

IRS Suspends Federal Excise Tax Assessments on Aircraft Management Company Fees

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The Internal Revenue Service (IRS) is suspending Federal Excise Tax (FET) assessments of aircraft management companies under audit, while the IRS develops 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. Over the last several years, the IRS has aggressively audited aircraft management companies, and has claimed 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 2012 Chief Counsel Advice memorandum, an aircraft owner hired a management company to oversee aircraft operations, 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. However, this new IRS position is inconsistent with prior guidance and creates confusion.

In response, representatives of the National Business Aviation Association (NBAA) and National Air Transportation Association (NATA) met with IRS officials to request clear guidance on FET as applied to aircraft operated privately by owners using 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 the owner's agent.