

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

MAR 5, 2001

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Third Party Contact: None
Index (UIL) No.: 4471-00.00
CASE MIS No.: TAM-130341-00/CC:PSI:B8

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No:

Quarter Involved:

Date of Conference:

LEGEND: Taxpayer =

ISSUE:

Is Taxpayer liable for the excise tax imposed by § 4471 of the Internal Revenue Code under the circumstances described below?

CONCLUSION:

Taxpayer is liable for the excise tax imposed by § 4471 under the circumstances described below.

FACTS:

Taxpayer operates a cruise ship. There is no gambling on the cruise ship conducted, sponsored, or operated by Taxpayer or by any employee, agent, or franchisee of Taxpayer. Taxpayer's cruise ship has berths for more than 16 passengers. Taxpayer offers passengers a variety of cruises that include overnight cruises of two, three, and five days. The overnight cruises depart in the morning. Passengers on overnight cruises are allowed to board the cruise ship at 8:30 pm the night before the morning departure.

On overnight cruises, the cruise ship sails to multiple ports depending on the length of the cruise and weather conditions. The travel time between the ports visited

varies from five to seven hours. Passengers may disembark at the ports visited, but later return to the cruise ship for dinner and overnight accommodation. In the mornings, the cruise ship departs the ports visited.

LAW AND ANALYSIS:

Section 4471 imposes an excise tax of \$3 per passenger on certain voyages referred to as “covered voyages.” The person responsible for paying this tax is the person who provides the covered voyage.

Section 4472(1)(A)(i) defines a covered voyage as a voyage of a commercial passenger vessel which extends over one or more nights. Section 4472(1)(B) provides that a covered voyage shall not include a voyage of a passenger vessel of less than 12 hours between two ports in the United States. Section 4472(2) defines “passenger vessel” as any vessel having berth or stateroom accommodations for more than 16 passengers.

Section 43.4472-1(b) of the Excise Tax on Transportation by Water Regulations provides that “voyage” means a journey of a vessel that includes the outward and homeward trips or passages. The voyage commences when the vessel begins to load passengers and continues during the entire ensuing period until the vessel has made one outward and one homeward passage (including intermediate passages, if made). Section 43.4472-1(c) provides that a voyage is considered to extend over one or more nights if it extends for more than 24 hours.

The Internal Revenue Service (IRS) office that submitted this request for technical advice suggests that Taxpayer’s claim that Taxpayer is not liable for the tax imposed by § 4471 because Taxpayer meets the exception in § 4472(1)(B) for a voyage of a passenger vessel of less than 12 hours between two ports in the United States is not supported by the facts. The IRS office reasons that the calculation of whether a voyage is less than 12 hours between two ports in the United States must begin when passengers board the vessel for the cruise to the next port. See § 43.4472-1(b). Using the 8:30 pm boarding time for an overnight stay on the vessel prior to the morning sailing departure as the beginning of the voyage, the IRS office concludes that Taxpayer’s voyages between visited ports exceed 12 hours and, therefore, are subject to the tax imposed by § 4471. This analysis fails to take into consideration the definition of voyage provided in § 43.4472-1(b). The IRS office treats each trip between the ports visited as a voyage rather than determining a voyage as one outward and one homeward passage (including intermediate passages, if made).

Although Taxpayer concedes that its voyages meet the definition of a covered voyage in § 4472(1)(A), Taxpayer maintains that all of its voyages must be exempt because the cruise time between ports never exceeds seven hours. Therefore, the exception described in § 4472(1)(B) applies to all its voyages. This argument, like the IRS office’s argument, does not use the specific definition of voyage provided in

§ 43.4472-1(b). For purposes of § 4472 a voyage is not simply a trip between two ports. A voyage is one outward and one homeward passage, which may include intermediate passages to various ports. In order for a voyage as defined in § 43.4472-1(b) to meet the exception in § 4472(1)(B) the time from vessel boarding prior to departure from home port to return to home port including all intermediate stops must be less than 12 hours.

Taxpayer also argues that there is not any language in the § 4472 regulations that specifically addresses the § 4472(1)(B) exception for a voyage of a passenger vessel of less than 12 hours between two ports. Therefore, the definition of voyage in the regulations is not applicable to the exception language in § 4472(1)(B). Adoption of this argument would result in inconsistent definitions of the term voyage within § 4472. The term voyage would have one definition for purposes of § 4472(1)(A) and another definition for purposes of § 4472(1)(B).

Because § 43.4472-1(b) defines the term voyage as the journey of a vessel that includes the outward and homeward trips or passages the voyage commences when the vessel begins to load passengers and continues during the entire ensuing period until the vessel has made one outward and one homeward passage (including intermediate passages, if made). Accordingly, Taxpayer's voyages begin when passengers board the vessel in Taxpayer's home port at 8:30 pm the night before the vessel's departure, continues as the vessel makes all intermediate passages to the ports on its itinerary, and ends when the vessel returns to its home port. The duration of these voyages exceeds 24 hours. Therefore, the voyages meet the definition of a covered voyage in § 4472(1)(A) and Taxpayer is liable for the tax imposed by § 4471(a) of three dollars per passenger.

CAVEATS: A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) provides that it may not be used or cited as precedent.