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December 9, 2015

Beth McCague  
Interim Executive Director  
Jacksonville Police and Fire Pension Fund  
1 West Adams Street  
Jacksonville, Florida 32202

Re: Taxation of Frequent Flyer Miles  
Our File: 900342

Dear Beth:

This is in response to your request for guidance as to whether frequent flyer miles earned by a Fund employee in the course of business travel is taxable income to the employee. For the reasons which follow, this question is answered in the negative.

The Internal Revenue Service (IRS) has issued unequivocal guidance on this issue. In IRS Announcement 2002-18, the IRS expressly stated:

“The IRS will not assert that any taxpayer has understated his federal tax liability by reason of the receipt or personal use of frequent flyer miles or other in-kind promotional benefits attributable to the taxpayer’s business or personal travel.”

The IRS went on to say that the above guidance did not apply to promotional benefits that are converted to cash; to compensation that is paid in the form of travel or other promotional benefits; or in circumstances in which these benefits are used for the purposes of tax avoidance. Since the issuance of that guidance, the IRS has not issued any further or different opinion.

The U.S. Tax Court cited 2002-18 with approval in *Shankar v. Commissioner of Internal Revenue*, 143 T.C. 140 (2014). In *Shankar*, the Tax Court noted the difference in the use of frequent flyer miles from promotional benefits converted to a cash value. The question you have asked involves

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solely the use of frequent flyer miles accrued during business travel which are not taxable or reportable as taxable income on a Form 1099. This analysis was cited with approval in a recent article in the University of Florida College of Law, *Florida Tax Review*. See, McMahon, McGovern, and Shepard, "Recent Developments in Federal Income Taxation: The Year 2014," *17 Fla. Tax. Rev.* 97 (2014).

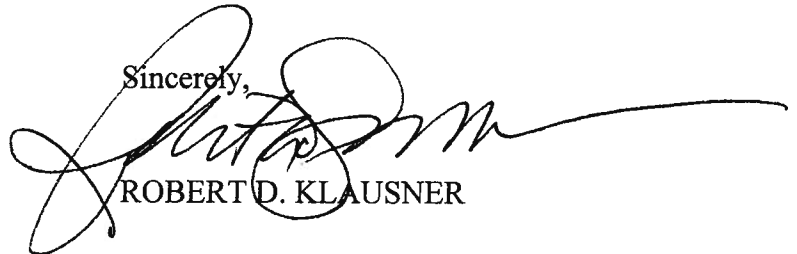
The Florida Commission on Ethics has not rendered any guidance on this issue, but comparable agencies in our sister states have. The City of New York Conflicts of Interest Board concluded that city officers and employees may lawfully use frequent flyer miles, earned while traveling on official business, to obtain awards for personal travel. NYC Adv. Op. 06-05. In that opinion, the New York City Board reviewed opinions from Ohio, South Carolina, Hawaii, Washington, South Dakota, and Texas, all of which concluded that personal use of frequent flyer miles was neither income nor a conflict of interest. These various opinions spanned a period of more than 20 years.

The New York City Board also noted similar treatment of travel awards for federal employees. The National Defense Authorization Act for Fiscal Year 2002, Section 1116 expressly authorized most federal employees to retain for personal use any "promotional item (including frequent flyer miles, upgrade, or access to carrier club or facilities) as a result of using travel or transportation services obtained at Federal Government expense provided the promotional item is obtained under the same terms as those offered to the general public and at no additional cost to the Federal Government. See, Pub.L. No.107-107, 115 Stat. 1012. The Code of Federal Regulations also contains similar language. See, 41 C.F.R. 301-53.3.

Lastly, the New York City Board cited to IRS Announcement 2002-18, discussed above, for the proposition that the IRS does not consider such promotional benefits to be reportable income.

Accordingly, the use of frequent flyer miles for personal travel is neither taxable nor reportable as taxable income.

Sincerely,



ROBERT D. KLAUSNER

RDK/yv