Internal Revenue Service

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Washington, DC 20224

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Person To Contact:
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Telephone Number:

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Date:
March 09, 2012

Company =

Program =

Type A Travel =

Type B Travel =

X =

Dear :

This letter responds to a letter dated November 3, 2011, requesting a ruling under § 4261 of the Internal Revenue Code (Code).

The facts submitted state that Company is a passenger airline that provides scheduled air transportation in the United States and to some international markets. Company plans to adopt the Program, pursuant to which Company will award employees with reward points for outstanding attendance levels, recognition, productivity and performance, and achievement of corporate goals and safety.

Company will administer the Program with assistance from a third party vendor (Vendor). Company will award non-transferable reward points to employees in accordance with the Program. Reward points will be credited to individual record-keeping accounts maintained by Vendor on behalf of employees.

Participating employees may redeem accumulated reward points for (1) Type A Travel, (2) Type B Travel, (3) merchandise, or (4) gift cards. Vendor will process redemptions of reward points at the request of the employee. Company will not allow an employee or Vendor to purchase from Company or borrow from another employee's account any reward points in connection with a redemption transaction. Company will cover all of the administrative costs associated with the services provided by Vendor.

If an employee, upon redemption, selects either Type A Travel or Type B Travel, Company will fulfill the employee's request at no charge to the employee. Vendor will not purchase X from Company. Vendor's only involvement will be to process the exchange, which includes notifying Company of the redemption of reward points and debiting the employee's reward points account accordingly. An employee, like any passenger, may incur service charges or fees in connection with air transportation. All such costs are incurred outside the Program and are the employee's separate responsibility.

If an employee, upon redemption, selects merchandise or a gift card, Vendor will process the exchange, which includes providing the merchandise or gift card to the employee at a predetermined cost to Company, and debiting the employee's reward points account accordingly.

You request a ruling that the air transportation excise taxes imposed by § 4261 do not apply to the reward points under the Program. Specifically, you request rulings that:

1. The reward points redeemed by an employee in exchange for Type A Travel or Type B Travel are not subject to the air transportation excise tax imposed by § 4261 because no amount is paid for air transportation.

2. The reward points awarded to an employee are not subject to the air transportation excise tax imposed by § 4261 when the points are granted to the employees.

Section 4261(a) imposes a 7.5 percent tax on amounts paid for taxable transportation of any person. Taxable transportation is defined in § 4262(a)(1) to include transportation by air that begins and ends in the continental United States.

Section 4261(e)(3)(A) provides that any amount paid (and the value of any other benefit provided) to an air carrier (or any related person) for the right to provide mileage awards for (or other reductions in the cost of) any transportation of persons by air is be

treated for purposes of § 4261(a) as an amount paid for taxable transportation, and such amount is taxable under § 4261(a).

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

The concept of an "amount paid" is well developed in the facilities and services excise tax area. Rev. Rul. 54-332, 1954-2 C.B. 417, holds that where a telephone company furnishes telephone service to certain employees free of charge, no tax attaches. The revenue ruling further holds that where telephone service is furnished to employees at a reduced rate, the tax applies to the amount actually paid for such services.

Rev. Rul. 70-515, 1970-2 C.B. 270, holds that amounts paid for travel cards which entitle certain classes of individuals to reduced fares are not subject to the tax imposed by § 4261(a). Rev. Rul. 70-515 reasons that the amounts paid for the travel cards do not entitle the holders to transportation. The cards merely identify the holders as being entitled to purchase transportation at a specified reduction from the fare regularly charged by the airline.

Similarly, Rev. Rul. 72-245, 1972-1 C.B. 347, holds that where an airline furnishes an employee the use of its international air travel facilities entirely free of charge, the $3 tax imposed by § 4261(c) (use of international travel facilities) does not apply because there is no amount paid for transportation within the meaning of § 4261(c).

Also, Rev. Rul. 84-12, 1984-1 C.B. 211, holds that the tax imposed by § 4261(a) does not apply to free bonus tickets issued by an airline company to customers who have already satisfied all requirements to qualify for the bonus; however, the tax applies to any amount the customer subsequently pays because of not fully qualifying for the free bonus ticket. Rev. Rul. 84-12 reasons that if no amount is paid, the tax does not apply. If payment is made at a reduced rate, however, then the reduced amount is an amount paid for air transportation within the meaning of § 4261(a), because the amount subject to tax is the actual amount paid for taxable transportation.

Based on the facts submitted and representations made, we conclude that the air transportation excise taxes imposed by § 4261 do not apply to the reward points under the Program. Specifically, we conclude that:

1. The reward points redeemed by an employee in exchange for Type A Travel or Type B Travel are not subject to the air transportation excise tax imposed by § 4261 because no amount is paid for air transportation.

2. The reward points awarded to an employee are not subject to the air transportation excise tax imposed by § 4261 when the points are granted to the employees because no amount is paid for air transportation.

However, any amounts paid by an employee for service charges or fees in connection with air transportation awarded through the Program that are the employee's separate responsibility, and that meet the definition of taxable transportation (and are otherwise not exempt from tax) are subject to the air transportation excise tax imposed by § 4261.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, you did not request, and we do not provide, a ruling on the federal income or employment tax consequences of awarding or redeeming reward points under the Program.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Stephanie N. Bland
Stephanie N. Bland
Senior Technician Reviewer, Branch 7
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter
Copy for section 6110 purposes

cc: