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Tax Considerations: *When Depreciation Begins.*

What constitutes placing an aircraft "In Service" for tax purposes? Simply taking a business flight at the end of the tax year may not be enough, warns attorney Troy Rolf.

An aircraft used for business can be depreciated only after it has been placed into service for its intended purpose. While such guidance seems sufficiently clear, a recent Tax Court case issued on December 3, 2013 reveals that the devil is in the detail.

Just prior to final delivery, a successful salesman purchased a factory-new aircraft that was configured as specified in a purchase agreement between the OEM and the original buyer, which subsequently dropped out of the sale. While not a party to the original purchase agreement and its completion specs, the new buyer accepted delivery even though the aircraft was not precisely configured as needed for the desired mission. The sooner the new aircraft was placed in service, the sooner the buyer could begin depreciating the aircraft for tax purposes.

The changes desired by the new owner were small—replacing two passenger seats with a con-

ference table, and swapping existing monitors with larger units—but the completion center would have been unable to complete the alterations and still deliver the aircraft by December 31, 2003. The owner considered a delivery in December to be essential in order to qualify for bonus depreciation in 2003.

Consequently, the new owner agreed to take delivery of the aircraft in December in the configuration as originally spec'd out by the original buyer, and signed a separate contract to have the modifications made to the aircraft shortly after the first of the year. Taking delivery of the aircraft in Oregon, the owner immediately conducted flights on the aircraft to Seattle and Chicago for meetings with business associates before returning the aircraft to the completions center.

TAX COURT CONCERNS

The Tax Court determined that IRS regulations require that property cannot be considered to have >

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been “placed in service” for tax purpose before the aircraft is “first placed in a condition or state of readiness and availability for a specifically assigned function”. The Tax Court held that the taxpayer had not met that standard and ruled in favor of the IRS.

Several principles can be gleaned from the Tax Court’s explanation and reasoning for its ruling:

- First, nothing in the “placed in service” test actually requires that a flight be conducted for an aircraft to be considered “placed in service.” Rather, the test only requires that the aircraft be in a condition or state of readiness to do so. Since there is no requirement to take an actual business flight, the fact that a business flight may or may not have actually occurred is not necessarily dispositive.
- Second, in determining whether an aircraft is in “a condition or state of readiness and availability for a specifically assigned function,” the IRS and the courts may look at the condition or state of readiness desired by individual taxpayers and the functions specifically assigned by the taxpayer.

It’s interesting to note that the case did NOT involve a green aircraft, or even an aircraft that was only partially complete, but rather an aircraft that was complete and finished as originally spec’d. It seems clear that the aircraft could have been put into service in that condition by another

taxpayer. However, since the taxpayer who actually bought the aircraft desired that two modifications be made in order for the aircraft to perform the intended mission in the way the owner intended, the Tax Court determined that the aircraft could not be considered to have been placed in service before such modifications were complete.

LESSONS LEARNED

So what can this case teach us about placing an aircraft in service at the end of the year? Clearly, an aircraft buyer who, near the end of one tax year, takes title to a green aircraft or an aircraft that otherwise is not yet complete in order to claim depreciation deductions (bonus or otherwise) in the year before all work on the aircraft is actually complete, does so at his or her own peril. The case also shows that the specific mission that the taxpayer has in mind for the aircraft can impact when the aircraft may be considered placed in service.

Consequently, before accelerating delivery of an aircraft that is not yet FULLY complete in order to place the aircraft in service before the end of a tax year, an aircraft buyer should consult with an aviation tax attorney or another knowledgeable aviation tax advisor regarding in-service issues.

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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