

Congress of the United States

Washington, DC 20510

February 6, 2014

Mr. Jacob Lew, Treasury Secretary
Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

Mr. John Koskinen, Commissioner
Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC 20224-0002

Re: Alaska Air Carriers Aviation Excise Tax Issue

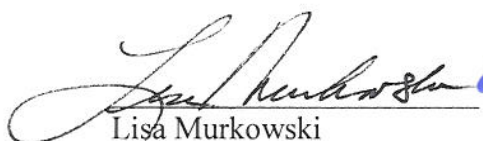
Dear Secretary Lew and Commissioner Werfel:

Last September, we wrote to you expressing serious concern about a problem that continues in Alaska related to unprecedented and burdensome audits against several Alaskan small air carriers for alleged non-collection and remittance of certain aviation excise taxes under Section 4261 of the Internal Revenue Code. In December, then Acting Commissioner Werfel acknowledged receipt of our letter and promised a response by the end of January. No response has been received. For your convenience, copies of these letters are attached.

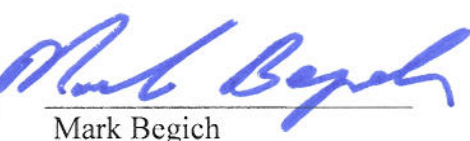
The IRS has done nothing to address the problems we first communicated more than a year ago. Assurances were made to suspend audits while this matter was being resolved, yet the audits continue. *This is unacceptable—especially while this problem remains unresolved.* We therefore demand that you suspend all current, ongoing and potential future audits of the Alaska aviation industry pending resolution of this matter and we request your written assurance to do so effective immediately. This is the only just, fair and appropriate action to take while your agency continues to work on its response to the Delegation.

We look forward to your immediate response.

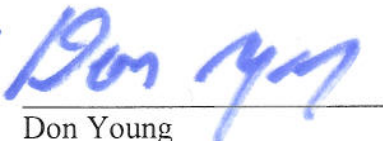
Sincerely,



Lisa Murkowski
U.S. Senator



Mark Begich
U.S. Senator



Don Young
Congressman for All Alaska

Congress of the United States

Washington, DC 20510

September 19, 2013

Mr. Jacob Lew, Treasury Secretary
Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

Mr. Daniel L. Werfel, Acting Commissioner
Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC 20224-0002

Dear Secretary Lew and Commissioner Werfel:

We write today with great concern about a problem we brought to your attention more than a year ago. This issue involves unprecedented and burdensome tax audits against several Alaska small air carriers for alleged non-collection and payment of certain aviation excise taxes pursuant to 26 U.S.C. § 4261. These small businesses primarily operate small piston and turbo-prop aircraft under Part 135 of the Federal Aviation Regulations (FAR) and primarily offer flightseeing operations. Despite our involvement, it appears little has changed.

Last year, a meeting was held between representatives of the IRS and our offices. As a result of that joint meeting, it was clear there was ambiguity in the new manner in which the IRS was re-interpreting and applying the excise tax to assess past tax liability. The IRS representatives present indicated further analysis was needed to address the ambiguity and a commitment was made to engage in public outreach to members of the Alaska air carrier community to educate and inform potential taxpayers of the IRS's new interpretation. Preliminary efforts were made to share the IRS's legal analysis with our offices, but that document (a memo dated July 25, 2012) states clearly that it may not be relied upon or cited as precedent. While we do not believe the analysis in that memorandum addresses the actual problem (differences between terminology used in the tax code versus how the FAA regulates these air carriers), the commitment to engage in public outreach and educate the Alaskan small air carriers industry has not occurred. Consequently, clear guidance is still lacking and ambiguity remains in the tax code.

Part of the problem is the unprecedented nature of these audits. None of the businesses audited were previously aware there was a duty to collect and remit these taxes. According to one business, that has been in the business for more than 40 years and was one of the first subjects of these audits, they had never before been required to collect this excise tax. These are not tax evaders. These small air services, for years, have acted under the guidance and practice that they qualify for exemptions to this excise tax.


The excise tax that is now being enforced against Alaska air carriers retroactively is problematic in another way: the tax, if it is required to be collected, is paid by the passenger. While the businesses now being audited were never required to collect this tax before, the retroactive applications of the audits means they cannot go back and collect this tax but are responsible to pay it now.

Finally, these audits appear extraordinarily onerous and punitive in the way they are being carried out. Three out of six aviation businesses that were audited have gone out of business as a direct consequence of the taxes, penalties and interest being assessed in these audits. Another report indicates auditors are choosing the most inconvenient times to conduct audits and then delaying finalization at the expense of business owners. In at least one instance, our offices were informed that the IRS began an audit in the summer of one year, left, did not return to complete the audit until the next summer and then assessed the taxpayer penalties and interest for the intervening months while the agent was away. These actions are very burdensome on small businesses. Further, we understand there are two new audits currently in progress.


We are deeply concerned that these reports paint a picture of your agents engaging in intimidating, burdensome and abusive behavior while refusing to provide clear guidance as to what is required under the tax code. Prospective application may be one thing when discussing a new interpretation of the code, but lack of guidance and a failure to communicate to the taxpayer after acknowledging the problem makes retroactive application, including assessing of penalties and interest, unjust.

We previously communicated these concerns to you, but the problem is getting worse. In light of the above, we request that Commissioner Werfel meet with us to provide justification for continuing these audits. Please contact Kristen Daimler-Nothdurft in Senator Murkowski's office at 202-224-6665, Maya Ashwal in Senator Begich's office at 202-224-3004, and Alana Wilson at 202-225-5765 to arrange a meeting.

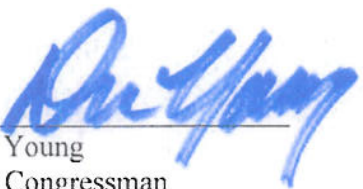
Sincerely,



Lisa Murkowski
U.S. Senator



Mark Begich
U.S. Senator



Don Young
U.S. Congressman



COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

December 20, 2013

The Honorable Lisa Murkowski
United States Senate
Washington, DC 20510

Attention: Kristen Daimler-Northdurft

Dear Senator Murkowski:

I apologize for the delay in responding to your letter dated September 19, 2013. You wrote about excise tax audits of several small air carriers in Alaska where the IRS examined the treatment of certain aviation excise taxes.

Unfortunately, we have not completed our review of this issue. We hope to get you a final response in January.

If you have any questions, please contact John M. Dalrymple, Deputy Commissioner for Services and Enforcement, at (202) 317-4263. I am also writing to Senator Begich and Congressman Young.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel I. Werfel".

Daniel I. Werfel
Acting Commissioner