
Update: Managed Part 91 Aircraft and the “New” IRS position on FET

By Dave Weil



Back on March 9, 2012, the IRS Chief Counsel released new guidance affecting aircraft owners and lessees who contract with aircraft management companies to employ pilots and provide services on their behalf. In so doing, the Chief Counsel expressed an opinion that extended the application of the 7.5% Federal Excise Tax (FET) to owners of managed Part 91 aircraft operations in most situations where the management company employs the pilots.

Subsequent to the release of the IRS opinion memo, there was a significant increase in audit activity on managed Part 91 aircraft operations. Many of these audits had adverse outcomes and resulted in large proposed FET assessments. Most of these adverse outcomes have been appealed by the management company involved.

Ever since the IRS opinion memo came out, the NBAA has been very active in trying to educate the IRS as to why it is an incorrect application of the current FET regulations and case law. Finally, the NBAA noted “on May 16, 2013, the IRS informally announced that it will suspend the assessment of FET on owner flights on aircraft managed by aircraft management companies.” This turn of events was in response to an IRS meeting with NBAA and NATA representatives the week before.

This suspension is intended to give the IRS more time to work through the FET issues with industry representatives. However, the suspension was communicated informally to IRS FET auditors. At this time there does not appear to be anything in writing prepared by the IRS documenting the suspension. Thus, it remains to be seen how effective it really is in stopping audit activity. A situation has already been reported where an IRS auditor believed that no change in policy had occurred.

Two members of the NBAA Tax Committee, John Hoover and Joanne Barbera, along with Scott O'Brien of NBAA, have worked very diligently on this issue. They will continue to work with the IRS and Treasury Department to obtain a favorable outcome on this issue.



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