

Congress Reinstates Air Carrier Ticket Taxes, But Implementation Problems May Remain

by Robert S. Logan

On Friday, August 5, 2011, the U.S. Senate completed passage of legislation reinstating the air transportation excise taxes imposed on airline passengers, and President Obama signed the bill (the “Extension Act”) over the weekend. The Extension Act creates problems in dealing with the two-week period during which the tax had expired, but fortunately the Internal Revenue Service has provided some helpful guidance and relief.

As background, air carriers and other providers of domestic air transportation for passengers (“air carriers”) have long been required to collect a “ticket tax” of 7.5% of the ticket amount plus a fixed per-segment charge. International travelers have had to pay a fixed international travel facilities tax in lieu of the domestic ticket tax. The ticket tax must be collected at time of payment if the tax is in effect at that time, although the tax paid is refundable if the tax has expired on the actual date of travel.

The ticket tax was scheduled to expire on July 22, 2011, and congressional disputes resulted in the deadline passing without Congress enacting an extension.¹ As a result, air carriers were no longer authorized to collect ticket taxes after July 22.

Unfortunately, despite prior congressional assurances that any reinstatement of the ticket tax would not be retroactive, the Extension Act reinstated ticket taxes retroactively and under its terms, air carriers were required to have collected tax without interruption after July 22. This presents problems for the air carriers that could not and did not collect tax during this period.

Fortunately, at the request of congressional leaders, the IRS quickly posted interim guidance on certain retroactivity issues on its website (www.irs.ustreas.gov). Based on these recent developments, air carriers should take note of the following:

- Due to the retroactivity of the ticket tax, customers who purchased tickets through July 22, 2011, will **not** be entitled to a refund of ticket taxes even if they traveled between July 23 and the enactment of the Extension Act.

¹ Other excise taxes apply to domestic air freight service and aircraft fuel providers that also expired and were reinstated by the Extension Act. However, this advisory discusses only the ticket tax.

- Air carriers should halt processing or payment of any ticket tax refunds for passengers who purchased tickets before July 23 for travel after July 22. The IRS guidance did not address the impact on air carriers that may have already paid such refunds. If any air carriers have paid refunds, it is hoped that further IRS guidance will provide appropriate relief.
- The IRS intends to grant relief to air carriers and passengers who purchased tickets after July 22 and before August 8 without payment of ticket tax. This relief should provide that air carriers and passengers will not be liable for a failure to collect or pay the ticket tax on these tickets, despite the stated retroactivity of the tax.
- Air carriers were given until 12:01 am, Monday, August 8, 2011, to make the appropriate changes to their systems to resume collecting the ticket tax.
- The Extension Act only extends the ticket tax through September 16, 2011. When Congress returns in session in early September, it may be anticipated that congressional leaders will work to avoid the same situation recurring next month. Moreover, Congress may be encouraged to provide statutory resolution of some or all of the issues raised by the retroactivity language of the Extension Act.

Pillsbury continues to monitor developments in this area. If you have questions, contact the Pillsbury attorney with whom you regularly work, or the attorneys below.

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