

M e m o r a n d u m**325.1724**

To : Mr. Bruce Morgan
Supervising Tax Auditor
Petitions Section

Date: February 1, 2001

From : David H. Levine
Tax Counsel IV

Telephone: (916) 445-5550
CalNet 485-5550

Subject: H--- E--- C---
S- -- XX-XXXXXX

This is in response to your memorandum dated December 21, 2000 regarding the application of Regulation 1620 to the use of a corporate jet. Your questions relate to the ferrying of the aircraft between Van Nuys and Los Angeles airports and the meaning of "commercial flight time."

A ferry flight from Van Nuys Airport to Los Angeles Airport so that the aircraft will be available at LAX for use as needed is an intrastate flight. On the other hand, if the aircraft is specifically dispatched, for example, from the Van Nuys Airport for a flight to New York, with a stop over in LAX to pick up passengers, the entire flight, Van Nuys to LAX to New York, is an interstate flight. This is true even if the first leg of the flight to LAX is a dead head flight solely to pick up the passengers who will then be flown to New York.

In the letter you cite sent to a representative of H--- in 1999, the aircraft was dead headed from Van Nuys to LAX the night before the flight from LAX to New York. The reason for this layover was that the Van Nuys airport had a curfew that necessitated the leg of the flight from Van Nuys to LAX be flown the night before the early morning continuation of the flight to New York. The reason that the flight from Van Nuys to LAX was accepted as part of an interstate flight was that it, in fact, was the first leg of an intended interstate flight from Van Nuys to New York, with a stop over in LAX to pickup passengers. The lay over was no longer than required for operational needs and the intent was always that the aircraft would continue on a specific flight plan that commenced in Van Nuys and terminated in New York.

Your current question is that you are unsure whether the flights in question here between Van Nuys and LAX were due to a curfew. Whether a flight from Van Nuys to LAX is part of a qualifying continuous interstate flight is a question of fact. Thus, without the facts, we are unable to provide you a definitive answer. However, I will provide you a couple of examples that I hope will provide you sufficient guidance to resolve the issues presented.

H--- dispatches the aircraft from Van Nuys to LAX at 9:00 a.m. with the intent to depart from LAX at 10:00 a.m. Unforeseen circumstances delay the passengers' arrival at LAX until 3:30 p.m., and the aircraft thus does not depart until 4:30 p.m. The flight from Van Nuys to LAX is part of a qualifying interstate flight to New York. The unforeseen delay did not mean that the flight was other than a continuous flight in interstate commerce.

H--- dispatches the aircraft from Van Nuys to LAX at 9:00 a.m. so that, if some of its employees need to travel to New York on short notice, they can do so. At 9:45 a.m., a group of employees is instructed to immediately travel to New York in order to meet with potential purchasers. The flight carrying those employees departs from LAX at 10:00 a.m. The flight from Van Nuys to LAX is *not* part of a qualifying interstate flight. Although the aircraft was on the ground at LAX for a very short time, at the time the aircraft was dispatched from Van Nuys, it was not dispatched for a specific interstate flight.

H--- dispatches the aircraft from Van Nuys to LAX at 9:00 a.m. for a specific flight carrying H---' employees from LAX to New York with a scheduled departure time of 3:00 p.m. The reason the aircraft is dispatched early is that, if all employees can reach the airport earlier than the scheduled departure time, the flight to New York will depart early. The flight from Van Nuys to LAX is part of a specifically scheduled flight to New York, and thus qualifies as part of an interstate flight. The fact that some flexibility in departure times is available does not alter this conclusion.

There are obviously many permutations. If you have questions regarding other specific factual circumstances that these examples do not resolve, please let us know.

Regarding the meaning of "commercial flight time," this simply means business travel as opposed to personal travel. Again, this is a question of fact and will depend on the actual facts. However, I believe that this will usually be easy to apply. In most cases, for example, legitimate corporations use most of their assets for business purposes. For example, when H--- uses its aircraft to fly to New York for sales presentations, the flight qualifies as commercial flight time. On the other hand, if the president were to use the aircraft to go on a golfing vacation with his wife (e.g., as one of his fringe benefits), that trip would not be a business trip and the flight would not qualify as commercial flight time. If you encounter factual circumstances that do not appear clearly business or clearly personal for which you need additional guidance, please contact us.

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cc: Mr. William D. Dunn (MIC:49)
Mr. Philip W. Spielman (MIC:38)
Ms. Oveta L. Riffle (MIC:37)
Ms. Janice L. Thurston (MIC:82)
Ms. Sharon P. Jarvis (MIC:82)