

TALKING PAPER ON FREQUENT FLYER MILEAGE AND TRAVEL BENEFITS

- The FY02 DoD Authorization Act (Public Law 107-107) was signed into law by the President on 28 December 2001
 - Section 116 of the law now permits Federal employees (military and civilian) to keep travel benefits earned while performing official travel and to use those benefits for personal travel

- The applicable JFTR/JTR regulations were changed on 31 December 2001 and the conflicting JER provisions were rescinded on 10 January 2002

- First Class Travel
 - According to GSA guidance and JER para. 4-202, DoD employees on official travel may accept airline seat upgrades to first class for official use, as long as there is no additional charge to the government and the upgrade is offered to the employee on the same terms as a member of the public
 - This means that while employees must generally perform official travel by using coach class accommodations, employees may upgrade transportation services at their own expense, which includes the use of personal frequent traveler mileage or upgrade benefits
 - The pre-existing restrictions on first class travel at government expense remain unchanged; see FTR 301-10.123 and JFTR U3125 for additional guidance
 - The pre-existing practice that discouraged first class travel while in uniform is still a recommended practice
 - Thus, even when first class travel is absolutely legitimate, military personnel should avoid wearing the uniform, unless appropriate, to avoid the public perception of misuse of government travel resources

- Travel Funded by a Non-Federal Source under 31 U.S.C. 1353
 - The Authorization Act specifically permits the retention of travel benefits accrued while performing official travel funded by a non-Federal source under 31 U.S.C. 1353
 - However, the JFTR and JTR implementing regulations do not apply to situations where official travel is funded under 31 U.S.C. 1353
 - Instead, the guidance directs travelers to seek guidance from the funding authority
 - The JER, Chapter 4, addresses 31 U.S.C. 1353 travel reimbursement, but it does not preclude personal retention of travel benefits earned while performing travel under this authority
 - Therefore, DoD officials take the position that DoD regulations do not preclude the personal use of travel benefits earned while performing official travel funded by a non-Federal source under 31 U.S.C. 1353.

- Tax Implications

- GSA and IRS officials are discussing the tax implications of the new law and the IRS is expected to issue definitive guidance on the issue in the near future

- If the travel benefit is characterized as a “gift,” it may fall under the annual \$10,000 gift tax exception for individuals (and therefore be tax-free)

- If the travel benefit is characterized as a “benefit of employment,” it will probably constitute taxable income

- Until the IRS issues definitive guidance on this issue, ethics counselors should not give advice about the tax implications of the new law, except to counsel travelers to keep good records of any benefits received

- The Involuntary Bump Rule

- According to the revised JFTR/JTR guidance, government travelers who are involuntarily denied a seat on a commercial carrier enter an “awaiting transportation” status for per diem and miscellaneous expense reimbursement

- While in this status, any monetary compensation (including meal and/or lodging vouchers) associated with official travel belong to the Federal Government

- In other words, DoD officials have taken the position that the new rules on retained travel benefits do not apply to situations involving an involuntary bump, based on the theory that in this situation, any benefits received belong to the Federal Government

- Supervisory Issues

- The potential windfall from travel-related benefits is not insignificant; thus, employees must exercise care to ensure the travel system is not abused

- To that end, travel-approving authorities are encouraged to exercise careful discretion when approving official travel to ensure that travel minimizes government expenses rather than maximizes frequent flier benefits

- For example:

- Is travel really necessary?

- Is the meeting/conference being held at a logical location?

- Does the trip unnecessarily involve multiple travel variations?

- Is the traveler using a contract (city-pairs) carrier? If not, is there a good reason?

- Is the traveler using his/her government travel card for all travel-related expenses?