



# TaxNewsFlash

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## Proposed regulations: Excise taxes on air transportation of persons or property; aircraft management services exemption

The U.S. Treasury Department and IRS today released for publication in the Federal Register a notice of proposed rulemaking (REG-112042-19) relating to the excise taxes imposed on certain amounts paid for transportation of persons and property by air.

### Summary

Specifically, the proposed regulations address an exemption for amounts paid by aircraft owners for certain aircraft management services.

In addition, the [proposed regulations](#) [PDF 327 KB] would also amend, revise, re-designate, and remove provisions of existing regulations that are out-of-date or obsolete, and generally update the existing regulations to incorporate statutory changes, case law, and other published guidance.

Finally, the proposed regulations withdraw a provision that was included in prior proposed regulations that was never finalized and re-propose it.

These proposed regulations were published in the Federal Register on July 31, 2020, and comments and requests for a public hearing must be received by September 29, 2020.

A statement in the preamble to today's proposed regulations provides that the Treasury decision adopting these proposed regulations as final regulations will apply no sooner than January 1, 2021.

### Background

A provision of the 2017 tax law (Pub. L. No. 115-97, the law that is often referred to as the "Tax Cuts and Jobs Act" (TCJA)) amended section 4261 by exempting from the air transportation tax on persons or property payments for "aircraft management services" made by aircraft owners to management companies (related to the management of private aircraft) (this is referred to as the "aircraft

management services exemption”). These payments relate to maintenance and support of the owner’s aircraft or services related to flights on the owner’s aircraft.

Specifically, the payments for “aircraft management services” include administrative and support services such as scheduling; flight planning and weather forecasting; obtaining insurance; maintenance, storage, and fueling of aircraft; hiring, training, and provision of pilots and crew; establishing and complying with safety standards; and other services necessary to support flights operated by aircraft owners.

The exemption applies to payments made by persons that lease aircraft, unless the lease is a “disqualified lease.” Disqualified lease means a lease from a person providing aircraft management services for such aircraft if the lease term is 31 days or less.

### **Overview of aircraft management services exemption proposed regulations**

The proposed regulations provide, among other things:

- A non-exclusive list of additional services that would qualify as “aircraft management services”
- Definitions for a number of other terms, including aircraft owner, aircraft management services provider, for-hire flight, private aviation, and substitute aircraft
- A limitation to aircraft management services related to aircraft used in private aviation
- An allocation rule applicable in situations when an aircraft management services provider provides flight services to an aircraft owner on a substitute aircraft
- A rule that payments for for-hire flights (such as charter flights, air taxi flights, and flightseeing flights) are not exempt under the aircraft management services exemption
- A coordination rule with fuel tax provisions
- A coordination rule with the exemption for aircraft in fractional ownership aircraft programs and fuel surtax, including an anti-abuse rule
- A clarification that the billing method chosen by the parties to an aircraft management services agreement (such as monthly fee for aircraft management services plus hourly fees for flight time or specific costs plus mark-up), is a business decision that does not affect the application of the exemption
- A clarification that whether a flight on an aircraft owner’s aircraft operates pursuant to the rules under Federal Aviation Regulations prescribed by the Federal Aviation Administration (FARs) Part 91 (14 CFR part 91) or pursuant to the rules under FARs Part 135 (14 CFR part 135) does not affect the application of the exemption

### **Other proposed regulations**

The existing regulations applicable to the excise taxes on air transportation of persons or property have not been revised since 1962.

The proposed regulations reflect, among other things, rules related to:

- The enactment of the international travel facilities tax in 1970 (*Airport and Airway Development Act of 1970* (AADA), Pub. L. No. 91-258, 84 Stat. 236 (1970));
- The enactment of the domestic segment tax in 1997 (*Taxpayer Relief Act of 1997*, Pub. L. No. 105-34, 111 Stat. 788 (1997))
- Current statutory exemptions

Finally, the proposed regulations re-propose a general excise tax provision that each business unit that has, or is required to have, a separate employer identification number is treated as a separate person. This provision, although previously proposed, was never finalized.

### **KPMG observation**

The proposed regulations provide much-welcomed updates to the air transportation excise tax regulations applicable to all air transportation service providers and persons that pay for those services. With respect to the aircraft management services exemption, the preamble to the proposed regulations indicates that payments that are made by certain parties related to an aircraft owner are not treated as though such payments were made by the aircraft owner. Aircraft owners thus need to examine their current payment arrangements to identify any potential risk that such payments would not meet the exemption.

In order to qualify for the aircraft management services exemption, the proposed regulations provide recordkeeping requirements for both the aircraft owner and aircraft management services provider. In addition, the proposed regulations include special rules for substitute aircraft and for-hire flights. Aircraft owners and aircraft management service providers need to review their current records and identify any potential risks.

Consider also whether tax has been paid with respect to any payment by an aircraft owner that would meet the aircraft management services exemption and identify any potential refund opportunities.

The preamble to today's proposed regulations clarifies that "...nothing in these proposed regulations should be construed as affecting the excise tax holiday" that was created by the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) (Pub. L. No. 116-136), that created an excise tax holiday on certain aviation taxes by suspending air transportation excise tax and certain fuel excise taxes from March 28, 2020, through December 31, 2020.

For more information, contact a tax professional with KPMG's Excise Tax Practice group:

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