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September 23, 2025

Brian Hamer
Senior Counsel, Multistate Tax Commission
444 North Capitol Street NW, Suite 425
Washington, DC 20001

Re: Draft Airline Regulation

Dear Mr. Hamer,

Airlines for America (A4A), the principal trade association for the leading U.S. airlines,[1] welcomes this chance to comment on behalf of the industry regarding the Multistate Tax Commission (MTC) Model Receipts Sourcing Regulation Review Work Group's Discussion Draft of the Special Airline Rule (the Draft) that was released June 30.

Commercial aviation is a unique and complex industry. At the outset of this project to review the MTC's special industry rules, there was not a good understanding among the various stakeholders about how the industry operates, and we appreciate the MTC staff's diligent work to learn about the industry and understand how the current apportionment rule (Reg. IV.18.(e)) works and has been implemented since it was introduced in 1983. We understand that this draft is intended to align the industry rule with the MTC's model General Allocation and Apportionment Regulations and to not deviate significantly from the tax treatment and understanding of the current rule. However, we have identified three significant issues with the Draft that are discussed below. These issues should be addressed before any vote is taken by the Working Group to send the proposed rule to the Uniformity Committee.

Nevertheless, we strongly prefer the current rule – as it works and has proved itself over the long-term – and urge the Working Group to reject a change.

Defending the Current Rule

Overall, we do not see a need to change the current rule. We appreciate that the MTC has undertaken a review of the special industry rules, but in this case, we do not see sufficient justification to support the change. The current rule has worked well for more than four decades, providing an effective framework for state taxation with enough flexibility to allow the commercial aviation industry to evolve and grow without having to regularly revisit or update the rules, and it has done so with little controversy.

Administrability: The current rule is administrable and provides a good measure of airline activities, balancing the ability of the industry to provide data, the need for the states to analyze that data and the time and cost of doing so. Airlines have developed systems to accurately track and report the necessary information, and the states are receiving the data needed to audit airlines and make determinations. We believe the airlines and the states have had few issues with administering the current system and that it continues to work well.

[1] A4A's members are Alaska Air Group, Inc.; American Airlines Group, Inc.; Atlas Air, Inc.; Delta Air Lines, Inc.; FedEx Corp.; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Airlines Holdings, Inc.; and UPS Co. Air Canada is an associate member.

Appropriate apportionment: Most importantly, the current rule allows the states to collect their fair share of income tax from the airlines. Airlines vary in their business models and offerings, but the current rule accommodates this variation. No system will perfectly apportion income, but the current rule works extremely well and captures the airlines' activities and income. At the outset of this project there seemed to be some concern that evolving product offerings were somehow not being captured in the apportionment formula. Those concerns are not well-founded, and the current rule does not result in states foregoing revenue they are entitled to or in shifting income into inappropriate jurisdictions or giving rise to "stateless" income.

Flexibility: The commercial aviation industry has evolved and grown significantly since 1983, and the current rule has been flexible enough to accommodate these changes. It has provided enough detail to guide airlines and the states without stifling innovation or misallocating income. While more detailed rules might seem to provide better guidance, we fear that the downside is that this could create a lock-in effect, where our tax rules become defined by the state of the industry as it exists in 2025. In such a highly regulated, competitive and low-margin industry, it is certain that aviation will continue to evolve. If the rule is not flexible enough to accommodate these changes as they happen, the rule will require frequent revision or force the states to depart from it out of necessity.

Further, the most substantive argument for more detailed rules – that the lack thereof promotes uncertainty, inconsistency and controversy – is not present in this case. There has been very little controversy over the application of the current rule for many years, unlike the concerns that animated the discussion around rule changes for the allocation of ground transportation income by trucking companies.

Conformity: Finally, many states do not conform to the current rule – such as using a mileage or other approach in lieu of the departures method – as legislators and policymakers have already determined what works best for their state's needs or circumstances. They will continue to do so, even with a new and more detailed rule. The proposed changes will add compliance complexity, even if not intended, for both airlines and the states. This complexity and the lock-in effect noted above may push states to depart from the rules to avoid such challenges. Therefore, this update is not likely to increase uniformity and could undermine it and lead to further inconsistency.

Comments on the Proposed Rule

A4A members have identified the following three issues – the definition of receipts, the treatment of mile sales to third parties and the treatment of transportation sold by one airline but operated by another – that could likely create problems if the current Draft is adopted. For the sake of the industry and the states, these issues should be addressed by MTC staff with updates to the proposal before the Working Group votes on whether to forward a new rule to the Uniformity Committee.

1. Definition of receipts

The Draft changes the use of "revenue" in most places in the current rule to "receipts." We understand that this change is to align the special industry rule with the terminology used in the General Allocation and Apportionment Regulations, but we think that if the draft is adopted, greater clarity about the terms' meaning is needed. While receipts and revenue are often used interchangeably, they are not necessarily the same, especially in the context of accounting. This distinction is significant in the airline industry, where the sale and the provision of transportation services are typically not close in time and are, therefore, accounted for very differently for book and tax purposes.

The Draft incorporates the definition of receipts in the General Regulations (Reg. IV.2.(a)(6)), which in turn are defined by reference to the definition of "gross receipts." That is, "the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital in a transaction which produces apportionable income in which the income or loss is recognized under the Internal Revenue Code . . ." (Reg. IV.2.(a)(5). While this indicates that receipts are receipts for tax purposes, the Draft appears to be inconsistent with this definition.

For example, the Draft defines both passenger and freight "transportation receipts" as "revenue earned by an airline" (prop. Reg. IV.18.(e)(2)(i)(L) and (M). Further the Drafter's Note following the definition of transportation receipts in (K), discusses the IRS rules on when income of an airline is recognized and states:

> This [regulation] does not address when income of airlines is recognized. Rather, it addresses where receipts are sourced in order to apportion income once recognized under applicable law.

While not part of the proposed rule (and not binding), the Drafter's Note appears to acknowledge that the definition of receipts is contradictory to when revenue is recognized under the Internal Revenue Code. In addition, bracketed portions of prop. Reg. IV.18.(e)(2)(iv)(A) and (B) state that a reference to the general allocation and apportionment statutes and regulations will be inserted. As a drafting matter, some of the complexity through repetition of the definition sections in (i) and (iv) may not be necessary if the proposed rule is clearer about the intent to use the Internal Revenue Code standard under the General Regulations.

Taken together, we believe that the states will not have enough clarity from these provisions and comments to adopt and apply the rules around income recognition with uniformity. Therefore, we recommend that the proposed rule should clearly state that receipts mean revenue recognized under the Internal Revenue Code.

2. Sale of miles or points

In its definition of passenger transportation receipts, the Draft includes the sale of miles or points in those receipts unless the miles are redeemed for the purchase of goods or services unrelated to air travel. As the Drafter's Notes further explain, these miles are usually treated as transportation revenue because federal tax rules (see IRC section 451) do not allow income deferral for more than one year beyond the taxable year. The Draft further provides Example 5, which illustrates how the bifurcation between transportation and non-transportation miles would work. While this method makes sense theoretically in matching the use of the miles, we have determined this proposal is not workable as a practical matter and will only lead to further uncertainty and confusion. Because of the ways miles are earned and often held for multi-year periods by customers, these miles are recorded for tax purposes often long before they are recorded for book purposes. We do not believe the tracking required – if it can be done at all – would be adequate to report this information or make it auditable by the states.

For better understanding, take this very common example:

> A customer has an Airline X co-branded credit card. She makes purchases with the card, and she receives miles for those purchases in Years 1 through 5. She also takes at least one annual roundtrip flight in those years with Airline X, earning miles from the trips. The customer does not use any accumulated miles until late in Year 5, when she books an award flight and uses some of the remainder for a new suitcase. Because the miles have been pooled in her account, each mile is not identified by how it was earned. For Airline X, any miles the customer earned from the credit card purchases in Years 1 through 3 have already been treated as transportation revenue because they cannot be deferred longer than one year for tax purposes.

Under the proposed rule, it is not clear what the result of this example should be. As an initial matter, should the miles be attributed to miles earned from the trips the customer takes, or should they be attributed to the credit card rewards? If they are attributed to the credit card miles, there are two possible results: (1) the miles for the suitcase are attributed to earlier years and treated as transportation revenue; or (2) the miles are attributed to Year 4 and are then treated as non-transportation revenue. All these positions are reasonable interpretations of the proposed rule.

Therefore, we recommend removing this proposed sale of miles rule and Example 5 from the Draft. Airlines are currently including the sale of miles in income and properly apportioning the revenue. As

noted above, there has been little controversy about the current treatment, even though many states have audited these programs across several airlines.

Other industries: The sale of miles also raises a question of equity. Setting forth prescribed apportionment rules for our loyalty program partnerships will likely create differential treatment from taxpayers in other industries, even though they are similarly situated. Loyalty programs with co-branded credit cards are the norm across many industries, including passenger rail (Amtrak), hospitality and retail. Air transportation is a unique industry, but the partnerships with issuing banks are not unique. The programs are largely similar whether the customer is getting points at a hotel, "cash" to spend at a retailer, or miles on an airline. We urge the MTC staff and the Working Group to consider the broader ecosystem of these programs and their tax consequences before promulgating rules that only apply to one industry.

3. Sale of tickets by one airline for flights on another airline

Finally, we see several issues with the proposed rule on how income is apportioned between an airline that sells transportation for a flight that is operated by another airline. The Drafter's Note under prop. Reg. IV.18.(e)(2)(iv)(B) notes that the General Allocation and Apportionment Regulations exclude property acquired by an agent on behalf of another from the definition of receipts. The Drafter's Note then states:

> Therefore, in the case where a passenger purchases a ticket from one airline to fly on an aircraft operated by another airline (where the two airlines have entered into a codesharing agreement or similar arrangement), the "receipts" of the selling airline will include the entire price of the ticket, unless it can be shown that the selling airline acted as the operating airline's agent (assuming the principle underlying Reg. IV.2.(a)(6)(G) applies here). In the event that there is an agency relationship, the "receipts" of the selling airline will include only that portion of the ticket price that the selling airline retains.

We understand that the proposed rule is attempting to apply general apportionment concepts and to conform to the General Regulations. However, we do not believe that this treatment follows longstanding industry practice for codeshare and interline sales and would unintentionally create more problems.

To make the process of purchasing a ticket for passengers as seamless as possible, the distribution system underlying the sale is complex, involving not only the airlines, but also online booking sites, traditional travel agents, software providers, clearinghouses, etc. Further, multiple contracts, agreements and regulations (U.S., foreign and international) govern these transactions to determine jurisdiction and liability, especially for international flights.

Under this proposal, an airline will have to attempt to untangle these complicated ties to determine whether an agency relationship exists, and we note that "agent" is not defined in the General Regulations. Applying various state laws on agency may lead to different results by state. This will cause confusion and inconsistency, and it will place undue administrative burdens on the airlines and state auditors.

In addition, we do not think the proposed rule – which in some cases would allocate all the income to a selling carrier who provides no services other than issuing the ticket – allows for a proper matching of expenses and income because the operating carrier will naturally incur most of the expenses.

Instead, we would urge you to allow the airlines to apply the allocations that the major clearing houses (such as Airline Clearing House) use to determine their transportation receipts from transactions involving multiple airlines. These amounts are already tracked and recorded and are auditable without the complex tracing of sales and relationships.

Conclusion

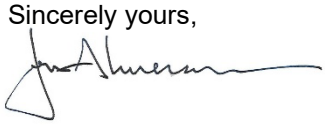
A4A does not see the need to enact a new special apportionment rule for commercial aviation. The current rule has been tested over time and proved its ability to serve the revenue needs of the states

while balancing the interests of the airlines and allowing the industry to evolve without requiring administrative rewrites. We urge the MTC to not fix what is not broken and keep the current rule.

However, if the Working Group feels strongly that a change is needed, we urge you to make changes to the Draft discussed above before recommending the proposal to the Uniformity Committee. Without those changes, the industry cannot support a change.

Thank you for your time and consideration of this important matter to the aviation industry. If you have any questions or comments, please do not hesitate to email me at jalmeras@airlines.org.

Sincerely yours,



Jon Almeras
Managing Director, Taxes