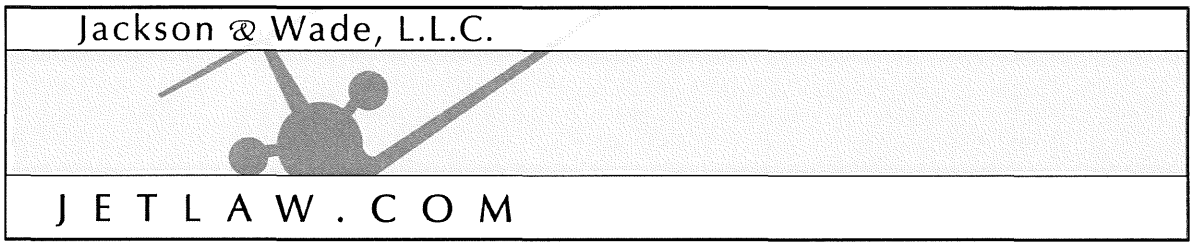

An Analysis of the Recent IRS Chief Counsel Advice Asserting That Management Companies are Subject to Transportation Tax

Phil Crowther, JD, MBA, CPA April 19, 2012

On March 9, the IRS Office of Chief Counsel released a Chief Counsel Advice ("CCA") which concluded that where an aircraft owner hired a management company to provide management and pilot services, the transportation tax applied to the owner payments attributable to owner Part 91 flights, including management fees, reimbursement of pilot salaries and other reimbursements. The conclusion in the CCA appears to be directly contrary to the official position of the IRS as expressive in over 50 years of public and private rulings, and audits and appeals.

While the CCA conclusion may be limited to the unique facts of the case, the management company arrangement, as described by the CCA does not appear to be significantly different from any other Part 91 management company arrangement. And, while the CCA does not represent the official position of the IRS, we are concerned that IRS auditors will use the arguments in the CCA as a basis for retroactively assessing tax against management companies.[1]

The History of Management Companies

Management companies first started appearing in the late 1950s. This process accelerated following enactment of the Federal Aviation Act of 1958 which resulted in the promulgation of FAA Regulations (FARs) which created additional operational (Part 91), maintenance (Part 43) and pilot qualification (Part 61) requirements for owners and operators of private aircraft.

FAA Approval of Management Companies

Most aircraft owners operate their aircraft under FAR Part 91. Under these rules, the owner must assume responsibility for "operational control" of the aircraft - which includes responsibility for properly maintaining and operating the aircraft.[2]

The FAA has long allowed aircraft owners to use management companies to assist in fulfilling these responsibilities. As long as the owner does not relinquish responsibility for operational control to the management company, the FAA recognizes that these companies are not providing transportation to the owner, but are simply providing pilot services and maintenance management services to the owner/operator.

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1 A Chief Counsel Advice ("CCA") is an internal document not intended for the guidance of the public, but subject to public disclosure under Sec. 6110. As explained in the IRS Internal Revenue Manual (IRM 33.1.2, Exhibit 1, A27) "The analysis of the law and the conclusions in Chief Counsel Advice do not establish the position of the Service."

2 See, e.g., Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations, FR Vol. 66, No. 138, p. 37520, 37521 (7/18/01) ["Aircraft owners flying aboard aircraft they own or lease exercise full control over and bear full responsibility for the airworthiness and operation of their aircraft."]

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THE FEDERAL EXCISE TAX ON AIR TRANSPORTATION - IN GENERAL

The federal excise tax on air transportation (the "transportation tax") applies to amounts paid for taxable air transportation.[3] The tax currently includes three components: a percentage tax of 7.5% on amounts paid for domestic transportation; a head tax on domestic flight segments; and a head tax on international flights. For purpose of this analysis, we will focus on the percentage tax.

The transportation tax began as a wartime tax and has evolved into a user fee. From 1917 to 1921, the transportation tax applied to the transportation of persons or property "by rail or water or by any form of mechanical motor power".[4] In 1941, Congress re-enacted a tax on transportation of persons "by rail, motor vehicle, water, or air".[5] In 1962, Congress limited the tax to apply only to transportation of persons by air.[6] In 1970, Congress revised the transportation tax as part of the Airport and Airway Revenue Act of 1970.[7] These changes were made to convert the tax into a "user fee" which would be used to fund development of airports and airways.[8] Congress intended that the transportation tax would work in tandem with the fuel tax - with the transportation tax applying to commercial aviation and the fuel tax applying to noncommercial aviation.[9]

IRS TREATMENT OF MANAGEMENT COMPANIES

The law does not contain a definition of "transportation". Nevertheless, the IRS has long agreed that the transportation tax does not apply to owner flights. According to the IRS, "To be amounts paid, there must be at least two entities recognized for excise tax purposes."[10] Thus, in order for the tax to apply to a management company, the management company must provide transportation to the owner.

The IRS and the courts have used several tests to determine whether an activity constitutes transportation. In historical order, these tests include (1) the "agency" test; (2) the "possession, command and control" test; and the (3) "commercial transportation" test.

Under these tests, the management company is providing transportation to the owner if (1) the management company is not acting as an agent of the owner; (2) the owner has relinquished "possession, command and control" of the aircraft to the management company; or (3) the management company is providing "commercial transportation" to the owner.

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3 Sec. 4261.

4 Revenue Act of 1917, Secs. 500 et seq.; Revenue Act of 1918, Secs 500 et seq.; Repealed by the Revenue Act of 1921, Section 1400. It does not appear that the tax was ever applied to transportation by aircraft.

5 Internal Revenue Code of 1939, Secs. 3469 et seq., as added by the Revenue Act of 1941. In the Internal Revenue Code of 1954, these were renumbered as Secs 4261 et seq.

6 P.L. 87-508 amended Sec. 4261 to apply only to transportation "by air".

7 P.L. 91-258.

8 According to the Senate Report: "[The] taxes on the transportation of persons and property by air are now generally viewed as user charges properly applicable in the case of all users." S. Rep No. 91-706, 91st Cong., 2d Sess.

9 According to the Senate Report: The overall approach of the bill is "to have the use of aircraft be subject either to the taxes on the transportation of persons and freight or else to the fuel taxes, but not to both as to any one trip" Senate Report No. 91-706, 91st Cong., 2nd Sess.. See, e.g., Rev. Rul. 72-156 ("[T]he objective of the Act is to have one set of taxes (either the transportation taxes or the fuel taxes) and not two sets apply to any one use of an aircraft.").

10 Rev. Rul. 79-355. In LTR 200203019 the IRS concluded that the tax did not apply where a single member LLC provided transportation to the member because both were the same entity for tax purposes.

For over 50 years, the IRS has consistently held that a management company is not providing transportation to the owner. The IRS first came to this conclusion in Rev. Rul. 58-215, relying on the agency test.[11] Later, the IRS reached the same conclusion, relying on the possession, command and control test.[12] The only case where the IRS held that a management company was providing transportation to the owner was in a case where the owner essentially relinquished all rights to schedule the use of his own aircraft to the management company.[13]

ISSUES ADDRESSED IN THE CCA

The CCA addresses three issues.

The first issue is whether control of an aircraft's pilots is a factor for determining the person that has possession, command, and control of an aircraft. The CCA concludes in the affirmative - that control of the pilots is a factor.

The second issue is whether the management company has possession, command, and control of the aircraft where - (1) the owner uses the aircraft; (2) related companies use the aircraft; and (3) unrelated third parties use the aircraft. The CCA concludes in the affirmative - that the owner has relinquished possession, command and control in all three cases. We are not concerned with the third scenario since we assume that everyone was already treating this use as taxable. And, as the CCA notes, the conclusion in the second scenario is dictated by the conclusion in the first scenario involving owner flights. Consequently, we will focus only on the first scenario involving owner flights.

The third issue is whether the monthly management fees paid to the aircraft management company are taxable payments for transportation. Again, the CCA answers in the affirmative, concluding that certain reimbursements to the management company are also taxable. While this presents interesting issues, the conclusion is dictated by the responses to the second issue.

Consequently, this analysis will focus on the CCA conclusions in Issues 1 and Issue 2, Scenario 1, involving owner use of the aircraft.

THE CCA CONCLUSION

The CCA concludes that the management company was providing taxable transportation to the owner. In reaching this conclusion, the CCA relied on all three tests in varying degrees. The CCA concludes that the management company has possession, command and control of the aircraft. This, in turn is based on the conclusion that the management company is not the agent of the owner and that the owner does not have "exclusive control" of the flight crew. The CCA does not directly rely on the commercial transportation test but quotes a commercial transportation ruling in support of this conclusion.

The CCA cites and describes eight rulings in support of these conclusions.[14] Many of these rulings are not relevant because they involve situations where the user is not the owner of the aircraft, but is obtaining the aircraft and crew from a third party. Nevertheless, the CCA does appear to cite the most important rulings.

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11 See, e.g., Rev. Rul. 58-215 and TAM 9347007.

12 See, e.g., TAM 9322002 (Issue 2), TAM 9343002 and TAM 9347007.

13 TAM 9404007.

14 These rulings, which are cited in the "Law and Analysis" section, are (by year) Rev. Ruls. 57-545, 58-215, 60-311, 68-256, 70-325, 74-123, 76-394 and 78-75.

KEY RULINGS CITED BY THE CCA

Rev. Rul. 58-215 and the Agency Test

The CCA cites Rev. Rul. 58-215. This is the first and only official revenue ruling dealing with a classic management company arrangement where an aircraft owner hired a management company to assist with maintaining and operating the aircraft. The IRS held that: "since [1] the corporation [a] owns the aircraft, [b] has exclusive control over the aircraft's personnel, [c] pays the operating expenses of the aircraft, and [d] maintains liability and risk insurance and [2] the airline operates the aircraft as an agent for the corporation, the airline company is not, with respect to this service, furnishing a transportation service for hire." [numbers in brackets added]

Although the ruling appears to mention agency as merely one of two primary factors, other rulings demonstrate that agency is the key factor and that the other factors are important primarily because they demonstrate the presence of an agency relationship. For example, in Rev. Rul. 56-608, the IRS had concluded that a company which used customer trucks to transport property was providing transportation to the owner because "the carrier is required to operate the tank truck equipment with its own employees under its own exclusive control, management, and supervision as an independent contractor and at its own expense and not in the name of or as an agent for the shipper".[15] Thus, the distinction between an agent and an independent contractor is critical for purpose of defining transportation. One of the primary characteristics of an agency relationship is that the owner remains primarily liable for events resulting from the operation of the aircraft. This is because, under general legal principles, a principal is liable for the actions of an agent, but is not responsible for the actions of an independent contractor.

This characteristic explains the significance of the many of the factors mentioned in Rev. Rul. 58-215. For example, the fact that the user is the owner of the aircraft is important because - in the absence of special provisions - the owner of property is liable for damage caused by that property. Similarly, the fact that the owner maintained liability and risk insurance showed that the owner remained liable for aircraft operations.

Other factors are simply indicative of an agency relationship. The fact that the owner "pays the operating expenses of the aircraft" was in contrast to Rev. Rul. 56-608 where the independent contractor provided services "at its own expense". The fact that the owner "has exclusive control over the aircraft's personnel" was in contrast to Rev. Rul. 56-608 where the independent contractor provided services "with its own employees under its own exclusive control, management, and supervision".

TAM 9347007 demonstrates the paramount importance of determining whether a management company is an agent or an independent contractor. In that ruling, an aircraft owner ("FA") hired a management company ("X") to provide management and pilot services. One concern in this case was that the governing documents referred to the management company as an independent contractor. However, the IRS concluded that "the totality of the contract provisions, particularly those whereby FA pays the operational expenses, retains and exercises substantial operational control, and assumes the risk of loss, indicate that X is acting as an agent of FA".[16]

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15 This ruling was declared obsolete by Rev. Rul. 69-227, presumably because the transportation tax no longer applies to transportation by truck.

16 See also TAM 9343002 which describes Rev. Rul. 58-215 as holding that "that since the corporation owns the aircraft, has exclusive control over the aircraft's personnel, pays the operating expenses of the aircraft, and maintains liability and risk insurance, the airline company that operates the aircraft does so as the agent of the corporation".

Rev. Rul. 60-311 and Possession, Command and Control

The CCA cites Rev. Rul. 60-311. Although this ruling does not involve a management company, this is the ruling where the IRS first adopted the "possession, command and control" test. The IRS appears to have borrowed this test from maritime law - which may have been somewhat appropriate in that, at the time, the transportation tax also applied to ships.[17] In this ruling, the IRS applied the test for the purpose of determining whether the lease of a helicopter was a transportation service. The IRS concluded that "Where the owner of a vehicle (such as a helicopter) leases it to others for the transportation of persons but retains possession, command, and control of the vehicle, he is furnishing a taxable transportation service". Conversely, "where the owner of the vehicle transfers the complete possession, command, and control of his vehicle to a lessee, either by a charter-party or by actual practice, the owner is not engaging in a taxable transportation service but is merely leasing his vehicle".

The IRS has not issued a published ruling applying the possession, command and control test to a management company. However, the IRS has issued several TAMs concluding that the owner had not relinquished "possession, command and control" of the aircraft to the management company.[18] In one TAM, the IRS concluded otherwise, primarily because the owner had relinquished access to his own aircraft to the management company.[19]

In TAM 9347007, the IRS equated the agency test with the possession, command and control test. In that ruling, an aircraft owner ("FA") hired a management company ("X") to provide management and pilot services. The IRS concluded that "The contract is in the nature of a management contract under which X acts as an agent in operating and maintaining FA's aircraft with FA, the owner of the aircraft, being the principal who has possession, command and control of the aircraft." The CCA also equates the agency test with the possession, command and control test.

Rev. Rul. 78-75 and the Commercial Transportation Test

The CCA cites Rev. Rul. 78-75. This ruling was issued to address a question that arose after Congress amended the transportation tax as part of the Airport and Airway Revenue Act of 1970. When Congress amended the law, they indicated that the transportation tax should apply only to the use of the aircraft in "commercial transportation" business and that the fuel tax would apply to the use of the aircraft in all other transportation.[20] Furthermore, Congress described "commercial transportation" as involving "transportation for compensation or hire". In one example, the Senate Report said that "it is necessary to determine on a flight-by-flight basis whether the aircraft is being used in a business of transporting persons or property for compensation or hire". Similarly, the Senate Report stated that: "Any personal use of an aircraft by the owner, lessee, or other operator of an aircraft is use of the aircraft in noncommercial aviation. This includes such flights as family trips and pleasure flying."

The reference to "commercial transportation" and to "transportation for compensation or hire" - indicates that (1) Congress intended that the transportation tax should apply only to certain transportation; and (2) since "for hire" is an FAA phrase, FAA principles should apply for

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17 See, e.g., U.S. v. Shea, 152 U.S. 178, 186-187 (1894). The ruling also refers to a "charter party" which is the nautical term for a lease or charter agreement.

18 See, e.g., TAM 9322002 (Issue 2), TAM 9343002, and TAM 9347007.

19 TAM 9404007.

20 Senate Report No. 91-706, 91st Cong., 2nd Sess., 1970-1 CB 386.

purposes of determining whether transportation is taxable.

At least one court has relied on the "transportation for hire" test in concluding that an activity was taxable.[21] However, the IRS appears to take the position that any transportation for which an amount is paid is "commercial transportation" or is "transportation for hire".[22]

With regard to application of FAA principles, the IRS issued Rev. Rul. 78-75 which stated that that FAA rules and the tax rules are different and that, as a result, the status of a person as a "commercial operator" under the FARs "is not determinative in applying the aviation fuel taxes and transportation taxes".

OTHER RULINGS CITED AND RELIED ON BY THE CCA

The CCA cites and, to varying extents, relies on other rulings, many of which have nothing to do with management companies.

Rev. Rul. 74-123 and the Transportation Company

The CCA cites Rev. Rul. 74-123, but does not fall into the common trap of citing this as a management company ruling. Instead, this is a case where an owner hired a company to provide transportation, sometimes using owner aircraft. The CCA correctly describes the ruling as standing for the proposition that where an owner hires a company to provide transportation, it makes no difference that the company uses the owner aircraft. This conclusion is entirely consistent with the IRS conclusion in Rev. Rul. 56-608.[23]

Rev. Rul. 70-325

The CCA cites Rev. Rul. 70-325. This ruling has limited application because of the unusual facts - the aircraft owner leased the aircraft to a wholly-owned management company. The ruling is also unusual in that the facts described a case that was in litigation. The government eventually lost the case and decided not to appeal.[24]

Wet Lease Rulings

The CCA cites several rulings where the user is not the owner of the aircraft, but is obtaining the aircraft and crew from a third party (a "wet lease"). These rulings include Rev. Ruls. 57-545, 68-256 and 76-394.

Rulings and Other Matters Not Cited

In addition to the published rulings, we have noted that there are many TAMs and private rulings in which the IRS concluded that a management company was not providing transportation. We understand that Chief Counsel cannot cite these rulings as precedent. However, we do think it would have been helpful for the CCA to recognize that the IRS has historically concluded that management companies are not providing transportation to the owners and to explain how the management company arrangement under review is different than the historical norm.

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21 Executive Jet Aviation, Inc., 125 F3d 1463 (CA5, 1997), aff'g Ct.Cl. 1996 ["We hold that, through its NetJets program, EJA was in the "business of transporting persons or property for hire by air"."]..

22 See, e.g., TAM 9322002 ["Because A [the owner] retained ownership and possession, command, and control of Plane 2, these are personal flights and not commercial transportation"]; and GCM 39523 ["One definition of 'hire' is to engage the temporary use of at a set price."].

23 GCM 35561 (11/15/73) which accompanies Rev. Rul. 74-123 cites Rev. Rul. 56-608 in support of the conclusion in Rev. Rul. 74-123.

24 Petit Jean Air Service, 74-1 USTC ¶16,135 (DC.AR.1974), AOD/CC-1975-33 (3/27/74).

CONVERGENCE OF FAA AND IRS TESTS

Because the CCA cited only published rulings and cases, the CCA simply does not have the data points available to recognize that there has been a growing convergence between the IRS and FAA terminology and results.

This convergence appears most clearly in the leasing area. The FAA defines the lease of an aircraft with a crew as a "wet lease" and the lease of an aircraft without a crew as a "dry lease".[25] Both the IRS and FAA agree that, in a wet lease, the lessor has control of the aircraft, and that in a dry lease the lessee has control of the aircraft.[26] In Rev. Rul. 68-256, the IRS adopted both the FAA conclusions and terminology.[27]

As this might suggest, the IRS has started equating "possession, command and control" with the FAA concept of "operational control".[28] This makes sense in that both tests appear to have been derived from maritime law. While, the FAA rules and tax rules are different in certain regards, they share a core common goal of defining transportation. In practice, both the FAA and IRS appear to agree on the definition of transportation.[29] Thus, while the FAA might allow certain forms of transportation to be conducted under Part 91 - such as related company flights, timeshare flights and interchange flights - both the IRS and FAA agree that these activities involve transportation.[30]

Under these circumstances, the tendency of the FAA and IRS to agree that a Part 91 management company is not providing transportation to the owner should not be surprising.

CRITIQUE OF THE CCA

In reaching the conclusion that the management company is providing transportation, the CCA uses elements from all three tests. The CCA initially relies on the possession, command and control test and identifies the key question as whether possession, command and control was "transferred from one person to another". In order to answer this question, the CCA turns to the agency test of Rev. Rul. 58-215. The CCA probably did so because that is the only published ruling dealing with a management company. However, this also allows the CCA to avoid recognizing the historical convergence between the IRS concept of "possession, command and

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25 See, e.g., FAA Advisory Circular No. 91-37A (1978), p. 3.

26 See, e.g., FAA Advisory Circular No. 91-37A (1978), p. 3 ["Normally, in the case of a "dry lease," the lessee exercises operational control of the aircraft. Conversely, in a "wet lease" the lessor normally exercises operational control."].

27 See, e.g., Rev. Rul. 68-256 ["When *M* company leases an aircraft under "dry lease" conditions, the lease payment is a payment for use of an aircraft which will be under the control of *M* company during the term of the lease. Consequently, the payment is a rental payment rather than a payment for taxable transportation. On the other hand, when *M* company leases an aircraft under "wet lease" conditions, control of the aircraft remains with *X* company because *X*'s crew is responsible for operations of the plane during the term of the lease."].

28 See, e.g., TAM 9347007 and TAM 9404007.

29 One small difference is that the IRS generally views transportation as involving two tax entities, while the FAA views transportation as involving two legal entities. This used to make a difference where a disregarded entity (such as a single member LLC) provided transportation to a member. See, e.g., LTR 200203019. However, the IRS recently amended regulations which indicate that, for transportation tax purposes, a disregarded entity should not be disregarded. See, e.g., Reg. 1.1361-4(a)(8)(i)(A) [qualified subchapter S corp] and Reg. 301.7701-2(c)(2)(iv)(B) [LLC]. Thus, there has been convergence in this small area as well.

30 FAR 91.501 describes certain flights that may be conducted under Part 91, including timeshare and interchange flights. The IRS treats these flights as involving transportation. TAM 9322002 (Issue 1) [timeshare] and TAM 9502004 [interchange].

control" and the FAA concept of "operational control".

In applying the agency test, the CCA appears to treat each of the items listed in Rev. Rul. 58-215, including agency, as having roughly equal importance. The CCA recognizes that several of the items listed in Rev. Rul. 58-215 are present. For example, the owner owns the aircraft [item 1a]; the owner pays or reimburses the management company for operating expenses of the aircraft [item 1b]; the owner "is the insured party under the aircraft's insurance policy and it bears all risk of loss that result from aircraft operations" [item 1d].

However, the CCA concludes that "Unlike the corporation in Rev. Rul. 58-215, [1] Owner does not have exclusive control over the aircraft's personnel [item 1c] and [2] Management does not operate the aircraft as an agent for Owner [item 2]." (numbers and items in brackets added) Oddly, despite this reliance on Rev. Rul. 58-215, the CCA asserts that ownership of the aircraft is irrelevant - even though it was the first item listed in the ruling.

The CCA does not rely on the commercial transportation test. However, the CCA does rely on Rev. Rul. 78-75 which the IRS issued to limit the application of that test. Unfortunately, the CCA misconstrues Rev. Rul. 78-75 as standing for the much broader proposition that "it is not relevant that ... the FAR under which the aircraft is operated is part 91, part 135, or some other FAR". As a result, the CCA concludes that the fact that owner flights are conducted under Part 91 is irrelevant. As will be seen, this refusal to acknowledge the role of the FARs is perhaps the fatal flaw in the CCA and limits the application of the CCA to real world situations.

Exclusive Control of the Flight Crew

Although the CCA concludes that the owner does not have "exclusive control of the aircraft's personnel, neither Rev. Rul. 58-215 nor CCA provides a lot of guidance as to what "exclusive control" means.

Instead, the CCA reaches some seemingly contradictory conclusions. Issue #1 is whether "control of an aircraft's pilots a factor for determining the person that has possession, command, and control of an aircraft". The CCA responds that control of the pilots is a factor, but cautions that "when determining who has control over the pilots, the ability to direct the pilots as to destination and time of flights should not be considered determinative". Later, under Issue 2, Scenario 1, the CCA states that "it is not relevant that ... the persons being transported have the power to schedule and direct flights". Thus, in one part of the CCA, the ability to schedule and direct flights is "not determinative", while in another part, it is "not relevant".

Some have interpreted the CCA to mean that, in order to meet the "exclusive control" requirement, the owner must employ the flight crew directly. However, Rev. Rul. 58-215 clearly does not support this interpretation since, in that case, the management company employed the flight crew. Nor has the IRS historically imposed this requirement.

Since the transportation tax applies on a flight by flight basis, one should presumably apply the "exclusive control" test on a flight by flight basis.[31] Furthermore, the term "exclusive" implies that the control is to the exclusion of others. Anyone who is familiar with the FAA rules would recognize that, on a Part 91 owner flight, the owner has control of the flight crew to the exclusion of all others, including the management company. In a Part 91 owner flight, the owner has

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[31] Rev. Rul. 72-360 ["The taxpayer's liability for tax under section 4041(c) of the Code or under sections 4261 and 4271 must be determined on a flight-by-flight basis."]; Senate Report No. 91-706, 91st Cong., 2nd Sess., 1970-1 CB 386 ["it is necessary to determine on a flight-by-flight basis whether the aircraft is being used in a business of transporting persons or property for compensation or hire"].

"operational control" of the aircraft. The FARs provide that, with respect to a flight, "operational control" means "the exercise of authority over initiating, conducting or terminating a flight".[32] Thus, the CCA conclusion that the owner did not have "exclusive control" of the flight crew is clearly erroneous.

Agent of the Owner

The CCA also concludes that the management company does not operate the aircraft as an agent of the owner. What this implies is that the management company is an independent contractor with respect to the owner and that the management company has assumed liability for the maintenance and operation of the aircraft. This is simply not possible.

Here again, by refusing to consider the FAA rules, the CCA is overlooking a critical piece of information. In a Part 91 management company arrangement, the owner must remain primarily liable for the operation and maintenance of the aircraft. That means that, under a legitimate Part 91 management company arrangement, the management company is, by definition, an agent of the owner and not an independent contractor. However, the CCA asserts that the management company has assumed these responsibilities.

This leaves us with two possibilities: either the CCA incorrectly interpreted the facts or the arrangement is not a legal Part 91 management company arrangement. Either limits the significance of the CCA.

CONCLUSION

Although the CCA is not an official document and cannot be cited by IRS agents, we are concerned that IRS agents might rely on the arguments in the CCA as support for asserting tax liabilities against management companies. If, as we assume, the CCA does not represent the official position of the IRS, we would hope that the IRS would issue a clarification to auditors.

However, in the unlikely event that the CCA does represent the new official position of the IRS, we would hope that the IRS would make this change by a public process and would provide detailed guidance to management companies so that everyone is working from the same rulebook. This is especially important in the case of a collected tax since failure to collect the proper tax generally results in the collector having to pay someone else's tax.

For the same reason, any change in the interpretation of the law should be made on a prospective basis only. The IRS has long held that the transportation tax does not apply to owner flights in a managed aircraft. In the case of a collected tax, changing the rules after the fact is inherently unfair to the collector.

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[32] FAR 1.1.

ABOUT THE AUTHOR

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