



U.S. Department of
Transportation

General Counsel

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

DEC 18 1985

Ms. Karen Haley
Riggs Air Service
Box 883
Sitka, Alaska 99835

Dear Ms. Haley:

Thank you for your recent letter regarding the applicability of Section 1113 of the Federal Aviation Act (Act) to local taxation of air taxi service. Specifically, you stated that the City and Borough of Sitka, effective November 1, 1985, imposed a 4% city sales tax on all air taxi service originating within Sitka. You asked whether or not Section 1113 preempts this tax and whether the legality of the tax depends on the destination of the air taxi's flights.

Based on this information, I believe that Section 1113 prohibits Sitka from levying such a tax on an air taxi's carriage of passengers, regardless of the origin or destination of the flights.

The section reads, in pertinent part:

State Taxation of Air Commerce

"(a) No State (or political subdivision thereof...) shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom...

"(b) Nothing in this section shall prohibit a State (or political subdivision thereof...) from the levy or collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services...."[Emphasis supplied]

Section 1113 was added to the Federal Aviation Act as part of the Airport Development Acceleration Act of 1973, which increased federal trust fund assistance for airport development and modernization and simultaneously curbed the freedom of states and localities to impose taxes and charges ultimately paid by the consumer.

By including references to "persons traveling in air commerce", Congress intended to restrict a state's power to tax intrastate air sales, including air taxi operations. "Air commerce" means:

"interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation of aircraft within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger the safety in, interstate...air commerce." (Section 101(4) of the Act). [Emphasis supplied].

Intrastate operations fall within the emphasized portion of this definition. (Massachusetts v. United States, 435 U.S. 444, 468 (1978) and Rosenhan v. United States, 131 F.2d 932, 935 (10th Cir. 1942), cert. denied, 318 U.S. 790). Indeed, acting under its authority to ensure safety in "air commerce," the Federal Aviation Administration regulates air taxi operators. (Section 103 and Title VI of the Act; 14 CFR 135). Moreover, the definition of "air commerce" is in contrast to the term "air transportation", which means only "interstate, overseas, or foreign air transportation, or the transportation of mail by aircraft." (Section 101(10) of the Act).

In a case raising the issue of state taxation of intrastate air sales, an Arizona state court held that Section 1113 preempts the authority of a state to assess a sales tax on within-state passenger transportation by air. The court concluded that direct or indirect state taxation of intrastate airline fares effectively was banned by the section's prohibition of taxes on the "carriage of persons traveling in air commerce." State ex rel. Arizona Department of Revenue v. Cochise Airlines, 626 P.2d 596, 599 (Ariz. App. 1981); see also Aloha Airline v. Director of Taxation of Hawaii, 104 S. Ct. 291, (1983), where the Supreme Court held that Section 1113 preempted a Hawaiian tax on airline gross income.

Thank you for giving me the opportunity to assist you.

Sincerely,

Jim J. Marquez

Jim J. Marquez
General Counsel

bcc: U.S. Attorney
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C-10:NKessler:mrh:472-5580:12/09/85
cc: C-1
C-10