Notice 2001–6

This notice provides rules relating to the air transportation tax imposed by § 4261(a) of the Internal Revenue Code on amounts paid for the right to provide mileage awards. The notice reflects changes made by § 1031(c)(2) of the Taxpayer Relief Act of 1997, 1997–4 (Vol. 1) C.B. 2, 144, which added § 4261(e)(3) to the Code. Section 4261(e)(3) provides that the tax imposed by § 4261(a) applies to any amount paid (and the value of any other benefit provided) for the right to provide mileage awards for, or other reductions in the cost of, any transportation of persons by air. The Treasury Department and the Internal Revenue Service expect to issue the substance of this notice as a regulation at a later date. Until that regulation is published, persons responsible for collecting the tax and persons responsible for paying the tax may rely on the guidance provided in this notice.

Section 4261(a) imposes a 7.5 percent excise tax on amounts paid for taxable transportation. Taxable transportation includes most domestic air transportation (that is, transportation between points in the United States) and certain air transportation beginning or ending in southern Canada or northern Mexico. With the exception of these Canadian and Mexican flights, the tax does not apply to air transportation between the United States and a foreign country, which is subject to the international arrival and departure tax imposed by § 4261(c), or to entirely foreign air transportation, which is not taxed.

Section 4261(e)(3) was enacted for the purpose of "clarifying that the air transportation excise tax applies to payments to air carriers (and related parties) for the right to award air travel benefits." H.R. Conf. Rep. No. 105–220, at 555 (1997), 1997–4 (Vol. 2) C.B. 2025. Thus, because the Treasury Department and the IRS have concluded that this clarification was intended as a backstop to the 7.5 percent tax imposed by § 4261(a), the new mileage award rules should not apply with respect to mileage awards for air transportation that would not, under any circumstances, be subject to the tax imposed by § 4261(a) or with respect to mileage awards that will otherwise be fully subject to that tax.

Regulations under § 4261(e)(3) will provide the following rules concerning mileage awards:

(1) Amounts paid for mileage awards that cannot be redeemed for taxable transportation (for example, awards usable only on a foreign air carrier) are not subject to tax.

(2) Amounts paid by an air carrier to another air carrier, whether foreign or domestic, for mileage awards that can be redeemed for taxable transportation are not subject to tax to the extent those miles will be awarded in connection with the purchase of air transportation subject to the tax imposed by § 4261(a).

(3) Amounts paid by an air carrier to another air carrier, whether foreign or domestic, for mileage awards that can be redeemed for taxable transportation are subject to tax to the extent those miles will be awarded other than in connection with the purchase of air transportation subject to the tax imposed by § 4261(a).

Air carriers may use any reasonable method to allocate amounts paid (and the value of any other benefits provided) between purchased mileage that cannot be redeemed for taxable transportation or that will be awarded in connection with the purchase of air transportation that is

subject to the tax imposed by § 4261(a) and purchased mileage that does not meet either of these conditions.

These rules apply to amounts paid after September 30, 1997. However, any amount paid after June 11, 1997, by one member of a controlled group for a mileage award that is furnished by another member of the controlled group after September 30, 1997, is treated as paid after September 30, 1997.

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