

Aviation Group Client Update

Date: March 22, 2012
Contact: Lisa A. Harig, Partner
Washington DC Office
lhurig@mklawdc.com
+1 703 247 5487

IRS ISSUES MEMO ON TAXABILITY OF AIRCRAFT MANAGEMENT FEES

On March 9, 2012, the Internal Revenue Service (IRS) issued a [memorandum](#) stating that monthly fees paid to a management company by an aircraft owner are taxable. Section 4161(a) of the IRS Code (26 USC § 4161(a)) imposes a tax on the amount paid for taxable transportation of any person. According to the IRS, “If we determine that management company provides taxable transportation to the aircraft owner, then we must determine whether a monthly management fee is an “amount paid” for that taxable transportation.”

First, the IRS concluded that control of an aircraft’s pilots is a factor in determining who has possession, command, and control of an aircraft, but the ability to direct the pilots as to destination and time of flights should not be considered a determinative factor.

Second, the IRS concluded that in determining whether a management company provides taxable transportation within in the scope of § 4261, it is not relevant that: (1) the persons being transported have the power to schedule and direct flights; (2) the management company does not own the aircraft through which it provides its services; or (3) the regulations under which the aircraft is operated is a part 91, part 135, or some other classification. What is determinative is that the management company provides taxable transportation to the owner and provides all of the essential elements necessary for transportation of persons by air and that the aircraft owner relinquished possession, command, and control of the aircraft to the management company.

Third, the IRS concluded that monthly management fees, as well as reimbursed amounts to the management company, are taxable for transportation if they are a precondition to receiving air transportation services from a management company.

We will continue to monitor IRS policy and guidance regarding the taxability of aircraft management fees.

* * * * *

McBreen & Kopko’s Aviation Group represents air carriers, fixed base operators (FBOs), airport managers, aviation service providers, and business aircraft owners and operators on a wide range of aviation issues including regulatory matters, commercial transactions, aircraft finance matters, and bankruptcy and creditors’ rights.