

January 8, 2009

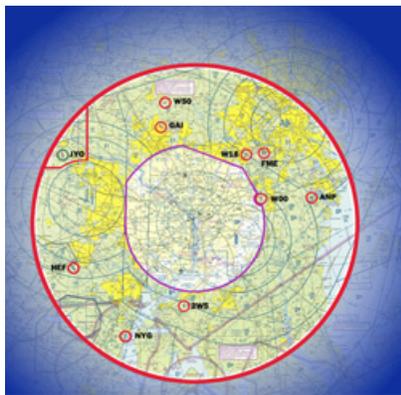
TSA Requests Comments on LASP Security Rules

TSA Extends Comment Deadline on Security Rules, Holds Public Hearings

We reported last month that the Transportation Security Administration has proposed new security rules that would apply to all aircraft with a MTOW above 12,500 pounds and all airports that serve these aircraft. It is known as the "Large Aircraft Security Program" (LASP), and the program also includes requirements for security training for flight crews and periodic security audits for operators. Comments are now due on February 29, 2009.

TSA has scheduled five public hearings to solicit feedback from business aviation. Two already have been held (in White Plains and Atlanta); the remaining hearings will be held in Chicago on January 16, Burbank on January 23, and Houston on January 28. For more information, please visit <http://www.nbaa.org/news/pr/2008/20081217-064.php>. More information about the TSA proposal generally is available at <http://www.nbaa.org/lasp>, and it can be downloaded from <http://www.regulations.gov/fdmspublic/ContentViewer?objectId=090000648078071b&disposition=attachment&contentType=pdf>. NBAA has set up an online guide to help members and other interested parties contact their members of Congress about the TSA proposal, at <http://www.nbaa.org/advocacy/lasp>, and also provides general information about how to submit comments to federal agencies at <http://www.nbaa.org/advocacy/rulemaking-comments.pdf>.

FAA Makes Special Flights Rules Around D.C. Permanent



In December, FAA released a final rule making the Washington, D.C. Air Defense Identification Zone ("ADIZ") permanent, despite widespread opposition from pilots and questions from Congress as to its security justification. In the final rule, FAA asserts that the reduction in the size of the ADIZ in August 2007 (as seen in the image to the left) addressed the issues raised in many of the 22,000+ public comments. The special procedures that allow easier access to Leesburg Executive Airport will not be part of the final rule, but will remain in effect by separate FAA action. The final rule is available online at <http://www.regulations.gov/fdmspublic/ContentViewer?objectId=09000064807dd862&disposition=attachment&contentType=pdf>.

Inauguration Flight Restrictions

NBAA has posted information about restrictions that can be expected in the greater Washington area before, during, and after the presidential inauguration on January 20, 2009. There will be increased traffic and heightened security, and operators can expect Temporary Flight

Restrictions (TFRs), traffic management initiatives, and aircraft parking issues. For more information, visit <http://www.nbaa.org/ops/airspace/regional/northeast/2009-inauguration.php>.

IRS Increases Passenger Taxes for 2009

The U.S. air transportation taxes for passengers are adjusted for inflation on an annual basis. Although the majority of the revenue generated by these taxes is derived from Part 121 operators, this is an issue of concern to Part 135 operators that are required to collect and remit taxes for commercial passengers. Effective January 1, 2009, the revisions are:

- The international arrival and departure taxes are **\$16.10** instead of \$15.40, the rate for 2008. For domestic flights involving Alaska and Hawaii, the international tax also applies to departures (but not arrivals), at reduced rates; the tax is **\$8.00** instead of \$7.70, the rate for 2008.
- For domestic travel, the percentage-based tax remains 7.5 percent of the amount paid for air transportation, but the separate segment charge will be **\$3.60** per domestic segment instead of \$3.50, the rate for 2008.

Currently, Congress has authorized the collection of these taxes only through March 31, 2009, when the current stopgap FAA re-authorization measure expires. However, it is likely that Congress will extend the taxes, either by a continuing resolution or by comprehensive legislation re-authorizing FAA programs (which was proposed but stalled in the last session).

Other government-imposed taxes/fees, such as customs, immigration, and agriculture user fees for international operations, are unchanged. Additional tax information can be obtained from the NBAA website at <http://www.nbaa.org/admin/taxes/federal/fet/>.

Special Awareness Training Rules Enter into Effect on February 9, 2009

As previously reported, "special awareness" training will be required for any pilot who files under VFR within a 60-nautical mile radius of Washington, DC, effective February 9, 2009. The training is available online via <http://www.faasafety.gov>, and pilots will be able to print out a certificate of training. The training will focus on procedures for flying in and around the 30-nautical mile radius Air Defense Identification Zone ("ADIZ") and the 15-nautical mile radius Flight Restricted Zone ("FRZ") and is intended to reduce unauthorized flights in those airspaces.

Visa Waiver Program Expanded But New Restrictions Imposed

Business aviation operators are eligible to participate in the federal Visa Waiver Program, which enables most citizens of approved countries to enter the U.S. for tourism and business purposes without a visa. In November 2008, seven additional countries were added to the program (the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Slovakia, and South Korea), bringing the total number of eligible countries to 34. However, effective January 12, 2009, citizens of all visa waiver countries before traveling must visit the Electronic System for Travel Authorization ("ESTA") website (<https://esta.cbp.dhs.gov>) and complete an online form.

The online form requires information similar to that currently provided on paper I-94 forms upon arrival in the U.S. Supposedly, more than 99% of applicants are approved for travel – but if an applicant is not approved, he/she must obtain a visa. Moreover, if no ESTA application has been made by a traveler, operators are supposed to deny boarding (although it is not clear if this will be strictly enforced initially). ESTA requirements apply even if a passenger is not traveling directly from a visa waiver country – i.e., if a U.K. citizen is aboard a flight from Mexico to the U.S., he must have ESTA authorization. Guidance about ESTA is available online from CBP at http://www.cbp.gov/xp/cgov/travel/id_visa/esta/about_esta/.

Regional News Round-Up



In November, **Washington Dulles Airport** officially opened its fourth runway, 1L-19R – although some connecting taxiways between the new runway and runway 1C/19C (the former 1L-19R) are not scheduled to be completed until later this year. The airport already has obtained FAA approval for the construction of a fifth runway, but no construction dates have yet been scheduled.

Essex Skypark has announced that, until further notice, its runway 16 has a displaced threshold of 185 feet, due to nearby trees. Essex also has reported that nearby **Martin State Airport** is now assessing its \$16 parking fee for use of Martin State's self-serve fuel station.

The Washington County Commissioners have approved, by a 4-1 vote, \$140,000 in additional expenses related to a bridge that is part of a runway rehabilitation project at **Hagerstown Regional Airport**. According to a letter from Airport Director Carolyn S. Motz that was provided to the Commissioners, most of the additional expense came from high asphalt prices. The overall runway project reportedly has about \$3 million left in its budget and is expected by airport officials to end up below budget.

GUEST VIEWPOINT:

Financing and Aircraft Purchases – Critical Tax Considerations You Need to Know

GWBAA is pleased to present the following discussion of tax issues by Kara M. Kraman, a business aviation and tax attorney concentrating in the areas of business aircraft transactions and operations at GKG Law, P.C. The firm's business aircraft group provides full-service tax and regulatory planning and counseling services to corporate aircraft owners, operators and managers. Kara can be reached at the firm's Minnesota office, at 700 Twelve Oaks Center Drive, Suite 700, Wayzata, MN 55391, telephone: (952) 449-5748, facsimile (952) 449-0614, email: kkraman@gkqlaw.com:

Let's consider the following scenario: You are thinking about acquiring a new aircraft, and your tax professional advises you that

you can depreciate the aircraft and offset taxable income against the depreciation. The after tax cost of operating the aircraft

appears to be very attractive due to the accelerated tax write-offs available. After you look at the numbers, you decide to go ahead with the transaction.

As the negotiations move forward, and after the tax planning is completed, your treasurer advises you that it would make sense to obtain a loan to pay for the aircraft, rather than using corporate funds. He also tells you he has found a lender who will lend the money at an attractive rate either on a non-recourse basis or without any type of personal guarantee.

You move forward with the loan and create a loan term sheet, identifying the aircraft owning entity as the borrower. You don't consider mentioning this to your tax advisors; why should you? Borrowing money isn't a tax issue... or, is it?

The at-risk rules under IRC § 465 limit the ability of individuals to deduct net losses from business investment activities involving borrowed money when the individual is not at-risk of repaying the money. In other words, in the context of funds borrowed by a limited liability company or partnership to purchase an aircraft, you are only considered at risk to the extent you are personally liable for the amounts borrowed. As a result, you may not have adequate basis to fully utilize the depreciation deductions flowing through on a K-1 if you take out a non-recourse loan to finance the aircraft.

The Internal Revenue Service does not consider a borrower to be at-risk for a non-recourse loan because unlike a recourse loan, a non-recourse loan does not allow the lender to recover the loan from the borrower in the event of a default. (On a related but separate topic, a shareholder in an S corporation who guarantees a corporate loan will not get additional basis in his stock and may also be precluded from fully utilizing his depreciation deductions.) If

you cannot fully utilize the aircraft depreciation deductions, suddenly the transaction looks much less attractive. So you think to yourself, 'Okay, I will personally guarantee the loan and then I can take the deductions'. Not exactly.

The Internal Revenue Service ("IRS") will not necessarily consider a person who personally guarantees a partnership or LLC loan to be at-risk for that loan. A proposed treasury regulation (which has never been finalized but is widely followed) provides:

If a taxpayer guarantees repayment of an amount borrowed by another person (primary obligor) for use in an activity, *the guarantee shall not increase the taxpayer's amount at risk* (emphasis added). If the taxpayer repays to the creditor the amount borrowed by the primary obligor, the taxpayer's amount at risk shall be increased at such time as the taxpayer has no remaining legal rights against the primary obligor.

In other words, if you have to pay the loan because of a personal guaranty but you have legal recourse against someone to recover the amount, you are not at-risk. The good news is that several courts have found that under certain circumstances, the individual guarantor of a loan is at-risk for purposes of § 465. The bad news is that the cases dealing with this issue can be confusing and sometimes contradictory because different courts may rely on different cases for guidance in determining whether you are at-risk for the amount of your guarantee. Thus, the matter can be more art than science.

In a frequently cited case, the Tax Court held that limited partners were not at-risk for the amount of the partnership loan they guaranteed because the applicable state law allowed them to recover against the primary obligor, in this case the general

partner. In a subsequent case, a Federal District Court held that the right of the limited partners to be indemnified by the general partners prevented any amount guaranteed from being at-risk even though the right of indemnification against the general partners was waived by the limited partners at the outset. *The general principle established by these cases is that if a guarantor has any right of contribution or reimbursement by contract, or even by state law, against another party or the partnership, he is not considered at-risk for the amount he has guaranteed.*

Under certain select facts and circumstances the courts have found that a personal guarantee by an individual increases his amount at-risk under § 465. For example, where limited partners guaranteed a pro-rata portion of the partnership debt in order to avoid joint and several liability, the court found that each limited partner was at-risk for his pro-rata amount of the debt because each limited partner's guaranty ran directly to the creditor so each was primarily liable and the creditor had no recourse against the partnership so each guarantor was ultimately liable.

Although sometimes the cases in which the courts find a guarantor is at risk versus the

cases where the courts find that a guarantor is not at risk seem nearly indistinguishable, certain similarities run through these cases. The three main factors that may tip the scale toward an individual being at-risk are: (i) whether the guarantee is absolute, unconditional and not contingent; (ii) whether the guarantor has a right of subrogation, contribution or reimbursement from the entity or any other owner; and (iii) whether the guarantor bears ultimate responsibility for the debt or a stated portion of the debt.

Nevertheless, it is difficult for an individual who guarantees a debt to ascertain with any certainty whether or not he will be considered to be at-risk under § 465. With careful tax planning, however, it is possible for you to structure your loan to maximize your amount at-risk. In order to accomplish this, it is a good idea to consult with an aviation attorney who specializes in tax law and has experience working on aircraft finance transactions. The attorneys of GKG Law have worked on hundreds of aircraft finance transactions and can help you identify and capitalize on opportunities for effective tax planning.

Upcoming Aviation Events

- **January 10:** The FAA Safety Team will present "Winter Safety Warmup!" at the Kent Island Branch Library at 10am. For more information, please visit https://www.faasafety.gov/SPANS/event_details.aspx?eid=22432.
- **January 10:** The FAA Safety Team will present "FAA Air Traffic Security – National Capitol Region Airspace and Security Briefing" at Leesburg Executive Airport, with sessions at 10am and 12:30pm. For more information, please visit http://www.faasafety.gov/SPANS/event_details.aspx?eid=22606.
- **January 14:** Aero Club of Washington luncheon featuring Mary Peters, Secretary of Transportation, at the Capitol Hilton Hotel. For more information, please visit <http://www.aeroclub.org/luncheons.htm>.

- **January 15:** National Aeronautic Association luncheon featuring Marion Blakey, President, Aerospace Industries Association, at the Crystal Gateway Marriott. For more information, please visit <http://www.naa.aero/html/events/index.cfm?cmsid=110>.
- **January 17:** The FAA Safety Team will present "FAA Air Traffic Security – National Capitol Region Airspace and Security Briefing" at the Potomac Consolidated TRACON in Warrenton, Virginia at 10am. For more information, please visit http://www.faasafety.gov/SPANS/event_details.aspx?eid=22717.
- **January 22:** The FAA Safety Team will present "CFI Workshop: Module 1" at Bay Bridge Airport at 7:30pm. For more information, please visit https://www.faasafety.gov/SPANS/event_details.aspx?eid=22440.
- **January 28:** ABA Forum on Air and Space law 2009 update conference, "Uncertain Times for an Uneasy Industry," at the Ritz-Carlton Hotel. For more information, please visit <http://www.abanet.org/forums/airspace/home.html>.
- **February 3-5:** NTSB hearing on Helicopter Emergency Medical Services operations. For more information, please visit <http://www.nts.gov/Pressrel/2008/081110.html>.
- **February 17:** ATW 2009 Airline Industry Achievement Awards. For more information, please visit http://www.atwonline.com/events/awards_washington09.html.
- **February 21-22:** Adventures in Travel Expo at the Washington Convention Center. For more information, please visit <http://www.adventureexpo.com>.
- **February 24:** International Standards for Business Aircraft Operations (IS-BAO) workshop hosted by Chantilly Air in Manassas. For more information, please visit http://ibac.org/isbao_workshop.php or call Kathy Perfetti at (540) 785-6415.
- **February 24-25:** Air Charter Safety Foundation Symposium, at the NTSB Training Center in Ashburn, Virginia. For more information, please visit <http://www.acsf.aero>.
- **March 25-27:** American Association of Airport Executives and Airports Council International-North America spring Washington conference at the Renaissance Hotel. For more information, please visit <http://events.aaae.org/sites/090304/>.
- **March 31-April 1:** 34th Annual FAA aviation forecast conference at the Walter E. Washington Convention Center, with a keynote address by Scott E. Carson, President and Chief Executive Officer, Boeing Commercial Airplanes. For more information, please visit http://www.faa.gov/news/conferences_events/aviation_forecast_2009/.
- **May 26-28:** ATW Eco-Aviation Conference at the Marriott Metro Center. For more information, visit <http://www.atwonline.com/events/ecoAviationConference09.html>.
- **June 13-14:** Ocean City air show, featuring the USAF Thunderbirds. For more information, please visit <http://www.ocairshow.com>.

- **August 24-26:** Airport Council International-North America public safety and security conference at the Ritz Carlton Pentagon City. For more information, please visit <http://www.aci-na.org/conferences/detail?eventId=149>.
- **September 9-11:** Sixth Annual FAA International Safety Forum at the Omni Shoreham. For information, visit http://www.faa.gov/news/conferences_events/2009safetyforum.
- **October 20-22:** NBAA's 62nd annual meeting and convention in Orlando, Florida.
- **December 3:** Airport Council International-North America international aviation issues seminar at the Fairfax Embassy Row. For more information, please visit <http://www.aci-na.org/conferences/detail?eventId=153>.

GWBAA Offers Online Benefits

We continue to add member information for GWBAA's electronic membership directory – <http://www.gwbaa.com/directory.html>. This service is available to GWBAA members at no cost. Please contact Jol Silversmith (jasilversmith@zsrlaw.com) if you want to post your company's information.

GWBAA Contacts

GWBAA President Paige Kroner of Chantilly Air (paigekroner@chantillyair.com) and GWBAA Secretary Jol Silversmith of Zuckert, Scoutt & Rasenberger, LLP (jasilversmith@zsrlaw.com) write and edit GWBAA News. GWBAA's success and ability to make a difference depends on the breadth of its support and your participation – so please send any ideas or comments for future newsletters, or for GWBAA, in general, to Paige or Jol, or any of the following people:

Jim Garland, Treasurer: jgarland@sharpdetails.com

Bob Rockwood, Membership Chair: racersblue@earthlink.net

Jim Lumley, Operations, Safety and Security Chair: jpilot3@aol.com

Under the terms of the Federal CAN-SPAM Act, this e-mail may be considered to be an "advertisement" or "solicitation." If you do not wish to receive any further emails from GWBAA, please send an email to: info@gwbaa.com, with the words "OPT-OUT" in the subject line. The postal address for GWBAA is c/o Paige Kroner, Chantilly Air, 10761 James Payne Court, Manassas, VA 20110, (703) 361-8253.