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## **New IRS Ruling on Responsibility for Air Transportation Excise Taxes**

**by James A. Harris**

On October 23, 2006, the IRS issued an important new ruling, Revenue Ruling 2006-52, that clarifies the responsibility for collecting and remitting air transportation taxes on tickets sold through intermediaries. Although this new ruling most directly affects intermediaries, it also provides greater certainty for the airlines for whom the intermediaries sell tickets.

Previous authority, Revenue Ruling 75-296, involved travel agents and allocated responsibility for collecting and remitting the excise taxes based on whether the travel agent was acting as agent for the airline, in which case the responsibility was the airline's, or as principal (*i.e.*, purchasing and reselling airline tickets), in which case the responsibility was the travel agent's. The new ruling, the facts of which appear to involve the typical on-line travel service firm, recognizes a third category where the intermediary is acting as agent for the passengers. In such cases, the federal excise tax responsibility remains with the airline, just as when it sells the ticket directly. The ruling also would appear to apply to most single entity charters, confirming that the general industry position that the carrier is responsible for federal excise tax compliance.

Revenue Ruling 2006-52 also makes clear that the service fee paid to the intermediary agent for the passenger is not considered part of the "amount paid" upon which the domestic excise tax is calculated. Although the ruling on its face applies only to the domestic excise tax, we believe it applies equally to the international arrival and departure taxes, as both are predicated upon an "amount paid" for air transportation.

The new ruling does not revoke or supersede Revenue Ruling 75-296. Where the intermediary is a charter operator or other true reseller, the intermediary remains responsible for federal excise tax compliance. Despite this new guidance, there may remain ambiguities in determining whether an intermediary is classified as a reseller and thus responsible for excise tax compliance, or as a mere agent, with the federal excise tax compliance burden remaining with the airline.