

Office of Chief Counsel
Internal Revenue Service
memorandum

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subject: Airline Fees for Seat Selection and Online Booking

This advice responds to your request for non-taxpayer-specific legal advice and supplements the advice we provided in PRES-107327-19 (PMTA 2019-11), in which we concluded that an additional fee paid for premium economy seating¹ on a flight, whether paid at the time of ticketing or at some other time before the flight, is an amount paid for taxable transportation.²

This advice may not be used or cited as precedent.

¹ As noted in PMTA 2019-11, “premium economy seating” is not a standardized term in the airline industry. See PMTA 2019-11 for a non-exclusive list of characteristics that constitute “premium economy seating” for purposes of that PMTA.

² PMTA 2019-11 references Rev. Rul. 73-508, 1973-2 C.B. 366, and Rev. Rul. 80-31, 1980-1 C.B. 251, as secondary support for the conclusion that an amount paid for premium economy seating is an amount paid for taxable transportation. The analysis section of this PMTA addresses Rev. Rul. 80-31 and its inapplicability to the seat selection and online booking fees at issue in *Situation 1* and *Situation 2* of this PMTA. The analysis section of this PMTA does not address Rev. Rul. 73-508 because the fee at issue in that revenue ruling (a fee imposed by the Civil Aeronautics Board – a federal government agency) is factually distinguishable from the seat selection and online booking fees at issue in *Situation 1* and *Situation 2* of this PMTA (both airline-imposed fees). Further, to the extent previous legal advice from this office relies on Rev. Rul. 73-508 to conclude that an amount paid for an airline-imposed fee is not subject to the air transportation excise tax, such legal advice no longer represents the views of this office.

FACTS*Situation 1*

Passenger purchases an economy ticket³ for a domestic flight on Airline. The type of economy fare that Passenger purchases does not include seat selection.⁴ Before the flight, Passenger pays a separate amount or a higher fare to select a particular seat on the aircraft for the flight in question (seat selection fee). The amount Passenger pays for seat selection does not include any other goods, services, or extra perks, such as access to extra-legroom seating. All amounts paid by Passenger are paid within the United States.

Situation 2

Passenger purchases an economy ticket for a domestic flight on Airline through Airline's website. When Passenger pays for the ticket, Airline adds a fee for booking the ticket online (online booking fee). Airline does not charge a similar fee for tickets purchased in person from the ticketing counter at an airport. All amounts paid by Passenger are paid within the United States.

ISSUES

1. In *Situation 1*, whether the amount Passenger pays for seat selection is an amount paid for taxable transportation and therefore subject to the tax imposed by § 4261(a) of the Internal Revenue Code (I.R.C.) (the air transportation excise tax).
2. In *Situation 2*, whether the amount Passenger pays for online booking is an amount paid for taxable transportation and therefore subject to the air transportation excise tax.

CONCLUSIONS

1. In *Situation 1*, the amount Passenger pays for seat selection is an amount paid for taxable transportation. Therefore, such amount is subject to the air transportation excise tax.
2. In *Situation 2*, the amount Passenger pays for online booking is an amount paid for taxable transportation. Therefore, such amount is subject to the air transportation excise tax.

³ Although the fact patterns in this memorandum discuss economy class service, the analysis provided herein applies regardless of the class of service at issue.

⁴ "Seat selection" refers to the passenger's ability to select the seat on the aircraft in which the passenger will sit during the flight.

LAW

I.R.C. § 4261(a) imposes a tax on the amount paid for the taxable transportation of any person.

I.R.C. § 4261(d) provides that the air transportation excise tax is paid by the person making the payment subject to tax, and I.R.C. § 4291 provides that the tax is collected by the person receiving the payment.

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

I.R.C § 4262(d) provides that “transportation” includes layover or waiting time and movement of the aircraft in deadhead service.

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

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, changing the 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 to passenger transportation.

Section 49.4261-8(f) provides that where the charge is separable from the payment for the transportation of a person and is shown in the exact amount thereof on the records pertaining to the transportation payment, the air transportation excise tax does not apply to the charges described in § 49.4261-8(f)(1) and (4) and similar charges.

Section 49.4261-8(f)(1) relates 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) relates 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. None of the examples set forth in § 49.4261-8(f) relate directly to passenger transportation.

Rev. Rul. 80-31, 1980-1 C.B. 251, which revokes Rev. Rul. 77-392, 1977-2 C.B. 380, addresses whether the air transportation excise tax applies to amounts paid for a service charge added to the price of a ticket by an airline or an airline agency to cover certain administrative costs (processing paperwork and reservations) associated with

the purchase of a ticket for use by another person in a different city.⁵ Under these facts, Rev. Rul. 80-31 – reversing the position taken in Rev. Rul. 77-392 – states that the air transportation excise tax does not apply to “a separate charge made by an air carrier or an airline agent for a service not reasonably necessary to the air transportation itself, provided the service is optional and the charge bears a reasonable relation to the cost of providing the service.”

Rev. Rul. 2006-52, 2006-2 C.B. 761, holds that a fee compensating an independent intermediary for the service of facilitating a traveler’s purchase of an airline ticket is not an amount paid for taxable transportation where the amount is not charged by, or passed on to, the airline. In reaching this conclusion, the revenue ruling determines that an airline’s costs associated with selling tickets – including the costs of selling tickets through an intermediary – are generally necessary to the air transportation the airline provides, but it differentiates those situations where the payment is for services provided by an independent party that does not pass the payment to the airline.

ANALYSIS

The current air transportation excise tax regime was created in 1970 through the Airport and Airway Revenue Act of 1970, Pub. L. 91-258, 84 Stat. 219 (1970). At that time, airline tickets generally included a range of services and amenities, such as seat selection.⁶ In 2008, airlines began to charge separately for many services, such as seat selection.⁷ Since then, airlines have shifted to an a la carte or fee-for-service ticketing model, which has resulted in an effective unbundling of the amenities and services that were previously included in the cost of an airline ticket.⁸ Therefore, except as otherwise provided in §§ 49.4261-2(c) and 49.4261-8(f), we must consider the taxability of

⁵ The service charge and the circumstances of why it was added to the price of a ticket are detailed in Rev. Rul. 77-392. Specifically, Rev. Rul. 77-392 describes a person who purchases from an airline agency a ticket in advance for taxable transportation between two points within the United States. The ticket is to be used by another person located in a city other than the city in which the ticket is purchased. The agency adds to the price of the ticket a service charge covering the administrative cost of processing the paperwork and the reservations connected with the transportation.

⁶ Prior to a statutory change in 1997, I.R.C. § 4261(a) imposed a tax on amounts paid for taxable transportation, and I.R.C. § 4261(b) imposed a tax on amounts paid for sleeping or seating accommodations in connection with taxable transportation. The 1997 statutory change replaced the tax on amounts paid for sleeping and seating accommodations with the domestic segment tax under I.R.C. § 4261(b) and the international travel facilities tax under I.R.C. § 4261(c). Because this statutory change occurred at a time when airlines did not charge separately for seat selection, the removal of the tax on amounts paid for seating and sleeping accommodations does not impact our analysis of whether an additional fee for seat selection is an amount paid for taxable transportation.

⁷ U.S. Gov’t Accountability Office, GAO-10-785, Commercial Aviation: Consumers Could Benefit from Better Information about Airline-Imposed Fees and Refundability of Government-Imposed Taxes and Fees (2010) at p. 4.

⁸ See U.S. Gov’t Accountability Office, GAO-17-756, Commercial Aviation: Information on Airline Fees for Optional Services (2017).

amounts a passenger pays for airline fees through the lens of the full-service ticketing model in effect in 1970.

This approach is supported by the statutory framework underlying the air transportation excise tax. Specifically, the air transportation excise tax is imposed on amounts paid for taxable transportation. I.R.C. § 4261(a). I.R.C. § 4262(a) generally defines “taxable transportation” as transportation that begins or ends in the United States. I.R.C. § 4262(d) provides that “transportation” includes layover or waiting time and movement of the aircraft in deadhead service. The I.R.C. § 4262(d) definition of “transportation,” which underpins the I.R.C. § 4262(a) definition of “taxable transportation,” demonstrates that the air transportation excise tax applies broadly, including to situations where passengers are not even on the aircraft. By extension, the definition of “transportation” also includes other elements of the transportation of persons by air, such as selecting a seat on a flight and purchasing a ticket. As a result, under the plain language of I.R.C. §§ 4261 and 4262, the amounts Passenger pays Airline in *Situation 1* and *Situation 2* are subject to the air transportation excise tax.

An analysis of the relevant regulations further supports this conclusion. Section 49.4261-7(c) provides that amounts paid as “extra fare” are subject to the air transportation excise tax. Section 49.4261-7(c) does not define the term “extra fare.” The Merriam-Webster Dictionary defines “extra” as “additional” and “fare” as “the price charged to transport a person.”⁹ Using standard dictionary definitions, an “extra fare” is an additional charge to transport a person.

Situation 1

Seating is a mode of allocating space for passengers aboard an aircraft, a fundamental element of transporting a person by air. The ability to pre-select a seat on an aircraft is a means of accomplishing that allocation. Where an amount paid for this “service” – or any other “service” related to space allocation – is included in a passenger’s fare (as an undifferentiated component of the fare), it is an “amount paid for taxable transportation.” I.R.C. § 4261(a). Where, as here, such amount is separately charged, it is an “extra fare” – an additional charge for the transportation of a person. Section 49.4261-7(c).¹⁰ In either case, the amount a passenger pays for seat selection is an “amount paid for taxable transportation” and subject to the air transportation excise tax.

Additionally, seat selection relates directly to passenger transportation. Every person must have a seat on the aircraft in order to fly. As a result, a seat selection fee is like the additional charges described in § 49.4261-7(c), which are subject to tax, and not like

⁹ <https://www.merriam-webster.com> (February 27, 2024).

¹⁰ Airlines generally offer different classes of economy fares. The lowest fare class typically provides only a ticket, with other services available for an additional fee. The standard fare class often includes seat selection. Although not determinative, the fact that airlines often include seat selection in the standard fare class further suggests that the seat selection fee is an extra fare.

the miscellaneous charges described in § 49.4261-8(f)(1) and (4), which are not subject to tax.

Based on the foregoing, we conclude that Passenger's payment of Airline's seat selection fee is an amount paid for taxable transportation and is therefore subject to the air transportation excise tax. The result is the same regardless of whether Passenger purchases the ticket directly from Airline, and regardless of whether Passenger pays for seat selection at the time Passenger purchases the ticket or at some later time before the flight.

This conclusion also facilitates consistent tax treatment for passengers who purchase a lower-fare economy ticket and pay a separate seat selection fee, and passengers who purchase a higher-fare economy ticket that includes seat selection as part of the initial fare. A different conclusion (that is, that amounts paid for seat selection are not taxable under I.R.C. § 4261(a)) would artificially reduce the air transportation excise tax base for passengers who purchase a lower-fare economy ticket and pay a separate amount for seat selection.

Situation 2

The conclusion that the online booking fee is subject to the air transportation excise tax under the plain language of I.R.C. §§ 4261 and 4262 is supported by the relevant regulations and sub-regulatory guidance. In *Situation 2*, Airline's online booking fee relates to Airline's costs associated with selling tickets. As explained in Rev. Rul. 2006-52, an airline's costs associated with selling tickets are generally necessary to the air transportation an airline provides. Because those costs – like all overhead and marketing costs associated with the transportation of persons – are necessary to the air transportation Airline provides, any amount Passenger pays that is related to those costs constitutes an amount paid for taxable transportation. Therefore, any amount paid by a passenger related to such costs is includible in the air transportation excise tax base as an "amount paid for taxable transportation" when included as a component of a passenger's fare, or as "extra fare" when separately charged to a passenger. I.R.C. § 4261(a) and § 49.4261-7(c).

Additionally, online booking relates directly to passenger transportation. Every passenger must have a ticket to take a commercial flight. As a result, an online booking fee is like the additional charges described in § 49.4261-7(c), which are subject to tax, and not like the miscellaneous charges described in § 49.4261-8(f)(1) and (4), which are not subject to tax.

Based on the foregoing, we conclude that Passenger's payment of Airline's online booking fee is an amount paid for taxable transportation and is therefore subject to the air transportation excise tax. This conclusion is consistent with the long-standing position of the IRS Office of Chief Counsel that normal reservation and ticketing

procedures – like those at issue here – are a necessary and integral part of air transportation.¹¹

*Inapplicability of Rev. Rul. 80-31*¹²

This PMTA includes an analysis under Rev. Rul. 80-31 because it is our understanding that airlines, as collectors of the air transportation excise tax, may be taking tax positions regarding seat selection and online booking fees that rely on an analysis under Rev. Rul. 80-31 as a basis for excluding amounts paid for such fees from the air transportation excise tax base. Rev. Rul. 80-31 is inapplicable to the fees described in *Situation 1* and *Situation 2* for two reasons.

First, as noted earlier, the services described in *Situation 1* and *Situation 2* are directly related to passenger transportation. Consequently, each fee paid for these services constitutes an “amount paid for taxable transportation” when included as a component of a passenger’s fare, or as “extra fare” when separately charged to a passenger. I.R.C. § 4261(a) and § 49.4261-7(c). In other words, I.R.C. §§ 4261 and 4262 and the applicable regulations are controlling and dictate that amounts a passenger pays for these fees are subject to the air transportation excise tax.

Second, the fees described in *Situation 1* and *Situation 2* are factually distinguishable from the service charge at issue in Rev. Rul. 80-31. Rev. Rul. 80-31 considers whether the tax imposed by I.R.C. § 4261(a) applies to a service charge added by an airline or airline agency to the price of an airline ticket to cover certain administrative costs involving the purchase of a ticket for use by another person in a different city. At the time the revenue ruling was issued, passengers purchased airline tickets in person or by phone from airline ticket offices or travel agents, and the airline or travel agent issued a paper ticket to the purchaser. As a result, when someone in one city purchased an airline ticket for someone in a different city, the purchaser, the airline, or travel agent had to arrange for the delivery of the paper ticket to the person in the other city. When considered against this backdrop, it becomes clear that the service charge at issue in Rev. Rul. 80-31 is an administrative fee imposed by the airline or travel agent for performing an extra nontransportation service, such as arranging for the delivery of a paper ticket to a person in a different city. As explained above, the seat selection and online booking fees described in *Situation 1* and *Situation 2* are “amount[s] paid for taxable transportation,” not for extra nontransportation services.

¹¹ For example, see Field Service Advisory 1997 WL 33314350 (July 24, 1997).

¹² This PMTA lays out the requisite statutory and regulatory analysis regarding the taxability of airline fees under I.R.C. § 4261(a). To the extent previous legal advice issued by this office relies only on Rev. Rul. 80-31 and not on the applicable statutes and regulations to determine the taxability of a particular airline fee, or misapplies Rev. Rul. 80-31 by considering only the optionality portion of the three-part test articulated in that revenue ruling, such legal advice no longer represents the views of this office. See, e.g., PLR 201002004.

Moreover, even if the fees described in *Situation 1* and *Situation 2* were fees to which the three-part test in Rev. Rul. 80-31 applied, which they are not, the fees would fail that test. In situations where Rev. Rul. 80-31 is applicable – meaning situations involving administrative fees identical or substantially similar to the administrative fee described in Rev. Rul. 80-31 – the three-part test articulated in the revenue ruling for excluding an amount paid for an airline fee from the air transportation excise tax base is cumulative: the service in question must not be reasonably necessary to the air transportation itself; the service must be optional; and the charge for the service must bear a reasonable relation to the cost of providing the service. Failure to meet any part of this test results in the amount paid for the service being subject to the air transportation excise tax. Moreover, the optionality of a service does not answer the question of whether such service is “reasonably necessary to the air transportation itself.”

In the case of the seat selection fee described in *Situation 1*, the fee would fail the first part of the Rev. Rul. 80-31 test if that test were applicable because the fee, like any other fee that constitutes a component of a passenger’s fare under I.R.C. § 4261(a) or “extra fare” under § 49.4261-7(c), is reasonably necessary to the air transportation service provided by Airline.

In addition, the fee would fail the third part of the test, regardless of whether we consider Airline’s cost of allowing Passenger to select a seat or the cost of the particular seat Passenger selects. With respect to the former, most airlines now offer seat selection at no additional charge for passengers purchasing tickets in certain fare classes. Because airlines sell tickets that include seat selection as part of the fare in the ordinary course of business, the costs incurred by an airline regarding such activities are overhead costs associated with the airline’s business. Therefore, the airline incurs no additional cost by allowing passengers to select a particular seat. As a result, in *Situation 1*, the amount Airline charges Passenger for seat selection cannot bear a reasonable relation to Airline’s cost of providing the seat selection service to Passenger.

With respect to the latter, while an airline may incur costs when initially configuring an aircraft’s seating, no additional costs are incurred when a passenger selects one of those seats over another or, in the absence of a selection, an airline assigns one seat over another to a passenger. As a result, in *Situation 1*, the amount Airline charges Passenger for seat selection cannot bear a reasonable relation to Airline’s cost of providing that particular seat (instead of another) to Passenger.

In the case of the online booking fee described in *Situation 2*, the fee would fail the first part of the Rev. Rul. 80-31 test if that test were applicable, because costs related to selling a ticket are reasonably necessary to the air transportation service provided by Airline. See Rev. Rul. 2006-52.

The online booking fee would also fail the third part of the test because most, if not all, airlines already have online booking platforms that allow passengers to purchase tickets online. An airline that required passengers to purchase tickets in person at an airport ticketing counter would be at a competitive disadvantage in today’s market. Therefore,

an airline's cost of building, maintaining, and operating a website on which passengers may purchase tickets is an overhead cost associated with the airline's business. There is no additional cost to an airline for allowing a passenger to book a ticket online; in fact, it is less costly for the airline to allow passengers to book tickets online using an automated system than for passengers to book tickets with a ticket agent. As a result, the amount Airline charges Passenger for the online booking fee in *Situation 2* does not bear a reasonable relation to Airline's cost of providing the online booking service to Passenger.

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