

Client Bulletin

March 2008

Class Action Lawsuits Against Two Foreign Airlines for Improper Collection of Taxes Dismissed on Preemption Grounds

Plaintiff, a California resident with citizenship in both the United States and Mexico, filed a federal class-action lawsuit against two Mexican air carriers. The plaintiff sought to recover Mexican tourist taxes collected by the carriers from all passengers who traveled between California and Mexico during the last ten years and who paid the tax but were exempt because of their status as Mexican citizens.

The air carriers were collecting the tax pursuant to an agreement with the Mexican government to which most, if not all, airlines operating from the United States into Mexico are parties. Under the agreement, the carriers collected the tax and remitted the collections quarterly to the Mexican government.

The airlines filed motions for summary judgment arguing that the Airline Deregulation Act (ADA) preempted plaintiff's claims. The ADA preempts all claims which affect "rates, routes, and services." The defendant airlines argued that the plaintiff's lawsuit was an attempt to impose an obligation on the carriers to advise passengers of their rights under Mexican law and to ensure that passengers who were exempt from the tax did not pay it. By attempting to impose this obligation on them, the airlines asserted that the claim had a direct effect on the airlines

"rates, routes, and services" and was preempted by the ADA.

The plaintiff argued that the ADA did not apply because the airlines had voluntarily undertaken a contractual duty to collect only such fees and taxes which the passengers were actually obligated to pay. Plaintiff also alleged that the airline undertook a contractual obligation to advise the passengers that they were not required to pay the tax if they were Mexican citizens or persons who were otherwise exempt. The plaintiff alleged that the contractual obligation was contained in the language of the airlines' website which stated that the amounts which the airlines collected included fees and taxes which were due the Mexican government. Since these fees and taxes were not "due" the Mexican government, the airlines breached their contractual obligation to the passengers.

The district court rejected the plaintiff's argument and granted summary judgment in favor of both carriers dismissing all of plaintiff's claims. The court concluded that the airlines' activities in collecting the taxes were governed by the ADA. Specifically, the court held that the plaintiff's attempt to hold the airline responsible for determining the tax-exempt status of its passengers constituted an infringement of the airlines' management of its "rates, routes, and services" and was thereby preempted under the ADA.



If you have any questions or would like further information concerning the obligations of an air carrier to collect taxes owing to foreign sovereigns, please contact:

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