



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Southwest Airlines - Free Companion Ticket

File: B-254858

Date: November 22, 1995

DIGEST

An airline offers a "free" companion ticket when a round-trip ticket to specified cities is purchased. An agency asks whether the free companion ticket may be used by its employees for personal use when the ticket is obtained incident to official travel. Such use is not allowed under existing General Services Administration (GSA) regulations, 41 C.F.R. §§ 101-25.103-2(a) and 301-1.103(b) (1995), which provide that all promotional materials received by an employee incident to official travel are due the government and may not be retained by the employee. However, the General Accounting Office would not object if GSA, consistent with this decision, were to change its regulation to allow an employee to use a companion ticket, provided that an appropriate official of the agency approves the personal use based on a determination that (1) the ticket is of no use to the agency, and (2) the approval will not result in additional cost to the government.

DECISION

The Regional Counsel, Internal Revenue Service (IRS), Southeast Region, asks whether a "free" companion airline ticket may be used by its employees for personal use (*i.e.*, family member or friend) when the free ticket is obtained incident to official travel. As discussed below, such use is not allowed under the existing General Services Administration (GSA) regulations, but we would not object if GSA were to change its regulations to permit personal use of the ticket under certain conditions.

BACKGROUND

The Regional Counsel advises that Southwest Airlines offers a free companion ticket when a round-trip ticket is purchased. The promotion is offered for travel among various cities in the United States and Canada and requires that both travelers must fly on the same flight. In effect, Southwest is offering two tickets for the price of one.

The Regional Counsel reports that IRS employees have used these promotions for personal use. He further reports that the Chief, Travel Management Branch, Federal Supply Service, GSA, issued an opinion on September 10, 1992, that employees could utilize the free ticket for personal use as long as no other federal employee was making the same trip. However, he reports, the Region's fiscal officer has questioned any personal use of the companion ticket.

In view of its September 10, 1992, opinion on the matter, we asked GSA for its comments. In reply, GSA affirms its earlier opinion that, if no other employee will be flying on the same flight, the employee should be allowed to use the companion ticket.

The Director of the Administrative Office of the United States Courts has also written to us on this issue because of questions received from judicial branch travelers. The Director takes the same position as GSA.

OPINION

The general rule is that an employee may not retain any bonus tickets, mileage credits or similar items of value obtained as the result of official travel. Gifts or Prizes Acquired in the Course of Official Travel, B-199656, July 15, 1981. Michael Farbman, et al., 67 Comp. Gen. 79 (1987); Discount Coupons, 63 Comp. Gen. 229 (1984); Department of Energy, B-233388, Mar. 23, 1990. This rule is set forth in GSA's Federal Property Management Regulations, 41 C.F.R. § 101-25.103-2(a), which provide in part as follows:

"(a) All promotional materials (e.g., bonus flights, reduced-fare coupons, cash, merchandise, gifts, credits toward future free or reduced costs of services or goods, etc.) received by employees in conjunction with official travel and based on the purchase of a ticket or other services (e.g. car rental) are properly considered to be due the Government and may not be retained by the employee."¹

¹Virtually identical language is found in GSA's Federal Travel Regulation, 41 C.F.R. § 301-1.103(b). Consistent with the GSA regulations, we note, is the treatment accorded discounts and similar benefits in regulations issued by the Office of Government Ethics, at 5 C.F.R. § 2635.204(c)(3):

"An employee may not accept for personal use any benefit to which the Government is entitled as the result of an expenditure of Government funds."

Notwithstanding the general rule, certain benefits received on behalf of the government are not treated as "promotional materials" governed by GSA's regulations and may be used by employees on official travel. See Discount Coupons, *supra*, 63 Comp. Gen. 229 at 232 (Question 3); Abraham Frydman, B-212559, Feb. 24, 1984; Michael Farbman, et al., *supra*, at 82-3. These include insurance coverage for the traveler, upgrades to first class (not in exchange for mileage credits),² membership in executive clubs, and check cashing privileges. These benefits by the common carrier or other firm can only benefit the employee and are of no use to the government. So long as their use by an employee does not raise any conflict-of-interest issue or violate any rule of ethical conduct, under current regulations employees may participate in such benefit programs while on official travel.

The premise of the law in this area is that items of value resulting from the expenditure of government funds belong to the government. Employees are not free to retain and use such items without the government's permission. The responsibility for establishing the rules for the use of promotional items falls, in the first instance, on GSA. As quoted above, in regulations implementing its authority to govern the management and disposal of federal property, 40 U.S.C. § 486(c), and those implementing its authority over travel and transportation expenses, 5 U.S.C. § 5707(a), GSA has required "promotional materials" to be relinquished to appropriate agency officials and described how agencies are to provide for their use and disposition. 41 C.F.R. § 101-25.103 (Federal Property Management Regulations); 40 C.F.R. § 301-1.103(b) (Federal Travel Regulations).

GSA argues that the free companion airline tickets are not "promotional materials," but are analogous to benefits that are not governed by the controlling regulation. In our view, companion tickets are "promotional materials" subject to GSA's regulations. Unlike an upgrade to first class or similar benefit, the companion ticket can be provided to another traveler on the same flight. As GSA itself recognizes, an employee holding a companion ticket earned as a result of the expenditure of government funds must turn over the ticket to the government when the government can use the ticket. Thus, the companion ticket clearly is transferable "material" under the regulation even though the ticket may not be used for future flights. The GSA regulation categorically requires that all promotional materials received as a result of official travel be turned over to the government; no

²The Federal Travel Regulation provides that frequent flyer mileage credits accumulated while traveling on official business may not be used to upgrade to first-class air accommodations, but may be used to upgrade to premium-class other than first class. 58 Fed. Reg. 58234, 58238-39 (1993); 41 C.F.R. § 301-3.3(d)(1) and 5(vii).

exception is made for allowing employees to retain promotional materials that are of no value to the government.

We recognize that a particular free companion ticket may not be transferable as a practical matter because there is no other federal employee whose official business requires traveling the same route at the same time. In these cases, the ticket is of no benefit to the government. In light of GSA's authority to issue regulations governing the travel of government employees, we are aware of no reason why it could not provide that employees may use promotional companion airline tickets when they are of no possible use to the government. If GSA should undertake to do so, we recommend that its regulation require approval by an appropriate agency official based on a determination that (1) the agency is unable to use the companion ticket for the official travel of another employee, and (2) the approval will not result in additional cost to the government. This would help to ensure that official travel arrangements are based on the government's interests and not influenced by personal considerations.

There remains the issue of those employees who have used the companion tickets for family or friends. Since those employees may have relied on the GSA memorandum, cited above, sanctioning personal use of these tickets when the government could not use the ticket itself, we do not think it would be appropriate to seek recovery from them.

/s/ James F. Hinchman
for Comptroller General
of the United States