

AVIATION ADVISOR

December 17, 2008

NEW TAX AND BAGGAGE LIABILITY REQUIREMENTS FOR 2009

Aviation Excise Tax Increases

When Congress revised the structure of U.S. air transportation excise taxes in 1997, it provided that the international arrival and departure taxes would be adjusted for inflation on an annual basis. In addition, the domestic segment charge also is adjusted for inflation on an annual basis. The Internal Revenue Service now has announced the inflation adjustments for the year 2009 (Rev. Proc. 2008-66, § 3.32).

Beginning **January 1, 2009**, the international arrival and departure taxes will be **\$16.10** instead of \$15.40, the rate for 2008. For domestic flights involving Alaska and Hawaii, an "international" tax applies to departures (but not arrivals). Beginning January 1, 2009, this tax will increase to **\$8.00** instead of the 2008 rate of \$7.70.

For domestic U.S. travel, the percentage-based tax remains 7.5% of the amount paid for air transportation, but beginning **January 1, 2009**, the separate segment charge will be **\$3.60** per domestic segment instead of \$3.50, the rate for 2008.

These increases apply to all transportation for which payment is made starting on

January 1, 2009; the critical date is the date of payment and **not** the date of travel.¹

Currently, Congress has authorized the collection of these taxes only through March 31, 2009, but we expect that Congress will extend the taxes, either by a continuing resolution or comprehensive legislation re-authorizing FAA programs (which was proposed but stalled in the current Congressional session).

Baggage Liability Increase

In addition, the Department of Transportation has announced that the minimum limit on domestic baggage liability will also be adjusted for inflation. The new limit is **\$3300** per passenger (an increase from the former limit of \$3000) and is effective December 22, 2008 (73 Fed Reg. 70591).

Air carriers that operate domestic flights should revise their contracts of carriage to reflect the new minimum. However, the new limit is only applicable to domestic flights;

¹ The Department of Transportation also generally requires airlines and ticket agents to include accurate information about taxes in their advertising, including websites, press releases, and other forms of publicity.

for international flights (and domestic flights taken as part of as international itinerary), an air carrier's liability for baggage continues to be governed by international treaties (the Warsaw Convention and the Montreal Convention).

Questions?

Please call any of the members of our Aviation Group, or our tax partner, James A. Harris ((202) 973-7911), if you have any questions about these matters.

The **AVIATION ADVISOR** is published by **Zuckert, Scoutt & Rasenberger, L.L.P.**, a Washington, D.C. law firm.

For further information regarding any of the developments discussed in this issue, please contact a member of the firm's Aviation Group:

Frank J. Costello
Ralph L. Kissick
William H. Callaway, Jr.
Rachel B. Trinder
Charles J. Simpson, Jr.
Richard D. Mathias
Malcolm L. Bengé
Lonnie A. Pera
Robert T. Francis
Nathaniel Breed
John E. Gillick

888 17th Street, N.W.
Washington, D.C. 20006
Telephone: (202) 298-8660
Fax: (202) 342-0683
Web site: www.zsrlaw.com

© 2008