



Federal Excise Taxes for
Part 91 and Part 135:
Rules, Reporting, and
Current Issues



Jed R. Wolcott
Certified Public Accountant
and
John Hoover
Certified Public Accountant
Attorney at Law



© 2013 Wolcott Aviation Seminars, LLC

Wolcott Aviation Seminars, LLC

Housekeeping
Issues




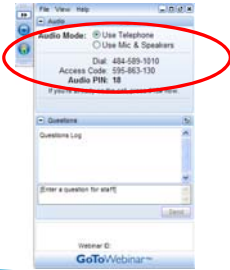
Sue Folkering, CPA, MBA
Commercial Pilot, AS/MEL,
Instrument Airplane

© 2013 Wolcott Aviation Seminars, LLC

Wolcott Aviation Seminars, LLC

If you are unable to
hear the audio through
your speakers or
prefer to listen via
phone, please dial:


646-558-2119
Access code
452-873-149



© 2013 Wolcott Aviation Seminars, LLC

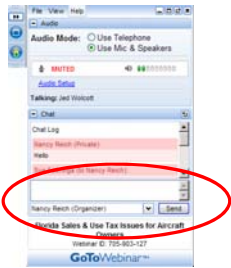
Today's Webinar:

- Webinar will be approximately 60 minutes in length
- Course materials have been emailed to you but in case you do not have them:
www.aviation-cpa.com
Resource Library ID = 50118
- Call our office if you need assistance
(866) 791-6092



© 2013 Wolcott Aviation Seminars, LLC

Please ask questions during the webinar



© 2013 Wolcott Aviation Seminars, LLC


We get asked many questions during the webinar.....


- We try to answer all questions asked during the webinar
- If your question has not been answered by the end of the webinar, please don't disconnect when the webinar ends
- We may ask you to contact us after the webinar if your issue is too complex to answer using the 'chat' feature

© 2013 Wolcott Aviation Seminars, LLC

Reminders:

- You must be present for the entire program for CLE, CPE or an Attendance Certificate.
- Polls will be provided during the program to confirm attendance. Complete all polls for attendance credit.

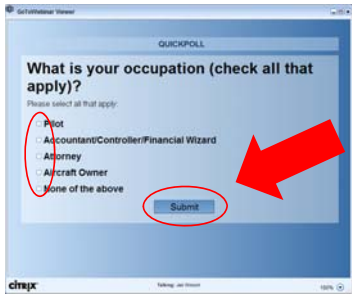
 National Association of State Boards of Accountancy (NASBA)
Group Internet Based Programs sponsor ID 108984

 CLE
CONTINUING LEGAL EDUCATION

Florida Bar Association Continuing Legal Education
Accreditation Provider # 283052

© 2013 Wolcott Aviation Seminars, LLC

Reminders:



© 2013 Wolcott Aviation Seminars, LLC

Today's Presenters:



Jed R. Wolcott, CPA, MBA

&

John B. Hoover, JD, LLM, CPA, MBA




© 2013 Wolcott Aviation Seminars, LLC



About our Guest Speaker:

John Hoover has a wide range of experience in federal and state tax planning and compliance matters involving tax-exempt organizations, individuals, corporations, partnerships, estates, trusts and other entities. He has also worked extensively in tax matters relating to like-kind exchanges, deferred compensation, aircraft, and political and lobbying expenditures. John is the Chair of the Federal Tax Working Group of National Business Aviation Association Tax Committee and is also a member of the Virginia Society of CPA's and AICPA.

© 2013 Wolcott Aviation Seminars, LLC 10




Overview of Today's Presentation

- Federal Excise Tax (FET) rules for Part 91 and Part 135 flight operations
- Current trends and issues

Note: There are many forms of Federal Excise Taxes (FET); we are focusing on air transportation taxes


© 2013 Wolcott Aviation Seminars, LLC 11



FET Rules for Part 91 and Part 135 Flight Operations


- Commercial air transportation FET rules and exceptions
 - Domestic FET
 - International head tax
- General aviation FET rules and exceptions
- Calculating and reporting FET
 - Deposits
 - Fuel tax refunds
 - Tax forms

© 2013 Wolcott Aviation Seminars, LLC 12



Commercial Air Transportation Tax on Domestic Passengers and Freight (Part 135)

© 2013 Wolcott Aviation Seminars, LLC 13




FET Rates on Domestic Commercial Flights

Congress imposes an excise tax on the cost of air transportation to fund airports and the air traffic control system in the U.S.

- 7.5% on *amounts paid* plus \$3.90 per person segment fee for 2013
- 6.25% tax on freight
- Airline passengers pay per ticket
- Part-135 customers pay according to the cost of the charter
- Domestic = within the 50 states
- The IRS defines which flights are taxed as "commercial"


© 2013 Wolcott Aviation Seminars, LLC 14



FET Rates on Domestic Commercial Flights

- IRS rules determine that a flight is subject to FET when it is deemed "taxable air transportation"
- Taxable air transportation include all amounts paid for the flight including:
 - Flight time expenses
 - Deadhead/repositioning flights
 - Crew waiting charges
 - Landing fees
 - Plus any other expenses incurred in the movement of the aircraft
- Amounts paid do not include separately stated charges, such as:
 - Catering
 - Ground transportation


© 2013 Wolcott Aviation Seminars, LLC 15



Possession, Command and Control (PPC)

- Responsibility for collecting FET is determined by who has PPC; can be either the owner or the operator
- Factors for determining PPC include:
 - Who owns the aircraft
 - Who provides the flight crew
 - Who oversees and provides maintenance
 - Who controls aircraft scheduling
 - Who pays for aircraft insurance
 - Who pays related aircraft expenses
- Charter brokers that collect FET may be liable to deposit and report


© 2013 Wolcott Aviation Seminars, LLC 16



Commercial Use Exemption – 225-Mile Zone

- The 225-Mile Zone is that portion of Canada or Mexico that is not more than 225 miles from the continental U.S.
- Flights within the 225-Mile Zone may be taxed as domestic flights, not international, if paid for in the United States
- Points in Mexico and Canada that are further than 225 miles are taxable as international flights
- The Bahamas and the Caribbean are not in the 225-mile zone, and flights are taxed as international

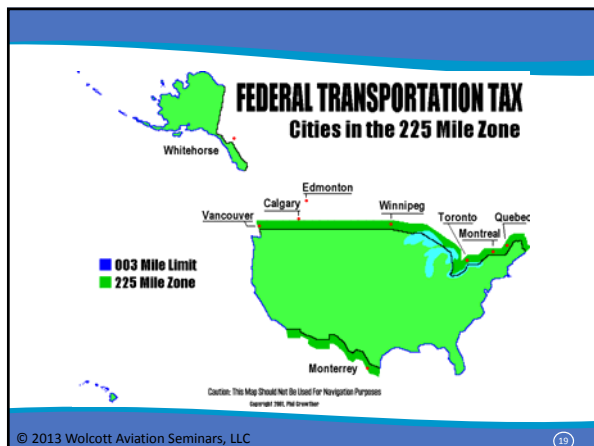
© 2013 Wolcott Aviation Seminars, LLC 17




Flights to and from the U.S. to Hawaii and Alaska

- Flights between the continental U.S. and 225-mile zone to Alaska and Hawaii are taxable on the portion of the travel in the U.S and the 3-mile international boundary
- Taxable amount may be calculated by miles in U.S. divided by total miles times transportation costs
- A flight enters or leaves the U.S. when it crosses the border into Canada or Mexico, or a point 3 nautical miles from the coastline at low tide
- Such flights area also subject to the reduced International Head Tax \$8.60 (2013 rare)
- Flights within Hawaii or Alaska are subject to the regular 7.5% domestic tax and segment fee

© 2013 Wolcott Aviation Seminars, LLC 18





Commercial Use Exemptions – Rural Airports

- The domestic segment fee does not apply if the segment is to or from a rural airport
- A rural airport is one that has less than 100,000 annual departing passengers
- Rural airport must not be located within 75 miles of an airport that has more than 100,000 departing passengers annually
- There are approximately 3200 airports that qualify as rural


© 2013 Wolcott Aviation Seminars, LLC



Other FET Commercial Flight Exceptions

- FET does not apply to:
 - Skydiving operations
 - Sightseeing flights
 - Flights that land on water
 - Forestry & logging flights
- Emergency medical services, providing
 - Flights are by helicopter, or
 - By aircraft dedicated to care of acute medical services
- Non-turbojet aircraft with MTOW of less than 6,000 lbs. are exempt from FET, unless they are operating on a published schedule


© 2013 Wolcott Aviation Seminars, LLC



Air Cargo Regulations

- 6.25% FET applies to amounts paid for transportation of property within the U.S., providing the operator is engaged in the business of transporting property by air for hire
- FET does not apply to:
 - Transportation of property that begins or ends outside of the U.S.
 - The domestic portion of an international cargo flight
 - Transporting property for export
- Small aircraft and affiliated group exemption from FET applies to transportation of property

© 2013 Wolcott Aviation Seminars, LLC 22



Head Tax on International Air Transportation (Part 135)

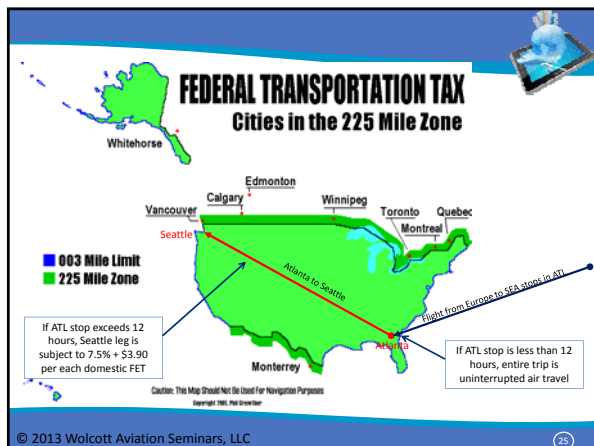
© 2013 Wolcott Aviation Seminars, LLC 23



International Air Transportation

- Fee is \$17.20 per person entering or leaving territorial U.S. (2013 rate; amount varies by year)
- Applies to uninterrupted transportation entirely by air
- Does not apply to flights that begin AND end in the U.S. or the 225-zone
- Flights from the U.S. or within the 225-mile zone that begin or end in Hawaii or Alaska:
 - Calculate the portion of the flight over the U.S. and Alaska at the domestic 7.5% & segment fee rates and prorate to the total flight miles
 - Add Alaska or Hawaii head tax of \$8.60 (2013 rate)
- Passengers on flights to or from Hawaii or Alaska pay \$17.20 (2013 rate)

© 2013 Wolcott Aviation Seminars, LLC 24



Air Transportation Taxes on Business and Recreational Use
(Part 91)

© 2013 Wolcott Aviation Seminars, LLC

26


FET for Corporate and Recreational Use

- For corporate and recreational use (general aviation), the tax is imbedded in the price of the fuel, and is paid for when the fuel is purchased
- Current general aviation FET taxes
 - \$0.194 per gallon for aviation gasoline
 - \$0.219 or \$0.244 per gallon for jet fuel, depending on the FBO and the method of delivery
- Certain Part 91 flights are subject to FET, meaning that the owner will be liable for FET on the cost of the flight

IRC Section 4081(a)(2)

© 2013 Wolcott Aviation Seminars, LLC

27




Part 91 Exceptions – Timeshare and Schwab Flights

- Timeshares (sometimes called part 91 charters) are subject to FET
 - FAA limits timeshare reimbursements to twice fuel, plus “out of pocket” expenses
 - For IRS, timeshare means passengers reimburse for a Part-91 flight
 - Passengers may be company employees, guests or third-parties
- Schwab exception flights are subject to FET
 - Under specific conditions, the FAA will permit executives to reimburse the company for more than twice fuel costs
- In either case, FET applies to entire amount reimbursed

See IRS Rev. Rul. 2005-64 in handouts

© 2013 Wolcott Aviation Seminars, LLC 28




Part 91 Exceptions – Flight Department Company

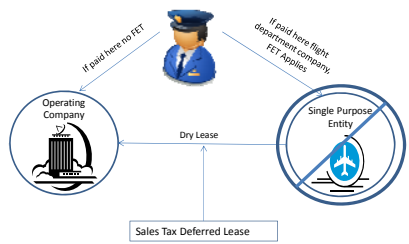
- A *Flight Department Company* is an entity that has no other business except operating an aircraft
- No specific form of entity
 - Corporation
 - Partnership
 - LLC
- Need not own the aircraft (may be leased)
- Entity must have possession, command and control; generally this means the pilot is paid from the aircraft-owning company

See IRS Rev. Rul. 2005-64 in handouts


© 2013 Wolcott Aviation Seminars, LLC 29



Part 91 Exceptions – Flight Department Company




© 2013 Wolcott Aviation Seminars, LLC 30



Calculating and Reporting Air Transportation Tax Collections and Fuel Tax Credit Claims

© 2013 Wolcott Aviation Seminars, LLC 34




FET Deposit and Fuel Credit Reporting Rules

- FET collections and refunds of fuel taxes are made every three months on Form 720, Quarterly Federal Excise Tax Return.

Quarter Covered	Due By
Jan., Feb., Mar.	April 30
Apr., May, June	July 31
July, Aug., Sept.	October 31
Oct., Nov., Dec.	January 31


© 2013 Wolcott Aviation Seminars, LLC 35



FET Deposit and Reporting Rules

- IRS rules require semimonthly deposits of excise taxes
 - 1st to the 15th of the month are due the 29th of the same month
 - 16th to the end of the month are due on the 14th of the following month
- Electronic Funds Transfers (EFT) (like payroll taxes) are required to make excise tax deposits.
- Special deposit rule for the 3rd quarter
- Fuel tax credits may be claimed on quarterly Forms 720 *if paid in the current quarter*
- Adjustments and refunds of FET paid are made on Form 720X


© 2013 Wolcott Aviation Seminars, LLC 36



Fuel Tax Credits & Refunds

- Commercial flights permit the operator to apply for fuel tax credits paid on fuel purchases when:
 - The passengers pay air transportation taxes (FET), and
 - FET is included in the cost of the fuel purchased
- Calculate the refund based on either
 - Actual purchases
 - Calculated fuel burn of the aircraft


© 2013 Wolcott Aviation Seminars, LLC 37



Fuel Tax Credits & Refunds

- The amount of tax charged for kerosene (Jet-A) depends on the FBO and how the fuel is pumped
 - If the FBO is registered with the IRS and the fuel is sold from a truck, fuel sells with \$0.219 tax included in price to operator
 - If the FBO is not registered with the IRS and the fuel is sold from a truck, fuel sells with \$0.244 tax included in price to operator
 - If the FBO sells the fuel from a hydrant system, fuel sells with \$0.219 tax included in price to operator
- Bonded (untaxed) fuel is available at certain airports for international or non-taxable flight operators. Purchasers of bonded fuel do not receive fuel tax refunds


© 2013 Wolcott Aviation Seminars, LLC 38



Fuel Tax Credits & Refunds

- Fuel tax credit rates:
 - Kerosene used in commercial aviation taxed at \$0.244/gallon credit = \$0.20/gallon
 - Kerosene used in commercial aviation taxed at \$0.219/gallon credit = \$0.175/gallon
- Apply on Schedule C of quarterly Form 720 for credits due from the current quarter
- If applying late, or if not required to file Form 720, attach Form 4136 Credit for Federal Tax Paid on Fuels to annual income tax return
- Form 8849 may be also filed for fuel claims

© 2013 Wolcott Aviation Seminars, LLC 39



Liability for FET Collections


- FET amounts collected are fiduciary. The IRS assigns liability for FET collected and not deposited to individuals that control the funds
 - Anyone having access to the FET funds can be held liable
 - Includes bookkeepers and signatories on bank accounts
- When disputes arise over control of funds, such as between charter brokers and charter operators, the IRS will "follow the cash" to establish personal liability
- FET liabilities generally do not go away in bankruptcy

© 2013 Wolcott Aviation Seminars, LLC 40



Current Trends and Issues


© 2013 Wolcott Aviation Seminars, LLC 41



FET Problem for Aircraft Management Companies

- Management company provides services for aircraft owner's flights
- IRS says this service is commercial air transportation service subject to Federal Transportation Excise Tax (FET) (IRC § 4261)
- Management companies do not collect FET on owner flights
- IRS audits management companies for uncollected FET


© 2013 Wolcott Aviation Seminars, LLC 42



FET Issue

- FET applies to commercial air transportation
- "Air transportation" requires providing both the PILOT and the AIRCRAFT
 - Management company provides the pilot
 - To also provide the aircraft, a management company must first *have* the aircraft
- The issue is whether the management company has "possession, command, and control" of the aircraft


© 2013 Wolcott Aviation Seminars, LLC 43



IRS Revenue Rulings

- Rev Rul 58-215 – No FET
 - Owner had "exclusive control" of pilot
 - Management company was "agent" of owner
- Rev Rul 74-123 – FET applied
 - Scheduled flights between definite points
 - Management company operated owner's aircraft the same as the rest of management company's fleet
 - Management company bore economic cost of operations
 - Management company has operational control of "public aircraft" (not subject to Part 91/135 rules)


© 2013 Wolcott Aviation Seminars, LLC 44



IRS Private Letter Rulings

- PLR 93-47-007 – No FET
 - Owner has "substantial control"
 - Owner had "operational control" under FAR Part 91 rules
- PLR 94-04-007 – FET applied
 - Management company performed "virtually all decision-making" regarding the aircraft
 - Management company had "operational control" apparently under FAR Part 135 rules


© 2013 Wolcott Aviation Seminars, LLC 45



Petit Jean Air Service

- No FET on S corporation that employed pilot and constructively leased aircraft to sole shareholder
 - Sole shareholder had an overwhelming degree of control
- Court considered whether—
“the transaction was characterized by the objective attributes of a lease, notably the right to possess, use, and control the aircraft”


© 2013 Wolcott Aviation Seminars, LLC 46



CCA 2012-10026

- NBAA met with IRS Examination group in Summer 2011 regarding the FET problem for management company's
- Instead of continuing meetings, IRS issued CCA 2012-10026 on March 9, 2012
- CCA concludes that management company service is air transportation subject to FET
 - Management company performs virtually all decision-making regarding the aircraft
 - Management company service is taxable unless management company is “agent” under Rev Rul 58-215


© 2013 Wolcott Aviation Seminars, LLC 47



Industry Response to CCA

- NBAA/NATA met with Chief Counsel Bill Wilkins in April 2012 and with Branch Chief several times
- NBAA submitted several memoranda including—
 - Explanation that Rev Rul 74-123 does not provide clear guidance
 - Explanation that “deputy tax collector” like management company cannot be held liable for failure to collect tax, if legal guidance is not “clear and precise” regarding collection responsibility


© 2013 Wolcott Aviation Seminars, LLC 48



Status of FET Guidance

- Branch Chief attorneys agree that Rev Rul 74-123 does not provide clear guidance
- NBAA/NATA met with Commissioner of SBSE
 - SBSE issued Suspension on Assessments in May 2013
- NBAA/NATA met with Branch Chief attorneys and Treasury Tax Legislative Counsel regarding need for clear guidance
 - Regulations project was added to IRS priority guidance plan in August 2013


© 2013 Wolcott Aviation Seminars, LLC 49



Status of FET Guidance

- NBAA submitted draft proposed regulations and meetings are continuing
 - NBAA draft regulations rely on constructive lease concept to determine when owner relinquishes possession, command, and control to management company
 - NBAA draft regulations state that actions of "agent" are attributable to owner as principal
- Proposed regulations are expected soon

© 2013 Wolcott Aviation Seminars, LLC 50



IRS Audits

- IRS is continuing FET audits of management company's, but no 30-Day Letters
- Management company's are currently winning at Appeals based on—
 - Owner control of aircraft (list of factors)
 - Lack of clear and precise guidance regarding collection responsibility
- Future IRS regulations cannot retroactively create clear guidance now (even if the regulations are retroactive)


© 2013 Wolcott Aviation Seminars, LLC 51



Management Agreements

- Best FET approach is for owner to employ the pilot
 - typically not feasible
- Designate management company as "agent"
- Owner should—
 - control as much as possible
 - hire and pay vendors directly
 - have the right to cancel third party charters at any time

© 2013 Wolcott Aviation Seminars, LLC 52



Fractional Programs

- *Executive Jet Aviation* decision held that fractional programs are air transportation service subject to FET
 - In *EJA*, IRS dropped assertion of FET on management fees
 - In response, fractional operators did not collect FET on management fees
 - Later, IRS audited fractional operators for uncollected FET on management fees
- Under FAA Reauthorization, fractionals are not subject to FET after April 1, 2012

© 2013 Wolcott Aviation Seminars, LLC 53



Thank you!

Please feel free to contact today's presenters:

<p>John Hoover, CPA, JD Dow Lohnes Senior Counsel 202-776-2391 jhoover@dowlohnescpa.com www.dowlohnescpa.com</p>	<p>Sue Folkring, CPA, MBA Wolcott & Associates, P.A. Aviation "Taxologist" 954-763-9363 suef@aviation-cpa.com www.aviation-cpa.com</p>	<p>Jed Wolcott, CPA, MBA Wolcott & Associates, P.A. President 954-763-9363 jedw@aviation-cpa.com www.aviation-cpa.com</p>
--	---	--

© 2013 Wolcott Aviation Seminars, LLC 54
