



February, 2015

## Split Decisions in NetJets/EJM Federal Air Transportation Excise Tax Case

NetJets and Executive Jet Management (EJM) are locked in a battle with the IRS over the taxing agency's efforts to extend federal air transportation excise taxes to a broad list of aircraft support services. Although the case remains on-going, the U.S. District Court for the Southern District of Ohio recently issued several significant decisions.

1. The Court held that NetJets' activity under its fractional aircraft ownership program was "taxable transportation" by NetJets. Therefore, certain payments by fractional aircraft owners to NetJets were subject to federal excise tax (FET).
2. The Court held that FET was due only on the "occupied hourly fee" charged by NetJets to the fractional aircraft owners. FET was not owed for NetJets' management fees or fuel surcharges because the IRS previously agreed to only collect FET on the "occupied hourly fee" in a 1992 Technical Advice Memorandum issued by the IRS to NetJets.
3. With regard to EJM, EJM provided aircraft management services to aircraft owners. The IRS argued that FET should be imposed on aircraft

owners' flights, when such aircraft are managed by EJM and also made available by EJM for charter to third party customers. This effort to apply FET to Part 91 owner-operations has the broadest financial implications for the private aircraft industry. The Court declined to grant a decision, on summary judgment motions, on whether FET applied to aircraft owners with private aircraft under EJM management. Instead, the Court stated that whether FET is due would be decided based upon an analysis of the facts to determine who had "possession, command and control" over the aircraft, EJM (in which case the management services fees and other fees could be taxable) or the aircraft owners (in which case such fees would be non-taxable).

We will continue to monitor to developments in this case and federal excise taxes affecting private aircraft activity.

For more information, please contact Gary Horowitz at 301-800-0001, or [ghorowitz@hchlegal.com](mailto:ghorowitz@hchlegal.com).