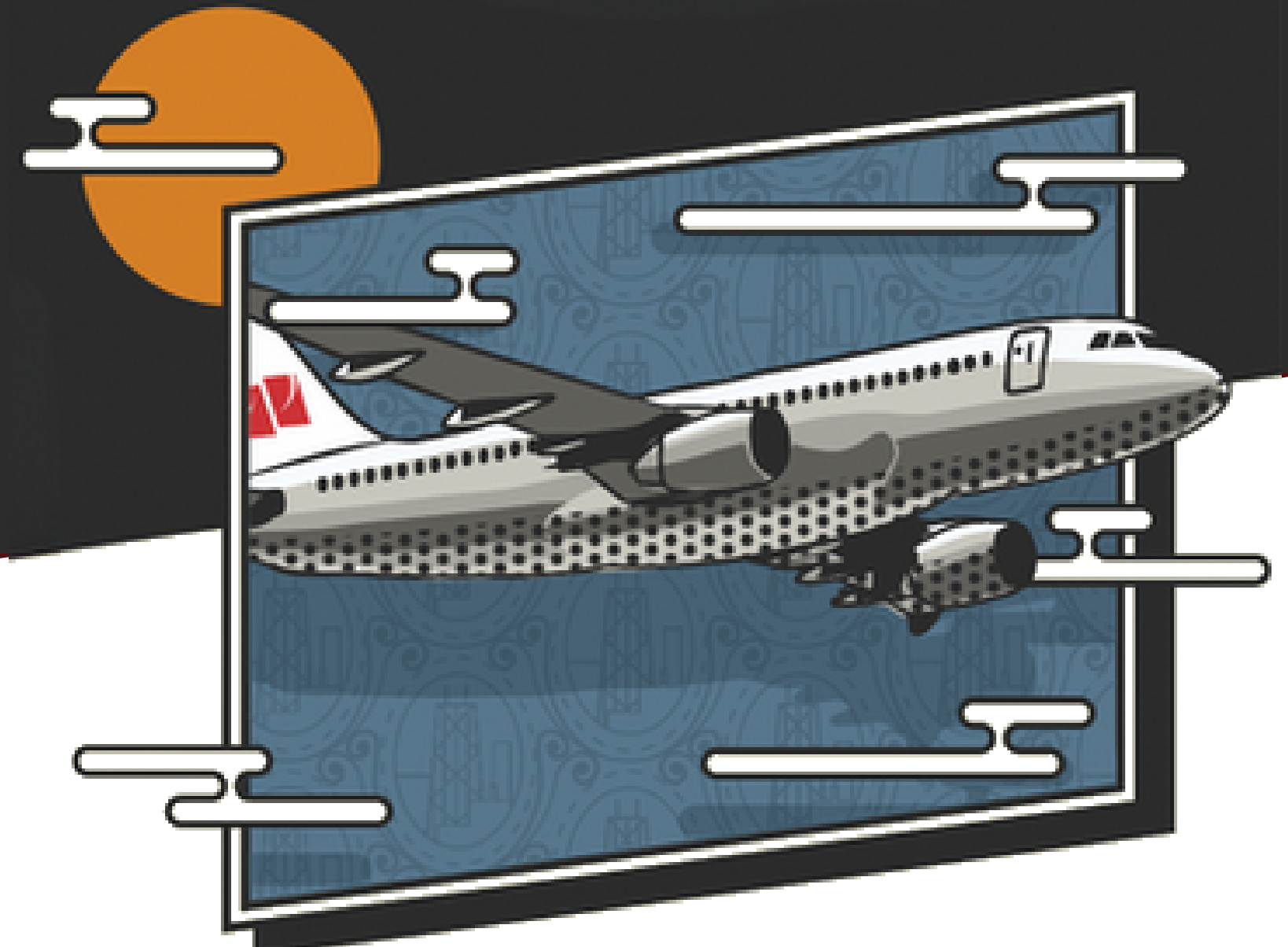


40th Annual
Airport Law Workshop



Session #3

Fundamentals: Regulation of Airport Revenue and Use of Airport Funds

Speakers

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Overview

Regulation of airport revenue and use of airport funds

- Basic obligation to operate as a **closed fiscal system**.
- Where is the law?
- Airport revenue
 - What are the permissible uses?
 - What are the prohibited uses?
 - What kind of records and reports must be kept?
 - How are obligations monitored and enforced?
- And some closely related topics...

Airport Revenue Use

The fundamental rule



Sources of Authority

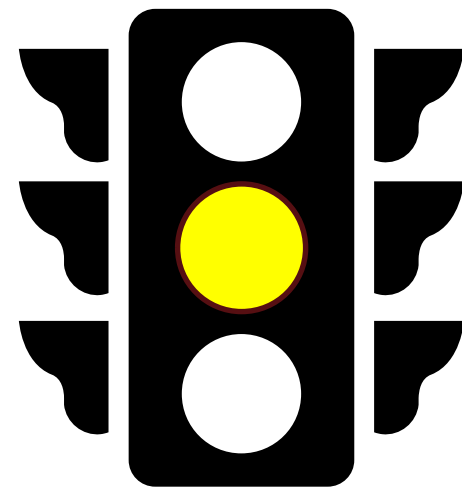
- Governing Statutes/Legislative History
 - Airport and Airway Improvement Act of 1982 (AAIA)
 - Airport and Airway Safety and Capacity Expansion Act of 1987
 - FAA Authorization Act of 1994
 - FAA Reauthorization Act of 1996
- Codified at 49 U.S.C. §§ 47107(b)(1), 47133
- 64 Fed. Reg. 7696 (Feb. 16, 1999) (FAA Revenue Use Policy)

What is “airport revenue?”

All fees, charges, rents, or other payments received by or accruing to the sponsor for the right to conduct an activity on the airport or use or occupy airport property, for the sale or other transfer of airport property, or from the sponsor’s aeronautical activities.

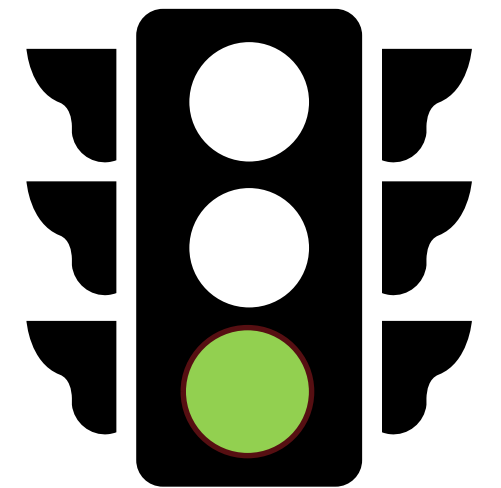
Airport Revenue:

- Airline Charges
- Land/Facility Rent
- Landing Fees
- Concession Fees
- Parking Revenue
- Mineral Rights
- Taxes on Aviation Fuel*



Not Airport Revenue:

- Property Tax
- Other Sales Tax
- Hotel Taxes
- Parking Citations
- (Some) Rental Car Fees
- Tenants’ Revenues



Permitted Uses of Airport Revenue

General rule

- Operating and capital costs of:
 - The airport
 - The airport system
 - Other facilities **owned or operated by the airport sponsor** and **directly and substantially related** to transportation by air of passengers and cargo
- Includes direct and indirect costs



Permitted Uses of Airport Revenue

Allocation of indirect costs

- Cost Allocation Plan consistent with 2 CFR Part 200 Subpart E
- Costs allocated must be eligible for expenditure of airport revenue under section 47107(b)
- May not indirectly bill costs through the cost allocation plan that are also billed directly to the airport

Permitted Uses of Airport Revenue

Common examples

- Airfield pavement projects
- Construction of facilities on airport property
- Airport employee salaries and benefits
- Utilities for the terminal building
- Marketing expenses related to the airport
- Costs incurred by government officials
- Portions of ground access projects
- Structured air carrier incentive programs
- Generally applicable tax assessments
- Lobbying and attorney fees



Permitted Uses of Airport Revenue

More examples

- Promoting the airport and its services
 - Public & Industry Awareness
- Reimbursement for owner/operator contribution to capital and operating costs
- Community activities



Prohibited Uses

Unlawful revenue diversion

Unlawful revenue diversion is the use of airport revenue for purposes *other* than the capital or operating costs of an airport (where no grandfathering exception applies).

Common Examples

- Payments exceeding reasonable value to the airport
- General economic development
- Inconsistent cost allocation formulae
- Non aeronautical uses at less than fair market value
- Minimum revenue guarantee programs



Recordkeeping

Grant Assurance 13

- Fully disclose the amount and disposition the total cost
- Maintain evidence to support direct and indirect charges to the airport
- The accounts and records shall be kept in accordance with the Single Audit Act of 1984



Unlawful Revenue Diversion

Limited exceptions

- Revenue diversion violates federal law and AIP grant assurances unless:
 1. It is grandfathered within the scope of grandfathered financial authority established before 1982, or,
 2. It is authorized under an exemption issued by the FAA as part of the Airport Investment Partnership Program



Unlawful Revenue Diversion

FAA's investigatory authority

- The FAA has the authority to:
 - Receive/investigate complaints
 - Conduct informal (Part 13) and formal (Part 16) compliance proceedings
 - Compel sponsors to produce evidence
 - Conduct audits by the DOT/OIG



Unlawful Revenue Diversion

Enforcement and Remedies

- **Administrative**

- ACO will first seek corrective action by the sponsor
 - May withhold approval of an application for future grants
 - May withhold payments under existing grants
 - May withhold approval of any new application to impose a passenger facility charge

- **Civil Penalties**

- FAA may seek a civil penalty up to three times the amount of unlawful revenue diversion.
 - >\$50k, FAA must file civil action in U.S. district court

Unlawful Revenue Diversion

Statute of Limitations

The statute of limitations prevents the recovery of funds illegally diverted more than six years after the illegal diversion occurs. (See 49 U.S.C. § 47107(m)(7))



Specific topics

State and local taxes on aviation fuel

- Airport revenue includes state or local taxes on aviation fuel (except taxes in effect on December 30, 1987).
- In addition to other permitted uses of airport revenue, state or local taxes can be used to support a state aviation program, or on- or off-airport noise mitigation.
- Many pending **Fuel Tax Action Plans**.



Specific Topics

Nonaeronautical use of the airport

- Generally, must receive fair market value (FMV)
- Determined *only* by appraisal
 - See [Compliance Guidance Letter 2018-03](#), *Appraisal Standards for the Sale and Disposal of Federally Obligated Airport Property*

Fair Market Value: “The highest price estimated in terms of money that a property will bring if exposed for sale in the open market allowing a reasonable time to find a purchaser or tenant who buys or rents with knowledge of all the uses to which it is adapted and for which it is capable of being used.”

Specific Topics

Exceptions to the FMV obligation

- Community purposes
 - Enhances public acceptance
 - Would not otherwise produce revenue
 - Does not preclude airport reuse
 - No capital or operating costs
- Non-profit aviation organizations
 - Reasonably justified by the tangible or intangible benefits to airport
- Public transit projects



Specific Topics

Non-airport revenues

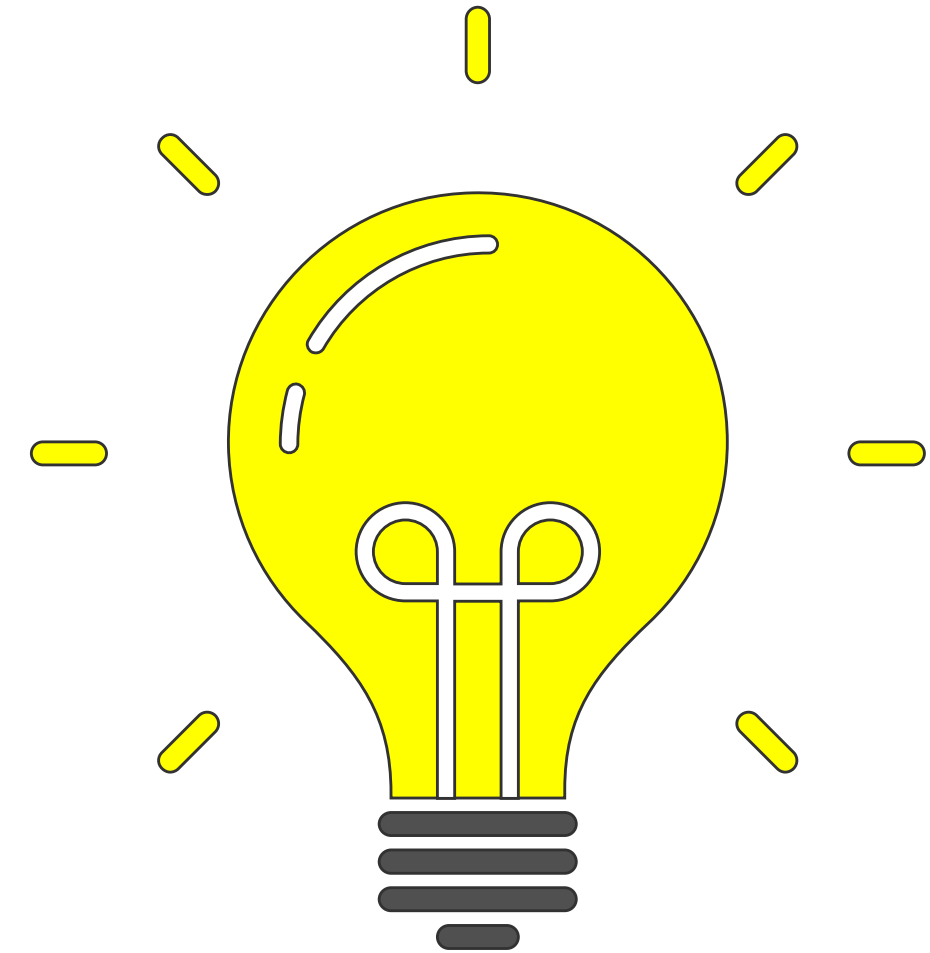
- Not subject to *Revenue Use Policy*
- Handling of non-airport revenues must be consistent with Grant Assurance 22
- Common example: Airline Subsidies
 - Sponsors role limited to technical assistance



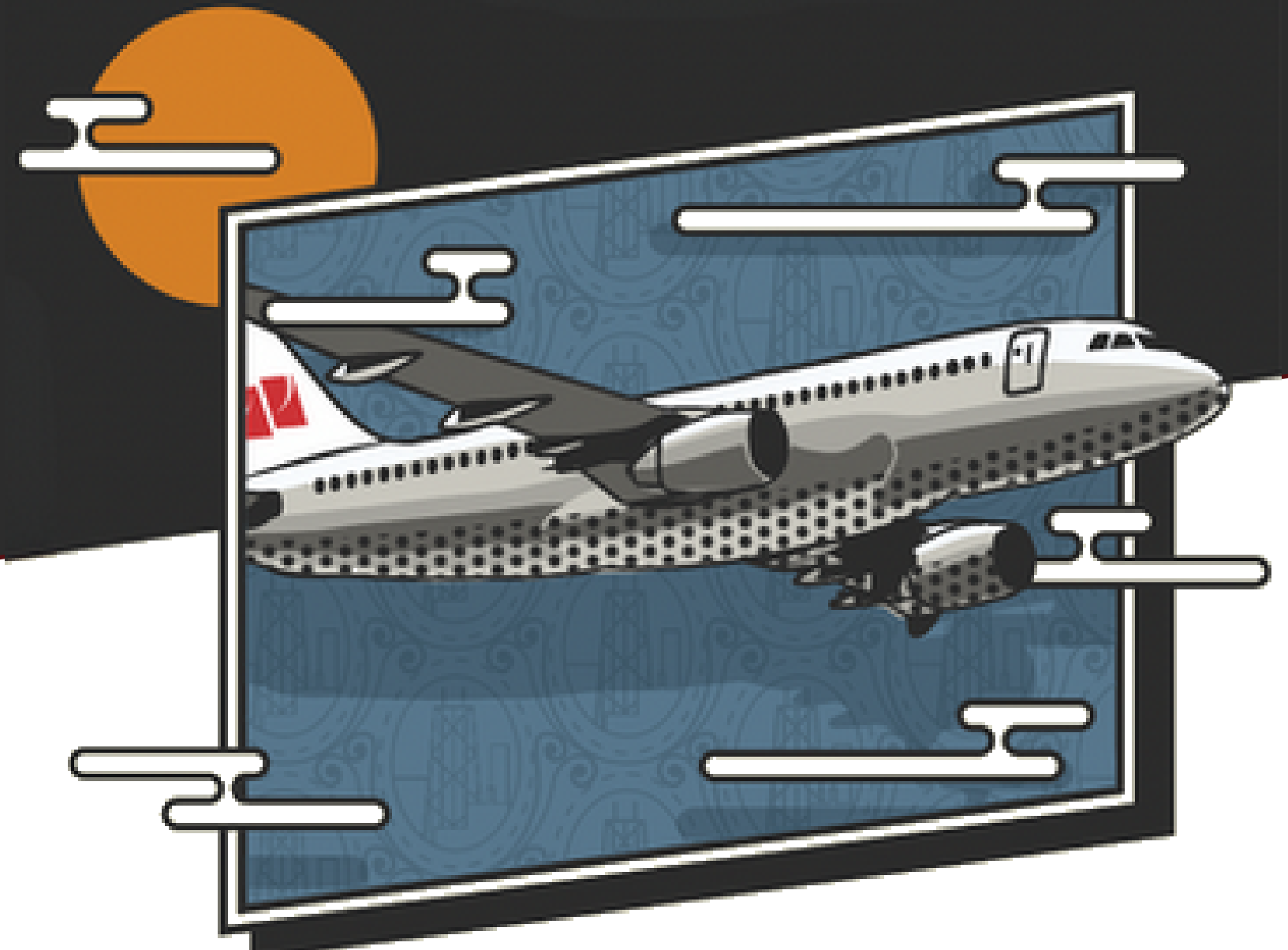
Summary

Key takeaways to ensure compliance

- Document all revenue and expenses
- No comingling
- FMV for non-aeronautical uses
- Educate officials and non-sponsors



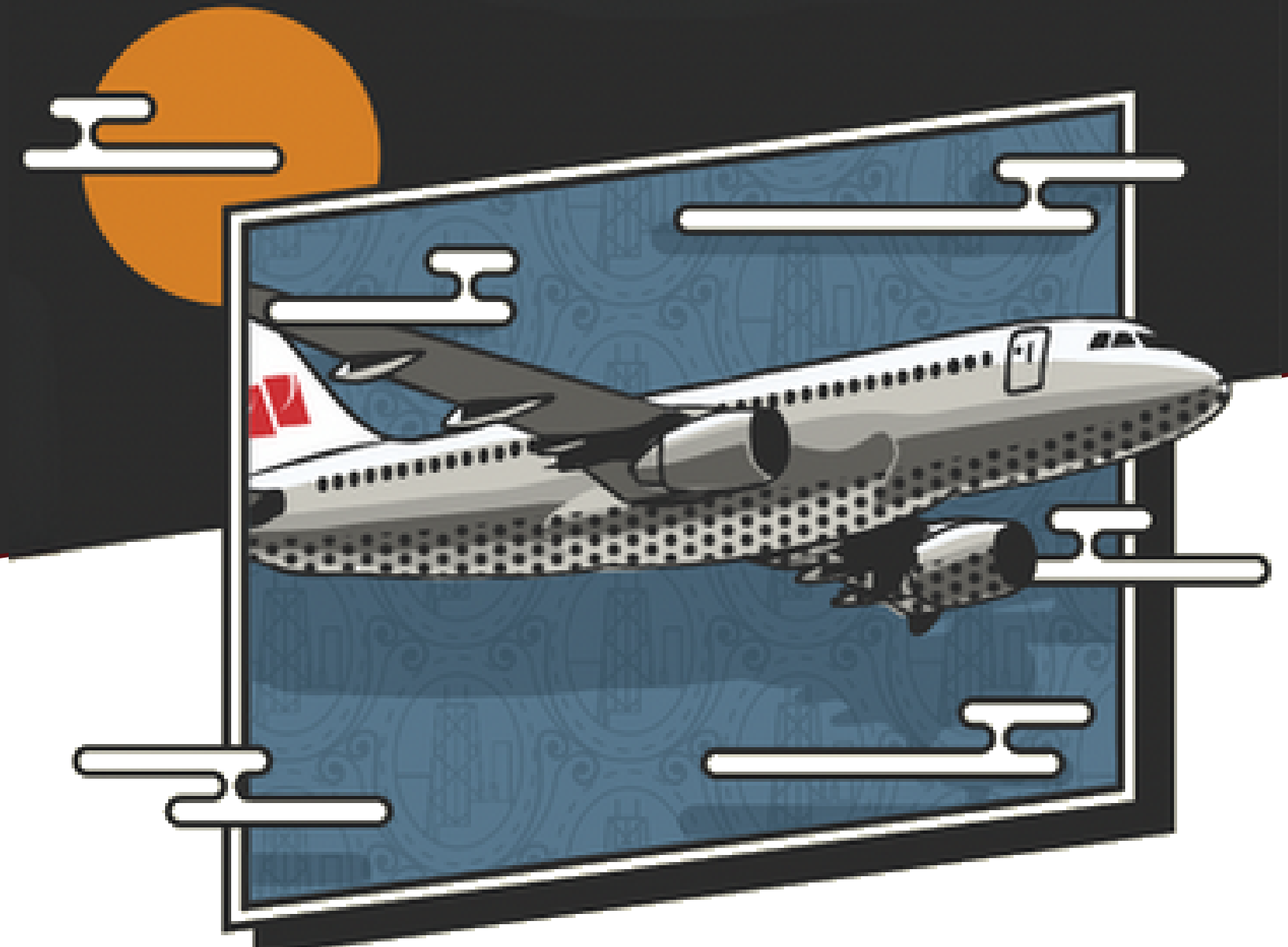
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QUESTIONS?



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THANK YOU!