

## Relief from the ATSC for Charitable Flights

2016 Federal Budget: Submission seeking an exemption from the Air Travellers Security Charge for flights provided by registered Canadian charities

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# Relief from the ATSC for Charitable Flights

## Executive Summary

The Air Travellers Security Charge (the “ATSC”) is an onerous levy paid by Hope Air on behalf of our clients: fellow Canadians who, on average, live at or below the national “poverty line” and find that where they live in Canada has become an obstacle for them accessing our universal health system.

To support families and help vulnerable Canadians to equally access vital healthcare, Hope Air recommends that the Government of Canada amend the Air Travellers Security Charge Act to exempt Canadian registered charities from the ATSC when such charity is providing free flights to low-income Canadians who are travelling to required medical appointments.

Hope Air’s charity mission is to arrange free flights for Canadians who are in financial need and must travel to healthcare.

## The Societal Need across Canada

Canada is a country of vast distances and our universal healthcare system starts at the front door of the hospital, treatment centre or specialist’s office. Fellow Canadians who live in communities far from larger urban centres face enormous challenges in accessing the healthcare they need. They frequently face long-distance travel to get to their medical appointments, at their own expense, and in winter risk dangerous long drives. Long-distance travel to healthcare puts low-income Canadians at risk as they often decide to cancel or delay treatment due to the travel costs. It also takes people away from work, school, family and community much longer than necessary.

Canadians who need to fly for non-emergency medical care, but cannot afford the price of the flight, rely upon the scarce charitable resources of Hope Air to provide for free air transportation to enable them safe and efficient access to their vital medical care. Full relief from the ATSC should be provided to registered charities that provide Canadians with any such flights.

## Previous ATSC exemption was helpful, but did not provide for all concerned

Under the Air Travellers Security Charge Act<sup>1</sup>, every person who acquires air transportation services from a designated air carrier is required to pay an air travellers security charge (“ATSC”). There are various provisions under the Act whereby the ATSC is not chargeable, such as:

- a) if the air service is in the course of an air ambulance service; or
- b) where a registered charity acquires transportation services from a carrier for no consideration and, in turn, donates the services to an individual for no consideration in pursuit of its charitable purposes.

Hope Air has partially benefited from the current ATSC exemption as described in b) above; however, such does not address the full societal concern nor cover fully the ways this charity sources its flights. The exemption in b) above is solely focused on flights donated by an air carrier. In light of the changing economic times and the impact felt by Canada’s airlines during the past several years, Hope Air has had

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<sup>1</sup> Under subsections 11(1) and 11(2) of the Air Travellers Security Charge Act<sup>1</sup>, 2002, c.9, s.5 as amended (the “Act”)

to modify its operating model so that it does not rely solely upon flights donated by the commercial airlines. Through innovative collaborative funding arrangements and increased private sector donor participation, Hope Air is now purchasing flights with donated funds to meet the increased demand. Under the current relief legislation, these purchased flights are not exempted from the ATSC. The key point is that “how” Hope Air provides these vulnerable Canadians with a free flight should not be a criterion as to whether the ATSC levy is exempt (i.e. whether the flights were donated by an airline or purchased by Hope Air). For example, in 2015 Hope Air provided 11,200 free flights to low-income Canadians: 33% were donated by airlines (and were thus exempted from the ATSC fee) and 67% were purchased by Hope Air using donations from our generous donors.

It is our submission that every flight provided by a registered charity in pursuit of its stated charitable purpose, and provided at no cost to the recipient, should be exempt from the ATSC – regardless of how that flight has been obtained by the charity (through donation by an airline, purchase by the charity through funds it has raised for its mission, by the redemption of loyalty points by the charity or otherwise). The flight is being provided, for no consideration, to a fellow Canadian who has found it necessary to seek charity support due to cost and distance barriers when needing to access non-emergency medical care. The goal of the Government should be to ensure that financially disadvantaged Canadians have equal access to healthcare regardless of their geographical home community.

An example of one way Hope Air provides free flights to vulnerable Canadians is through the donation of loyalty points. In 2010/2011 the Ministry of Revenue enforced its strict reading of the exemption b) above and denied the ATSC exemption for flights sourced by Hope Air through donated loyalty points. In the ruling by the Federal Tax Court, the concept of what is “just” and “in the public interest” was referenced by The Honourable Chief Justice Rip<sup>2</sup> in the final paragraph of his judgement:

“Hope Air provides a valuable and essential service to people who need it... For whatever reason, Parliament did not exempt from the [ATSC] charge the use of points as consideration for the flights...As a result, the money available for Hope Air to carry on its charitable activities is reduced to the extent it is forced to pay charges on the flights it acquires for its charitable works. The Crown may wish to consider whether, in such circumstances, it is just to return the charges or whether it is in the public interest to remit the amount of the charges to Hope Air pursuant to ... the Financial Administration Act.” [Emphasis added].

### **Recommendation for legislative change**

To address the specific concern raised here, and to support families and help vulnerable Canadians to access healthcare, Hope Air recommends that the Government of Canada amend, effective retroactively to April 1, 2002, Section 11 (2) of the Air Travellers Security Charge Act, 2002, c.9, s.5 as amended, to read:

11 (1.1) No charge is payable in respect of an air transportation service that is acquired:  
(b) by a person from a registered charity, for no consideration, if the service is provided by the charity in pursuit of its charitable purposes.

Further, to conform to previous amendments, and to provide for equitable treatment, it is proposed that the amendment be made effective retroactively to April 1, 2002 when the ATSC legislation was implemented.

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<sup>2</sup> 2011 TCC 248

## Impact on vulnerable Canadians

By taking action in the 2016 Budget to exempt the ATSC levy on charitable flights, the Government will:

1. be recognizing that access to healthcare is a vital matter and should not be dependant on where you live in Canada or how much money you have;
2. be proactively addressing the comments made by The Honourable Chief Justice Rip when he referred to what is “just” and what “is in the public interest”;
3. be acknowledging to all ten provincial governments which support Hope Air financially that the federal government will take proactive legislative action to participate in enabling better access to Canada’s universal healthcare system;
4. be proactively responding to the recommendation contained in the report from the House of Commons of the Standing Committee on Finance (41<sup>st</sup> Parliament, Second Session) which provided:

“That the federal government examine the feasibility of amending the *Air Travellers Security Charge Act* to exempt Canadian registered charities from the air travellers security charge when the charity is providing a free flight to a low-income Canadian who is travelling to a required medical appointment.”<sup>3</sup>
5. be recognizing how the public sector and the not-for-profit sector can work effectively and efficiently together to provide meaningful social programs and assistance; and
6. be providing additional funding through such legislative relief so that Hope Air can continue to ensure its charity work across Canada directly benefits those who are struggling financially and also facing difficult healthcare challenges.

## Impact on federal tax revenue

The annual number of charity flights provided by Hope Air each year will vary; assuming the number of charity flights provided by Hope Air in 2016 is 12,000 flights to needy Canadians, and assuming the ATSC rate remains at \$7.12 per one-way flight, the requested legislative relief would be \$85,440 (plus HST) for 2016.

It should be noted that Hope Air is the unique registered charity in Canada which provides charitable flights on a national basis, and it is not aware that there are other charities which seek legislative relief for the ATSC as contemplated here.

It should also be noted that Transport Canada on its web site has provided estimates that ATSC revenues in fiscal 2013/14 exceeded expenses by \$42 million and that in the fiscal 2014/15 ATSC revenues may exceed expenses on air travel security by \$74 million<sup>4</sup>.

## About Hope Air

Hope Air is the only registered nation-wide charity that provides free flights to individuals who cannot afford the cost of a plane ticket to fly to required healthcare treatment far from home.

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<sup>3</sup> <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6830258&Language=E>

<sup>4</sup> <http://www.tc.gc.ca/eng/aviationsecurity/page-181.htm>

Since its founding in 1986, Hope Air has arranged over 100,000 free flights, and has grown to become a national resource for individuals of all ages suffering from a wide range of illnesses. Over the years Hope Air had forged strong partnerships with national and regional airlines which enable it to keep costs low and offer more flights. Hope Air estimates that for every one client it directly supports with a flight, it positively impacts at least fifty people in their community who have a vested interest in that client's need to access healthcare. This includes parents, siblings, other family members and friends, teachers, social workers, and healthcare providers. Almost half of the flights Hope Air provides are for children and their parent or guardian; many of whom live in a household where the average income is close to their community's low-income line. This means that many of the families Hope Air helps devote a larger share of their income to the necessities of food, shelter and clothing than the average Canadian family.

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