
Clarifying the Status of Aircraft Management Services

The provision provides aircraft management service companies with long-sought tax certainty

In March of 2012, an IRS Chief Counsel opinion concluded that aircraft owners employing aircraft management services that allow the use of the aircraft for occasional charter operations should be assessed the 7.5 percent commercial ticket tax on amounts paid for those management services. Aircraft management services typically include overseeing key safety standards, storing and fueling the aircraft, as well as hiring, training, and scheduling pilots and other personnel.

The IRS interpretation is unprecedented as all aviation taxes are movement based. If an owner is using an aircraft for personal reasons, the fuel tax is assessed. The same aircraft, used by a management company for charter services, assesses the commercial ticket tax [i.e. federal excise tax (FET)] on the charter customer.

The 2012 opinion left aviation management companies – most of them small businesses – vulnerable to back taxes and penalties. After a significant number of these companies successfully appealed audit findings assessing the FET to aircraft management services, the IRS opinion was put on hold in May of 2013 pending further clarification. In July of 2017, the IRS decided to close pending audits where the agency sought assessment of the FET on fees paid for aircraft management services. However, for aircraft management businesses the risk of future IRS audits on this issue still remains.

Is this a new tax benefit? Unfortunately, some have characterized the provision as a giveaway to wealthy aircraft owners. Far from it. ***The provision provides aircraft management service companies with long-sought tax certainty.*** It is these small businesses - not aircraft owners - that have been vulnerable to IRS back taxes and penalties. For that reason, the Joint Committee on Taxation has concluded the provision will cost the federal government less than \$500,000, in total, over the next ten years.

While NATA has been in constructive dialogue with Treasury and IRS, there is no timeline for resolution, leaving these small businesses in tax limbo. Bipartisan legislation has been introduced (H.R. 896/S.321), by Representative Tiberi (R-OH) and Senators Brown (D-OH) and Portman (R-OH), that clarifies aircraft management services are not subject to the 7.5% FET. In other words, the legislation clarifies that the tax would be applied and collected as it was for decades until the outlier 2012 IRS opinion. The Brown-Portman legislation was recently added to the Senate tax reform bill, the “Tax Cuts and Jobs Act” approved by the Senate Finance Committee on November 16, 2017.