HCH LEGAL Airworthy Alert

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Tax Law Changes under

The FAA Modernization and Reform Act of 2012

The general aviation industry will be affected by several tax law changes made under the FAA Modernization and Reform Act of 2012 (the "FAA Act").

Extension of Federal Excise Taxes. The FAA Act extends through September 30, 2015, the 7.5% federal excise tax ("FET") on air transportation services, the 6.25% FET on property transportation by air, and the 4.3-cent-per-gallon FET on charter and commercial airline fuel.

Fractional Aircraft Programs. Beginning April 1, 2012, qualified owner flights on fractional program aircraft under fractional ownership aircraft programs are considered noncommercial flights, and will not be subject to the 7.5% FET, but will instead be subject to the noncommercial fuel tax rate of 21.9 cents-per-gallon, plus an additional 14.1 cents-per-gallon surtax (the "Fuel Surtax"). However, there are still ongoing disputes between fractional aircraft program managers and the IRS regarding whether the 7.5% FET applies to flights under fractional aircraft programs prior to April 1, 2012, and if so, what fractional program costs and fees are subject to the 7.5% FET as taxable air transportation services (i.e., management fees).

The Fuel Surtax applies until September 30, 2021, but the exemption from the 7.5% FET applies only through September 30, 2015, which is when the 7.5% FET is scheduled to expire under the FAA Act. Assuming the 7.5% FET is extended past September 30, 2015, we will see whether, beginning October 1, 2015, fractional program aircraft will become subject to both the Fuel Surtax and the 7.5% FET on air transportation services.

New Small Jet Aircraft Taxes. Prior to the FAA Act, the 7.5% FET on air transportation services and the 6.25% FET on property transportation by air did not apply to aircraft with a certified maximum takeoff weight of 6,000 pounds or less, when such aircraft were operated on a non-established line. Under the FAA Act, these exemptions have been repealed as applied to jet aircraft (e.g., Eclipse 500 aircraft).

Important Omissions. Perhaps most notable about the FAA Act is what is not in the FAA Act – more new taxes. Prior to the FAA Act, there was substantial debate over whether to replace the current FET with per-aircraft user fees, which was strongly opposed by several general aviation trade associations. Also, absent from the FAA

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Act was the proposal to make tax depreciation schedules longer for business aircraft. Despite the FAA Act, the call for new taxes on general aviation is unlikely to end anytime soon. For example, the White House budget for Fiscal Year 2013 recently proposed imposing a new, $100-per-flight fee for air traffic services in addition to the current federal aviation taxes already being paid.

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