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IRS Suspends Federal Excise Tax Assessments on Aircraft Management Company Fees

The Internal Revenue Service (IRS) is suspending Federal Excise Tax (FET) assessments of aircraft management companies under audit, to give the IRS time to develop guidance on FET specific issues affecting private aircraft operations.

The Tax Code imposes a 7.5% FET on the amount paid for domestic air transportation services provided by aircraft charter operators and commercial airlines. FET can also be imposed by the IRS on non-commercial flight operations, and over the last several years the IRS has aggressively audited aircraft management companies. The IRS claims that the aircraft management fees paid by an owner to its aircraft management company are subject to FET, even when the aircraft is operated by the owner under FAR Part 91. In a Chief Counsel Advice memorandum written in 2012, the IRS examined a case where an aircraft owner hired a management company to oversee aircraft operations, and the owner paid the management company a monthly management fee and reimbursed pilot employment and training costs. The IRS determined that the management company provided taxable transportation to the aircraft's owner, and that FET was due on the monthly management fees and pilot reimbursements, neither of which (according to the IRS) were non-transportation services.

However, this new IRS position was inconsistent with prior guidance and generated confusion.

In response, representatives of the National Business Aviation Association (NBAA) and National Air Transportation Association (NATA) met with IRS officials requesting clear guidance on FET as applied to aircraft operated privately by owners that use aircraft management company services. In consideration for the concerns of NBAA and NATA, the IRS will suspend FET assessments on current audits until the IRS develops formal guidance and audit standards for both future FET liability and past activity. IRS guidance is expected to be provided within several months.

In light of the IRS's FET activity, private aircraft owners using aircraft management company services should review their arrangements to clearly establish that, for FET purposes, the aircraft owner has possession, command and control over its aircraft and the management company is merely acting as an agent of the owner. For more information, please contact Gary Horowitz at 301-800-0001, or ghorowitz@hchlegal.com.