From: jeffrey E. <jeevacation@gmail.com>
Sent: Monday, September 25, 2017 3:24 PM
To: Barry J. Cohen; Melanie Spinella
Subject: Re: FW: FET Question

yes, im aware the NBAA fought and won. never h=s been an issue. . these are technical . one of th= reasons they won was that no one ever really paid .

On Mon, Se= 25, 2017 at 11:19 AM, Barry J. Cohen [redacted] >=wrote:

Minor point on the airplane tax article you sent a w=ile back. It suggested that FET was due on Part 91 flights. Se= below the view of Ruth Wimer at McDermott suggesting that this policy is =o longer followed by the IRS.

From: Wimer, Ruth [mailto:[redacted] mailto:[redacted]
Sent: Monday, September 25, 2017 11:14 AM
To: Joseph Vinciguerra [redacted] <mailto:[redacted] >
Cc: Deyoe, David [redacted] <mailto
<mailto:[redacted] <mailto [redacted]
Subject: RE: FET Question

Joe: The short a=swer is that CCA 201210026 is no longer followed by the IRS. First, =here was an actual internal document about a year after the CCA, directing=auditors to curtail assessment. (see article below) Then about a year ago, the audit of the issue, that being Own=r Management company flights, was dropped altogether for new audits. =Thus, it is now "safe" not to pay the excise tax on the Pa=t 91 Owner flights.

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NBAA/BNA Article descr=bing initial IRS Directive:

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Impli=ations of the Suspension on Assessments

The susp=nsion on assessments of FET was announced by the Small Business/Self Emplo=ment (SBSE) division of the IRS, which includes the FET auditors. The intent is to suspend the collection of these taxes u=til after the issuance of

clear authoritative guidance, such as regulation=. At the SBSE meeting, we requested that the IRS terminate the FET audits =f owner flights, but SBSE decided to merely suspend the assessments instead.

We under=tand that this decision was communicated informally to FET audit managers,=likely by conference call. If the guidance project takes a long time, then the lack of a written document announcing the susp=nsion on assessments may result in misunderstandings with IRS auditors reg=rding the scope of the suspension.

Overv=ew of FET Audit Process

As a pro=edural matter, an FET audit includes an examination of the taxpayer by an =uditor and the issuance of an Examination Report in which the auditor proposes adjustments to the taxpayer's FET liabil=ty. If the taxpayer signs the audit report indicating agreement with the p=oposed adjustments, the FET is then assessed. If the taxpayer does not agr=e, but instead appeals the proposed adjustment to the IRS Appeals Office, then the taxpayer and the Appeals Of=ice may reach an agreement resulting in an assessment of taxes. If they ca=not agree at Appeals, then the IRS would presumably assess the taxes and r=quire payment, and the taxpayer could seek a refund in federal court.

Effec= of the Suspension of Assessments on Existing Audits

Notwiths=anding the suspension of assessments, FET examinations currently in progre=s may continue, and the IRS Agents may provide preliminary Examination Reports proposing FET taxes to be assessed. Howeve=, it is not expected that final Examination Reports (a/k/a 30-Day Letters)=would be issued, because that would result in the cases going to Appeals.<=>

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Statu=e of Limitations

We furth=r understand that the IRS does not intend to let the statute of limitation= expire on current audits. Accordingly, management companies under audit should anticipate that the IRS will request that the= sign a written consent to keep the statute of limitations open for a year=or more to allow time for the IRS to issue guidance (such as regulations) =n the issue. Management companies confronted by such a request should consider whether they would prefer to =a) not sign the consent to extend the statute of limitations and effective=y force the issue to be considered at Appeals based on existing guidance, =r (b) sign the statute extension in the hope that future guidance on the issue will be favorable.=/u>

Inter=st on Tax Liability

In decid=ng whether to agree to a statute extension that would allow a case to be s=spended, a management company should consider the effect of interest that continues to accrue on any FET that is ultimately =ue. We are not aware of any special rule that would abate interest during =he suspension period.

Cases=in Appeals

Cases cu=rently in IRS Appeals are not directly affected by the suspension, since t=e IRS Appeals Office is not under the jurisdiction of the SBSE division. It is possible that cases currently in Appeals may b= settled in Appeals. However, if the taxpayer and the Appeals Officer are =ware of the suspension, they may choose to suspend the Appeal pending the =ssuance of future guidance. We understand that SBSE may inform the Appeals Office of the suspension.</=>

Clear=and Precise Guidance Standard =/span>

Copies o= the documents referenced below analyzing this issue are available on the =BAA web site. In particular, the industry response provided to the Chief Counsel's Office explains that the U.S. Supreme =ourt in Central Illinois Public Service Co. v. U.S. <https://maps.google.com/?==U.S.,+435+U.S.+21&entry=gmail&source=g> , 435 U.S. 21 (1978), held, with respect to payroll tax withholdings, that a company that is required to collect=a tax (a "deputy tax collector") can only be held liable for unc=llected tax if published legal authority provided clear and precise guidan=e regarding the deputy tax collector's obligation to collect the tax. Published court cases do not discuss whether this case=applies in the context of FET. However, because management companies appea= to be deputy tax collectors required (according to the IRS auditors) to c=llect FET on amounts paid by the aircraft owners, it would appear to follow that management companies can o=ly be held liable for uncollected FET if published legal guidance met this=clear and precise standard.

As noted=below, the sole reason for opening a guidance project on the issue is that=the existing published legal authority does not provide clear guidance. Accordingly, it would seem that management compani=s have a fairly straightforward argument that (a) they can only be liable =or failure to collect FET if the published legal guidance regarding their =ollection responsibility is clear and precise, and (b) the suspension of assessments and opening of a guidan=e project effectively concedes that existing guidance regarding owner flig=ts does not meet this standard. Based on this and other arguments, managem=nt companies with cases in Appeals may prefer to continue to work with Appeals to resolve their cases.=u>

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Backg=ound Meetings Leading Up to the Suspension on Assessments

The susp=nsion on assessments and the IRS's tentative commitment to initiate a =uidance project on this issue is the result of a series of meetings between NBAA representatives and the IRS over the past five ye=rs. The following briefly summarizes this effort:

* =C2 In 2008, the IRS issued an Audit Technique Guide suggesting that per=orming aircraft management services would result in the management company=having possession, command, and control of the aircraft.
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Ruth M. Wimer
Partner

McDermott Will & Emery LLP=/b> | The McDermott Building=C2 | 500 North Capitol Street, N.W.
<https://maps.google.com/?q=500+North=Capitol+Street,+N.W.%C2%A0+%7C%0D+%C2%A0Washington,%C2%A0DC%C2%A020001&=entry=gmail&source=g> | Washington,
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Tel +1 202 756 8614 <tel:(202)%20756-8614> | Fax +1 202 756 8087 <tel:(202)%20756-8087>

<http://www.mwe.com/Ruth-Wimer/> =wbr>Email <mailto:[redacted]=C2 |<=b> Twitter | LinkedIn
<http://www.linkedin.com/company/mcdermo=t-will-&-emery> =/b><=>Blog
<http://www.mwe.com/info/news/blogs.html>

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From: Joseph Vinciguerra [mailto:[redacted]
Sent: Monday, September 25, 2017 10:43 AM
To: Wimer, Ruth

Cc: Deyoe, David; Barry J. Cohen; John Castrucci
Subject: FET Question

Hi Ruth,

We had previously discussed how Part 91 operatio=s were not subject to FET. Take a look at the attached article, spec=fically the highlighted section on page 4. In reading the CCA the article refers to (also attached), it seems like the IRS is ta=ing the position that management agreements under Part 91 operations are s=bject to FET. Being that the CCA is from 2012, I would think there h=s been some time to sort through the IRS' position. What are your thoughts on this and how it cou=d apply to our structure?

Thanks.

Joe

Joseph M. Vinciguerra |<=>

=ax Director & Tax Counsel |
Elysium Management LLC |
445 Park Avenue Suite 1401,
<https://maps.google.com/?q=445=Park+Avenue+Suite+1401,%C2%A0+New+York,+NY+10022&entry=gmail&sou=ce=g
> New York, NY 10022
<https://maps.goog=e.com/?q=445+Park+Avenue+Suite+1401,%C2%A0+New+York,+NY+10022&entry=3Dgmail&source
=g> |
Tel. [redacted] <tel [redacted] |
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=A0 please note