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Aircraft Owners and Pilots Association

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I. Job Creation and Worker Assistance Act of 2002

A. Advantages - Special 30% bonus first-year depreciation for **new** property acquired after 9/10/2001 and before 9/11/2004 I.R.C. §168(k).

1. Original use must commence with t/p after 9/10/2001
2. FAR Part 91 a/c must be placed in service before 1/1/2005 FAR Part 135 & Part 121 a/c must be placed in service before 1/1/2006. Must be acquired by 9/11/2004
3. Must be depreciated under MACRS or "elected" ADS
4. Business use must be over 50%
5. Recapture if/when business use drops to 50% or less
6. Special Expensing Election IRC§ 179 Is Deducted Before 30% Bonus
7. Qualifying property does not trigger AMT

B. Disadvantage: Bonus depreciation is subject to I.R.C. §162 "Ordinary, Necessary and Reasonableness" tests

C. Disadvantage: Bonus depreciation is subject to I.R.C. § 263 and 263A Uniform Capitalization rules

D. **Alert** special 30% Bonus **Not** Yet Adopted by Most States

II. Aircraft Business Plan

A. Mission Statement
B. Current business and plans for expansion
C. Profit projections

D. Interest rate assumptions
E. Chance for aircraft appreciation
F. Aircraft mission profile
G. Evaluation of various aircraft
H. Aircraft business entity selection
I. Parker v. Commissioner, T.C. Memo 2002-76
J. Recent I.R.S. appeals inquiry
K. Plan for maximum qualified business use

III. Business vs. Personal Use

A. Business Usage - **CRITICAL**

1. Bona fide business/development trips
2. Post maintenance flights
3. Training - <u>Knudtson v. Commissioner</u>, T.C. Memo 1980-455
4. Currency - proficiency VFR/IFR day/night
5. Insurance requirements
6. Personal trips - evaluate - mixed business use
7. Consider use of return extended due date
8. Aviation business diary - record income

B. "<u>*Limited Personal Use*</u>"

1. Use S.I.F.L. rates to impute value of personal use on W-2
2. Limit personal use to 35% or less per recent I.R.S audit and court cases T/P victories
3. <u>Sutherland Lumber-Southwest vs. Commissioner</u>, 114TC197
4. <u>National Bancorp of Alaska Vs. Commissioner</u> TC Memo 2001-202
5. <u>Midland Financial Co. and Subsidiaries vs. Commissioner</u> TC Memo 2001-203
6. Above cases had business use of 64%-80% conceded/stipulated by IRS
7. Value of personal flights and other W-2 compensation was reasonable
8. IRS wanted to limit depreciation and expenses to amount of imputed W-2 income
9. U.S. Tax Court and Eighth Circuit Court of Appeals ruled against IRS
10. IRS Issued Acquiescence/Action on Decision 2/11/2002 for Sutherland
11. **Caution** s/b excercised where facts are different from Sutherland and follow-on cases

IV. Rehabs vs. Repairs and Maintenance Rev. Rul. 2001-4

A. Rehabilitative Repairs Extend Life of Aircraft/Add Value

1. Extensive skin replacement
2. Installation of smoke and fire detection
3. Air phone, ground proximity warning system
4. All parts, systems, inspected on an 8 year cycle – heavy maintenance visit
5. Cost over $2 million, 45 day completion period, 15 million original cost excl. engines
6. Adapt airframe to different use

B. Deductible Repairs Maintain Ordinary, Efficient Operation

1. Inspecting, testing, servicing, cleaning
2. Repainting, re-upholstery, carpet repairs
3. Cost of repairs is not controlling
4. Evaluate on a case-by-case basis

   a. Hard line on major overhaul is weakened
   b. Mandated repairs may not “necessarily” extend life of aircraft
   c. Look at “degree” of repair not “kind” of repair
   d. Use the “put” or “keep” standard

C. Summary of Revenue Ruling 2001-4

1. Work that only maintains relative aircraft value is deductible
2. Aircraft was used for same purposes as before the heavy maintenance
3. Establish pattern of business use prior to heavy expenditures, where possible
4. Replacements of numerous expensive parts may be deductible
5. Work required by FAA does not mean that aircraft value is materially increased
6. Plan of rehabilitation doctrine is applied on a case-by-case basis
7. Additional service life of 12-14 years resulted in capitalization
8. Replacements of major portions of skin panels are not deductible
9. Only the most significant and complete rehabilitation programs seem to require capitalization
10. Smith V. Commissioner, KTC 2002-565(9thCir. 2002) should have little effect on Rev. Rul. 2001-4

V. Sales and Use Taxes

A. Vary widely from state to state
B. Few states have exemptions for FAR Part 91 use
C. Out of state registrations may be subject to penalties if discovered. Business activity may help.
D. Take delivery in a state that has a fly-away exemption
E. Increased cooperation between county assessors, state departments of revenue and IRS
F. Sales tax auditors "crossing over" to income tax issues for case referral and income tax documentation
G. California (New) Interstate Commerce Exemption Regulation 1620(b) language retroactive

1. Take delivery out of state
2. Next flight segment must be a business flight
3. Six month test period begins upon entry to CA
4. If 50% or more of flight time is interstate commerce (business trips) then aircraft is exempt

MACRS vs. 30% Special Allowance (Bonus)				
	FAR Part 91	**FAR Part 91**	**FAR Part 135**	**FAR Part 135**
Year	No 30%	With 30%	No 30%	With 30%
1	20.00%	44.000%	14.29%	40.003%
2	32.00%	22.400%	24.49%	17.143%
3	19.20%	13.440%	17.49%	12.243%
4	11.52%	8.064%	12.49%	8.743%
5	11.52%	8.064%	8.93%	6.251%
6	5.76%	4.032%	8.92%	6.244%
7			8.93%	6.251%
8			4.46%	3.122%
Totals	**100.00%**	**100.00%**	**100.00%**	**100.00%**