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IRS Issues Guidance on Applicability of Federal Excise Taxes on Aircraft Management Fees (March 2012)

On March 9, 2012, the Internal Revenue Service Office of Chief Counsel released a Chief Counsel Advice (“CCA”) discussing the applicability of Federal Excise Taxes on aircraft management fees. In the past few years, the IRS has been aggressively asserting that FET applies to certain arrangements under which a business aircraft owner hires a professional management company to provide pilot, maintenance and other services, even when the aircraft is only operated by the owner under Part 91.

The IRS has long held that if “possession, command and control” has transferred from the owner to the management company, then the management company is providing a taxable transportation service to the owner and amounts paid by the owner are taxable. The test used by the IRS in this analysis was originally issued in a revenue ruling in 1958 where the IRS found no tax due. This new CCA takes a fact pattern that is nearly identical to the 1958 ruling but concludes that all amounts paid by the owner to the manager (reimbursements for operating expenses, fixed expenses, pilot salaries, insurance, etc.) are now subject to FET. The CCA attempts to distinguish the factual scenarios but its analysis is unconvincing at best.

While the CCA may not be used or cited officially as precedent, it signals the IRS’ position with respect to certain management agreements, and will certainly be cited by the IRS in future efforts to assert FET. A full copy of the CCA can be found [here](#). If you would like to discuss the implications of this CCA to your operations, or your company is facing an IRS audit for Federal Excise Taxes, please feel free to contact [Mark A. Ringel](#), [James A. Harris](#) or [Jol A. Silversmith](#).



The firm’s practice encompasses virtually every aspect of aviation law including advising users of business aviation on acquiring and selling aircraft and the regulatory, commercial and tax issues that govern their operation.

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