

June 29, 2012

Carl B. Nelson
Associate General Counsel, American Airlines
by email: [REDACTED]
CC: Gary Kennedy

RE: carrier-imposed surcharges systematically mischaracterized as "tax"

Mr. Nelson,

Thanks for getting back to me. I appreciate your taking the time to clarify AA's position on this matter.

You suggest that Mr. Kennedy's January 11 reply adequately addresses my concern about carrier-imposed surcharges mischaracterized as "tax." But note the important factual errors in Mr. Kennedy's message, as detailed in my March 25 reply. For example, Mr. Kennedy claimed that the false statements at issue were made only after ticketing. I capably demonstrated that false statements occurred before ticketing. Hence my continued view that refunds are required in this circumstance.

Your reliance on the DOT's February 21 guidance is misplaced. Nothing in that guidance permitted AA to mischaracterize carrier-imposed fuel surcharge as "tax" at any time -- neither before nor after the effective date of the February 21 guidance. Indeed, the DOT's February 21 notice explicitly confirms the impropriety of the practices that prompted me to write: "Such displays were deceptive and in violation of section 41712" (emphasis added) -- indicating that the false statements were unlawful when made, not that the statements would become unlawful only as of some future date. You also mischaracterize the 60-day period referenced in the DOT's notice. The notice clearly indicates that the delay applies only to commencement of DOT enforcement action: "The office will provide ... 60 days [delay] ... before instituting enforcement action." In particular, the 60-day period in no way cures liability for prior unlawful conduct. A consumer with a valid claim, as to unlawful practices occurring before or after April 21, simply is not hindered from bringing that claim by reason of the DOT's decision not to institute enforcement action until that date.

Your reply is particularly timely because earlier this week (before I received your reply), I happened to find further evidence of AA staff and systems mischaracterizing carrier-imposed surcharges as tax. In particular, before I purchased a \$5000+ long-haul premium ticket from an AA Executive Platinum Desk representative by telephone, the agent mischaracterized carrier-imposed fuel surcharges. I quote verbatim:

Me: "Could you review the fare and tax?"

Agent: "Certainly. OK, I'm showing that the fare in US dollars is 4828, and 708.20 taxes."

In fact, contrary to the agent's statement, I believe the majority of the \$708.20 consists of carrier-imposed fees, not "taxes." So AA continues, to this day, to misrepresent carrier-imposed surcharges as "tax." Note that AA's automatic answering system stated "This call may be recorded" so I recorded it, and I retain a high-quality digital copy.

During my pre-purchase research on aa.com, I also happened to find numerous examples in which the amount shown as “tax” exceeded the actual amounts I believe American is required to pay to governments and similar authorities. Rather, in each instance, I believe the quoted “tax” consisted primarily of carrier-imposed surcharges. If I am correct about the actual tax associated with these itineraries, AA’s practices are directly contrary to the DOT’s February 21 notice, contrary to your claim of compliance with that notice, and also contrary to AA’s affirmative commitments as presented to consumers at <http://www.aa.com/i18n/disclaimers/ipDisclaimerRevenue.jsp> (“International ... Fares include: Base fare and carrier-imposed surcharges”). I retain appropriate screenshot evidence. Notably, the misrepresentations of tax now affect itineraries for travel solely on AA – a significant broadening relative to the BA issues that prompted my initial message to Mr. Kennedy.

I credit that these are difficult times, and I know that recent developments have required many changes to AA's fares and procedures. No doubt rapid industry and partnership changes have increased the complexity of correctly characterizing all carrier-imposed fuel surcharges. But these factors do not excuse false statements about fare and tax, or attempts to retain the fruits of prior or ongoing unlawful conduct. If AA staff and systems made false statements prior to purchase, I see no alternative but to refund the amounts subject to those misrepresentations.

Your message indicates unwillingness to discuss this matter further. I’m disappointed to hear that. As a courtesy, I will wait ten business days in order to give you time to consider the additional information provided in this letter and, if you like, conduct your own investigation of current practices of AA staff and systems. After ten business days, I will send a full complaint to DOT Aviation Consumer Protection Division, Office of Aviation Enforcement and Proceedings, including the substance of my concern, our correspondence, and top-quality call transcript and screenshot evidence of AA staff and systems continuing to mischaracterize carrier-imposed surcharges as "tax."

Separately, one of my students seeks to publish my evidence on the web in order to inform and assist other consumers similarly situated. I had been inclined to decline, as I preferred to bring this matter directly to Mr. Kennedy’s attention in order to avoid burdening American with a public dispute during this difficult period. But if you are unwilling to discuss this matter, I will support that student’s effort as time permits.

I’ve spent a decade admiring AA, both as a passenger and as a business academic. I regret that we have reached this unfortunate juncture.

Respectfully,
/s/
Benjamin Edelman