

B-256481

April 5, 1994

The Honorable Gillespie V. Montgomery
House of Representatives

Dear Mr. Montgomery:

This is in response to your letter of January 31, 1994, concerning _____ personal use of frequent flyer mileage credits earned as a result of performing official travel.

Airline tickets are the property of the government when the tickets have been earned based on official travel. Discount Coupons, 63 Comp. Gen. 229 (1984); _____, 63 Comp. Gen. 233 (1984). This includes all promotional materials, such as bonus points, mileage credits, or similar items of value received by employees in connection with official travel or incident to the purchase of tickets for official travel. _____, et al., 67 Comp. Gen. 79 (1987); Gifts or Prizes Acquired in the Course of Official Travel Assignments, B-199656, July 15, 1981.

According to correspondence included with your letter, _____ has defended his use of the frequent flyer mileage credits on the basis that the courts have ruled that frequent flyer awards are not property, but rights of contract between the individual and the airline. He also stated that the General Services Administration (GSA) has challenged our view that frequent flyer awards are property of the government. _____ believes we will change our opinion in response to a request we received from the Senior Executives Association to do so.

Contrary to _____ belief, we have no reason to change our opinion. With respect to the court rulings, we think that _____ primarily referred to Transworld Airlines v. American Coupon Exchange, 913 F.2d 676 (9th Cir. 1990). In Transworld Airlines, the Court of Appeals upheld an airline tariff prohibiting the brokering of its frequent flyer coupons. The court held that the public policy in favor of free alienation of property did not apply to frequent flyer coupons since they were more in the nature of contract rights than property rights.

The same court subsequently distinguished Transworld Airlines, holding that frequent flyer mileage credits were "things of value" and could be construed as property for purpose of a criminal statute. United States v. Mullins, 992 F.2d 1472 (9th Cir. 1993), at 1476-77. The 10th and 5th Circuit Court of Appeals have also adopted this rationale. See, United States v. Schreier, 908 F.2d 645 (10th Cir. 1990), cert. denied, 112 L.Ed.2d 850 (1991); United States v. Loney, 959 F.2d 1332 (5th Cir. 1992). These holdings do not give us reason to change our position.

Regarding GSA's opinion about frequent flyer awards, we assume _____ referred to a discussion paper the GSA staff submitted to us in 1992, in connection with a request by the Senior Executives Association (SEA) that we reconsider the issue. The GSA staff paper was not intended as an official legal position of the agency, but rather a discussion of the legal issues involved. In fact, GSA has recently affirmed the government's policy against permitting employees to use promotional materials received from common carriers in connection with official travel for their own personal use, 41 C.F.R. §§ 301-1.103(b), and 101-25.103-2(a) (1993).¹ Moreover, the SEA request has been withdrawn and _____ belief that we would change our position in response to this request is in error.

In sum, we are not aware of any legal justification for _____ personal use of frequent flyer mileage credits obtained through official travel.

Sincerely yours,

Robert P. Murphy
Acting General Counsel

¹The Armed Forces have adopted this policy in their travel regulations. See, 1 Joint Federal Travel Regulations, para. U2010-B (Ch. 73, Jan. 1, 1993).