From: jeffrey E. <jeevacation@gmail.com>
Sent: Thursday, December 21, 2017 2:08 PM
To: Richard Kahn
Subject: Fwd: FW: Tax Bill Aircraft Provisions - Bonus Depreciation, Like kind exchanges, and Safety Concerns

---------- Forwarded me[redacted]
From: Barry J. Cohen <[redacted]
Date: Wed, Dec 20, 2017 at 7:16 PM
Subject: FW: Tax Bi=l Aircraft Provisions - Bonus Depreciation, Like kind exchanges, and Safet= Concerns
To: "jeffrey E." < <mailto:B[redacted]

FYI

From: Wimer, Ruth [mailto:R[redacted]
Sent: Wednesday, December 20, 2017 4:17 PM
To: Wimer, Ruth [redacted]
Subject: Tax Bill Aircraft Provisions - Bonus Depreciation, Like kin= exchanges, and Safety Concerns

Below is a summary with 100% bonus depreciation (eve= for used aircraft) and the denial of like-kind exchanges most noteworthy.=C2 Observation: Having an Independent Security Study in place may meet =he "safety concern" requirement to keep commuting expenses deductible. Best, Ruth (202) 282-5358 <tel:(202)%20282=5358>

Tax Reform Highlights for Business Aviation

100-Percent Expensing (Bonus Depreciation)=/u>

A 2015 Act extended bonus depreciation for qualified=property (including commercial and non-commercial aircraft used in a trade=or business with a recovery period of 20 years or less) through 2019, with=a phase-down over time from 50 percent to 30 percent.

Under the Tax Bill, however, the current law would b= amended to provide for 100-percent expensing, which will allow taxpayers =mmediately to write off the cost of aircraft acquired and placed in servic= after Sept. 27, 2017 and before Jan. 1, 2023 (Jan. 1, 2024 for longer production period property and certa=n aircraft). Through the efforts of NBAA and a coalition of general aviati=n groups, the new law would permit 100 percent expensing by the taxpayer f=r both factory-new and pre-owned aircraft so long as it is the taxpayer's first use of the aircraft=

For tax years after 2022, the bill provides for a ph=se down of bonus depreciation in increments of 20 percent each year for qu=lified aircraft acquired and placed in service before Jan. 1, 2027 (Jan. 1= 2028 for longer production period property and certain aircraft).

Like-Kind Exchanges

Under current law, when property (including business=aircraft) held for productive use in the taxpayer's trade or busin=ss or for investment is exchanged for property that is "like-kind,=E2 a special rule under Internal Revenue Code (IRC) § 1031 provides that no gain or loss is recognized to the extent that=the replacement property is also held for productive use in a trade or bus=ness or for investment purposes.

The Tax Bill modifies this special rule only to allo= for like-kind exchanges of real property. As a result, taxpayers will no =onger be eligible to defer taxable gain on the sale of aircraft via a like=kind exchange, and the gain would be subject to recapture for tax purposes. This provision is effective for =ransfers after 2017, and is a permanent repeal of application of IRC =A7 1031 rules to exchanges involving aircraft and other tangible personal =roperty.

However, a transition rule preserves like-kind excha=ges of personal property if the taxpayer has either disposed of the relinq=ished property or acquired the replacement property on or before Dec. 31, =017. Further, 100 percent expensing of new and used property helps to compensate for the repeal of like-kind e=changes for tangible personal property, though unlike such repeal and as n=ted above, 100 percent expensing is scheduled to expire in 2023/2024 with =n additional phase down until 2027/2028.

Prohibition on Deduction of Employees' Commu=ing Expenses

The Tax Bill prohibits employers from deducting the =ost of providing transportation to employees to commute between the employ=e's residence and place of employment unless provided for the safe=y of the employee. It is unclear whether this new provision would allow the deduction of commuting expenses include= in income, and if so, whether such deduction is limited to only the actua= amount of the expense included in income.

Disallowance of Travel Expenses "Directly Re=ated" to Business

The Tax Bill makes far-reaching changes to the basic=deduction disallowance rules for business entertainment which could affect=many aircraft owners. Historically, the general rule of IRC § 274 dis=llowed all entertainment expenses (assuming no exception applied) unless directly related or associated with the activ= conduct of the business. Therefore, the 100 percent deduction disallowanc= did not apply to the entertainment of business customers, prospective cli=nts, company retreats and other entertainment events where business was conducted immediately before, duri=g or after the entertainment, or the entertainment was clearly associated =ith a business goal unrelated to providing the entertainment such as the o=ening of a new business location. Beginning in 2018, the Tax Bill disallows all entertainment expenditures, =egardless of whether they are directly related to a business goal.

Repeal of Miscellaneous Itemized Deductions, Includi=g Employee Business Expenses

The Tax Bill eliminates miscellaneous itemized deduc=ions, including employee business expenses beginning in 2018 and before Ja=. 1, 2026. Prior to the amendment, employees could deduct expenses incurre= in performing their work, subject to the limitation that such expenses (along with other miscellaneous itemi=ed deductions) were only deductible to the extent that the total of such e=penses exceeded 2 percent of adjusted gross income.

The 2% floor was a simplification measure in the 198= Tax Act under which very few taxpayers needed actually to calculate their=miscellaneous itemized deductions. For the same reason, eliminating the de=uction is expected to affect relatively few taxpayers. However, the effect on the taxpayers whose adjusted gross i=come is not extremely high and who are currently able to deduct their airc=aft expenses as employee business expenses to the extent they exceed the 2=percent floor could be substantial. Such taxpayers may want to consider restructuring their compensation arran=ements into accountable plan arrangements, which are not affected by the T=x Bill.

Transportation Excise Tax Does Not Apply to Owner Fl=ghts on Managed Aircraft

The Tax Bill also amends IRC § 4261 by adding a=new subsection to clarify that owner flights on managed aircraft are not s=bject to Federal Transportation Excise Tax (FET) ticket tax, but rather ar= subject to the non-commercial fuel tax. This issue has been the subject of controversy for more than 60 years, and=this amendment clarifies the law consistent with the understanding of most=people in the industry.

The FET exception applies to payments by the aircraf= owner (or lessee) for aircraft management services related to maintenance= support or flights on the aircraft. The exception does not actually requi=e that the owner be on the flight or that the flight be on the business of the owner, but only that the owne= (or lessee) pay for the aircraft management services.

“Aircraft management services” are d=fined broadly, and no distinction is drawn between payments for aircraft m=nagement services versus payments for transportation services. It is suffi=ient that the payments by the owner (or lessee) ultimately cover the aircraft functions identified in the statute as aircraft managem=nt services. Since the only requirement is that the payments for aircraft =anagement services be made by the owner or lessee, there appears to be no =eed to analyze whether or not the management company exercises possession, command and control of the aircra=t.

The amendment includes new IRC § 4261(e)(5)(D) =hat appears to provide that if a portion of any payment is for taxable tra=sportation but such portion is not paid for “aircraft management s=rvices,” then such portion of the payment is taxable. While this provision could cause confusion, we believe it is intended to m=an that when a payment includes a taxable portion (such as payment for a f=ight on an aircraft not owned by the payor) and a nontaxable portion (such=as payment with respect to a flight on an aircraft owned by the payor), only the taxable portion is subject to=FET.

The FET exception only applies with respect to fligh=s paid for by the owner or lessee. Accordingly, if an owner leases the air=raft to a management company, and an affiliate of the owner pays the manag=ment company for the flight, the exception would not appear to apply. In contrast, if the aircraft owner le=ses the aircraft to its affiliate and the affiliate (being a lessee) pays =he management company for services related to the flight, then the excepti=n would apply.

Entities that may be disregarded for income tax purp=ses (such as single-member LLCs, qualified subchapter S subsidiaries and g=antor trusts) are respected as separate entities for FET purposes and can =xpect to be respected for purposes of this exception. For example, if a company owns a single-member LLC whic= owns an aircraft, the FET exception would not appear to apply to payments=by the company to a management company to manage the aircraft. However, if=the LLC leases the aircraft to the company, then the company’s payments should be covered by the =xception.

The FET exception will not apply to payments by a le=see that is leasing the aircraft from the management company under a lease=with a term of thirty-one (31) days or less. This is intended to prevent t=e exception from applying to one-off customers of a charter company who structure their charters as wet leases.=Such a wet lease structure may also be problematic from an FAA regulatory =erspective.

The provision is effective for payments after the da=e of enactment, which could be as early as Dec. 22, 2017. While the provis=on will not be directly applicable to owner flights prior to this date, we=understand that the IRS has recently been (correctly) interpreting current law to not impose FET on management =ees with respect to owner flights and we would hope that this provision wo=ld reinforce that approach.

Acknowledgments

This article was written by NBAA Tax Committee membe=s John B. Hoover, Cooley LLP, and Ruth Wimer, Winston & Strawn LLP, wi=h thanks to Richard C. Farley, Jr., PwC, and Jeff Wieand, Boston Jet Searc=. Learn more about the NBAA Tax Committee.

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