January 28, 2021

Ms. Stephanie N. Bland
Branch Chief, Branch 7 (Passthroughs & Special Industries)
Office of the Associate Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Final Rules on Excise Taxes; Transportation of Persons by Air; Transportation of Property by Air; Aircraft Management Services

Dear Ms. Bland:

On behalf of the National Air Transportation Association ("NATA") and National Business Aviation Association ("NBAA"), thank you for completing the rulemaking project on amendments to the Facilities and Services Excise Tax Regulations (26 CFR Parts 40 and 49). We appreciate your careful consideration of our comments and believe that the final rule provides much-needed clarity on air transportation excise tax responsibilities for aircraft management companies and their customers.

Both of our associations are currently performing significant outreach to the general aviation community on the impact of the final rule to aircraft management arrangements. For example, we have conducted webinars with nearly 800 registered attendees and are developing articles and other website resources to continue the education process. As the IRS creates additional resources on the final rule, such as updates to publications or forms, we welcome the opportunity to be engaged in the process.

For example, guidance expanding on the types of information sufficient to support a conclusion that payments indeed originate from an eligible aircraft owner are of great importance to aircraft management providers.

Also, as the IRS interacts with taxpayers on the final rule, we hope to maintain an open line of communication for common questions or areas of confusion. Since NATA and NBAA represent most aircraft management companies, we can quickly reach our members with best practices or address common issues in the field.

In our comments to the July 31, 2020, proposed regulations, we also provided feedback on updates to regulations regarding payment and collection rules based on your request. While we understand and appreciate that the final rules did not address these changes due to their broad implications for industry, the issues are still critical for our members.

The final rules indicate that issues surrounding § 4263(c) should be the subject of a separate rulemaking project, and we welcome the opportunity to begin working with you on that effort. We understand that a rulemaking project could be desirable, however we are open to guidance options that provide answers to common industry questions more expeditiously.

In summary, we believe that existing regulations and guidance regarding federal excise tax (FET) collection responsibilities under § 4291 and liability for unpaid FET on audit under § 4263(c) are unclear and create confusion for taxpayers and the IRS. Guidance or regulations that provide greater clarity on these two issues will offer taxpayers certainty regarding their collection and filing responsibilities and promote efficient tax administration.

As we described in our comments from September 29, 2020, within the air charter industry, intermediaries chartering aircraft from the certificated air carrier performing the flights are known as brokers. These air charter brokers can act as agents of the carrier, agents of the passengers, principals reselling transportation service, or principals facilitating the passenger's purchase of the service directly from the air carrier. There is currently little guidance to determine whether charter brokers are responsible for collecting FET and filing Forms 720.

Another area of confusion is that under § 4263(c), if FET is not collected, then the air carrier providing the initial flight segment in the U.S. is responsible for paying the tax. This obligation on the air carrier's part to pay the tax if the party responsible for collecting it fails creates confusion and unfair liability exposure for the air carrier in instances where a broker is collecting payment from the passenger.

To alleviate the confusion and unfairness to air carriers, we suggest that the regulations provide that if an air carrier documents that it informed the charter broker of its obligation to collect FET and file Form 720, then the carrier will not be liable for uncollected tax under § 4263(c). Also, under an audit scenario, the air carrier should be entitled to obtain information from the IRS on whether the asserted FET has been paid by the charter broker or any other party.

As a first step in approaching these complex issues, we respectfully request a call to determine how NATA and NBAA can best engage with the IRS on a guidance or rulemaking effort. During our conversations on the § 4261(e)(5) rulemaking, we began to discuss ways to provide more certainty to the general aviation community on excise tax collection responsibilities and look forward to continuing those conversations.

We appreciate your attention to these issues, and we look forward to meeting with you.

Sincerely,

Scott O'Brien
Senior Director, Government Affairs
NBAA

Jacqueline E. Rosser
Senior Advisor, Regulatory Affairs
NATA

cc: Michael Beker, Attorney, IRS Associate Chief Counsel, Passthroughs and Special Industries