

Aviation Tax Law Webinar

Carriage of Candidates for and Holders of Federal Elected Office/ Bonus Depreciation Update



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Part 1

CARRIAGE OF CANDIDATES FOR AND HOLDERS OF FEDERAL ELECTED OFFICE

Presented
by
Chris Younger



Relevant Law, Rules and Regulations

1. Section 91.321 of the Federal Aviation Regulations
2. Internal Revenue Code Section 4261
3. The Honest Leadership and Open Government Act of 2007 (enacted September 14, 2007)
4. Federal Election Commission Rules (effective January 6, 2010)
5. Senate and House Ethics Rules



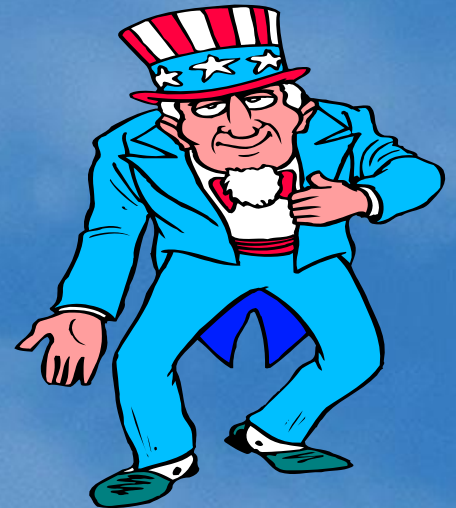
Complying with Federal Aviation Regulations

- ➔ No special restrictions in the Federal Aviation Regulations on charges to and payments for flights operated under FAR Part 135 for candidates and elected office holders.
- ➔ Candidate travel is governed by FAR 91.321 for all non-commercial (FAR Part 91) flights.
- ➔ Part 91 operators permitted to receive payment from candidates for Federal, state, and local offices, their agents, leadership political action committee, a political party or non-candidate political committee, or other person traveling for the candidate provided:
 - ➔ Operator's primary business is not as an air carrier or commercial operator;
 - ➔ Applicable Federal, state or local election law requires that operator receive such payment; and
 - ➔ Payment may not exceed amount calculated under applicable laws and regulations.



Federal Excise Tax

- Amounts reimbursed for candidate travel are subject to federal “ticket tax”
- Excise tax must be collected by provider of aircraft and remitted to IRS



The Current Statutory and Regulatory Framework

- ➔ The Federal Election Campaign Act defines a “contribution” to include “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”
- ➔ The phrase “anything of value” encompasses “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.”
- ➔ When goods or services are provided at less than the usual and normal charge, *“the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services... and the amount charged the political committee.”*



The Honest Leadership and Open Government Act of 2007

- Generally, an incumbent is a “candidate” until announcement of retirement, *etc.*
- More than one candidate on flight: Each pays for seats occupied or pro-rata for charter valuation
- “Deadhead” flights are not counted



New 2010 FEC Regulations

- Approved November 19, 2009
- Effective January 6, 2010
- Apply to individuals traveling in connection with campaign for election to Federal office including candidates, campaign members, security personnel, media members, authorized committees, and leadership of Political Action Committees



New 2010 FEC Regulations (*cont'd*)

- ➔ Restrict and, in some situations, prohibit Federal candidates and certain individuals traveling on behalf of such candidates from utilizing non-commercial air travel
- ➔ Revised method for calculating reimbursement rates for permitted non-commercial air travel



Candidates for U.S. House of Representatives

- House candidates may fly only on:
 - Commercial flights;
 - Aircraft owned and operated by a federal or state government entity; or
 - Aircraft owned by the candidate or an immediate family member of the candidate or by a corporation or other business entity (excluding publicly owned corporations) in which the candidate or an immediate family member of the candidate owns an interest.
 - Immediate family members include only the candidate's father, mother, son, daughter, brother, sister, husband, wife, father-in-law or mother-in-law.
 - The candidate may not use the aircraft more than her percentage ownership.
 - The candidate's committee must report value of such travel as a contribution unless the campaign reimburses such costs to the candidate, a family member or a business entity.



Candidates for U.S. President, U.S. Vice President and U.S. Senate

- The Candidate or any person traveling on behalf of the candidate or her authorized committee must pay their pro-rata share of the “normal and usual charter fare or rental charge for travel on a comparable aircraft of comparable size” for each campaign traveler when using non-commercial, non-government-owned aircraft
 - Normal and usual charter fare or rental charge is amount it would cost to charter a comparable aircraft of comparable size for the given distance or time flown (contact charter operators for pricing)
 - Pro rata share calculated by dividing normal and usual charter fare or rental charge by number of campaign travelers on the flight traveling on behalf of such candidate or candidate’s authorized committee
 - If more than one candidate on same flight, each campaign pays pro rata cost for each passenger traveling on behalf of particular candidate



Candidates for U.S. President, U.S. Vice President and U.S. Senate (cont'd)

- The FEC did not extend the requirement that presidential/vice-presidential and Senate candidates pay the full charter rate for use of non-commercial aircraft to travel on behalf of political committees other than their own campaign committees.
 - If commercial service exists between the destinations traveled candidates may pay the lowest unrestricted and non-discounted first-class airfare rate for each person traveling on non-commercial aircraft on behalf of:
 - National political party committees such as the DNC and RNC;
 - State political party committees; and
 - Federal PACs and other federal political committees, including the candidate's leadership PAC.
 - If commercial service exists between the destinations traveled, but not first-class airline service, the lowest unrestricted and non-discounted coach airfare rate applies.
 - If commercial service does not exist between the destinations traveled, the full charter rate applies.



Payment and Recordkeeping Requirements

- Advisable to obtain reimbursement prior to the beginning of flight
 - Payment generally required within seven days after flight begins
 - **BUT**, unreimbursed value of travel is treated as contribution to candidate or political committee
- Candidates must maintain and report records pertaining to non commercial air travel including flights undertaken, aircraft utilized, identification of passenger information and affiliation with candidate, charter rates, etc.



Members of U.S. House of Representatives

- For House members participating in privately sponsored, officially connected travel, gift rule prohibits travel on non-commercial, private or chartered flight absent exceptional circumstances
- House Code of Official Conduct prohibits members from using personal, official or campaign funds to pay for or reimburse the expenses of a flight on any aircraft unless one of the exceptions in the rule is met
 - Major exceptions are for travel on commercially scheduled flights and flights provided by individuals or companies operating a charter service.



Members of U.S. Senate

- U.S. senators not expressly prohibited from utilizing non-commercial aircraft
- Under Senate rules, senators traveling on board non-commercial aircraft must provide reimbursement at the normal charter rate or rental charge for a similar aircraft
 - However, FAR do not permit a Part 91 operator to receive such a reimbursement
 - Senator must be able to reimburse the cost of the flight under another arrangement, such as a time sharing arrangement



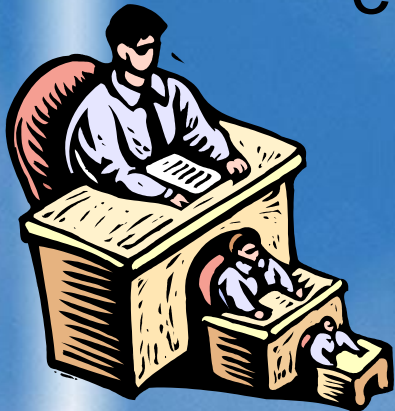
Carriage Of Federal Candidates: FAR 121 and 135

- FAR 121 and 135 certificate holders are not covered by FEC valuation rules
 - Must charge normal rates available to the public for comparable service



Who Is NOT Covered?

- Federal, State or local appointed officials
- Federal, State, or local government employees



State/Local Candidates

- FAR 91.321 permits reimbursement
- FEC rules do not apply
- State law may also apply
 - Some permit corporate contributions
- Federal candidates may campaign for state/local candidates free of FEC restrictions



Part 2

BONUS DEPRECIATION UPDATE

Presented
by
Troy Rolf



Legislation

- “**Bonus Depreciation**” was originally enacted after the September 11 terrorist attacks, and expired a few years later.
- The **Economic Stimulus Act of 2008** (the “2008 Act”) re-introduced the concept of Bonus Depreciation into the Tax Code for certain “Qualified Property” placed in service in 2008 (and, under certain circumstances, in 2009).
- The **American Recovery Reinvestment Act of 2009** (the “2009 Act”) extended each of the placed in service deadlines of the 2008 Act by an additional year (to 2009/2010).
- The **Small Business Jobs Act of 2010** (the “First 2010 Act”) extended each of the placed in service deadlines of the 2008 Act by yet another year (to 2010/2011).



Legislation

→ The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the “Second 2010 Act”)

- extended each of the placed in service deadlines of the 2008 Act by two more years (to 2012/2013)
- increased Bonus Depreciation Allowance from 50% to 100% for Qualified Property acquired between Sept. 8, 2010 and Dec. 31, 2011, and placed in service prior to January 1, 2012 (2013 for Certain Aircraft and Property having Long Production Times).



Bonus Depreciation

- The depreciation deduction for the taxable year in which “**Qualified Property**” is placed in service includes an allowance equal to either 50 or 100 percent of the adjusted basis of the Qualified Property (i.e., after adjustments under other sections of the IRC (e.g., Section 179)).



Bonus Depreciation

- ➔ Exception: for “Properties Having Long Production Periods” (defined later) that are placed in service in 2013, the bonus depreciation allowance applies only to that portion of the adjusted basis thereof attributable to manufacture, construction, or production before January 1, 2013.



Bonus Depreciation

- A taxpayer's remaining basis after deducting the 50% allowance is depreciated under standard depreciation principles (i.e., MACRS). (Obviously, does not apply to property qualifying for 100% bonus).
- For example, assuming an aircraft depreciable under a five-year MACRS depreciation schedule, and the half-year convention, total first year deduction is 60% (i.e., 50% Bonus Depreciation Allowance, plus 20% of the remaining 50% under MACRS).



What is “Qualified Property”?

- “Qualified Property” is property which meets each of the following four requirements:
1. has a recovery period of 20 years or less (e.g., aircraft);
 2. the “Original Use” of the property commences with the taxpayer after December 31, 2007;



What is “Qualified Property”?

→ 3.

- (i) is acquired by the taxpayer after December 31, 2007, and before January 1, 2013, but only if no “Written Binding Contract” for the acquisition was in effect before January 1, 2008, or
- (ii) is acquired by the taxpayer pursuant to a “Written Binding Contract” which was entered into after December 31, 2007, and before January 1, 2013; or
- (iii) in the case of Self Constructed Property, the taxpayer begins manufacturing, constructing, or producing the property after December 31, 2007, and before January 1, 2013; and



What is “Qualified Property”?

- ➔ 4. is placed in service by the taxpayer before January 1, 2013, or, in the case of “Certain Aircraft” or “Property Having Long Production Periods”, before January 1, 2014.



What is “Original Use”?

→ “Original Use” means the first use to which the property is put, whether or not that use corresponds to the use of the property by the taxpayer.



What is a “Written Binding Contract”?

- ➔ Regulations provide that a contract is binding only if it is enforceable under State law against the taxpayer or a predecessor, and does not limit damages to a specified amount (for example, by use of a liquidated damages provision); however, a contractual provision that limits damages to an amount equal to at least 5 percent of the total contract price will not be treated as limiting damages to a specified amount.
- ➔ In determining whether a contract limits damages, the fact that there may be little or no damages because the contract price does not significantly differ from fair market value will not be taken into account.



What are “Certain Aircraft”?

- “Certain Aircraft” are aircraft which:
- are not “Transportation Property”;
 - on which such purchaser, at the time of the contract for purchase, has made a nonrefundable deposit of the lesser of 10% of the purchase price, or \$100,000;
 - have an estimated production period exceeding 4 months; and
 - have costs exceeding \$200,000.



What is “Transportation Property”?

- “Transportation Property” is tangible personal property used in the trade or business of transporting persons or property. This could include all corporate aircraft that are predominantly used in charter, however, no definitive guidance exists.



What is “Self-Constructed Property”?

- “Self Constructed Property” includes property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business (or for its production of income).



Self-Constructed Property

- Treasury Regulations provide an example indicating that newly manufactured aircraft purchased from the manufacturer would be considered self-constructed property where a buyer entered into a contract to purchase the aircraft prior to commencement of construction of the aircraft.



Self-Constructed Property

- ➔ Manufacture, construction, or production of property begins when physical work of a significant nature begins.
- ➔ Physical work does not include preliminary activities such as planning or designing, securing financing, exploring, or researching.



Self-Constructed Property Safe Harbor

- ➔ Taxpayers generally may elect to determine when physical work of a significant nature begins in accordance with a Safe Harbor. However, when property (e.g. an aircraft) is manufactured, constructed, or produced for the taxpayer by another person, the safe harbor test must be satisfied by the taxpayer.
- ➔ Under the Safe Harbor, physical work of a significant nature will not be considered to begin before the taxpayer incurs (in the case of an accrual basis taxpayer) or pays (in the case of a cash basis taxpayer) more than 10 percent of the total cost of the property.



Self-Constructed Property Safe Harbor

- ➔ For example, if an aircraft is to be constructed by an OEM for a cash basis taxpayer for the total cost of \$20,000,000, construction should be deemed to begin for purposes of this safe harbor when the taxpayer has paid more than 10 percent (\$2,000,000) of the total cost of the aircraft.



Self-Constructed Property Safe Harbor

- A taxpayer chooses to apply the safe harbor by making a notation on the income tax return for the placed-in-service year indicating the date when physical work of a significant nature began consistent with the safe harbor.



What is “Property Having Long Production Periods”?

- In order for property placed in service in 2013 (other than “Certain Aircraft”) to qualify for Bonus Depreciation, the property must satisfy each of the following four tests:
- (1) the property must meet all the requirements of “Qualified Property” discussed above;
 - (2) the property must either have a recovery period of at least 10 years or be “Transportation Property”;



What is “Property Having Long Production Periods”?

- (3) the property must be subject to IRC Section 263(A) (which applies to real or tangible personal property produced by the taxpayer); and
- (4) the property must have an estimated production period (i.e., the time from the date production actually begins until the date the aircraft is ready to be placed in service) **exceeding 1 year**, and a cost exceeding \$1,000,000.



What is “Property Having Long Production Periods”?

- ➔ This last requirement will eliminate many business-class aircraft that are “Transportation Property” and are placed in service in 2013 from qualifying for Bonus Depreciation under the “Property Having Long Production Periods” provision. Notwithstanding the fact that many makes/models of business aircraft have waiting lists that are several years long, few corporate jets actually have production periods exceeding 1 year.



What is “Property Having Long Production Periods”?

→ If a “Transportation Property” aircraft placed in service in 2013 qualifies as “Property Having a Long Production Period”, as previously stated, the bonus depreciation allowance applies only to that portion of the adjusted basis of such aircraft attributable to manufacture, construction, or production before January 1, 2013.



What is “Property Having Long Production Periods”?

- How do you calculate that portion of the adjusted basis of such aircraft attributable to manufacture, construction, or production before January 1, 2013?



What is “Property Having Long Production Periods”?

- Neither the statute, nor the regulations answer the question. However, Congress did state that it intended that rules similar to Section 46(d)(3) of the Internal Revenue Code that was in effect prior to the Tax Reform Act of 1986 should be employed to determine what portion of such costs are attributable to production before January 1, 2013.
- Consistent with Section 46(d)(3), the amounts that would be attributable to production before January 1, 2013, would likely be the lesser of (i) the amounts paid before January 1, 2013, or (ii) the amount which represents that portion of the overall cost of the construction which is properly attributable to that portion of such construction which is completed before January 1, 2013.



Summary

Placed in Service

Type of Property	Jan 1, 2008 – Sep 8, 2010	Sep 9, 2010 – Dec 31, 2011	Jan 1, 2012 – Dec 31, 2012	Jan 1, 2013 – Dec 31, 2013
Certain Aircraft	50% of Cost	100% of Cost	50% or 100% of Cost (See Note)	50% of Cost
Long Production Times	50% of Cost	100% of Cost	50% or 100% of Cost (See Note)	50% of Pre-2013 Production
Other Qualified Property	50% of Cost	100% of Cost	50% of Cost	None

Note:

Property acquired Sep 9, 2010 - Dec 31, 2011, but placed in service in 2012, qualifies for 100%.

Property acquired and placed in service in 2012, qualifies for 50%



Special Rules; Predominant Use

Bonus depreciation does not apply to aircraft used predominately outside the United States.

→ 50% test

→ Aircraft operated to and from the United State



Special Rules: Like-Kind Exchanges

- Bonus Depreciation applies in the year the replacement property is placed in service.
- Both the **Carryover Basis** (i.e., the basis in the relinquished aircraft), and the **Excess Basis** (i.e., additional cash paid in the exchange), are eligible for Bonus Depreciation.
- Depreciation (Bonus and MACRS) is computed separately for the Carryover Basis and the Excess Basis.



Special Rules: Like-Kind Exchanges

- ➔ Deduction Attributable to Relinquished Aircraft in Year of Exchange has 3 components:
 1. MACRS deduction applicable to that portion of the year preceding the exchange (apply applicable convention).
 2. Bonus Depreciation on remaining Carryover Basis.
 3. MACRS deduction applicable to that portion of the year after the exchange (apply applicable convention).



Special Rules: Like-Kind Exchanges

- ➔ Deduction Attributable to Replacement Aircraft in Year of Exchange usually has 2 components, but may have 3 components if Section 179 expensing also applies:
 1. Section 179 expensing deduction, if applicable.
 2. Bonus Depreciation.
 3. MACRS deduction.



Flipping an OEM Contract

- A Treasury Regulation example indicates that where a taxpayer enters into a written binding contract prior to January 1, 2008 (September 11, 2001 in the example), and then subsequently transferred the rights to own and use the property to another unrelated taxpayer, the transferee taxpayer can qualify for bonus depreciation.
- The use of the phrase “transferred the rights to own and use” in the Treasury Regulations is ambiguous, and it is not clear whether the phrase implies an assignment of the original OEM agreement, or a back-to-back title transfer of a new aircraft without an assignment of the OEM agreement, or both.



Special Rules: OEM Demonstrators

- New aircraft used by a manufacturer or dealer for demonstrator purposes prior to sale to a customer should qualify. In such situations, the “Original Use” of the aircraft is considered to be by the taxpayer and not by the dealer or manufacturer.



Special Rules: Fractional Aircraft

- ➔ If, in the ordinary course of its business, a taxpayer sells fractional interests in property to third parties unrelated to the taxpayer, each first fractional owner of the property is considered as the original user of its proportionate share of the property.



Special Rules: Rebuilt Aircraft

- Rebuilt and reconditioned aircraft do not qualify.
- The cost of new upgrades and improvements (e.g., new engines and new avionics) purchased by a taxpayer for an aircraft the taxpayer already owns can qualify; but if the taxpayer purchases a used aircraft after the upgrades and improvements have been made, the aircraft will be considered rebuilt or reconditioned and no part of the total acquisition cost will qualify.



Closing Remarks



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