

## NBAA BUSINESS AVIATION TAXES SEMINAR RESOURCE

### Why Businesses Lease Aircraft

April 8, 2015

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**Disclaimer:** This NBAA resource is intended to provide Members with an introduction to regulatory and tax considerations for aircraft leases. Readers are cautioned that it is not intended to provide more than an illustrative introduction to the subject matter, and since the materials are necessarily general in nature, they are no substitute for the advice of legal and tax advisors addressing a specific set of facts that readers may face.

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Aircraft owners often place an aircraft in one entity and lease it to one or more other entities for a number of reasons.

#### FAA COMPLIANCE

Leasing is a common method used by aircraft owners to comply with FAA rules. FAA operational rules make leasing necessary for certain types of aircraft uses. The general aviation rules in Part 91 of the FAA Regulations (FAR) generally permit aircraft operations that involve no compensation or hire. Therefore, in order for an aircraft owner limited by the rules of Part 91 to provide use of the aircraft, even to related parties, in compliance with the rules, leasing is necessary. Leasing an aircraft allows the lessee to operate the aircraft for the lessee's own use, generally also under the rules of Part 91.

Aircraft owners may also lease to avoid the Part 91 issue of the "flight department company." This term refers to a company that is set up solely for the purpose of owning and operating aircraft to provide air transportation. The FAA takes the position that a flight department company cannot operate an aircraft under Part 91 because the carriage of persons would not be incidental to the business of that company. Nevertheless, a separate entity is permitted to own an aircraft and lease it to another company that operates the aircraft under Part 91.

Leasing is also a common method to place an aircraft in commercial operations. An aircraft owner may lease an aircraft to a certificated air carrier in order that the aircraft may be used to provide transportation of passengers or property for compensation or hire. For business aircraft, such operations are generally conducted under Part 135 of the FARs, which generally applies to air charter operations. In that case, the lessee must hold an air carrier certificate that authorizes the operator to conduct aircraft charter operations under Part 135. In addition, the aircraft must meet the outfitting, equipment and maintenance requirements of that part.

The FAA also has complex citizenship rules for aircraft registration that may prevent a limited partnership or other entity from registering an aircraft with the FAA Aircraft Registry. In such instances, it is common practice for a separate company to register the aircraft with the FAA and lease it to such an entity for its business use.

## **LIMITING LIABILITY EXPOSURE**

Generally under common law, each person who owns, operates, pilots or maintains an aircraft is responsible for damages arising from that person's negligence or willful misconduct with respect to the aircraft. An aircraft owner may also be strictly liable for damages arising out of aircraft ownership under a products liability theory or a particular state statute. Leasing the aircraft allows aircraft ownership liability to be borne by the company that owns the aircraft and aircraft operational liability to be borne by the company responsible for the pilots and operating the aircraft for its particular flights.

Likewise, the owners of a business frequently place ownership of an aircraft in a separate entity that leases the aircraft to the business to protect the aircraft from liability exposure arising from other operations of the business.

## **STAKEHOLDER'S PARAMETERS**

The owners of a company may have differing purposes or concerns with regard to an aircraft used for company business travel. In such instances, it is common for the aircraft to be owned in a separate company with an overlapping but not identical ownership to the main business. This structure enables the owners who have direct business use of the aircraft to proportionately bear the capital and other costs of aircraft ownership.

In some instances, aircraft owners must structure ownership of the aircraft to meet the requirements of their lenders. A commercial lender for a business may limit the types of assets that a particular company may own, including requiring that an aircraft be owned in a separate company. This separate ownership may be required to strengthen the lender's security rights in and to the aircraft and to facilitate any potential future repossession by the lender. Where multiple lenders are involved in a business, separation of asset ownership may also be required. In these circumstances, leasing allows a company to use the aircraft for its own business purposes while complying with the lender's financing requirements.

Similarly, in certain highly regulated industries (e.g., public utilities, banks, insurance companies), industry regulations may discourage direct ownership of an aircraft. In such cases, it may be necessary to place ownership of an aircraft in a separate entity that leases the aircraft to comply with the regulations.

## **STATE TAX FLEXIBILITY**

Many aircraft owners use a leasing structure for state sales tax reasons. A leasing structure can allow state sales tax to be paid by its user(s) on lease payments instead of by its owner immediately upon its purchase.

Leasing can benefit aircraft owners and users by facilitating regulatory compliance, spreading risk, increasing aircraft usage, assisting financing and increasing tax efficiency. Aircraft leasing also has requirements and potential traps. An aircraft owner should identify and plan for these issues before implementing a leasing structure.

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### **Learn More**

Attend NBAA's May 8, 2015, Business Aviation Taxes Seminar to learn more about this topic and for in-depth presentations on actual tax planning challenges that business aircraft owners and operators face on a daily basis. [Review the seminar agenda.](#)

### **About NBAA**

Founded in 1947 and based in Washington, DC, the National Business Aviation Association (NBAA) is the leading organization for companies that rely on general aviation aircraft to help make their businesses more efficient, productive and successful. Contact NBAA at (800) FYI-NBAA or [info@nbaa.org](mailto:info@nbaa.org). Not a Member? Join today by visiting [www.nbaa.org/join](http://www.nbaa.org/join).