



BUSINESS AVIATION AND THE BOARDROOM



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An Aviation Tax Recap: Moving Forward in Reverse

There have been (or possibly will be) several key changes to aviation-related tax laws in 2012, the effects of which will carry into 2013. Chris Younger summarizes a few of these changes below.

FET & MANAGED AIRCRAFT

In March 2012, the IRS published Chief Counsel Memorandum 201210026 (the CCM), in which the IRS concluded that control of an aircraft's pilots is the primary factor in determining which party has possession, command and control of an aircraft for purposes of imposing transportation excise taxes on payments relating to the operation of that aircraft.

Under the facts described in the CCM, the IRS determined that virtually all fees and reimbursements paid by the owner of an aircraft to its aircraft management company are subject to FET when the aircraft management company has primary control of the aircraft's pilots.

The IRS's conclusion in the CCM is not necessarily new. However, it interprets over fifty years of prior IRS rulings in a way that is aggressive, and, to some extent, unprecedented.

As we move into 2013, it will be interesting to see how the IRS's stance on this issue evolves and whether the IRS publishes additional guidance. In the interim, aircraft owners and charter management companies need to be cognizant of the IRS's more aggressive position and be vigilant in structuring aircraft operations in a manner that mitigates the risk that the IRS will impose FET on payments made by an aircraft owner to a charter management company. >



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What the Boardroom needs to know about Business Aviation



FUEL SURTAX

Effective April 1, 2012, the IRS began imposing a new 14.1¢ per gallon fuel surtax that applies to owner flights on fractional program aircraft in lieu of the 7.5% federal air transportation "ticket tax." The new 14.1¢ per gallon tax was enacted as part of the FAA Modernization and Reform Act of 2012. Prior to this change, the IRS had taken the position that the ticket tax applies to all fees paid to fractional aircraft program management companies by owners of such aircraft.

In connection with the implementation of the new 14.1¢ per gallon fuel surtax, the IRS published Notice 2012-27, which provides some limited guidance concerning the implementation of the ruling. However, questions regarding its application in specific situations remain unanswered.

For example, it is unclear whether the new tax applies in lieu of the "ticket tax" where a particular flight is operated for a fractional interest owner under FAR Part 135. It appears that the answer to this question is "yes", however the IRS has not issued specific guidance regarding this issue.

As the New Year unfolds, it will be important to track any additional IRS or other guidance that is made available regarding the application of this tax in specific situations.

BONUS DEPRECIATION

Many key Federal income tax provisions, including those relating to bonus depreciation, are set to expire at the end of 2012. At press time it is unclear which of these provisions will be extended into 2013 and what final form they will take. However, it does not appear likely that the expiring provisions relating to bonus depreciation will be extended again.

As it stands now, 50% bonus depreciation is generally allowed for aircraft acquired by a taxpayer pursuant to a written binding contract entered into before January 1, 2013 and placed in service before January 1, 2013 (except for "certain aircraft" or aircraft having long production periods which must be placed in service prior to January 1, 2014).

Unless these bonus depreciation provisions are extended, the ability to acquire an aircraft and elect to claim bonus depreciation in the amount of 50% of the aircraft's purchase price will expire at the end of 2012. Therefore, to the extent possible, an aircraft buyer who is interested in acquiring an aircraft that is eligible for bonus depreciation should immediately explore the possibility of doing so.

Do you have any questions or opinions on the above topic? Get them answered/published in World Aircraft Sales Magazine. Email feedback to: Jack@avbuyer.com
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