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* * * **LEGISLATIVE ALERT** * * *

TAX CHANGES AFFECTING BUSINESS AVIATION

By Troy A. Rolf, Esq.
GKG Law, P.C.

The Tax Cuts and Jobs Act of 2017 (the “2017 Act”), which was passed by Congress and signed by the President on December 22, 2017, contains a number of provisions that directly impact owners and operators of business jet aircraft; this Legislative Alert summarizes those provisions that are most pertinent to aircraft owners and operators.

BONUS DEPRECIATION INCREASED, EXPANDED AND EXTENDED

The Act modifies the popular Bonus Depreciation provisions contained in Section 168(k) of the Internal Revenue Code (the “IRC”) as follows:

- The Act expands the definition of “Qualified Property” that is eligible for bonus depreciation, effective after September 27, 2017, by removing the requirement that the “Original Use” of the property be with the taxpayer. The “Original Use” requirement formerly limited eligibility for bonus depreciation to new aircraft – used aircraft did not qualify. In the absence of such requirement, used aircraft are now eligible for bonus depreciation as well.
- The Act increases the portion of the basis of Qualified Property that may be immediately expensed to 100% for Qualified Property placed in service after September 27, 2017, and before January 1, 2023 (but only if no “Written Binding Contract” within the meaning of IRC 168(k) was in effect prior to September 27, 2017). For Qualified Property placed in service prior to September 28, 2017, and for Qualified Property placed in service after September 27, 2017 if it was acquired pursuant to a Written Binding Contract that was in effect prior to September 28, 2017, the rules that were in effect prior to the Act continue to apply.
- For Qualified Property placed in service on or after January 1, 2023, the bonus depreciation rate under the Act will be reduced and phased out over a number of years according to the following schedule:

- 80 percent for Qualified Property placed in service after December 31, 2022 and before January 1, 2024;
 - 60 percent for Qualified Property placed in service after December 31, 2023 and before January 1, 2025;
 - 40 percent for Qualified Property placed in service after December 31, 2024 and before January 1, 2026;
 - 20 percent for Qualified Property placed in service after December 31, 2025 and before January 1, 2027; and
 - 0 percent (bonus expires) for Qualified Property placed in service after December 31, 2026.
- The placed in service deadlines specified above are extended by one year for aircraft meeting the definitions of “Certain Aircraft” or “Property Having Long Production Periods”, as such terms and defined in IRC Section 168(k).

AIRCRAFT NO LONGER ELIGIBLE FOR LIKE-KIND EXCHANGE TREATMENT UNDER IRC SECTION 1031

The Act limits applicability of Section 1031 to real property only, effective January 1, 2018, which in effect eliminates the ability of owners of personal property (including aircraft) to conduct like-kind exchanges after December 31, 2017. There is a transition rule that allows taxpayers who have completed the first half of an exchange in 2017 (e.g., sold an old aircraft in a forward deferred exchange, or acquired a new aircraft in a reverse exchange) to complete the second half of the exchange in 2018.

FEDERAL EXCISE TAXES (FET) DO NOT APPLY TO OWNER FLIGHTS OF MANAGED AIRCRAFT.

The Act clarifies that amounts paid by aircraft owners and lessees to professional aircraft management companies after December 22, 2017, for various services, including, for example, flight crew services, maintenance, and insurance, are not subject to the FET imposed by Sections 4261 (transportation of passengers) and 4271 (transportation or property). This appears to be more of a clarification of existing law than a substantive change in existing law. Historically, it was believed that the FET did not apply to an aircraft owner/lessee’s own flights under Part 91, but in recent years, IRS auditors have become more aggressive in expanding their interpretation of Sections 4261 and 4271 to apply the FET to many such flights, and battles have been fought in audits and in the courts over what amounts paid by aircraft owners and lessees are or are not subject to the FET. The Act should resolve many of those battles.

IRC SECTION 179 EXPENSING

The Act increases the IRC 179 expensing limit from \$500,000 to \$1,000,000, and the investment limitation from \$2,000,000 to \$2,500,000, effective for property placed in

service after December 31, 2017. These amounts may be further increased in years after 2017 through cost-of-living adjustments.

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This Legislative Alert provides only brief summaries of those provisions of the Act that are most pertinent to aircraft owners and operators; if any of the provisions of the Act may apply to your aircraft ownership or operating structure, or if you desire more detailed analysis, information or advice concerning any provisions of the Act or your existing aircraft structuring and purchase/sale transactions generally, please contact the business aviation attorneys at GKG Law.

Troy A. Rolf is a business aviation and tax attorney concentrating in the areas of business aircraft transactions and operations in the law firm of GKG Law, P.C. The firm's business aircraft practice group provides full-service tax and regulatory planning and counseling services to corporate aircraft owners, operators and managers. The group's services include federal tax and regulatory planning, state sales and use tax planning, and negotiation and preparation of all manner of transactional documents commonly used in the business aviation industry, including aircraft purchase agreements, leases, joint-ownership and joint-use agreements, management and charter agreements, and fractional program documents. Troy manages the firm's Minnesota office, at 114 First Street South, Buffalo, MN, 55313, telephone: (763-682-6620), e-mail: trolf@gkglaw.com.