

IRS Issues Guidance on Air Transportation Excise Taxes

Overview

On August 21, 2019, the Internal Revenue Service (“IRS”) released a program manager technical assistance memorandum (the “memorandum”) which addresses the taxability of additional fees paid by passengers to upgrade to premium economy seatingⁱⁱ on domestic air transportation. The IRS concluded that additional fees passengers pay for premium economy seating are an “amount paid” for taxable transportation, and consequently, are subject to the air transportation excise tax.

IRS Guidance Regarding the Taxability of Additional Fees Paid for Premium Economy Seating

In the memorandum, the IRS addresses whether the additional fee paid by a passenger for premium economy seating is an “amount paid” for taxable transportation for purposes of the air transportation excise tax. Under the particular facts presented, the passenger purchased an economy ticket and, either at the time of booking or at a later time, paid an additional fee to upgrade to premium economy seating. The IRS ruled that additional fees paid for premium economy seating are an “amount paid” for taxable transportation.

First, the IRS found that both fares relate directly to the transportation of the passenger, and thus determined that the additional fee paid by the passenger for premium economy seating (whether located in the economy cabin or in a separate cabin) is an amount paid as “extra fare” under the Treasury regulations. Second, the IRS reasoned that an additional fee for premium economy seating located in a cabin that is separate from the aircraft’s economy cabin falls directly within the plain language of the regulations regarding additional charges for changing the class of accommodations; but also for premium economy seating located in the aircraft’s economy cabin, the IRS stated that such



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payment is analogous to an amount paid for changing the class of accommodations, explaining that passengers who pay additional fees “get an improved seating experience.” Finally, the IRS considered the fact that, 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.

Accordingly, the IRS held that the additional fee passengers pay for premium economy seating is an “amount paid” for taxable transportation, 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).

The IRS also advised that 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.

Implications and Forthcoming Guidance

Both international and domestic air transportation are subject to U.S. federal excise taxes. While this new guidance principally applies to domestic air transportation, it has implications for foreign air carries as well.

Separately, the Treasury and the IRS anticipate issuing regulations under section 4261(e)(3)(C) that will address amounts paid for the right to award free or reduced rate air transportation. In particular, the most recent version of the Treasury’s and the IRS’s priority guidance plan, released on June 17, 2019, includes a project regarding the “application of the domestic air transportation excise tax under section 4261 to the purchase of mileage awards.” This project has been on the IRS “to-do” list for some time now, as the tax code amendment was enacted in 1997; prompt regulatory action, however welcome, is unlikely.

ⁱ *Taxability of Additional Fee Paid for Premium Economy Seating*, OFFICE OF CHIEF COUNSEL IRS (July 12, 2019), <https://www.irs.gov/pub/iranoa/pmta-2019-11.pdf>. Although IRS technical assistance memoranda cannot be used or cited as precedent, such guidance generally reflects the IRS’s expectation for taxpayer compliance.

ⁱⁱ In the memorandum, the IRS acknowledged that the term “premium economy seating” is not currently standardized among airlines, but noted that, for purposes of its advice, the term generally includes more leg room (compared to a standard seat), a larger seat, additional perks (such as free food and drinks), or a combination thereof.