

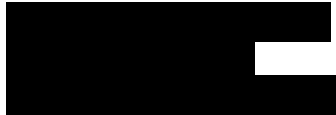


DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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CC:TEGE:EOEG:ET2
COR-139873-01
August 15, 2001



Dear [REDACTED]:

This responds to your letter dated July 20, 2001, concerning the proper tax treatment of the personal use of frequent flyer miles earned on employer-paid business travel. You provided suggestions involving the valuation of the ticket and the issuance of 1099s by the airline to the taxpayer. Our previous letter dated March 5, 2001, provided the underlying assumptions concerning the taxability of frequent flyer miles earned on employer-paid business travel for personal use.

The value of frequent flyer benefits is more problematic than using the actual published fare as you suggested. Frequent flyer benefits are constrained by numerous restrictions, among which are expiration, seat availability, destination restrictions, travel period blackouts, and requirements that a minimum number of credits be accumulated before any benefit can be obtained. The income tax regulations generally provide that an employee must include in gross income the fair market value of an employer-provided fringe benefit. Section 1.61-21(b)(1) of the regulations.

In the airline industry, frequent flyer programs do not differentiate between business travel and personal travel in the determination for frequent flyer mileage. Telephone, credit card, hotel, and rental car use can also lead to awarding frequent flyer mileage. Section 6041 of the Internal Revenue Code provides for the issuance of information returns when a business makes a payment to another person for compensation or remuneration. This perhaps could authorize the issuance of 1099s but the Section only provides for the issuance of 1099s in excess of \$600.00. Many frequent flyer trips would fall below that threshold. The airline industry, in the past, has argued against the application of this Section to the frequent flyer program claiming that the frequent flyer award was not a payment. Instead, the industry contended that the frequent flyer award is in the nature of a discount, and beyond the scope of Section 6041.

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In instances when a taxpayer does not receive a 1099 or other documentation, the United States tax system relies on voluntary compliance. Income should be reported when the taxpayer goes on a personal trip using the frequent flyer mileage from employer-paid business travel.

We want to reassure you that we are not refusing to publish guidance on this issue. Rather, senior officials from the IRS and the Treasury's Office of Tax Policy, considered over 200 proposals for guidance from tax practitioners, taxpayers, and industry groups and decided to publish guidance on issues that were more responsive to taxpayers at this time. The Guidance Plan should not be considered as an exclusive list of guidance that may ultimately result in publication.

We hope this information is useful to you. We appreciate your interest in this matter. The attorney assigned to this matter is Stephen Suetterlein (Employee ID#50-21120). He can be reached at (202) 622-6040.

Sincerely,

Jerry E. Holmes
Chief, Employment Tax Branch 2
Office of the Assistant Chief Counsel
(Exempt Organizations/Employment Tax/
Government Entities)