STUBBS
AVIATION ADVISORS

TIME SHARING AGREEMENTS

Applicable Federal Excise Taxes

Current tax laws affecting aircraft leasing are very involved, and they don't become any easier when aircraft operators attempt to maximize their aircraft's usage through a time-sharing agreement.

FAR Part 91.501(c)(1) defines a time-sharing agreement as follows: An arrangement whereby a person leases his airplane with flight crew to another person, and no charge is made for the flights conducted under that arrangement other than those specified in paragraph (d) of section 91.501.

> 91.501(d) The following may be charged, as expenses of a specific flight, for transportation as authorized by paragraphs (b) (3) and (7) and (c)(1) of this section:
> (1) Fuel, oil, lubricants, and other additives,
> (2) Travel expenses of the crew, including food, lodging, and ground transportation.
> (3) Hangar and tie-down costs away from the aircraft's base of operation.
> (4) Insurance obtained for the specific flight.
> (5) Landing fees, airport taxes, and similar assessments.
> (6) Customs, foreign permit, and similar fees directly related to the flight.
> (7) In flight food and beverages.
> (8) Passenger ground transportation.
> (9) Flight planning and weather contract services.
> (10) An additional charge equal to 100 percent of the expenses listed in paragraph (d)(1) of this section.

As in a number of other situations, the FAA and the IRS are not necessarily in agreement with each other in their opinions on whether a time-sharing agreement is noncommercial or commercial transportation. The FAA allows a time-sharing agreement to be conducted under Part 91. Therefore, for FAA purposes, as long as the truth-in-leasing requirements of FAR 91.23 are met and the charges for transportation do not exceed the per flight amount specified in paragraph (d) of 91.501, a time-sharing agreement is considered noncommercial transportation.

However, the IRS considers this type of operation to be commercial. It does not matter that there is not a profit motive or a profit made, the fact of the matter is that the aircraft has been made available for compensation or hire and the amounts paid for this activity are subject to the 7.5 percent (7.5%) commercial transportation ticket tax, plus a $5.30 *(as of 1/1/2026, adjusted annually)* per person per leg segment fee.

The following is a sample time-sharing scenario and the applicable tax rules and regulations that apply:

- **Scenario:** Company A owns and operates an aircraft weighing more than 6,000 pounds that is used to transport persons on company business. Company A intends to enter into a time-sharing agreement with unrelated Company B. The agreement will allow Company B to use Company A's aircraft, including its flight crew, on an "as available" basis. Company A will invoice Company B per paragraph (d) of FAR Part 91.501.
- This scenario brings about two questions:
    1. *Which tax applies to this agreement, the noncommercial fuel tax or the commercial transportation ticket tax?*
    2. *If the commercial transportation ticket tax does apply, what is the base upon which the tax is to be computed?*
- **IRS Rules:** The general approach to aviation excise taxes is to have the use of the aircraft subject to either (1) the taxes on transportation of persons or property or (2) to fuel taxes, but not to both taxes for any one trip. The tax imposed by Section 4261 of the IRS Code applies to the amounts paid for air transportation to a

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person who has possession, command and control of the aircraft *(IRS Private Letter Ruling 9028027 find Rev Ruling).*

In this case, Company A is considered to retain the elements of possession, command and control of their aircraft when flying for Company B because Company A is furnishing the pilots and pays the operating expenses of the aircraft. In addition, Company B will compensate Company A for the use of its aircraft.

The IRS believes that Company A will be in the business of providing air transportation for compensation or hire. Under the agreement, Company A will charge Company B an amount specified in FAR 91.501(d). It does not matter that there is no profit motive or any profit made; to the IRS such use is in effect considered a charter of your aircraft, i.e., the business of transporting persons by air.

The IRS concludes that because Company A received compensation for the use of their aircraft and retained the elements of possession, command and control of the aircraft, Company A is providing taxable transportation within the meaning of section 4261 of the Code. In response to question 2 above, the tax should be computed on the amounts paid.

Disclaimer: This information is not intended to provide a complete analysis of this subject but is meant to provide the reader with an accurate synopsis of a complex issue.

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