



United States Department of Transportation  
TRANSPORTATION SECURITY ADMINISTRATION

400 Seventh Street, S.W.  
Washington D.C. 20590

NOV 21 2002

Mr. James A Hultquist  
Managing Director, Taxes  
Air Transport Association  
1301 Pennsylvania Ave., N.W., Suite 1100  
Washington, DC 20004-1707

Docket No. 11120

TSA-02-11120-59

Dear **Mr.** Hultquist:

Thank you for your letter of October 9, 2002, on behalf of the members of the Air Transport Association (ATA) requesting guidance on the refundability of the Transportation Security Administration's (TSA) September 11<sup>th</sup> Security Fee to ticket purchasers who do not travel on their scheduled flights, particularly where the tickets are nonrefundable and have no value toward future travel. In addition, you inquire as to whether carriers or TSA should provide refunds of September 11<sup>th</sup> Security Fees to ticket purchasers, as it is common for carriers to have already remitted to TSA the actual fees collected from ticket purchasers. You note that ATA is also seeking guidance from the U.S. Department of Agriculture, the Immigration and Naturalization Service, and the Customs Service on their passenger fee refund requirements. Finally, you refer to Revenue Ruling 89-109, in which the Internal Revenue Service held that, to the extent that airlines do not refund the cost of airline tickets to passengers, the attributable taxes are due to be remitted to the Government.

On October 10, TSA placed a copy of your letter in the Department of Transportation's Docket Management System (DMS) for public review. The DMS is accessible online at <http://dms.dot.gov> and your letter is identified as item 57 in Docket No. TSA-2001-11120. TSA also placed a copy of this response in that docket.

Under 49 CFR **Part 1510**, air carriers and foreign air carriers are required to collect September 11<sup>th</sup> Security Fees, hold them in trust for TSA, and remit them to TSA by the end of the month following the calendar month in which the transportation was sold. These carriers are responsible for the safekeeping and accounting of these fees. While Part 1510 does not address in detail how refunds are to be handled, it clearly indicates that air carriers and foreign air carriers are responsible for refunding September 11<sup>th</sup> Security Fees to ticket purchasers. Specifically, it provides that "[a]ny changes by the passenger to the itinerary that alter the number of enplanements are subject to additional collection or refund of the security service fee by the direct air carrier or foreign air carrier as appropriate." 49 CFR § 1510.9(b) (emphasis added). When a ticket purchaser does not use a ticket for air transportation and the ticket then expires or loses its value, the September 11<sup>th</sup> Security Fee involved is subject to a refund by the collecting carrier to the ticket purchaser. If such a ticket purchaser requests a refund of the September 11<sup>th</sup> Security Fee collected, the carrier must provide the requester with a full refund of the fee.

TSA is considering promulgating further details concerning refunding September 11<sup>th</sup> Security Fees, as will be reflected in the Final Rule for 49 CFR ~~Part~~ 1510. In any case where an air carrier does not refund September 11<sup>th</sup> Security Fees to the ticket purchaser, the fees must be remitted to or remain with TSA.

Where a carrier remits a September 11<sup>th</sup> Security Fee to **TSA** and then refunds the fee to a ticket purchaser, the carrier may offset the refund by deducting it from the September 11<sup>th</sup> Security Fees remitted to TSA for the month in which the refund is provided. In such circumstances, the carrier must keep auditable records of the refund, as required by 49 CFR 1510.15. The carrier must also accurately denote the refund in its quarterly report of September 11<sup>th</sup> Security Fees imposed, collected, refunded and remitted, as required by 49 CFR 1510.17, as amended.

If you need further assistance, please contact me at (202) 385-1209. You may also contact Steven Cohen in the Office of the Chief Counsel at (202) 493-1216.

Sincerely,

A handwritten signature in cursive script that reads "Randall S. Fiertz".

Randall Fiertz  
Acting Director of Revenue