



Jonathan Levy, Esq., Member
Suzanne Meiners-Levy, Esq., Member

Offices
3555 Kraft Rd.
Suite 240
Naples, FL 34105

1300 N. Westshore Blvd.
Suite 220
Tampa, FL 33607
Phone (888) 325-1942
Fax (239) 213-0698
www.advocatetax.com

FIVE THINGS BUSINESS AIRCRAFT OWNERS AND OPERATORS SHOULD KNOW ABOUT THE TAX CUT AND JOBS ACT

After years of debate, tax reform has arrived. The late-year passage and signing of the Tax Cuts and Jobs Act (TCJA) has reshaped the business and individual tax landscape. The TCJA is likely to change many business practices moving forward, and as regulations develop the landscape will continue to adjust. This article highlights five areas of reform that directly impact business aircraft ownership and operation.

1. EQUIPMENT EXPENSING FOR PURCHASES MADE AFTER SEPTEMBER 27, 2017

A highlight of the TCJA is the revision of the bonus depreciation provisions pursuant to Section 168(k) of the Internal Revenue Code to allow for 100% bonus depreciation for qualifying new and pre-owned aircraft purchased and placed in service after September 27, 2017, gradually phasing down beginning in 2023. Additionally, Section 179 expensing elections have increased substantially, allowing additional first-year write offs for equipment and component parts placed in service. This makes 2018 an attractive time to add to your fleet or change aircraft, or alternatively to replace or upgrade major components of your business aircraft. In order to use bonus depreciation, the equipment must be used at least 25% of the time for qualified business use, and at least 51% of the time for total business use.

2. ELIMINATION OF 1031 EXCHANGES FOR EQUIPMENT

The TCJA has eliminated this tool commonly used by owners replacing their business aircraft. For exchanges already in process before year-end, it allows the completion of the exchange provided the relinquished aircraft was sold (or, in the case of a reverse exchange, the replacement aircraft was acquired) before year-end. While the elimination of 1031 exchanges is a disappointment for the industry, the expansion of deductions available under the revised 168(k) and Section 179 will significantly soften the blow for most business aircraft operators replacing their business aircraft within the tax year.

3. ADJUSTMENTS TO DEDUCTIBILITY OF FLIGHTS PURSUANT TO SECTION 274

Along with the new deductions came the loss of several deductions commonly taken in our industry. Travel connected to business entertainment is no longer deductible starting in 2018, and most flights taken for commuting between home and work face new deduction restrictions. If you use your aircraft for commuting trips, speaking with a tax lawyer about their on-going deductibility is prudent as you plan usage moving forward.



4. CLARIFICATION OF NO EXCISE TAX FOR PART 91 FLIGHTS PURSUANT TO A MANAGEMENT AGREEMENT

The TCJA puts to bed a topic of ongoing controversy with respect to aircraft managed by Part 91 management companies. Prior to 2012, the longstanding rule had been that an aircraft owner/lessee making payments to a Part 91 management company for the care and operation of the aircraft was not creating a commercial-transportation arrangement and, therefore, did not trigger the air-transportation excise tax (FET). In 2012, the IRS upended this understanding with a contrary interpretation, which posed an existential threat to the Part 91 management industry. Numerous audits ensued, many of which have now been held in stasis for years as the IRS re-evaluates its policy. The TCJA makes clear that, at least going forward, these Part 91 management fees will not be subject to FET. Further, it is expected that the IRS is now unlikely to assess tax on these arrangements for earlier periods.

5. TAX RATE CHANGES FOR C-CORPORATIONS AND DEDUCTIONS FOR PASS THROUGH ENTITIES

Corporate tax rates have been reduced, along with a newly available exclusion for income flowing from many pass-through entities. Standard industry practice must adjust to the new reality that business entities will be subject to different rates and that owners and operators may need to adjust expense allocations to ensure that the tax liability is minimized where appropriate and properly determined. Changes to the treatment of carryforward losses and interest deductions may also impact business planning.

CONCLUSION

Tax reform is exciting, and the impact of the TCJA should be to strengthen investment in aircraft and aviation equipment. This article touches on just a few of the changes. With such an appealing purchasing landscape, and changing business tax rates, it is critical to work with an aviation tax lawyer to help you navigate the many opportunities that await.

January 3, 2018

Suzanne Meiners-Levy, Esq.

Advocate Consulting Legal Group, PLLC is a law firm whose practice is limited to serving the needs of aircraft owners and operators relating to issues of income tax, sales tax, federal aviation regulations, and other related organizational and operational issues.

This article provides an introduction to a complex, and often ambiguous, area of law. Knowledgeable people may disagree as to outcomes in particular cases. Always consult with your advisor.