

**New Aircraft-Related Rules Under
The 2017 Tax Cuts and Jobs Act**
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- We are an aviation-dedicated firm of CPAs and accounting professionals
- Our clients are aircraft owners, operators, and accounting firms that have aircraft owner-clients
- We specialize in the preparation of aircraft income tax returns, state tax matters, IRS audits, structuring aircraft ownership, and related aviation tax and financial matters.
- *We identify, protect and preserve tax deductions for your aircraft and those of your clients!*

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Today's Presenters:



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8 Changes Affecting Business Aircraft from the 2017 Tax Cuts and Jobs Act ("ACT")

1. 100% Bonus Depreciation
2. 1031 Like Kind Exchanges are eliminated
3. Commuting Flights are No Longer Deductible
4. Disallowance of Travel Expenses that are "Directly Related" to Business
5. Repeal of Miscellaneous Itemized Deductions, including Employee Business Expenses
6. Federal Excise Tax on Management Fees
7. New Interest Limitations
8. New NOL Restrictions

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100% Expensing for Purchases

- Allows the buyer to write off 100% of the cost of acquiring an aircraft or equipment
- Retroactive to September 28, 2017
- Available for both new and pre-owned aircraft and equipment
- Deduction applies to the year the aircraft/equipment is placed in service
- Phase down of 20% per year begins in 2023
- Long Term Production Property (LPPP) aircraft and "Certain Aircraft" have reduced phase down rates

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100% Expensing Phase Down Schedule

Transition Rule For Property Placed in Service	Standard Rule	LPPP and Certain Aircraft
Sept. 28, 2017-Dec. 31, 2022	100 percent	100 percent
Jan. 1, 2023 - Dec. 31, 2023	80 percent	100 percent
Jan. 1, 2024 - Dec. 31, 2024	60 percent	80 percent
Jan. 1, 2025 - Dec. 31, 2025	40 percent	60 percent
Jan. 1, 2026 - Dec. 31, 2026	20 percent	40 percent
Jan. 1, 2027 - Dec. 31, 2027	0	20 percent

"Longer Production Period Property (LPPP)" and "Certain Aircraft" are eligible for a one-year extension

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100% Expensing for Purchases

- 100% Bonus and MACRS Depreciation requires meeting the IRC 280F qualifications for accelerated depreciation
- Rules require at least 25% qualified business use (QBU) and 50% total business use during the life of the asset
- Two exceptions apply:
 - Compensation Exceptions
 - Related Party Exceptions
- Also, there are different tests for different ownership structures:
 - Sole Proprietorships
 - Employer-Provided Aircraft
 - Related Party Leasing Structure
- The IRS takes the position that all use of the aircraft is excluded from QBU when there is leasing to a to 5% owner or related person

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100% Expensing for Purchases

- Taxpayer's can optionally claim up to four (4) different rates of depreciation:
 - 100% Bonus on new and used (must meet 280F rules)
 - 50% Bonus on new aircraft (must meet 280F rules)
 - MACRS 200% accelerated
 - 5 years for mostly Part 91 (must meet 280F rules)
 - 7 years for mostly Part 135 (must meet 280F rules)
 - ADS straight line
 - 6 years for mostly Part 91 (required if 280F rules not met)
 - 12 years for mostly Part 135 (required if 280F rules not met)

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100% Expensing for Purchases – Other Rules

- Failure to meet the 280F rules (i.e., 25% QBU and 50% business use tests) result in a recapture of accelerated depreciation
- The aircraft must be predominantly used inside the U.S.
- Entertainment passengers will reduce the depreciation deduction
- Substituting straight-line depreciation for disallowed depreciation will decrease the disallowance from entertainment passengers. This is a significant taxpayer benefit

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Elimination of 1031 Exchanges

- Permanent repeal of IRC § 1031 for tangible personal property
- Means no more tax-free exchanges for aircraft after December 31, 2017
- Safe harbor for partially completed exchanges if at December 31, 2017:
 - The taxpayer has disposed of the relinquished property (forward exchange), or
 - Acquired the replacement property (reverse exchange)
 - Requisite agreements and intermediaries must be in place

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Elimination of 1031 Exchanges

- Frees owners from timing restrictions of exchange periods, complexities of forward and reverse exchanges
- Impact of elimination can be compensated for most purchasers through 100% expensing
- Allows diversity of ownership between relinquished and replacement aircraft

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Commuting Flights are No Longer Deductible

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**Employee Commuting Flights
No Longer Deductible**

- Old rules: Allowed deducting employees' aircraft travel costs when commuting between their residence and place of employment
 - Passengers were reported as Non-Business-Non-Entertainment
 - Required SIFL imputed income to employee
- New rules: Employee commuting trips between home and work are not deductible unless a "safety plan" is in place
- Rule is not clear if the "Bona Fide Security Plan" described in the SIFL rules applies

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**Employee Commuting Flights
No Longer Deductible**

- Lack of clarity of commuting flight definition and impact
- May not apply to company owners
- Unclear if this applies for commuting between primary residence and second home
- Old rules for commuting remain in effect for 2017

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**Disallowance of Travel Expenses "Directly Related"
to Business**

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**Disallowance of Travel Expenses
"Directly Related" to Business**

- Previous rules allowed the deduction of entertainment expenses if they were directly related to the active conduct of the business
- Entertainment expenses were deductible, including travel expenses, providing business was conducted before, during, or following the entertainment activity
- New ACT rules disallows all entertainment expenditures, regardless of whether they are directly related to a business purpose or not
- Rules are not tested: Primary purpose rules may prevail

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**Disallowance of Travel Expenses
"Directly Related" to Business**

- Example #1: Company aircraft takes clients to vacation destination for a golf weekend to discuss business:
 - Old rules: Business passengers - travel costs were deductible
 - New rules: No travel costs deductible
- Example #2: Company flies employees to vacation destination for a day of sales and marketing meetings, then plays golf the next day:
 - Primary purpose of the flight was business
 - Old rules: Travel costs were deductible
 - New rules: Unclear, but many commentators feel primary purpose test will prevail

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**Repeal of Miscellaneous Itemized Deductions,
including Employee Business Expenses**

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Repeal of Misc. Itemized Deductions, Including Employee Business Expenses

- Previous rules permitted claiming miscellaneous employee business expenses in excess of 2% of AGI
- New rules eliminate all miscellaneous itemized deductions, including business expenses
- Rule will affect taxpayer's who are currently able to deduct their aircraft expenses, unreimbursed travel expenses, per diem expenses, or other employee business expenses
- Rule could lead to restructuring the aircraft ownership

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Federal Excise Tax on Management Fees

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Federal Excise Tax on Management Fees

- ACT amends IRC § 4261 to clarify that Federal Excise Tax (FET) does not apply to management fees for Part 91 owner flights
- The amendment only applies to payments by the owner (or a lessee) for aircraft management services
- The owner does not have to be on the flight
- Such Part 91 flights are subject to the non-commercial fuel tax
- Most management company operator audits initiated in the last 3 years have been withdrawn

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Interest Expense Limitations

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Business Interest Limitation

- Beginning in 2018, interest deduction is limited to 30% of “Adjusted Taxable Income”
- Adjusted Taxable Income is computed without regard for:
 - Business interest income or expense
 - Items of income or loss not allocable to the business, such as the sale of assets held for investment
 - Any net operating loss carryback or carryforward
 - Any deduction for certain pass-through income under section 199A (the new 20% qualified business income deduction)
 - Any deduction for depreciation, amortization, or depletion through 2021

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Business Interest Limitation

- The interest limitation does not apply to investment interest, and certain other specifically identified companies.
- Does not apply to small businesses with average annual gross receipts over the prior three years of \$25 million or less.
- “Quick and dirty” test: Start with annual net income, add back depreciation, and divide by 30%. The result approximates the allowable interest expense. Interest, actual or projected, that exceeds the calculation may not be deductible. Analyze carefully.

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New NOL Restrictions

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NOL Carryforward Limitation

- Sec. § 172 Old Rules:
 - NOLs would carryback 2 years and forward 20 years
 - NOL carryovers and carrybacks could fully offset taxable income (unless certain limitations at Sec 382 applied)
- Sec. § 172 Amended Rules:
 - Disallow NOL carrybacks
 - No time limit on NOL carryforwards
 - Deduction is limited to the lesser of the available NOL, or 80% of taxpayer's pre-NOL deduction taxable income
 - Applies to NOL's occurring in any year beginning January 01, 2018
 - NOL's existing at December 31, 2017 are not effected by the new rules

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Thank You Very Much!

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