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To Tax or Not To Tax: IRS Provides Guidance on Federal Excise Taxes Affecting a Myriad of Air Transportation Services

Air carrier fees for baggage, optional air carrier services, and air carrier services that do not relate to air transportation are not taxable transportation subject to a Federal Excise Tax (FET) of 7.5% according to the IRS, which has also clarified that certain other air carrier services are subject to FET.

In Private Letter Ruling 201002004, a commercial air carrier charges fees to its customers for a variety of services in addition to basic air transportation, which are paid either in cash or by allowing customers who are members of the air carrier's frequent flyer program ("Members") to redeem frequent flyer miles ("Miles") from their frequent flyer account ("Account"). FET is imposed on the amount paid for taxable transportation of any person by air under IRC § 4261. The person paying for the taxable transportation (the customer) is liable for the tax and the person providing the taxable transportation (the air carrier) is required to collect and remit the tax to the IRS. In addition, any amount paid (and the value of any other benefit provided) to an air carrier for the right to provide mileage awards for any transportation of persons by air is also treated as an amount paid

for taxable transportation and is thereby subject to FET.

Under this private letter ruling, the IRS ruled on the taxability of 39 different air carrier services.

Air Carrier Services Not Subject to Federal Excise Tax (FET) on Air Transportation

Amounts paid by customers to an air carrier for baggage handling for checked luggage, including overweight and oversized baggage, are not taxable.

Amounts paid for the following optional services are not taxable:

- Providing customers with assistance in making travel plans, purchasing tickets, and requesting seat assignments, either in person or on the telephone (as opposed to on air carrier's website).
- Allowing customers to apply the fare paid for an unused non-refundable ticket (on which FET was paid) to a new ticket.
- Providing customers who are standing by for an alternate flight on the same day of their ticketed travel with a confirmed seat ahead of routine stand-by customers.

- Allowing customers to be placed on the stand-by list for an alternate flight.
- Providing custodial service to minors age 13 and over traveling without an adult, including transfer of custody from an adult (such as a parent) to a gate agent, a personalized safety briefing onboard the aircraft and further in-flight attention as necessary, arranging for airport transportation to a connecting flight, help picking up the child's baggage, and ensuring the child's safety from the moment of check-in until a responsible adult picks up the child at his ultimate destination.
- Providing Members with expedited processing of Miles redemptions for the purchase of air transportation.
- Allowing Members who have already redeemed Miles for free air transportation to change their ticket (the air carrier allows Members to apply the Miles from the unused, issued ticket to a new ticket).

Amounts paid for the following nontransportation services are not taxable:

- Providing customers the option of purchasing food and alcoholic beverages while in-flight.
- Providing customers the option of purchasing headsets to be used for in-flight entertainment.

Amounts paid for the following are not conditions to receiving air transportation and therefore not taxable:

- Providing customers with access to the air carrier's premium airport lounges on an annual basis.
- Providing customers with access to the air carrier's premium airport lounges on a daily basis.
- Allowing customers to purchase non-refundable gift cards that can only be applied to the purchase of future air transportation (the gift

cards are not issued in the exact amount of the fare, do not state an itinerary, and do not themselves entitle the bearer to air transportation).

- Allowing Members to transfer Miles in their Account to the Account of another Member.
- Allowing Members to restore expired Miles to their Account.
- Allowing Members, through a third party, to convert the value of their Miles into the currency of a loyalty program unaffiliated with the air carrier.
- Fees relating solely to the maintenance of the Member's Account.
- Allowing the Miles of a deceased Member to be transferred to the Account(s) of one or more Members.
- Allowing divorced Members to transfer Miles to the Account(s) of one or more Members.
- Allowing Members to proactively extend the expiration date of fewer than X Miles in the Member's Account.
- Allowing Members to proactively extend the expiration date of X Miles or more in the Member's Account.
- Providing Members with a retroactive extension of the Miles in the Member's Account in certain circumstances.
- Allowing Members who have already redeemed Miles for free air transportation to cancel their ticket and reinstate the Miles from the unused, issued ticket to the Member's Account.
- Allowing elite Members to maintain their status for the following year if the elite Member otherwise fails to fully qualify for such status.

- Allowing Members to obtain elite status in an expedited period of time by meeting certain requirements.
- Providing Members with a printout of their Account details.
- Providing details and records of a Member's Account to an outside third party.
- Providing Members with password protection for Account inquiries made by telephone.
- Providing Members with personalized luggage tags.

Providing Members with elite status the ability to upgrade, free of charge, to a higher class of service is not taxable because no amount is paid.

Allowing Members to redeem Miles for the purchase of air transportation on the air carrier's website without a fee is not taxable when no amount is paid.

Air Carrier Services Subject to Federal Excise Tax (FET) on Air Transportation

Amounts paid for the following services for Miles that can be redeemed for taxable transportation are taxable:

- Allowing customers who are Members of the air carrier's frequent flyer program to purchase frequent flyer Miles to be credited to their frequent flyer Account.
- Allowing Members to purchase Miles to be credited to another Member's Account.
- Allowing Members to purchase "bonus" Miles (i.e., double or triple Miles) on certain flights to be credited to the Member's Account.

Amounts paid for the following services that change the customer's class of accommodations are taxable:

- Providing customers with confirmed upgrades, paid for at the time of check-in at automated kiosks, on certain flights.

- Allowing Members to purchase, at check-in or in advance, the ability to upgrade to a higher class of service by making a monetary payment.

Amounts paid for the following services as a mandatory condition to receiving air transportation are taxable:

- Fuel surcharges added at the time a customer purchases tickets for transportation by air.
- Providing custodial service to minors under age 13 traveling without an adult, including transfer of custody from an adult (such as a parent) to a gate agent, a personalized safety briefing onboard the aircraft and further in-flight attention as necessary, arranging for airport transportation to a connecting flight, help picking up the child's baggage, and ensuring the child's safety from the moment of check-in until a responsible adult picks up the child at his ultimate destination.
- Fuel surcharge added at the time a customer acquires tickets by redeeming Miles for transportation by air.

Allowing Members to purchase, at check-in or in advance, the ability to upgrade to a higher class of service by both redeeming Miles and making a monetary payment is taxable to the extent paid in cash, not Miles, because this service is an additional charge for changing the class of accommodations.

Allowing Members to redeem Miles for the purchase of air transportation on the air carrier's website with a fee charged at the time of ticketing is taxable because the amount paid is a mandatory condition to receiving air transportation.

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