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Internal Revenue Service
memorandum**

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to: Daniel R. Lauer
Director, Examination - Specialty Policy
Small Business/Self-Employed, IRS

from: Stephanie Bland
Branch Chief, Branch 7
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

subject: Non-Taxpayer Specific Advice - Taxability of Additional Fee Paid for Premium
Economy Seating

This Chief Counsel advice responds to your request for assistance. This advice may not be used or cited as precedent.

FACTS

Passenger purchases an economy ticket on a domestic flight and pays an additional fee to the airline at or after the time of booking to select or upgrade to premium economy seating.¹

The term “premium economy seating” is not currently standardized among airlines. For purposes of this legal advice, the term “premium economy seating” includes but is not limited to:

- (i) a seat in the economy cabin of an aircraft (sometimes alternatively referred to as the “main cabin” or the “coach cabin”) that has more leg room than a standard economy seat but is otherwise the same as a standard economy seat and comes with no additional perks;
- (ii) a seat in the economy cabin that has more leg room than a standard economy seat but is otherwise the same as a standard economy seat and

¹ Although the fact pattern here does not contemplate a refund claim by the airline, we note that under such facts, the airline, as the § 4291 collector, would be the proper claimant only if the airline showed that it satisfied the requirements of § 6415(a) or any applicable case law.

that comes bundled with one or more additional perks, such as but not limited to, free food and drinks, free or enhanced in-flight entertainment options, free Wi-Fi, priority check-in, expedited security, free checked bags, premium lounge access and/or early boarding;

- (iii) a seat in the economy cabin that is larger and has more leg room than a standard economy seat and that may or may not come bundled with one or more additional perks, such as but not limited to, free food and drinks, free or enhanced in-flight entertainment options, free Wi-Fi, priority check-in, expedited security, free checked bags, premium lounge access and/or early boarding; and
- (iv) a seat in a cabin that is separate from the economy cabin (and that is also separate from the business and/or first class cabin(s)) that has more leg room than a standard economy seat, that may or may not be larger than a standard economy seat, and that may or may not come bundled with one or more additional perks, such as but not limited to, free food and drinks, free or enhanced in-flight entertainment options, free Wi-Fi, priority check-in, expedited security, free checked bags, premium lounge access and/or early boarding.

ISSUE

Whether the additional fee paid by Passenger for premium economy seating is an “amount paid” for taxable transportation for purposes of the tax imposed by § 4261(a) of the Internal Revenue Code (Code) (the “air transportation excise tax”).

CONCLUSION

The additional fee paid by Passenger for premium economy seating is an “amount paid” for taxable transportation. Therefore, the additional fee paid by Passenger is subject to the air transportation excise tax, regardless of whether the premium economy seating is located in the economy cabin or in a separate cabin.

LAW

Section 4261(a) of the Code imposes a tax on the amount paid for the taxable transportation of any person.²

Section 4261(d) provides that the tax is paid by the person making the payment subject to tax and § 4291 provides that the tax is collected by the person receiving the payment.

² Prior to a statutory change in 1997, § 4261 imposed a tax on amounts paid for taxable transportation, and on amounts paid for sleeping or seating accommodations in connection with taxable transportation. Although the 1997 statutory change replaced the tax on amounts paid for seats and berths with the domestic segment tax under § 4261(b) and the international facilities tax under § 4261(c), the statutory change does not impact our analysis of whether an additional fee for premium economy seating is an amount paid for taxable transportation.

Section 4262(a)(1) defines “taxable transportation” to generally include transportation by air that begins and ends in the United States.

Section 49.4261-2(a) of the Facilities and Services Regulations provides, in part, that the air transportation excise tax is measured by the total amount paid.

Section 49.4261-2(c) provides that where a payment covers charges for nontransportation services as well as for transportation of a person, such as charges for meals, hotel accommodations, etc., the charges for the nontransportation services may be excluded in computing the tax payable with respect to such payment, provided such charges are separable and are shown in exact amounts thereof in the records pertaining to the transportation charge. If the charges for nontransportation services are not separable from the charge for transportation of the person, the tax must be computed on the full amount of the payment.

Section 49.4261-4(a) creates a presumption of taxability regarding payments made within the United States. Specifically, § 49.4261-4(a) provides that the § 4261(a) tax shall apply to any amount paid within the United States for the transportation of any person, unless the taxpayer establishes that at the time of payment the transportation is not transportation in respect of which tax is imposed by § 4261(a).

Section 49.4261-7 provides examples of payments for transportation that are subject to the air transportation excise tax. Section 49.4261-7(c) provides that amounts paid as additional charges for changing the class of accommodations, destination, or route, extending the time limit of a ticket, as “extra fare”, or for exclusive occupancy of a section, etc., are subject to the air transportation excise tax. Each of the charges referenced in § 49.4261-7(c) relates directly to passenger transportation.

Section 49.4261-8 provides examples of certain ancillary and incidental charges that are not subject to the air transportation excise tax, provided the charge is separable from the payment for the transportation and is shown in the exact amount thereof on the records pertaining to payment. More specifically, § 49.4261-8(f)(1) provides that the air transportation excise tax does not apply to charges for transportation of baggage, including incidental charges such as excess value, storage, transfer, parcel checking, special delivery, etc. Section 49.4261-8(f)(4) provides that the air transportation excise tax does not apply to charges for admissions, guides, meals, hotel accommodations, and other nontransportation services, for example, where such items are included in a lump sum payment for an all-expense tour. We note that none of the examples set forth in § 49.4261-8(f) relate directly to passenger transportation.

For services that are not addressed by the regulations, IRS published guidance generally limits the air transportation excise tax base to amounts paid for mandatory charges; in essence, amounts that must be paid to board the aircraft for a certain type or level of service.

Revenue Ruling 73-508, 1973-2 C.B. 366, for example, holds that a security charge is part of the amount paid for taxable transportation because it is required to be paid as a condition to receiving air transportation services.

Revenue Ruling 80-31, 1980-1 C.B. 251, holds that a separate charge for a service not reasonably necessary to the air transportation itself is not an amount paid for taxable transportation if the service is optional and the charge bears a reasonable relation to the cost of providing the service.

Revenue Ruling 78-75, 1978-1 C.B. 340, holds that the status of an aircraft operator under Federal Aviation Administration regulations is not determinative in applying the air transportation taxes imposed by § 4261.

ANALYSIS

Section 49.4261-4(a) creates a presumption that the air transportation excise tax applies to any amount paid within the United States for the transportation of any person, unless the taxpayer establishes in accordance with the provisions of § 49.4261-4 that at the time of payment the transportation is not transportation in respect of which tax is imposed by § 4261(a). Therefore, Passenger bears the burden of demonstrating that the additional fee for premium economy seating is not subject to the § 4261(a) tax.

Treasury Regulations

Section 49.4261-7(c) provides that amounts paid as additional charges for changing the class of accommodations, destination, or route, extending the time limit of a ticket, as "extra fare," or for exclusive occupancy of a section, etc., are subject to the air transportation excise tax. As noted above, all of the examples of taxable charges set forth in § 49.4261-7(c) relate directly to passenger transportation.

Section 49.4261-8(f) provides that the air transportation excise tax does not apply to baggage fees and certain incidental charges, such as charges for admissions, guides, meals and other nontransportation services. None of these charges relate directly to passenger transportation.

Section 49.4261-7(c) does not define the term "extra fare." The Merriam-Webster Dictionary defines "extra" as "an added charge" and "fare" as "the price charged to transport a person."³ Using standard dictionary definitions, an "extra fare" is an added charge to transport a person. All airline passengers are required to have a seat on the aircraft, so a seat is part of every passenger's air transportation. If a passenger who purchases an economy ticket wishes to be transported to his or her destination in premium economy seating, the passenger must pay an additional fee to be transported

³ For the definitions of "extra" and "fare" we consulted www.merriam-webster.com on July 12, 2019.

in such manner.⁴ The additional fee that a passenger must pay to be transported in premium economy seating is an added charge for that passenger's transportation - in other words, an "extra fare."

Under the facts presented, Passenger purchases an economy ticket and, either at the time of booking or at a later time, pays an additional fee for premium economy seating. The amount Passenger pays for the economy ticket constitutes the initial fare Passenger pays for the flight and entitles Passenger to transportation from one place to another in a seat in the economy cabin of the aircraft. The additional fee that Passenger pays for premium economy seating constitutes an "extra fare" because the fee is an added charge for the transportation of Passenger in premium economy seating. In both instances, the initial fare and extra fare relate directly to the transportation of Passenger. Thus, the additional fee Passenger pays for premium economy seating (whether located in the economy cabin or in a separate cabin of the aircraft) is an amount paid as "extra fare" within the meaning of § 49.4261-7(c).

Further, an additional fee for premium economy seating located in a cabin that is separate from the aircraft's economy cabin falls squarely within the plain language of § 49.4261-7(c) regarding additional charges for changing the class of accommodations. In the case of an additional fee paid for premium economy seating located in the aircraft's economy cabin, such payment is analogous to an amount paid for changing the class of accommodations. More specifically, a change in the class of accommodations on an aircraft necessarily involves a change to a passenger's seating. Although there is no standardization within the airline industry regarding the type of seating offered in business class, premium economy class and economy class, passengers who pay additional fees to change the class of accommodations get an improved seating experience. Likewise, passengers who pay an additional fee for premium economy seating get an improved seating experience.

Finally, even if an additional fee paid for premium economy seating were not considered "extra fare" or a change in the class of accommodations, the fee nonetheless relates directly to passenger transportation. Therefore, the fee for premium economy seating is more like the charges described in § 49.4261-7(c), which are subject to tax, than the charges described in § 49.4261-8(f), which are not subject to tax.

Based on the foregoing, we conclude that the additional fee Passenger pays for premium economy seating is an "amount paid" for taxable transportation under § 49.4261-7(c) because the fee is both an "extra fare" and an additional charge for changing the class of accommodations (in the case of premium economy seating located in a separate cabin) or analogous to an additional charge for a change in the class of accommodations (in the case of premium economy seating located in the economy cabin). Furthermore, unlike the incidental and nontransportation charges described in § 49.4261-8(f), the additional fee for premium economy seating relates

⁴ This written advice does not consider or address "complimentary" upgrades to premium economy seating for passengers with status in an airline's frequent flyer program or redemptions of frequent flyer miles for upgrades to premium economy seating.

directly to the transportation of Passenger. Therefore, the additional fee Passenger pays for premium economy seating is subject to the air transportation excise tax.⁵

If the premium economy seating comes bundled with additional perks, the entire payment for premium economy seating is subject to the air transportation excise tax unless the charges for the otherwise nontaxable services included in the bundle are separable from the payment and shown in the exact amount thereof on the records pertaining to the payment. See §§ 49.4261-2(c) and 49.4261-8(f).

Other IRS Published Guidance

Other IRS published guidance also supports the conclusion that the additional fee for premium economy seating is taxable under § 4261(a). For services that are not addressed by the regulations, IRS published guidance generally limits the air transportation excise tax base to amounts paid for mandatory charges; in essence, amounts that must be paid to board the aircraft for a certain type or level of service. Generally, all amounts paid as a condition to receiving air transportation are subject to the air transportation excise tax. See Rev. Rul. 73-508. A separate charge for a service not reasonably necessary to the air transportation itself is not an amount paid for taxable transportation if the service is optional and the charge bears a reasonable relation to the cost of providing the service. See Rev. Rul. 80-31.

Having a seat on an aircraft is an integral part of passenger air transportation. Accordingly, an additional fee for premium economy seating is reasonably necessary to the air transportation itself. However, even if the additional fee for premium economy seating were not reasonably necessary to the transportation itself, the fee is mandatory (and not optional) in order for a passenger to board the aircraft and sit in premium economy seating. Therefore, under the facts presented, the additional fee paid by Passenger for premium economy seating is an “amount paid” for taxable transportation under the rationale of Rev. Rul. 73-508 and Rev. Rul. 80-31.

Contra argument

The federal travel regulations promulgated by the General Services Administration under 41 C.F.R. 301-10.124 do not consider an upgrade to premium economy seating within the economy cabin to be an upgrade to a higher class of accommodation because the seating is still in the economy cabin.

⁵ A paid premium economy fare, like a business class fare, is an “amount paid” for taxable transportation and is fully taxable under § 4261(a). There is no reason for there to be different tax consequences for a passenger who books a premium economy fare at the outset and one who purchases a basic or standard economy fare and, either at the time of booking or at some later time, pays an additional fee for premium economy seating. In both instances, the passenger has paid some amount to sit in premium economy seating while being transported from one place to another. Moreover, subjecting all payments for premium economy seating to the § 4261(a) tax results in the equitable treatment of similarly-situated passengers.

Some might argue that by virtue of 41 C.F.R. 301-10.124 (and possibly other government agency rules and regulations), an additional fee paid for premium economy seating is not an additional charge for changing the class of accommodations within the meaning of § 49.4261-7(c). This argument fails for several reasons.

First, the status of premium economy seating under other government agency rules and regulations is not determinative with regard to the air transportation excise tax. See Rev. Rul. 78-75.

Second, the purpose of 41 C.F.R. 301-10.124 is completely different from the purpose of the air transportation excise tax. The former provides guidance to federal agencies regarding the reimbursement of expenses for official government travel by agency employees. The latter imposes a tax on amounts paid for the taxable transportation of persons by air in order to fund the Airport and Airway Trust Fund, which provides funding for the maintenance and operation of the airway infrastructure system.

Third, as explained in the analysis section above, the additional fee for premium economy seating is taxable under § 49.4261-7(c) without even considering whether an upgrade to premium economy seating constitutes a change in the class of accommodations.

Based on the foregoing, we conclude that this contra argument is without merit.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call Michael Beker at (202) 317-6855 if you have any further questions.