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Person To Contact:

ID No.

Telephone Number:

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LEGEND

X =

Y =

Area =

Airport =

City =

State =

n =

Dear

This is in response to your authorized representative's letter dated March 14, 2013, requesting rulings under § 4261(f) of the Internal Revenue Code ("Code").

According to the facts submitted, X is a limited liability company wholly owned by Y. X's business includes helicopter flights to and from offshore oil rigs located in the Area. All of the flights specifically relate to the exploration, development or removal of oil or gas, and involve transporting individuals, equipment, or supplies to the offshore locations. X provides an on-demand charter service with no fixed schedule. The final destinations and scheduled takeoff times are solely at the discretion of the customers.

The flights depart from and return to X's base of operations ("base"), which is on privately-leased space within the Airport located in City, State. Airport is a facility that is

eligible for assistance under the Airport and Airway Development Act of 1970 (the Act). X cannot apply for federal funds under the Act, and Airport cannot use federal funds to improve X's base.

Under the terms of the lease agreement between X and Airport, X's base is not accessible to the public. X is responsible for all maintenance of its base. Any improvements X makes to its base are for the benefit of X rather than the Airport. Moreover, under the terms of the lease, X retains title to any improvements, as well as the right to remove such improvements when the lease terminates. In addition, X does not use any of Airport's runways or taxis for its flights.

Airport and X are within Federal Aviation Administration (FAA) Class D Airspace, which requires tower approval for take offs and landings. In most cases, X's helicopter flights use Visual Flight Rules (VFR), which do not require use of the FAA's navigation signals. X represents that its helicopter flights use VFR in over 95% of all flights hours.

X's helicopters are equipped with Instrument Flight Rules (IFR) equipment. The FAA requires aircraft to use IFR in certain circumstances, such as when it unsafe to fly using the Visual Flight Rules (VFR) or when the aircraft is in FAA Class A Airspace. Flights that use IFR are guided by the FAA navigation system. X uses IFR in less than 5% of all flight hours, typically during inclement weather. X obtains weather information from the Automated Weather Observing System (AWOS). Generally, the FAA operates and maintains the AWOS.

X requests a ruling that its VFR flights meet the exemption described in § 4261(f)(1) and are therefore exempt from the taxes imposed by § 4261(a) and (b).

Section 4261(a) imposes a 7.5% tax on the amount paid for taxable transportation of any person.

Section 4261(b)(1) imposes a $3.00 tax for each domestic segment of taxable transportation.

Section 4261(f)(1) provides that no tax is imposed under § 4261(a) or (b) on air transportation by helicopter for the purpose of transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas.

The flush language of § 4261(f) provides that the exemption in § 4261(f)(1) only applies if the helicopter does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to §§ 44509 or 44913(b) or subchapter I of chapter 471 of title 49 of the United States Code, during such use. In the case of helicopter transportation

described in § 4261(f)(1), § 4261(f) is applied by treating each segment as a distinct flight.

49 USC § 44509 allows the Secretary of Transportation to carry out under chapter 445 of Title 49, demonstration projects that the Secretary considers necessary for research and development activities under chapter 445.

49 USC § 44913(b) allows the Secretary of Transportation to provide grants to continue the Explosive Detection K-9 Team Training Program to detect explosives at airports and on aircraft.

Subchapter I of chapter 471 of title 49 (49 USC § 47101 et. seq.) contains provisions for airport improvement.

Congress enacted the exemption under § 4261(f) as part of the Tax Equity and Fiscal Responsibility Act of 1982. As originally enacted, § 4261(f) applied to certain timber and hard mineral resource operations. The Joint Committee on Taxation explained that the reason for providing that exemption was that, in light of the user fee concept of air passenger ticket taxes, certain helicopters used in timber and hard mineral resource operations that do not use federally-financed airport or airway system facilities, should be exempt from the tax. See JCS-38-82 at 406.

The Deficit Reduction Act of 1984 (Pub. L. 98-369) expanded the exemption in § 4261(f) to include oil and gas operations. The Senate Finance Committee noted in the legislative history of the Deficit Reduction Act of 1984 that “the exemption does not apply to helicopters that depart from or arrive at heliports or airports that receive funds from the FAA airport development assistance programs or helicopters that follow FAA air navigation signals in their flight patterns.” S. Prt. 98-169, Vol. I (April 2, 1984), at 758. See also JCS 41-84 at 1104.

Section 4261(g) provides an exemption for certain helicopters and other aircraft that provide emergency medical services. Prior to the Small Business Job Protection Act of 1996 (Pub. L. 104-188), which amended § 4261(g), § 4261(g) included restrictions identical to those in § 4261(f). More specifically, like the § 4261(f) exemption, the § 4261(g) exemption only applied if the helicopter did not use services provided pursuant to § 44509 or 44913(b) or subchapter I of chapter 471 of title 49 of the United States Code. The legislative history of § 4261(g) states that “the mere use by these emergency medical helicopters of weather service information supplied by the FAA to all aircraft or the fact that such helicopters notify airports or air navigation stations of their location while in the air will not disqualify the qualified helicopters from the exemption.” H.R. Rep. No. 100-48, at 87 (1987) (Conf. Rep).

X's flights are for the purpose of transporting individuals, equipment, or supplies in the exploration for, or the development or removal of oil or gas. Therefore, the flights satisfy the requirements of § 4261(f)(1).

We must next consider whether X's flights satisfy the requirements of the flush language of § 4261(f). The first part of the flush language limits the exemption in § 4261(f) to helicopters that do not take off or land at a facility eligible for assistance under the Airport and Airway Development Act of 1970. In the present case, X's flights depart from and return to X's base, which is located on privately-leased space within Airport. Any improvements to X's base would be solely for the benefit of X's commercial activities. Consequently, X's base is not a facility eligible for assistance under the Airport and Airway Development Act of 1970. Although Airport is such a facility, Airport may not use federal funds to improve X's base. Therefore, X's flights satisfy the first part of the flush language.

We must also consider whether X's flights satisfy the second part of the flush language of § 4261(f), which provides that the exemption does not apply to helicopters that use services provided pursuant to 49 USC § 44509 or 44913(b) or subchapter I of chapter 471 of title 49 of the United States Code. Airport does not provide maintenance or services to X's base. X's base is private and, as such, cannot benefit from federal funds, including those described in §§ 44509 or 44913(b), or subchapter I of chapter 471 of title 49.

The only assistance that X routinely receives is that it obtains weather information from AWOS, which the FAA operates and maintains. Although the legislative history to § 4261(f) does not mention AWOS, the legislative history to § 4261(g) addresses this issue. That legislative history suggests that the mere use of weather service information supplied by the FAA to all aircraft does not disqualify otherwise qualified helicopters from the exemption. Thus, X's use of weather information from AWOS does not preclude X's flights from qualifying for the exemption under § 4261(f)(1).

Further, the legislative history of § 4261(f)(1) provides that the exemption does not apply to helicopters that follow FAA air navigation signals in their flight patterns. Approximately 95% of X's flights use VFR. Such flights do not follow FAA air navigation signals. Section 4261(f) treats each segment of a flight described in § 4261(f)(1) as a distinct flight. Therefore, X's flights that do not use FAA navigational signals may be treated as separate and distinct from X's flights that do use FAA navigational signals.

Based on the facts submitted and representations made, we conclude that X's helicopter flights for the purpose of transporting individuals, equipment, or supplies in the exploration for, or the development or removal of oil or gas that do not use FAA navigation signals (in other words, X's flights that use VFR) qualify for the exemption under § 4261(f)(1). Therefore, those flights are exempt from the tax imposed by

§ 4261(a) and (b). We further conclude that X's flights that use FAA navigation signals (in other words, X's flights that use IFR) do not qualify for the exemption under § 4261(f)(1).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Stephanie Bland
Senior Technician Reviewer, Branch 7
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes