

Western Hemisphere, by water on a vessel which makes one or more intermediate stops at ports within the United States on a voyage which (i) begins or ends in the United States, and (ii) ends or begins outside the northern portion of the Western Hemisphere. In such a case, a stop at an intermediate port within the United States at which such vessel is not authorized both to discharge and to take on passengers shall not be considered to be a stop at a port within the United States. A vessel is considered to be authorized both to discharge and to take on passengers at an intermediate port unless there is a legal or other authoritative prohibition of such traffic. For purposes of the preceding sentence, an order issued by the owner or operator of a vessel prohibiting such vessel from either discharging or taking on passengers at the intermediate port is not a legal or other authoritative prohibition of such traffic.

(2) *Illustrations.* The provisions of this paragraph may be illustrated by the following examples:

*Example (1).* A purchases a steamship ticket in New York for transportation from New York to Southampton, England. The vessel on which A sails makes an intermediate stop during the course of such voyage at Boston to take on passengers. The vessel is not, however, authorized to discharge passengers at such port. No tax applies to the portion of the transportation between New York and Boston since under section 4264(f)(2) the vessel is not considered to have made a stop at Boston.

*Example (2).* B purchases a steamship ticket in San Francisco for a voyage from San Francisco to Tokyo, Japan. The vessel on which B travels makes a stop at Honolulu, Hawaii, to discharge passengers. The vessel is also permitted to take on passengers in Honolulu. Since the vessel is permitted both to discharge and take on passengers at the stop in Honolulu, the portion of the transportation between San Francisco and Hawaii not excluded under section 4262(b) (i.e., the portion of such transportation between the pier in San Francisco and the three-mile limit off the coast of California and between the three-mile limit off the coast of Hawaii and the pier in Honolulu) is taxable under section 4262(a)(2) as transportation from one port in the United States to another port in the United States.

(c) *Northern portion of the Western Hemisphere.* For purposes of the regulations in this subpart, the term “north-

ern portion of the Western Hemisphere” means the area lying west of the 30th meridian west of Greenwich, east of the International Date Line, and north of the equator, but not including any country of South America.

[T.D. 6430, 24 FR 9665, Dec. 3, 1959, as amended by T.D. 6618, 27 FR 11227, Nov. 14, 1962]

### Subpart E—Transportation of Property

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

(a) *Purpose of this section.* In general, section 4271 of the Internal Revenue Code of 1954, as added by the Airport and Airway Revenue Act of 1970, imposes a tax equal to 5 percent of the amount paid within or without the United States for the transportation of property by air which begins after June 30, 1970, if such transportation begins and ends in the United States. This section sets forth rules as to the general applicability of the tax. This section also sets forth rules as 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 4492(b)) of 6,000 pounds or less, unless such aircraft is operated on an established line. 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)) 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.

(3) Since the tax imposed by section 4271 applies only to amounts paid to persons engaged in the business of transporting property by air for hire, the tax applies to amounts paid to an air carrier by a freight forwarder or express company for the transportation of property by air. The tax does not apply to amounts paid by a shipper to a freight forwarder or express company.

(c) *Property exported or imported entirely by air.* (1) The tax does not apply to amounts paid for transportation entirely by air which begins in the United States and ends outside the United States, or which begins outside the United States and ends in the United States. Transportation of property by air will be considered to begin and end at the points of origin and destination shown on a through airwaybill covering shipment of the property, even though there may be stopovers in the United States (such as, for example, to consolidate cargo at a "gateway" city). If a through airwaybill is issued by a person other than a person engaged in the business of transporting property by air for hire (for example, by a freight forwarder), the air carrier may accept an air freight manifest listing the article to be shipped by weight and destination as evidence of the existence of a through airwaybill.

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

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

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

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

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

If a U.S. Government bill of lading stating that a shipment is "For Export" has been issued but the shipment nevertheless ends in the United States, then the amount paid for air transportation is taxable. In such a case the Department of Defense shall notify the air carrier that the shipment is taxable and shall pay the tax to such carrier.

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

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

(ii) Form 1363 may be used in connection with a separate payment otherwise subject to tax or it may be used, with the permission of the district director, as a blanket exemption certificate by a person who expects to make

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

(iii) Form 1363 may be used as a blanket exemption certificate by a person who demonstrates to the satisfaction of the district director that it is impracticable to execute a separate Form 1363 for each payment. Permission to execute a blanket exemption certificate shall be requested, in writing, from the district director for the district in which is located the principal place of business or principal office or agency of the shipper or other person seeking the 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.

[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, Re-designated and amended by T.D. 8328, 56 FR 190, Jan 3, 1991; T.D. 8442, 57 FR 48186, Oct. 22, 1992]

**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 district director 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. Upon receipt of this information the district director 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 district 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 district director 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.

[T.D. 8685, 61 FR 58007, Nov. 12, 1996]