1 calendar day
 - All passengers from initial point of departure must return with the aircraft at the conclusion of the tour. See S. Rep. 109-82, 16 for more information (not defined in IRC or Treas. Regs).
 - See also relevant court cases and other authorities.
3. Established Line.
 - Flights are operated with some degree of regularity between definite points. See § 49.4263-5(c).
 - The public can rely on the transportation, although a fixed schedule is not required. Papillon Airways, Inc. v. U.S., 105 Fed. Cl. 154 (June 5, 2012).
 - Service exclusively by customer demand is not sufficient. Lake Mead Air, Inc. v. U.S., 991 F. Supp. 1209 (D. Nev. Dec. 18, 1997).
 - See also other relevant court cases and authorities.

Chart 3: Rural Airport Exception to Segment Tax (4261(b) only)

Start:



4. DOT List of Rural Airports is located at:
http://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/subject_areas/airline_information/rural_airports/index.html