Kansas City Business Aviation Symposium

Legal & Regulatory Update

June 21, 2012

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Welcome

- This is a review of current legal, regulatory and tax considerations that may be of interest to you as an aircraft owner, operator, seller or lessee
- If you are here as a prospective aircraft purchaser, you are in good company with Warren Buffet who just ordered 425 new aircraft worth up to 9.6 billion over the next 10 years
- We thank you, Mr. Buffet for your confidence in the future of business aviation

Re-Registration and Renewal of Aircraft Registration

- New registration rules in 14 CFR 47
- Aircraft registered before Oct 1, 2010 must be re-registered within a three year period
- Renewal of registration will take place every three years
- Fee for re-registration is $5.00
- FAA will send out two notices to owner:
    1. 180 days before registration expires
    2. Two months before registration expiration to those not yet re-registered or renewed
- If you forget to re-register, bad things happen…

Block Aircraft Registration Requirement (BARR) Changes

- BARR allows owners or operators to block their aircraft registration numbers from being displayed on the FAA's Aircraft Situation Display to Industry (ASDI) or the National Airspace System Status Information (NASSI)
- There are two blocking levels available:
  1. ASDI Source Level Blocking
  2. FAA Source Level Blocking
- A June 2011 policy required a valid security concern in order to block aircraft registration numbers
- In December 2011, that policy was eliminated and the FAA adopted an interim policy that stated a valid security concern was no longer required to block aircraft registration requests

Temporary Flight Restrictions (TFR)

- TFRs are issued on very short notice for special events, natural disasters and government VIPs
- We can expect a TFR in Kansas City on July 9th when Vice President Biden is in town and on July 10th for the All-Star Game
- AOPA and The National Business Aviation Association (NBAA) are currently working to try and eliminate inadvertent violations by coming up with a new approach to security
- The NBAA is currently collecting data from its members to get information on the economic impact TFRs are having on companies during this election season to discuss with TSA and the FAA

Flightcrew Duty and Rest Requirements – Part 135

- There are new flightcrew member duty and rest requirements for Part 121 airline operations as a result of the Colgan accident in Buffalo, New York
- The new rule will go into affect on January 4, 2014.
- Although Part 135 operators are not affected yet, in the proposed rule for the new pilot duty requirements, dated September 14, 2010, the FAA stated that, "[T]he part 135 community should expect to see an NPRM addressing its operations that looks very similar to, if not exactly like, the final rule the agency anticipates issuing as part of this rulemaking initiative."

FAA Modernization and Reform Act of 2012

- Fractional owner flights are no longer subject to the federal excise taxes for commercial operations (7.5% +), but subject to a 14.1¢ per gallon fuel surtax.
- These Part 91 Subpart K flights are now treated as non-commercial flights by the IRS

Federal Excise Tax for Part 91 – Taxability of Aircraft Management Fees

- An IRS Chief Counsel Memorandum released March 9, 2012 gave internal guidance on taxability in Part 91 management arrangements and who exercises "possession, command, and control" over the aircraft. If possession, command and control is transferred by an owner to a management company, the IRS wants to collect a 7.5% excise tax on the monthly management fee as an "amount paid" for taxable transportation
- Factors indicating manager has possession, command and control:
  1. Pilots and maintenance crew employed by management company, not owner
  2. Management company uses aircraft for Part 135 air charter
  3. Manager of aircraft carries insurance for aircraft, not owner
- At this point there is no change in the law, but management companies and aircraft owners are carefully reviewing their agreements to clarify who has "possession, command, and control" of a managed aircraft

Sales and Use Tax

- Sales Tax / Use Tax
  - Sales Tax is a one time tax applied in the state of the purchase at the time of sale and will vary depending on state and local taxes
  - Use Tax may be applied when the use or storage in the state for property acquired outside the state
- No State Sales Tax:

  Alaska (but some local sales taxes)

  Delaware (but gross receipts taxes)

  Montana

  New Hampshire

  Oregon
- States with Aircraft Purchasing Exemptions:

  Connecticut (MCTOW greater than 6,000 lbs)

  Delaware (MCTOW greater than 12,500 lbs)

  Massachusetts

  Rhode Island

Sales and Use Tax, cont.

- Fly-Away Tax Exemptions:
  - A fly-away tax exemption may apply when you purchase an aircraft within a state then fly it away within a specified period
  - States may also impose restrictions on returning to the state within a specified period
- There are currently 19 States with fly-away tax exemptions:

  AZ, CA, CO, FL, ID, IL, IN, **IA**, **KS**, ME, MN, **NE**, NJ, ND, SD, TN, TX, VA, WI
- Other exemptions may be available; however, other fees or taxes may also be applicable

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State Sales & Use and Property Tax

	Missouri	Kansas	Iowa	Nebraska
Sales/Use Tax Rate	8.49% in St. Louis	8.65% in Olathe	6.0% in Des Moines	7.0% in Lincoln
	7.6% in Kansas City	8.3% in Wichita		
Fly Away Exemption?	No	Yes	Yes	Yes
Common Carrier Exemption Available for Part 135?	Yes, but current being challenged	Yes	Yes--Must apply for exemption	Yes
Leasing Structure Available for Sales Tax Planning?	Yes (will not work with SMLLC/parent)	Yes	No	Yes
Casual Sale Exemption?	Only if sales price <$3,000. §144.010(1)(2)	No. §79-3601(l), 79-3603(o)	No. §423.6(6); §701-18.28(1)	Yes--provided used as business asset for >1 year and sales tax had been paid. 77-2701.24(3); Reg. §1-022.05
Personal Property Tax?	Yes. Allocation available for "commercial aircraft" = >3,000 pounds	Yes. Exemption available for aircraft used predominantly (80%) for business.	No PPT. Have Annual Registration Fee (capped at $5,000/year)	Yes

Depreciation

- Depreciation is an annual allowance for the wear and tear, deterioration, or obsolescence of the property
- Types:
  1. Modified Accelerated Cost Recovery System (MACRS)
  2. Alternative Depreciation System (ADS)
- 7-year MACRS or 12-year ADS depreciation schedule for commercial and contract carriage use (i.e. Part 135)
- 5-year MACRS or 6-year ADS depreciation schedule for those in non-commercial use (i.e. Part 91)

Bonus Depreciation

- Allows new aircraft (used for non-commercial purposes) acquired after September 8, 2010 and placed into service before January 1, 2013, to take 100% depreciation allowance
- Not yet extended for 2013
- Qualified property (certain aircraft) acquired and placed into service in 2012 may qualify for 100% bonus depreciation
- Qualified property (certain aircraft) acquired and placed in service in 2013 may still qualify for 50% depreciation

European Union Emissions Trading Scheme (EU ETS)

- On January 1, 2012 EU ETS was implemented
- Applies to aircraft over 12,566 pounds who fly to, from, or within the EU or EEA-EFTA countries or their territories
- Exemptions:

  Air Operator (i.e. Part 135) small emitters

  Aircraft with a maximum certified takeoff weight less that 12,566 pounds (5700 kg)

  Flights conducted exclusively under visual flight rules

  Search and rescue, firefighting, humanitarian, and emergency medical service flights authorized by the appropriate authority
- Part 91 small emitters are not exempt, but have a simplified reporting process

EU ETS, cont.

- Small Emitters, defined:
  - If you operate fewer than 243 flights in three consecutive four month periods (Jan-April; May-Aug; Sept-Dec); **or**
  - If you are an operator who emits less than 10,000 tonnes of CO_2 per year when flying to or from EU aeronautical facilities
- If you are not exempt, you should:
  - Apply for or confirm your EU Member State
  - Submit your monitoring plans to your Member State
  - Annually:

    Track your emissions

    Compile an emissions report for verification

    Submit your verification to a third-party verifier

    Submit the verifier's findings to your Member State for approval prior to March 31 each year

US Owner Trustee Rules

- A non-citizen trust (NCT) allows aircraft buyers who are unable to meet the citizenship requirement to use a US Owner Trustee to register their aircraft in the US
- FAA has concerns about obtaining important information from the owner trustee for proper oversight of the aircraft when operating outside the United States
- In February 2012, the FAA released a Proposed Policy Clarification (PPC) for NCTs and held a public meeting on June 6, 2012

US Owner Trustee Rules, cont.

The Proposed Policy Clarification (PPC) would:

- Require the US Owner Trustee to provide within two business days of the FAA's request:
  1. The identity of the person normally operating, or managing the operations of the aircraft;
  2. Where that person currently resides or has its principle place of business;
  3. The location of maintenance and other aircraft records; and
  4. Where the aircraft is normally based and operated
- Within five business days, the trustee, being the registered owner, would provide more detailed requested information, if requested
- In the event of an emergency the trustee would be required to provide the information more quickly
- The Aviation Working Group has submitted and represented organizations and businesses to advocate for position within the industry

Thank you!

(Questions?)

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