



Tax Matters for Airplane Purchases: *The 30,000 foot view*

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Upcoming Webinars

**Federal Income & Excise Tax Implications of
Personal & Entertainment Use of Business Aircraft**

**November 19, 2020
1 pm ET**

**Sales & Use Taxes on Aircraft:
Latest Developments & Key Planning Tools**

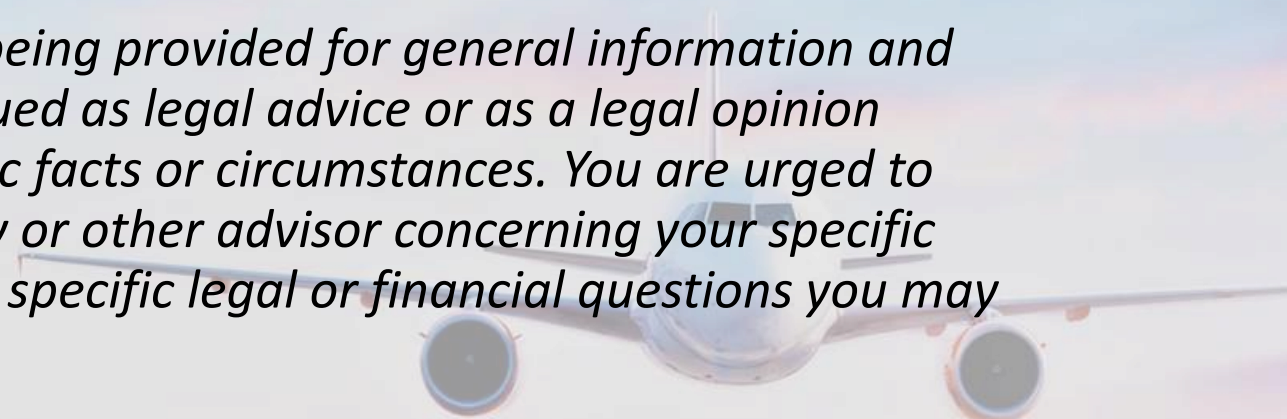
**December 17, 2020
1 pm ET**

Federal & State Tax Audit Defense

**January 21, 2021
1 pm ET**

Tax Matters for Airplane Purchases Disclaimer

This presentation is being provided for general information and should not be construed as legal advice or as a legal opinion regarding any specific facts or circumstances. You are urged to consult your attorney or other advisor concerning your specific situation and for any specific legal or financial questions you may have.

A blurred image of a commercial airplane in flight, viewed from a low angle, with its landing gear extended. The background is a soft-focus cityscape at night with warm, glowing lights.

GKG Law, P.C.

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- ✓ Aircraft Purchase & Sale Transactions
- ✓ Aircraft Ownership & Operating Structures
- ✓ Federal & State Tax Planning
- ✓ Aircraft Ownership Trusts
- ✓ IRS, State & FAA Audits & Enforcement Actions
- ✓ Aircraft Personal Use Guidelines
- ✓ Analysis & Preparation of Fringe Benefit Income Imputation & Entertainment Disallowance Calculations

Tax Matters for Airplane Purchases

Webinar Outline

During today's webinar, we will discuss the multitude of federal, state and local tax issues faced by business aircraft purchasers and owners, including:

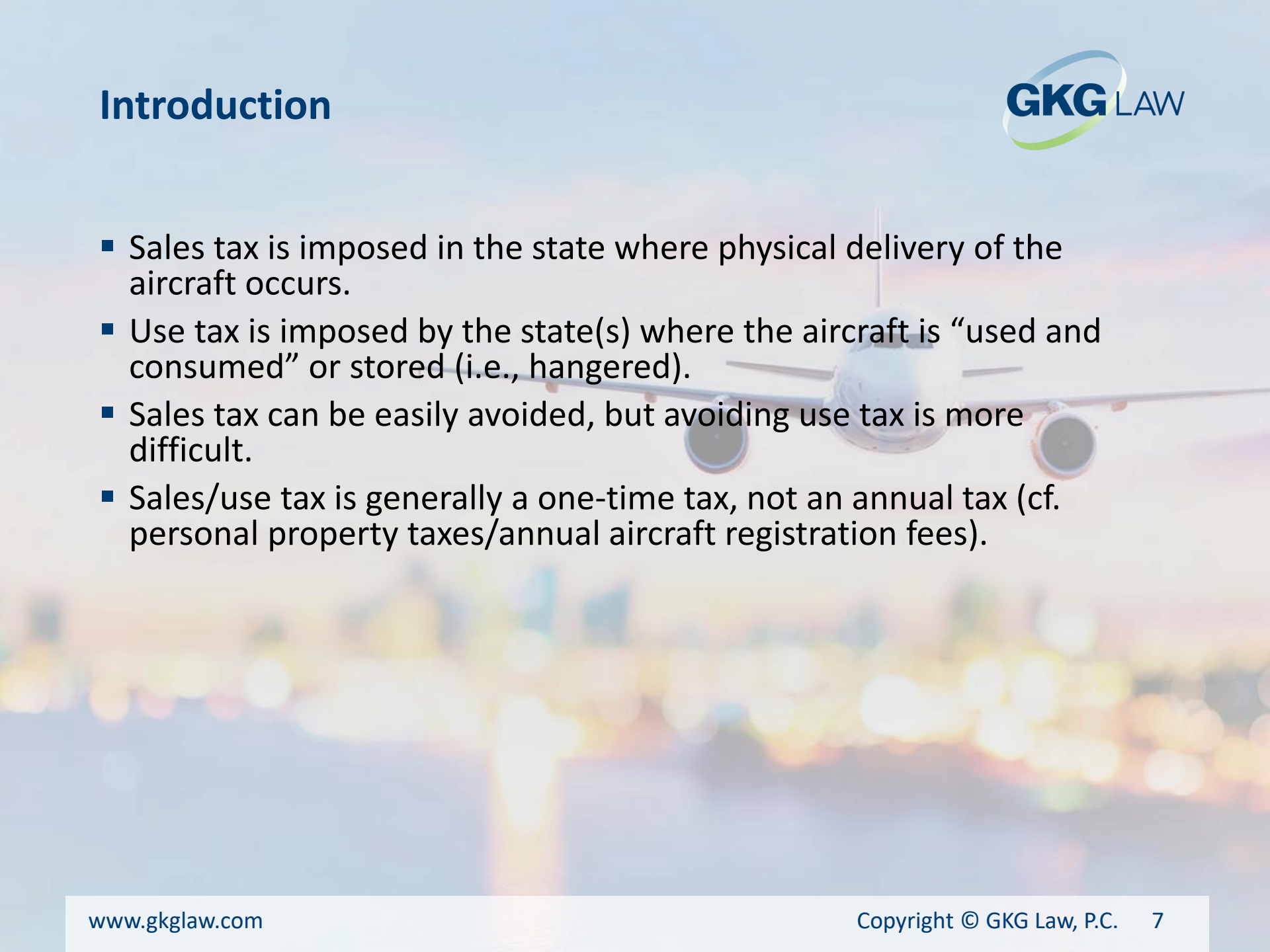
- State sales and use tax and personal property tax issues and planning strategies to mitigate multi-state tax issues and the amount of such taxes
- Strategies for maximizing federal income tax deductions and avoiding limitations imposed on such deductions
- Application of federal fuel and air transportation excise taxes to aircraft operations
- Impact of Tax Cuts and Jobs Act of 2017 and CARES Act on federal income and excise tax issues

State Sales & Use & Personal Property Taxes

- Key sales and use tax concepts
- Sales and use tax nexus
- Planning considerations
- Specific exemptions
 - Fly away
 - Occasional/isolated/casual sales
 - Sales for resale
 - Interstate commerce
 - Common carrier/commercial aircraft
 - State sales and/or use tax credits
 - Fractional aircraft shares



Introduction

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- A blurred image of a commercial airplane in flight, viewed from a low angle, with its wings and engines visible. The background is a soft-focus cityscape at night with bokeh lights.
- Sales tax is imposed in the state where physical delivery of the aircraft occurs.
 - Use tax is imposed by the state(s) where the aircraft is “used and consumed” or stored (i.e., hangered).
 - Sales tax can be easily avoided, but avoiding use tax is more difficult.
 - Sales/use tax is generally a one-time tax, not an annual tax (cf. personal property taxes/annual aircraft registration fees).

Introduction

- Sales/use tax planning is primarily based on ownership structuring – form over substance (cf. federal income tax planning, which typically relies on substance over form).
- Some states now analyze aircraft ownership structures based on substance over form when determining application of sales and use taxes.
- Sales tax analysis and planning should be performed at the outset of an aircraft acquisition and before completing analysis and planning of other tax and non-tax matters, as the sales tax planning recommendations provide the structural foundation for the balance of the tax planning and FAA/DOT compliance.

Introduction

- Although state law exemptions may be referred to by the same name, the requirements for their implementation varies significantly from state to state.
- Timing and implementation mechanics must be followed precisely.
- The use tax rate in a specific state will typically be identical to such state's sales tax rate.
- Sales taxes and use taxes are mutually exclusive; states may impose a sales tax or a use tax, but not both, on an aircraft.

Concepts

Sales Tax

- Most states impose sales/use tax on the purchase of tangible personal property (e.g., aircraft).
- The sales/use tax rate is generally between 2% and 10% of the aircraft purchase price/FMV.
- Sales tax is a transaction-based tax and will apply only in the state where the transaction occurs (i.e., the aircraft delivery location).
- Jurisdiction to impose state sales or use tax is referred to as *nexus*.

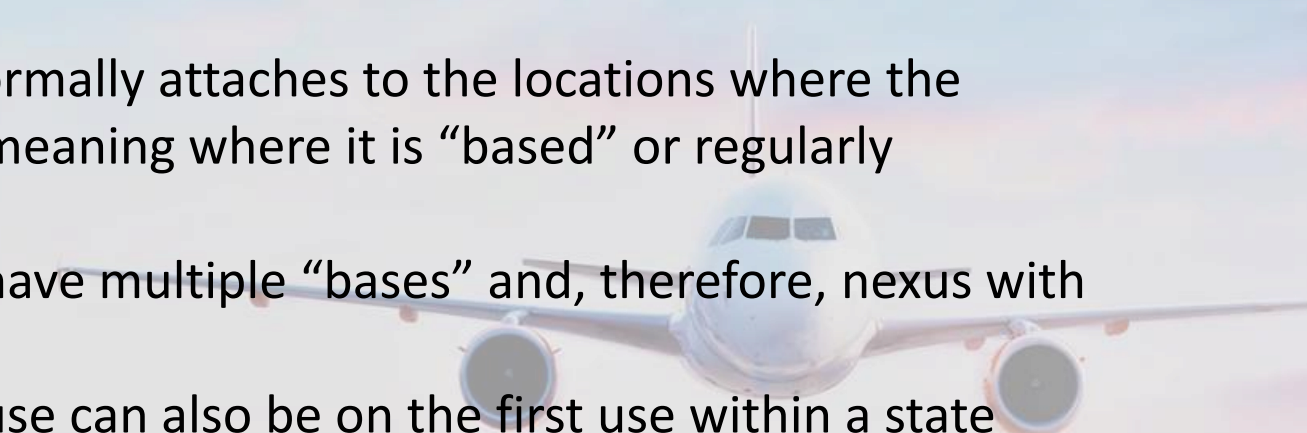
Concepts

Use Tax

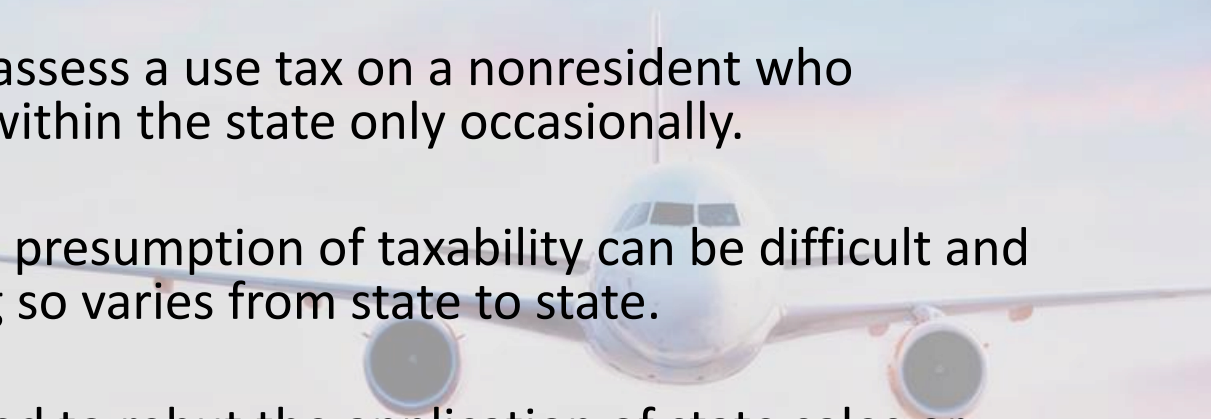
- A state may impose a use tax on the use, storage, or consumption in the state, of property acquired outside the state and subsequently brought into the state provided that the aircraft has substantial nexus with the state seeking to impose such tax.

Nexus

Use Tax

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- A photograph of a large commercial airplane in flight, viewed from a low angle looking up. The plane is white with two engines. The background is a blurred cityscape at night with lights.
- Use tax nexus normally attaches to the locations where the aircraft is used, meaning where it is “based” or regularly hangered.
 - An aircraft may have multiple “bases” and, therefore, nexus with multiple states.
 - Taxable aircraft use can also be on the first use within a state after title transfers; flight activity within a certain time period (e.g. six months); or the flight activity of the aircraft for a specified number of days.
 - The level of activity in a state that will lead to a use tax assessment on an aircraft varies. (In some states a single use will trigger, in other states it must be used within the state for a certain period of time.)

Nexus

- 
- A photograph of a white commercial airplane in flight, viewed from a low angle looking up. The plane is centered in the upper half of the slide. The background is a blurred cityscape at night with warm, glowing lights.
- A state is unlikely to assess a use tax on a nonresident who operates an aircraft within the state only occasionally.
 - Rebutting a state law presumption of taxability can be difficult and the process for doing so varies from state to state.
 - Tools that may be used to rebut the application of state sales or use tax to an aircraft include:
 - evidence of delivery outside the state,
 - evidence of state sales tax paid to the state where the aircraft is primarily “based,” and
 - evidence of aircraft personal property tax paid to another state.

Planning Considerations

- If an aircraft will be based in a state that imposes use tax, there may be no net tax advantage to taking delivery of the aircraft in a state that does not impose its sales tax on aircraft.
- State of incorporation/formation of the ownership entity will not create a sales or use tax advantage, but can create a disadvantage (e.g., by creating nexus with the state of incorporation/formation).
- Carefully consider mailing/street address used on FAA Application for Aircraft Registration (Form 8050-1).

Specific Exemptions

- Fly away
- Occasional/isolated/casual sales
- Sales for resale
- Interstate commerce
- Common carrier/commercial operator



Fly Away Exemption

- Sales tax exemption
- Typically available only to non-residents of the state of delivery
- Time restrictions
- Usage restrictions
- Re-entry can invalidate



Occasional/Casual Sales Exemption

- Sales/Use tax exemption for used aircraft
- Focus in most states is on the seller's status as a casual/occasional seller. Some states also look at buyer's status.
- Many differences in requirements between states

Sale for Resale Exemption

- Property is purchased exclusively for the purpose of resale (lease).
- Sales tax is then collected on the receipts from the resale (lease) of the property unless such receipts are otherwise exempt.
- In most states a lease is considered a sale for sales and use tax purposes (cf., California and Illinois).
- In states where leases are considered sales, an aircraft leasing structure may allow for the aircraft purchaser to be exempt from use tax on the aircraft and for sales tax to be paid on lease rent instead.
- The payment of sales tax on rent instead of paying use tax on the aircraft when purchased normally results in significant overall tax savings in lease structures with aggregate terms of 10 years or less.

Qualifications

- In most states, the aircraft owner/lessor must be qualified to transact business in the state and properly registered as a resale vendor with the state's taxing authority at the time of purchase.
- The aircraft owner/lessor generally must be a party to a “dry” lease of the aircraft effective on the date of the aircraft purchase.

Sale for Resale Exemption Pitfalls

- Some states have lease rent acceleration requirements (e.g., New Jersey and Ohio) pursuant to which the sales tax must be paid on the rent due during the entire lease term up front.
- To avoid problems with related party lease, the lessor must have a profit motive by implementing leases with ordinary (arm's length) commercial terms including rent rate/amount.
- Look out for state-specific restrictions on related party leasing structures or leases between entities that are disregarded from one another for state income tax purposes (e.g., Wisconsin).
- It is vital that all lease payments be made on time and that all other lease formalities be followed.
- Any inconsistent use other than holding for resale can cause the exemption to not be respected and have sales or use tax due on the full purchase price of the aircraft.

Interstate Commerce Exemption

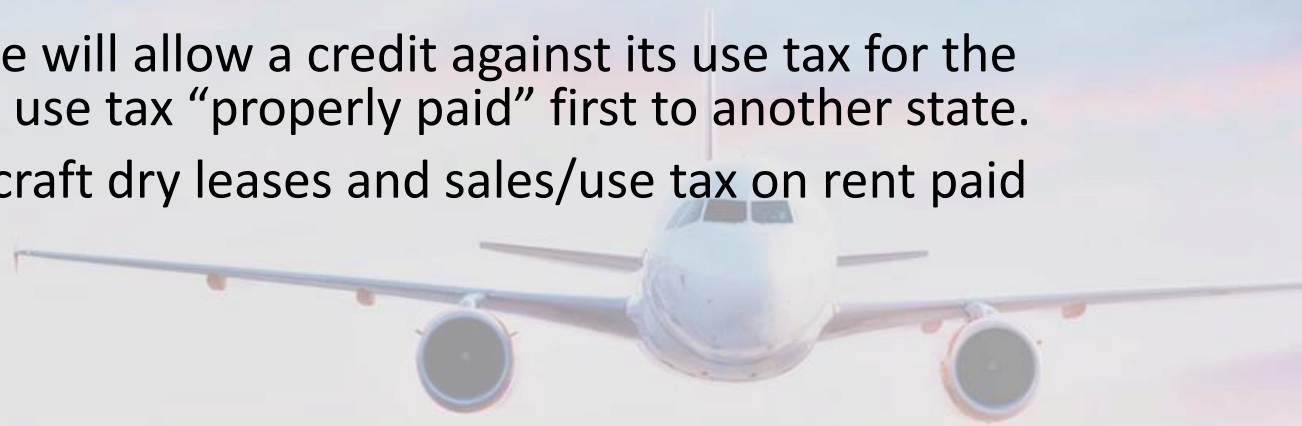
- Interstate commerce exemptions may apply to both FAR Part 91 and FAR Part 135 on-demand use.
- Generally requires use of aircraft, crossing state lines (i.e., interstate flying) in furtherance of business/commercial activities.

Common/Commercial Carrier Exemption

- Generally requires aircraft to be owned or leased and used by an FAA authorized air carrier.
- Some states limit the application of the exemption to scheduled carriers while other states also include on-demand carriers.
- Some states disallow the application of this exemption in situations where all or substantially all of the use is by parties that are related to or affiliated with the owner.

State Sales Tax Credits

- Generally, one state will allow a credit against its use tax for the amount of sales or use tax “properly paid” first to another state.
 - Exception: Aircraft dry leases and sales/use tax on rent paid thereunder.



Trade-In Credit

- Trade-in credit is that portion of the purchase price “paid” with the trade-in property rather than in cash.
- It is possible to utilize a trade-in credit by structuring the transaction to meet the requirements of a particular state’s trade-in credit statute.
- Implementation requirements are normally complex since a sales tax “dealer” must be involved in the trade-in in most cases.

Fractional Shares

- Generally, fractional ownership programs will deliver a fractional interest in an aircraft when the aircraft is located in a state with an applicable sales tax exemption/cap (e.g., Ohio).
- Taxpayers should examine use tax law in states where fractional interest owner is considered a “citizen” for state tax purposes.
- Some states have specific rules regarding application of their sales and use taxes to fractional shares.
- When no specific guidance exists on application of sales and use taxes to fractional shares, then default to general rules for whole aircraft.
- If use tax rules (nexus) do not specifically require “basing” aircraft in such state, then use tax risk is present.
- Risk increases if no sales or use tax paid anywhere. (Caveat: sales tax paid to state with a fixed sales tax on fractional interests in aircraft is generally not helpful to alleviate this risk.)
- Consider planning to meet an exemption, such as “sale for resale.”

Federal Income Tax Issues

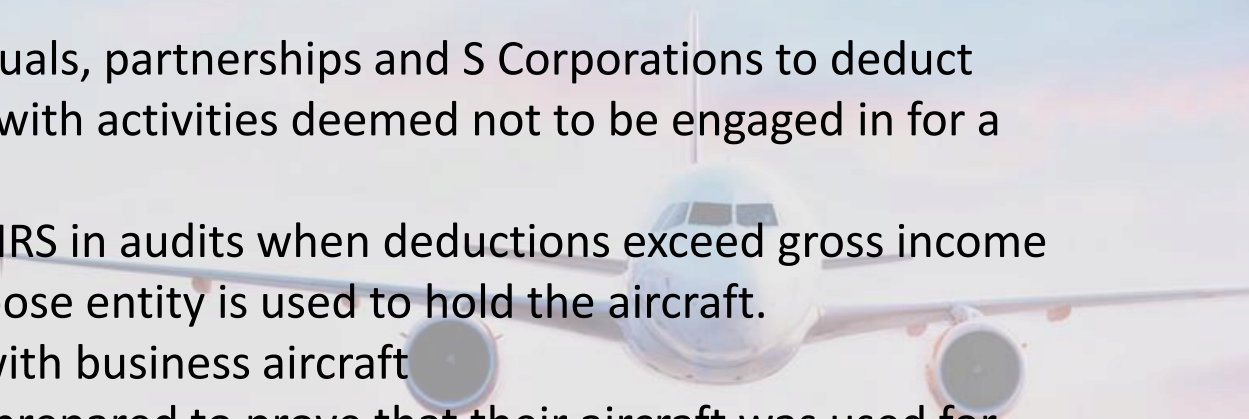
- Trade or Business – Ordinary, Necessary and Reasonable Requirement – IRC Section 162
- Activity Not Engaged In for Profit – IRC Section 183
- Depreciation/Bonus Depreciation – IRC Section 167/168
- Qualified Business Use Requirements – IRC Section 280F
- At-Risk Loss Limitation Rules – IRC Section 465
- Passive Loss Rules – IRC Section 469
- Business Entertainment and Entertainment/Recreational Use By a Specified Individual – IRC Section 274
- Excess Business Loss Limitation – IRC Section 461(I)

IRC 162: Trade or Business Expenses

- Certain costs may be treated as “ordinary and necessary” expenses for which an income tax deduction is allowed for the year of payment.
- Examples: normal operating expenses (fuel, crew costs, etc.), routine maintenance costs
- Deductions are only available for business use, including use as a compensatory fringe benefit (subject to exceptions described in later slides).
- Costs must be appropriate for carrying on taxpayer’s business and reasonable in amount.
- Documentation supporting business use is important!
 - Create a business plan describing how owner plans to use the aircraft to enhance business profitability.
 - Keep contemporaneous documents evidencing use for a legitimate business purpose.

Potential Limitations on Deductibility

IRC 183: Hobby Loss

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- A large commercial aircraft is shown in flight, viewed from a low angle, flying towards the viewer. The aircraft is white with blue accents. The background is a blurred cityscape at night with warm, bokeh light effects.
- Limits right of individuals, partnerships and S Corporations to deduct expenses associated with activities deemed not to be engaged in for a profit.
 - Frequently raised by IRS in audits when deductions exceed gross income and/or a special purpose entity is used to hold the aircraft.
 - Often the case with business aircraft
 - Taxpayers should be prepared to prove that their aircraft was used for purpose of making money.
 - Was the aircraft treated like a business asset?
 - What is the profit or loss history of the activity?
 - To what degree was the aircraft used for personal purposes?
 - In some situations, the aircraft activity may be considered together (aggregated) with other affiliated businesses to satisfy the hobby loss rules.
 - TCJA elimination of deduction of unreimbursed employee business expenses makes hobby loss rules more relevant.

Depreciation

Comparison of Depreciation and Expensing

- Depreciation is allowed on assets like aircraft which are used in a “trade or business” and subject to “exhaustion, wear and tear, and obsolescence” over time (IRC §167).
- Depreciation is taken on costs that must be capitalized, the most significant being the cost of purchasing a business aircraft and some major repair costs.
- Like deductions for operating expenses, entitlement to depreciation is affected by entertainment use, passive loss and hobby loss limitations.
- Unlike deductions for operating expenses, depreciation deductions are spread over multiple years (bonus depreciation is an exception).
- Unlike deductions for operating expenses, depreciation deductions may result in the imposition of tax when the aircraft is eventually sold.
 - Owner may not elect out of depreciation
- Section 179 expensing may be a simpler alternative if available (subject to phase out that may make Sec. 179 deduction unavailable to higher dollar aircraft purchases).

Depreciation

Depreciation Method

- IRC §168(b) provides that business aircraft are depreciated using one of two methods:
 - Modified Accelerated Cost Recovery System, generally referred to as MACRS, and
 - Alternative Depreciation System, generally referred to as ADS or straight line depreciation
- Generally MACRS is preferable because recovery period is shorter and deductions are weighted more heavily in the earlier years.
- Under either method, the tax basis in the aircraft is reduced annually by the amount of the depreciation deduction, with the result that there is taxable gain equal to the difference between the tax basis and the sales price when the aircraft is eventually sold.

Depreciation

Qualifying for MACRS

- Two tests:
 - Aircraft must be predominantly used (more than 50%) for a “qualified business use.”
 - Use in a trade or business of the taxpayer
 - See next slide regarding significant exclusions!
 - Aircraft must be predominantly used (more than 50%) in U.S.

- If predominant use tests are not satisfied in any year during the depreciation period, MACRS no longer applies and any prior deductions that exceed the amounts allowed under straight-line depreciation must be “recaptured” and included in income.

Depreciation

Qualified Business Use

- Three categories of uses only qualify as “Qualified Business Use” if all other Qualified Business Uses comprise at least 25% of total use.
- Three Excluded Uses:
 1. Leasing to any person who owns 5% or more of the taxpayer, or to any related person (within the meaning of Section 267(b) of the IRC);
 - Use is excluded regardless of whether flight is for business or pleasure
 - a/k/a the “leasing company trap”
 2. Use as compensation to any person who owns 5% or more of the company, or to any related person;
 3. Use as compensation to any other person, unless an amount is included in the gross income of such person with respect to such use of the aircraft, and any required income tax was withheld (e.g., SIFL).

Depreciation

Recovery Period

- MACRS Depreciation
- One of two MACRS schedules could apply to business aircraft:
 - 5-year MACRS: Fixed wing aircraft (except those used for commercial or contract carrying of passengers or freight) and all helicopters
 - 7-year MACRS: All aircraft used for commercial or contract carrying of passengers or freight except helicopters
- Straight line depreciation
- One of two straight line schedules could apply to business aircraft:
 - 6-year straight line: Fixed wing aircraft (except those used for commercial or contract carrying of passengers or freight) and all helicopters
 - 12-year straight line: All aircraft used for commercial or contract carrying of passengers or freight except helicopters

Depreciation

Recovery Period

- If the aircraft use falls partially in two categories, the schedule for the predominant use (more than 50%) applies.
- The categories of uses applied by the IRS for depreciation purposes do not exactly mirror the categories used by the FAA for regulatory purposes.
 - Example: A fixed wing aircraft used predominantly in Part 135 operations is 7-year MACRS property, but a helicopter used in Part 135 operations is 5-year MACRS property.

Depreciation

Conventions

- Conventions are used to determine the amount of depreciation that can be taken the first year, which also affects depreciation amounts in subsequent years.
- Half-Year Convention: an aircraft purchased anytime before the end of the taxpayer's 3rd quarter will be treated as if it had been purchased in the middle of the year.
- Mid-Quarter Convention: an aircraft purchased anytime during the taxpayer's 4th quarter will be treated as if it had been purchased in the middle of the quarter, assuming that 40% or more of all MACRS property purchased by the taxpayer was acquired in the 4th quarter.

Depreciation Schedule

5/7 Year MACRS Half-Year Convention

Year	5-Year	7-Year
1	20.00%	14.29%
2	32.00	24.49
3	19.20	17.49
4	11.52	12.49
5	11.52	8.93
6	5.76	8.92
7		8.93
8		4.46

5/7 MACRS Mid-Quarter Convention Placed in Service in Q4

Year	5-Year	7-Year
1	5.00%	3.57%
2	38.00	27.55
3	22.80	19.68
4	13.68	14.06
5	10.94	10.04
6	9.58	8.73
7		8.73
8		7.64

Depreciation Schedule

Straight Line Method Half-Year Convention

Year	6	12
1	8.33%	4.17%
2	16.67	8.33
3	16.67	8.33
4	16.67	8.33
5	16.67	8.33
6	16.67	8.33
7	8.33	8.34
8		8.33
9		8.34
10		8.33
11		8.34
12		8.33
13		4.17

Straight Line Method Mid-Quarter Convention Placed in Service in Q4

Year	6	12
1	2.08%	1.04%
2	16.67	8.33
3	16.67	8.33
4	16.67	8.33
5	16.66	8.33
6	16.67	8.34
7	14.58	8.33
8		8.34
9		8.33
10		8.34
11		8.33
12		8.34
13		7.29

Bonus Depreciation

Tax Cuts and Jobs Act of 2017 (“2017 Act”)

- Expanded the scope of “Qualified Property” that is eligible for bonus depreciation to include used property
- Extends all of the below placed in service deadlines by an additional year for Certain Aircraft and Property having Long Production Times – not discussed in today’s presentation).

Authorized Qualified Property Expensing

100%	Placed in service after 9/27/17 and before 1/1/23
80%	Placed in service after 12/31/22 and before 1/1/24
60%	Placed in service after 12/31/23 and before 1/1/25
40%	Placed in service after 12/31/24 and before 1/1/26
20%	Placed in service after 12/31/25 and before 1/1/27

Bonus Depreciation

Accounting Mechanics

- Depreciation deduction for the taxable year in which “Qualified Property” is placed in service includes an allowance equal to a percentage of the adjusted basis of the Qualified Property (i.e., after adjustments under other sections of the IRC (e.g., IRC Section 179))
- Percentage depends on the year the property is placed in service, as previously discussed

Bonus Depreciation

Accounting Mechanics

- A taxpayer's remaining basis after deducting the appropriate bonus depreciation allowance is depreciated under standard depreciation principles (i.e., MACRS).
 - Obviously, this requirement does not apply to property qualifying for Bonus Depreciation at the 100% level since it will have a zero basis after deduction of the Bonus Depreciation.

- Example: assuming an aircraft placed in service during a 50% Bonus Depreciation year is 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)

Bonus Depreciation

“Qualified Property”

- “Qualified Property” is property that meets each of the following requirements:
 - Property has a recovery period of 20 years or less (e.g., aircraft);
 - Either the Original Use (e.g., new aircraft) of the property commences with the taxpayer or the acquisition of the property meets the Acquisition Requirement (e.g., used aircraft); and
 - Property is placed in service by the taxpayer before January 1, 2027, or, in the case of “Certain Aircraft” or “Property Having Long Production Periods”, before January 1, 2028.

Bonus Depreciation

“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.
 - This refers to property that is new.



Bonus Depreciation

“Acquisition Requirement”

- The “Acquisition Requirement” is met if:
 - the property was not used by the taxpayer at any time prior to such acquisition, and
 - the acquisition of such property meets the requirements of paragraphs (2)(A), (2)(B), (2)(C), and (3) of IRC Section 179(d).

- This refers to property that is used, but not previously owned or used by the taxpayer or an affiliate.

Potential Limitations on Deductibility

IRC 274: Business Entertainment & Recreational Use by a Specified Individual

- Limits owner's right to deduct expenses attributable to business entertainment and to entertainment, amusement and recreational flights for "Specified Individuals"
 - Includes flights to resort destinations or sporting events or to go hunting, fishing, golfing, skiing, etc.
 - Specified Individual = officer, director or owner of more than 10% of any equity class of the aircraft owner or a related party, plus their families and guests
- Does not limit deductibility of expenses for entertainment, amusement and recreational flights for anyone who is not a Specified Individual
- Does not limit deductibility of expenses for flights by Specified Individuals that are not for entertainment, amusement or recreation (cf., "commuting" expenses which are now disallowed)
 - Examples: travel to attend funeral or for medical reasons, etc.

Potential Limitations on Deductibility

IRC 469: Passive Loss

- Limits rights of individuals, partnerships, LLCs, S Corporations and closely held C Corporations to deduct expenses associated with:
 - business activities in which the taxpayer does not “materially participate” and
 - rental activities
- Since aircraft operations are often not a taxpayer’s primary business and the aircraft are often subject to leases under Part 91 or Part 135, this is a commonly encountered issue
- To overcome the passive loss limitations the taxpayer must satisfy the tests for material participation (often difficult when taxpayer is running another business) and satisfy the restrictive requirements to leases, such as, most commonly, being able to “group” the rental and non-rental activities

Potential Limitations on Deductibility

Excess Business Loss

- Excess business loss is disallowed and carried forward as a net operating loss in the following taxable year.
- Excess business loss is:
 - Aggregate deductions of the taxpayer attributable to trades or businesses of such taxpayer, over
 - Aggregate gross income attributable to such trades or businesses + \$250,000 or \$500,000 (if joint return).
- Therefore, even with 100% bonus depreciation, may not be able to use all of it in the year of acquisition.
- Net operating loss carry forwards are subject to 80% limitation rule.
- CARES Act retroactively eliminates EBL limitation for tax years 2018 and 2019, and instead defers its effective date to tax years beginning after Dec. 31, 2020.

Federal Fuel and Air Transportation Excise Taxes



Federal Excise Taxes on aviation are broken down into 2 categories:
“**Noncommercial**” and “**Commercial**”

- **Noncommercial FET = Fuel Taxes = Paid at pump**

- Fuel Taxes

- Kerosene = 24.4 cents per gallon

- $17.5 + 4.3 + .1 + 2.5 = 24.4$

- Jet Fuel = 21.9 cents per gallon

- $17.5 + 4.3 + .1 = 21.9$

- Avgas = 19.4 cents per gallon

- $15 + 4.3 + .1 = 19.4$

- L.U.S.T. = .1

Overview

Commercial FET is broken down into 2 categories:
“Transportation of Persons” and **“Transportation of Property”** (not covered today)

- **Transportation of Persons**

- Transportation of persons is broken down into **“Domestic”** and **“International”**
- **Transportation of Persons – Domestic**
 - 7.5% of amounts paid, plus
 - Segment Fee - \$4.30 per person/leg for 2020 (Changes January 1 every year)
- **Transportation of Persons – International**
 - \$18.90 (2020) International (departure & arrival)
 - \$9.50 (2020) Hawaii & Alaska (departure from AK & HI only)
 - Commercial flights within Alaska and among the Hawaiian Islands are subject to the commercial FET

- CARES Act implemented a Commercial FET Holiday for amounts paid for otherwise taxable transportation between 3/28/20 and 12/31/20

Fuel Tax Credits & Refunds

- Noncommercial and commercial taxes are mutually exclusive.
 - If a flight is considered commercial for tax purposes,
 - The operator is required to collect and remit the commercial transportation tax to the IRS, and apply for fuel tax credits.
 - However, it is the Ultimate Purchaser of the fuel purchased who is entitled to the refund or credit of the fuel taxes paid
 - Except for the 4.3 cents per gallon deficit reduction tax and the .1 cent per gallon LUST tax (LUST Tax only during CARES Act 2020 holiday).

- The refund should be calculated on either
 - Actual purchases, or
 - Fuel burn of the aircraft
 - Be consistent

Unique Issues

- From the perspective of the IRS an operation can be considered Part 91 for FAA purposes, but be subject to the commercial FET,
 - FAR 91.501 Subpart F
 - Allows certain charge backs among a corporation without having to have an operating certificate
 - Allows certain types of leasing activities with out benefit of an operating certificate
 - Such as:
 - Time Sharing 91.501(c)(1)
 - Interchange 91.501(c)(2)
 - Demonstration flights 91.501(b)(3)

Unique Issues

- Part 91 operations (*continued*)
 - Although there is no requirement to have an operating certificate
 - All these operations are considered commercial operations by the IRS, and therefore are subject to the commercial transportation ticket tax on either:
 - amounts paid, or
 - fair market value

Also, an operation can be operated under Part 135, but not subject to the commercial FET (such as flights to transport an aircraft owner/lessee that are operated under Part 135).

Commercial FET Exemptions

Affiliated Group Exemption

- Amounts paid within the affiliated group are not subject to the commercial FET
 - Flights flown outside of the affiliated group are subject to the commercial FET on a flight by flight basis.

Entities Disregarded for Federal Income Tax Purposes

- Effective January 1, 2008, entities that are disregarded for federal income tax purposes are not disregarded for purposes of the taxes under IRC Sec. 4261/4271.

FET Application

How does the FET apply in the following scenarios?

- Time sharing
- Demo Flights
- Interchange
- Joint Ownership
- Affiliated Group Companies
- “Other” Affiliated Companies
- Flight Department Company
- Single Member LLC’s and Qsubs
- “Nichols Interpretation” flights

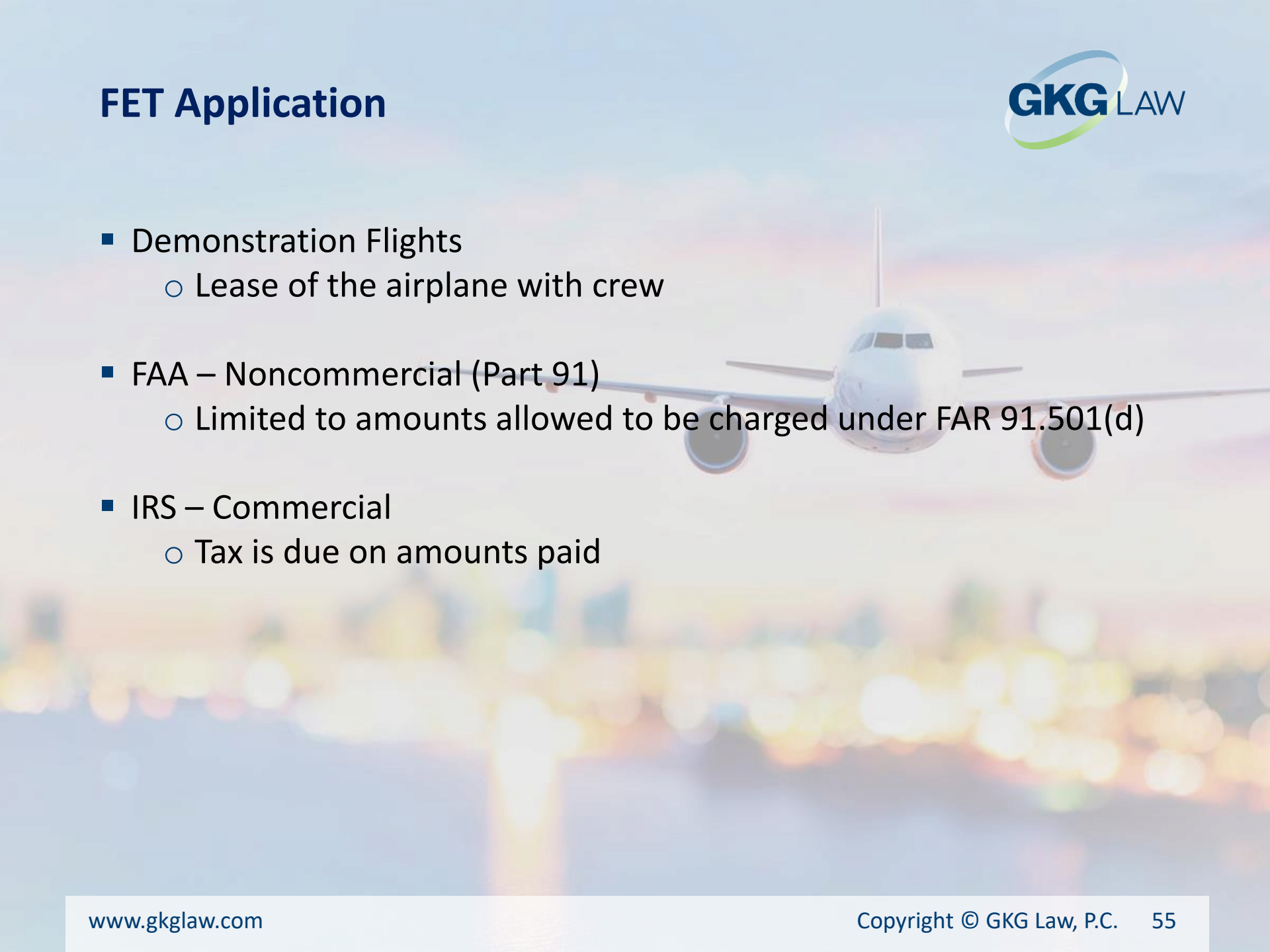


FET Application


- Time Sharing
 - Lease of the airplane with crew
 - Timeshare agreement needs to be in place
 - FAA – Noncommercial (Part 91)
 - Limited to amounts allowed to be charged under FAR 91.501(d)
 - 2x cost of fuel + listed incidental costs

- IRS – Commercial
 - Tax is due on amounts paid

FET Application

- Demonstration Flights
 - Lease of the airplane with crew
 - FAA – Noncommercial (Part 91)
 - Limited to amounts allowed to be charged under FAR 91.501(d)
 - IRS – Commercial
 - Tax is due on amounts paid
- 
- A large commercial airplane is shown from a front-on perspective, flying towards the viewer. The background is a blurred cityscape at night, with numerous lights creating a bokeh effect. The sky is a mix of light blue and white, suggesting a bright or overcast day.


FET Application

- Interchange
 - Hour for hour exchange of time
 - May charge for difference of owning, operating and maintaining
 - FAA – Noncommercial (Part 91)
 - Exception under FAR Part 91.501
 - IRS – Commercial
 - Tax is due on FMV of flight
- 
- A large commercial airplane is shown from a low-angle perspective, flying towards the viewer. The plane is white with two engines. The background is a blurred cityscape at night, with numerous lights creating a bokeh effect. The sky is a mix of light blue and white, suggesting a bright day or a very bright light source.

FET Application

- Joint Ownership
 - Each party is a registered owner of the aircraft
 - Each owner pays pro-rate share of fixed expenses
 - Each owner pays variable expenses for their use
- FAA – Noncommercial (Part 91)
- IRS – Noncommercial
 - Percentage owned must accurately approximate percentage used


Application of Commercial FET

- Co-Ownership
 - FAA – 91 Noncommercial
 - IRS – Noncommercial if flights operated by owner/lessee
 - Co-Tenant Agreement
 - Fractional, Subpart 91K
 - No commercial FET (percentage and segment fee), however, now 14.1 cents more per gallon
 - Aircraft must be a fractional program aircraft
- 
- A large commercial airplane is shown from a low-angle perspective, flying towards the viewer. The background is a blurred cityscape at night, with warm lights from buildings and streetlights creating a bokeh effect. The sky is a mix of blue and orange, suggesting a sunset or sunrise.


FET Application

- Affiliated Group
 - Aircraft owned by one corporation
 - Used by others in the affiliated group
 - Payments can be made for the full cost of owning, operating and maintaining the aircraft
- FAA – Noncommercial (Part 91)
- IRS – Noncommercial (IRS exemption)
 - Only charges within the affiliated group are exempt. Anything outside the group is taxable.

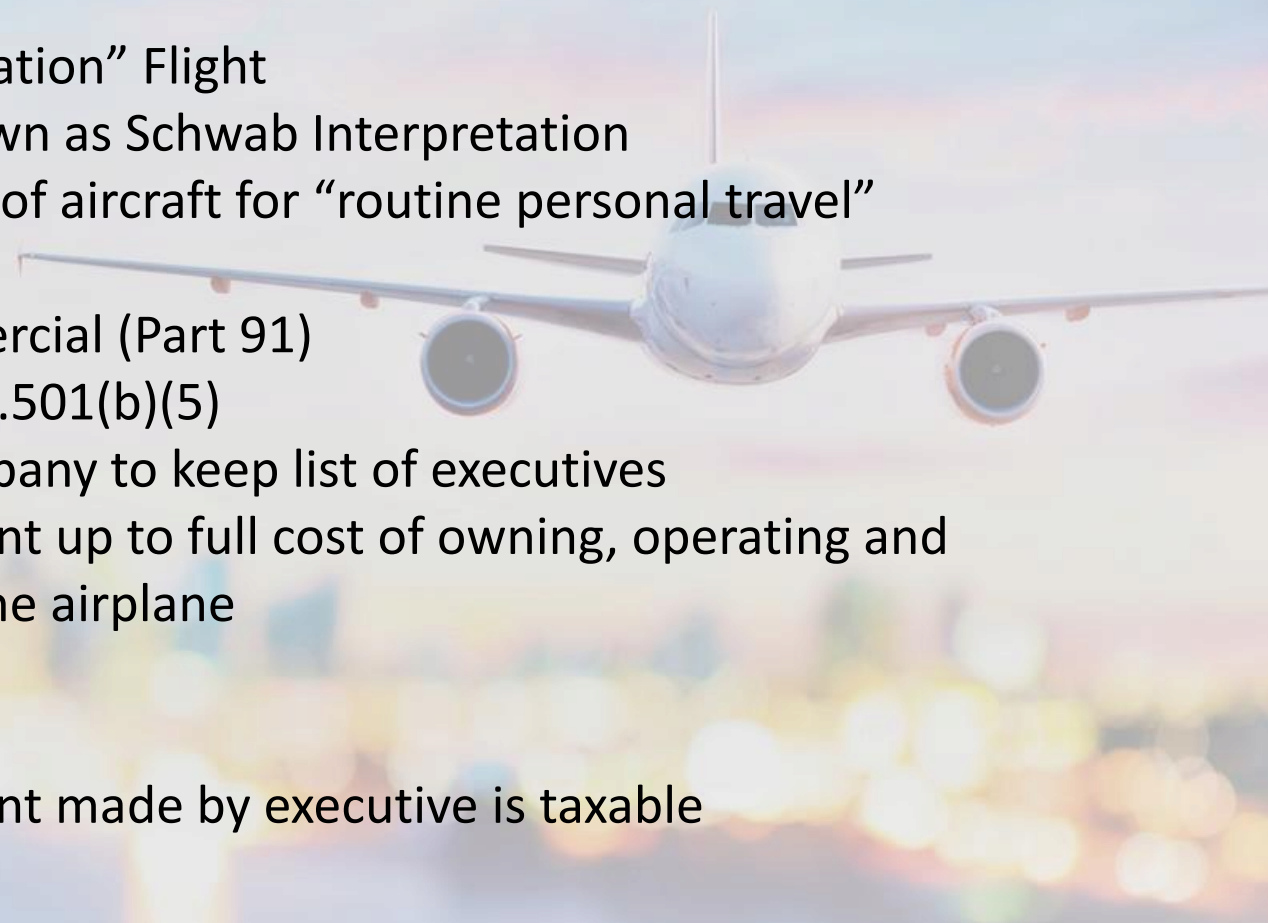
FET Application

- “Other” Affiliated Companies
 - An individual owns 100% of several companies
 - One company owns and operates aircraft for themselves and other companies
 - FAA – Commercial
 - Not considered an affiliated group
 - IRS – Commercial
 - Tax due on amounts charged to other companies
- 
- A large commercial airplane is shown from a low-angle perspective, flying towards the viewer. The aircraft is white with two engines mounted under the wings. The background is a blurred cityscape at night, with warm lights from buildings and streetlights creating a bokeh effect. The sky is a mix of light blue and white, suggesting a bright day or a very bright light source.

FET Application

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- A photograph of a white commercial airplane in flight, viewed from a front-quarter perspective. The plane is centered in the upper half of the slide. The background is a blurred cityscape at night, with warm lights from buildings and streetlights creating a bokeh effect.
- Flight Dept. Company/Sole Purpose LLC
 - Aircraft operations is only activity of the entity
 - Flown for owner and other related entities
 - FAA – Commercial (Part 135)
 - Commercial FET may not apply if flights are for the LLC owner but requires additional analysis
 - Potentially illegal if operated under Part 91
 - IRS – Commercial
 - LLC is providing transportation for compensation
 - Even capital contributions can be deemed taxable

FET Application

- 
- “Nichols Interpretation” Flight
 - Formerly known as Schwab Interpretation
 - Executive use of aircraft for “routine personal travel”
 - FAA – Non Commercial (Part 91)
 - Falls under 91.501(b)(5)
 - Requires company to keep list of executives
 - Reimbursement up to full cost of owning, operating and maintaining the airplane
 - IRS – Commercial
 - Reimbursement made by executive is taxable

Collection & Remittance of FET

Who pays the tax?

- The passenger is the taxpayer and is responsible for *paying* the commercial FET.

Who is responsible for collecting and remitting the tax?

- The entity who is billing the passenger is responsible for *collecting, reporting and remitting* the commercial FET.



Questions?

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