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TRAVEL EXPENSES - AIR TRAVEL - FLY AMERICA ACT - APPLICABILITY JOINT TRAVEL REGULATIONS MAY BE REVISED TO INDICATE THAT SECTION 5 OF INTERNATIONAL AIR TRANSPORTATION FIR COMPETITIVE PRACTICES ACT (49 U.S.C. 1517) DOES NOT RESTRICT THE USE OF FOREIGN AIR CARRIERS WHEN SUCH TRANSPORTATION IS PAID FOR IN FULL BY A FOREIGN GOVERNMENT, INTERNATIONAL AGENCY OR OTHER ORGANIZATION EITHER DIRECTLY OR BY REIMBURSEMENT TO THE UNITED STATES. HOWEVER, THE MERCHANT MARINE ACT REQUIREMENT FOR USE OF VESSELS OF U.S. REGISTRY APPLIES REGARDLESS OF WHETHER THE TRANSPORTATION IS ULTIMATELY PAID FOR BY A FOREIGN GOVERNMENT, INTERNATIONAL AGENCY OR OTHER ORGANIZATION. FUNDS - NONAPPROPRIATED - INTERNATIONAL AIR TRANSPORTATION THE REQUIREMENT OF 49 U.S.C. 1517 FOR USE OF CERTIFICATED U.S. AIR CARRIER FOR GOVERNMENT FINANCED FOREIGN AIR TRANSPORTATION APPLIES NOT ONLY TO TRANSPORTATION SECURED WITH APPROPRIATED FUNDS BUT TO TRANSPORTATION SECURED WITH FUNDS "APPROPRIATED, OWNED, CONTROLLED, GRANTED, OR CONDITIONALLY GRANTED OR UTILIZED BY OR OTHERWISE ESTABLISHED FOR THE ACCOUNT OF THE UNITED STATES * * *." WHERE INTERNATIONAL AIR TRANSPORTATION IS SECURED WITH OTHER THAN APPROPRIATED FUNDS, AGENCIES SHOULD APPLY THE FLY AMERICA ACT GUIDELINES.

IN THE MATTER OF FLY AMERICA ACT-- REVISION OF JOINT TRAVEL REGULATIONS, JUNE 13, 1978:

THIS DECISION IS IN RESPONSE TO A LETTER DATED FEBRUARY 9, 1978, FROM THE ASSISTANT SECRETARY OF THE ARMY (MANPOWER AND RESERVE AFFAIRS) REQUESTING AN ADVANCE DECISION AS TO WHETHER THE JOINT TRAVEL REGULATIONS MAY BE REVISED TO INDICATE THAT THE PROVISIONS OF SECTION 5 OF THE INTERNATIONAL AIR TRANSPORTATION FAIR COMPETITIVE PRACTICES ACT OF 1974, PUBLIC LAW 93-623, JANUARY 3, 1975, 88 STAT. 2102, 2104, AMENDING THE FEDERAL AVIATION ACT OF 1958 BY ADDING SECTION 1117, 49 U.S.C. 1517 (SUPP. V, 1975), DO NOT APPLY TO FOREIGN AIR TRAVEL WHEN SUCH TRAVEL IS EITHER PAID FOR DIRECTLY AND IN FULL BY A FOREIGN GOVERNMENT OR INTERNATIONAL ORGANIZATION, OR PAID FOR OUT OF APPROPRIATED FUNDS WHICH ARE LATER REIMBURSED BY A FOREIGN GOVERNMENT. A DECISION IS ALSO REQUESTED CONCERNING THE REQUIREMENT IMPOSED BY 46 U.S.C. 1241(A) (1970) WITH RESPECT TO THE USE OF VESSELS REGISTERED UNDER THE LAWS OF THE UNITED STATES AND WHETHER THE JOINT TRAVEL REGULATIONS MAY BE REVISED TO EXEMPT FROM THAT REQUIREMENT TRANSPORTATION WHICH IS ULTIMATELY PAID FOR BY OTHER THAN THE UNITED STATES GOVERNMENT. THE PER DIEM, TRAVEL AND TRANSPORTATION ALLOWANCE COMMITTEE HAS ASSIGNED THIS MATTER PDTATAC CONTROL NO. 78-6.

THE AMENDMENT MADE BY SECTION 5 OF THE INTERNATIONAL AIR TRANSPORTATION FAIR COMPETITIVE PRACTICES ACT OF 1974 REQUIRES THE COMPTROLLER GENERAL TO DISALLOW ANY EXPENDITURES FROM APPROPRIATED FUNDS FOR PAYMENT FOR PERSONNEL OR CARGO TRANSPORTATION ON NONCERTIFICATED AIR CARRIERS (THOSE CARRIERS THAT DO NOT HOLD

CERTIFICATES UNDER SECTION 401 OF THE FEDERAL AVIATION ACT OF 1958, 49 U.S.C. 1371) "IN THE ABSENCE OF SATISFACTORY PROOF OF THE NECESSITY THEREFOR." IN ORDER TO CARRY OUT OUR RESPONSIBILITIES UNDER SECTION 5, OUR OFFICE ISSUED GUIDELINES ON JUNE 17, 1975, B-138942, REVISED MARCH 12, 1976, WHICH DIRECTED THE EXECUTIVE DEPARTMENTS, AGENCIES, AND INSTRUMENTALITIES OF THE UNITED STATES TO MODIFY THEIR CURRENT REGULATIONS CONCERNING GOVERNMENT-FINANCED COMMERCIAL FOREIGN AIR TRANSPORTATION. THE APPLICATION OF THESE GUIDELINES WAS LATER CLARIFIED IN 55 COMP.GEN. 1230 (1976), AND THEY ARE NOW REFLECTED IN VOLUME 1, JOINT TRAVEL REGULATIONS, PARA. M2150 (CHANGE 298, DECEMBER 1, 1977) AND VOLUME 2, JOINT TRAVEL REGULATIONS, PARA. C2204-4 (CHANGE 147, JANUARY 1, 1978).

THE PURPOSE BEHIND SECTION 5 OF THE INTERNATIONAL AIR TRANSPORTATION FAIR COMPETITIVE PRACTICES ACT OF 1974 IS TO COUNTERBALANCE THE ADVANTAGES MANY FOREIGN AIRLINES ENJOY BY VIRTUE OF FINANCIAL INVOLVEMENT AND PREFERENTIAL TREATMENT BY THEIR RESPECTIVE GOVERNMENTS. THUS, THE CLEAR INTENT OF CONGRESS WAS FOR UNITED STATES GOVERNMENT-FINANCED FOREIGN AIR TRANSPORTATION TO BE ACCOMPLISHED BY CERTIFICATED UNITED STATES AIR CARRIERS TO THE GREATEST EXTENT POSSIBLE. 55 COMP.GEN. 1230, 1232. WE FIND NOTHING IN THE ACT OR ITS LEGISLATIVE HISTORY TO SUGGEST THAT A GOVERNMENT EMPLOYEE OR ANY OTHER PERSON IS REQUIRED TO USE CERTIFICATED UNITED STATES AIR CARRIERS WHEN NO EXPENDITURE OF GOVERNMENT REVENUES IS INVOLVED. THIS INTENT TO LIMIT THE SCOPE OF THIS PROVISION TO THOSE OCCASIONS WHEN GOVERNMENT FUNDS ARE EXPENDED IS REFLECTED IN S. REP. NO. 1257, 93 CONG., 2D SESS. 9 (1974) WHERE IT IS STATED:

WE DO NOT SUGGEST, OF COURSE, THAT U.S. BUSINESS TRAFFIC OUGHT TO BE RESERVED EXCLUSIVELY FOR U.S. FLAG AIRLINES. BUT IT CERTAINLY IS IN ORDER TO REQUIRE THAT ALL GOVERNMENT-FINANCED TRANSPORTATION IS ACCOMPLISHED ON U.S. FLAG AIRLINES WHEREVER AND WHENEVER POSSIBLE.

WITH RESPECT TO TRANSPORTATION SECURED ON BEHALF OF A FOREIGN NATION OR INTERNATIONAL AGENCY, SECTION 5 IMPOSES THE REQUIREMENT TO USE CERTIFICATED UNITED STATES AIR CARRIERS FOR FOREIGN AIR TRANSPORTATION ONLY IN THOSE CASES WHERE INTERNATIONAL AIR TRANSPORTATION IS FURNISHED:

* * * TO OR FOR THE ACCOUNT OF ANY FOREIGN NATION, OR ANY INTERNATIONAL AGENCY OR OTHER ORGANIZATION OF WHATEVER NATIONALITY, WITHOUT PROVISION FOR REIMBURSEMENT * * *

IN VIEW OF THE CLEAR STATUTORY LANGUAGE AND ITS PURPOSE, WE CONCLUDED THAT THE JOINT TRAVEL REGULATIONS MAY BE REVISED TO INDICATE THAT 49 U.S.C. 1517 AS ADDED BY SECTION 5 OF THE INTERNATIONAL AIR TRANSPORTATION FAIR COMPETITIVE PRACTICES ACT OF 1974 DOES NOT APPLY TO FOREIGN AIR TRANSPORTATION PAID FOR DIRECTLY AND IN FULL BY A FOREIGN GOVERNMENT, INTERNATIONAL AGENCY OR OTHER ORGANIZATION, OR WHEN THE EXPENSE FOR SUCH TRAVEL IS PAID OUT OF FUNDS WHICH ARE LATER REIMBURSED BY A FOREIGN GOVERNMENT, INTERNATIONAL AGENCY, OR OTHER ORGANIZATION. WHERE TRANSPORTATION COSTS ARE INITIALLY PAID BY THE UNITED STATES, THE REQUIREMENT TO USE CERTIFICATED AIR CARRIER SERVICE DOES NOT APPLY ONLY WHEN THERE IS A SPECIFIC PROVISION FOR REIMBURSEMENT TO THE UNITED STATES FOR THE COST OF THE TRANSPORTATION INVOLVED.

IT IS NOTED THAT ALTHOUGH THE FLY AMERICA GUIDELINES REFERRED TO ABOVE APPLY TO TRANSPORTATION SECURED WITH APPROPRIATED FUNDS, THE REQUIREMENT OF 49 U.S.C. 1517 FOR USE OF AVAILABLE CERTIFICATED AIR CARRIER SERVICE APPLIES MORE BROADLY TO TRANSPORTATION SECURED WITH FUNDS "APPROPRIATED, OWNED, CONTROLLED, GRANTED, OR CONDITIONALLY GRANTED OR UTILIZED BY OR OTHERWISE ESTABLISHED FOR THE ACCOUNT

OF THE UNITED STATES." IMPLEMENTING THE FLY AMERICA ACT PROVISIONS WITH RESPECT TO TRANSPORTATION PROCURED WITH OTHER THAN APPROPRIATED FUNDS, AGENCIES SHOULD APPLY THE STANDARDS SET FORTH IN THE FLY AMERICA ACT GUIDELINES.

REGARDING THE APPLICATION OF THE SUGGESTED RULE TO TRAVEL ABOARD SHIPS NOT REGISTERED UNDER THE LAWS OF THE UNITED STATES, SECTION 901(A) OF THE MERCHANT MARINE ACT OF 1936, JUNE 29, 1936, CH. 858, 49 STAT. 1985, 2015 AS AMENDED, 46 U.S.C. 1241(A) PROVIDES:

(A) ANY OFFICER OR EMPLOYEE OF THE UNITED STATES TRAVELING ON OFFICIAL BUSINESS OVERSEAS OR TO OR FROM ANY OF THE POSSESSIONS OF THE UNITED STATES SHALL TRAVEL AND TRANSPORT HIS PERSONAL EFFECTS ON SHIPS REGISTERED UNDER THE LAWS OF THE UNITED STATES WHERE SUCH SHIPS ARE AVAILABLE UNLESS THE NECESSITY OF HIS MISSION REQUIRES THE USE OF A SHIP UNDER A FOREIGN FLAG: PROVIDED, THAT THE COMPTROLLER GENERAL OF THE UNITED STATES SHALL NOT CREDIT ANY ALLOWANCE FOR TRAVEL OR SHIPPING EXPENSES INCURRED ON A FOREIGN SHIP IN THE ABSENCE OF SATISFACTORY PROOF OF THE NECESSITY THEREFOR.

SINCE THAT PROVISION APPLIES TO ALL OFFICIAL TRAVEL OF OFFICERS AND EMPLOYEES OF THE UNITED STATES AND TRANSPORTATION OF THEIR PERSONAL EFFECTS WITHOUT REGARD TO THE SOURCE OF FUNDS USED TO PAY FOR THE TRANSPORTATION, NO GENERAL EXCEPTION TO ITS RESTRICTIONS MAY BE MADE BASED UPON THE FACT THAT FUNDS USED TO PAY FOR TRAVEL ARE THOSE OF A FOREIGN NATION OR INTERNATIONAL ORGANIZATION.

ALTHOUGH IN B-185465, MAY 7, 1976, WE HELD THAT THE GENERAL PROHIBITION AGAINST THE USE OF FOREIGN FLAG CARRIERS APPLIED TO THOSE SITUATIONS WHERE THE APPROPRIATED FUNDS EXPENDED WERE RECOVERABLE IN FULL FROM A FOREIGN GOVERNMENT, THE TRAVEL INVOLVED IN THAT CASE PREDATED ENACTMENT OF PUBLIC LAW 93-623 AND THE DECISION WAS SPECIFICALLY PREDICATED UPON THE THEN CURRENT PROVISION OF THE JOINT TRAVEL REGULATIONS IMPLEMENTING SENATE CONCURRENT RESOLUTION 53, 76 STAT. 1428, EXPRESSING THE SENSE OF CONGRESS THAT TRAVEL BY OFFICERS AND EMPLOYEES ON OFFICIAL BUSINESS BE PERFORMED ON U.S. AIR CARRIERS. IT THEREFORE POSES NO IMPEDIMENT TO A REVISION OF THE PRESENT REGULATIONS BASED ON THE FOREGOING DISCUSSION.