

Industry
Transportation

IRS Increases Federal Excise Taxes on Air Transportation

Effective January 1, 2013, the Internal Revenue Service (IRS) increased federal excise taxes (FET) on commercial and private air transportation services, which will affect any company that operates an aircraft. FET is assessed on either the fuel purchased in the operation of the aircraft or on the "fees" to transport people or cargo. For private operators, these higher taxes could have important business implications.

Most private, or non-commercial, operators that are regulated under Part 91 of the Federal Aviation Regulations pay FET on the fuel purchased to operate their aircraft, which is calculated on a cents-per-gallon basis.

Commercial operators calculate FET based on the amount "paid" for the commercial transportation service and collect the tax directly from their customers before remitting to the IRS. The FET for domestic commercial flights includes a percentage component and a segment fee. International transportation adds a per head tax to the FET calculation.

The FET rates for 2012 and 2013 on commercial air transportation services are shown in the table below:

	2012	2013
Percentage tax	7.5%	7.5%
Domestic segment fee	\$3.80	\$3.90
International arrival/departure head tax	\$16.70	\$17.20
Hawaii/Alaska Flight Tax	\$8.40	\$8.60

What This Means to You

Commercial operators need to apply and collect the correct FET rate. Non-commercial operators should be aware that the Federal Aviation Administration (FAA) and the IRS have different views on what constitutes commercial air transportation and that this can significantly impact how the taxes are applied. A Part 91 operator may conduct a flight that the FAA considers non-commercial, but the IRS could subject the flight to commercial FET rates. As the IRS continues to expand its application of FET to Part 91 flights – as indicated by the March 2012 chief counsel advisory applying FET to management fees – private operators must carefully navigate the conflicting interpretations of the FAA and IRS.

In particular, non-commercial operators should carefully evaluate Part 91 flights when any consideration or reimbursement is received, including flights specifically excluded from commercial operations by the FAA under Subpart F of Part 91. Private operator should also be aware that if the IRS assesses commercial FET, the operator is entitled to receive a credit for the "cents-per gallon" FET it pays on the fuel purchased when conducting the commercial flight.

Contact Information

If you have any questions concerning federal excise tax on air transportation or other aviation related matters, please contact your Husch Blackwell attorney or one of the aviation attorneys listed below.

David Agee - 417.268.4066

Michael Cosby - 417.268.4110

Husch Blackwell LLP regularly publishes updates on industry trends and new developments in the law for our clients and friends. Please contact us if you would like to receive updates and newsletters or request a printed copy.

Husch Blackwell encourages you to reprint this material. Please include the statement, "Reprinted with permission from Husch Blackwell LLP, copyright 2013, www.huschblackwell.com" at the end of any reprints. Please also email info@huschblackwell.com to tell us of your reprint.

This information is intended only to provide general information in summary form on legal and business topics of the day. The contents hereof do not constitute legal advice and should not be relied on as such. Specific legal advice should be sought in particular matters.