

March 10, 2009

Join GWBAA for a Luncheon and Tour at ARINC

Luncheon and Tour of ARINC to Be Held on Thursday, March 19

GWBAA members and other business aviation professionals are invited to a complimentary lunch briefing and tour of ARINC's facilities in Annapolis on Thursday, March 19. The year 2009 marks ARINC's 80th year of providing aeronautical communications services. GWBAA's President Paige Kroner and GWBAA board members also will be on hand to welcome attendees and provide an update on GWBAA activities and upcoming events. Please contact Paige via email at info@gwbaa.com.

GWBAA to Hold Third Annual Safety Standdown on Thursday, May 7

GWBAA will hold its Third Annual Safety Standdown on May 7 at the National Transportation Safety Board (NTSB) Training Center in Ashburn, VA. GWBAA has confirmed **Captain Alfred C. Haynes** (of United Airlines flight 232) as the keynote speaker. It was twenty years ago this year that Captain Haynes and his crew, against all odds, crash landed a United DC-10 into Sioux City, Iowa with no hydraulics; there were 184 survivors.

Captain Haynes' presentation is not just for pilots, but for flight attendants, maintenance personal, dispatchers, air traffic controllers, emergency crews, and others. His 75 minute presentation will captivate, inspire, and motive you.

The cost of the Safety Standdown is \$50 and includes a continental breakfast, lunch (sponsored by Bombardier), and breakout sessions. More details about speakers and agenda will be made available in future newsletters and on the GWBAA website (<http://gwbaa.com>). Contact Jim Lumley, GWBAA Safety Chairman, for more information at (443) 534-1219.

Regional News Round-Up

The Washington County Commissioners are considering an agreement to preserve the Brumbaugh-Kendle-Grove Farmstead near **Hagerstown Regional Airport**. FAA has sought to have structures removed due to their proximity to the runway. In FAA's draft of the agreement, officials would first attempt to find a third party to relocate the structures. They would, then, attempt to sell the architectural elements to a third party and demolish the rest, attempting, finally, to relocate the structures elsewhere on airport property. The structures would be demolished if all else failed.



Commissioners have asked for modifications of this plan, including a first-priority option to offer the facility at its current location for renovation by a third party for a business use compatible with airport operations

Various airports in the greater Washington area have announced their receipt of FAA grants for airport improvements. **Maryland Airport** has received \$1.61 million for the extension of its runway from 3,000 to 4,300 feet. **Salisbury-Ocean City Wicomico Airport** has received \$4.4 million, also for a runway extension project, as well as other projects including safety area and ILS upgrades.

A group of private airport owners have formed the **Virginia Airport Owners Association (VAOA)** to foster the continued growth and development of private airports in Virginia. For more information, contact John Mazza, Jr., President, at (804) 526-7665 or vaoa@live.com.

FAA General Aviation News

The current issue of FAA's bi-monthly publication for general aviation – simply titled “Aviation News” – includes articles on avionic systems, such as retrofits and the limitations of uncertified systems, as well as other technology issues such as GPS and autopilots. The issue is available online at http://www.faa.gov/news/aviation_news/2009/media/marapr2009.pdf.

GUEST VIEWPOINT:

Taking the Headache Out of Aircraft Tax Audits

GWBAA is pleased to present the following discussion of tax issues by Keith G. Swirsky and Brian J. Heisman of Galland, Kharasch, Greenberg, Fellman and Swirsky, P.C.:

Imagine this: you get back to your office after a trip on your corporate jet. You sit down at your desk ready to start your busy work week only to find that while you were gone you received an audit letter from the IRS. Immediately, your stress level begins to mount. Since you typically rely on your accounting department to handle your taxes or perhaps an outside accounting firm, you prepare to make the call everyone hopes to avoid. Before you pick up the phone, read this article. You may think twice about who assists you in an audit revolving around corporate aircraft.

Dealing with an IRS audit, in and of itself, can be quite a challenging and painstaking process. Further, an IRS audit dealing with the use of a corporate aircraft frequently involves the most convoluted provisions in the Internal Revenue Code. However,

these rules also allow for a significant amount of interpretation and, in turn, a significant amount of planning when understood and applied correctly. So, if you don't want the IRS to assess a large tax deficiency, working with an aviation tax expert will bolster your chances of success. This article will highlight some of the more commonly challenged tax return positions involving corporate aircraft and highlight the issues involved.

Reasonableness:

The IRS may call into question whether utilization of a private aircraft was reasonable in the business under Internal Revenue Code (“IRC”) § 162. One way corporations show that purchasing and using the corporate aircraft is reasonable is

to have a business plan that incorporates the benefits of the aircraft into it.

Personal Use:

An area subject to substantial planning and interpretation is the personal use disallowance rules of IRC § 274. This code section and the current Proposed Regulations are complicated and can have various meanings and different applications to different types of aircraft uses.

By way of background, on October 22, 2004, Congress passed The American Jobs Creation Act (AJCA) which overturned the ruling in Sutherland Lumber-Southwest, Inc. v. Commissioner that a corporate taxpayer may deduct the full cost of a non-business (entertainment) flight on the company's aircraft. Subsequent to the AJCA, the IRS issued Notice 2005-45 and Proposed Regulations. Notice 2005-45, when combined with the Proposed Regulations, provides four different methodologies to calculate any disallowance.

Although IRC § 274 on its face may seem to disallow all deductions associated with personal / entertainment use of an aircraft, there are in fact several categories into which personal / entertainment use may be placed, only one of which causes complete disallowance of deductions. Thus, calculating the deduction under different methodologies, and correctly identifying which category the "use" should be placed in, may allow a taxpayer to realize a greater tax savings.

In addition to understanding the calculation methodologies, and the type of "use," it is also necessary to understand which expenses are subject to the personal use disallowance rules. There are numerous other "special rules" contained in the AJCA, the Notice and the Proposed Regulations and experts in the industry have taken and continue to take positions on the proper interpretation of these laws. Aviation tax

specialists will be familiar with these developments and should require limited background research in order to understand all of the issues at play in a particular audit.

At-Risk Rules When Financing:

Sometimes the IRS will challenge deductions for being in excess of your amount at-risk. A taxpayer is generally considered at-risk under IRC § 465 for the amount of money and the adjusted basis of property he contributes to an activity. In addition, a taxpayer may also be at-risk for amounts borrowed for use in the activity, but only if the taxpayer is personally liable for repayment of the loan. The complications surrounding at-risk rules and financing were addressed in detail in an article by Kara Kraman, an attorney in GKG Law's Minneapolis office, in the January edition of World Aircraft Sales. When the IRS asserts that you are taking deductions and losses beyond the amount you actually have at-risk, there may be arguments available to you to prove that you are at-risk for a greater amount than the IRS claims. For example, if you have personally and unconditionally guaranteed the loan on the aircraft and you have no right of subrogation against anyone else, you will probably be considered at-risk for the amount of the loan. The at-risk rules are, again, complicated, and not typically dealt with on a day to day basis by the average tax professional.

Passive Activity Loss Rules:

The IRS may also argue that you have used the aircraft in a rental activity or that you have not materially participated in the active conduct of a trade or business, and thus all depreciation tax losses and operating losses should be treated as passive. If the losses are treated as passive, the taxpayer will only be able to utilize those losses and deductions to offset passive income. Few taxpayers have any passive income.

Aviation tax experts will know what will be considered normal in the aviation context for material participation, will have familiarity with what is considered a “rental activity,” and will know how to argue that a rental activity should be classified as a “non-rental” activity. Further, assertions that an individual “materially participates” in an activity of chartering an aircraft to the general public have to be carefully weighed against potential violations of the FAA’s regulations and the IRS’s knowledge of what is “substantive” in the context of providing a transportation service (in terms of the respective roles of a third-party charter company and the aircraft owner). Documentation of such a transaction is also very relevant to any positions taken in an audit.

Federal Excise Taxes:

The IRS has become continuously and increasingly more aware of issues relating to the so-called flight department company. Are you using a special purpose entity (“SPE”) that not only owns the aircraft, but also pays for the crew and other operating expenses? Has the SPE contracted directly with a management company? If you answer “yes” to either of these questions, you may find yourself subject to an excise tax audit. Coincidentally, such an operating structure also violates the FAA’s regulations. Ironically, having a “flight department company” may provide a defense to a “rental activity” passive activity claim by the IRS, but there must be a careful balancing between income tax

benefits and excise tax liabilities when determining a tax strategy.

Future Planning:

As an overarching issue, it is more likely than not that prospective modifications will need to be made to the aircraft ownership and operating structure to address various federal income and excise tax concerns and federal aviation regulatory considerations. At this juncture, if not sooner, an aviation tax expert should be retained to address any pre-existing problems and to provide solutions for prospective aircraft operations.

Keith G. Swirsky is a tax specialist concentrating in the areas of corporate aircraft transactions and aviation taxation and is the chairman of GKG Law’s business aircraft practice group. Brian J. Heisman is a tax specialist concentrating in the area of business aircraft transactions and operations and corporate reorganizations.

The firm’s business aircraft group provides full-service tax and regulatory planning and counseling services to corporate aircraft owners, operators and managers. The group’s services include Section 1031 tax-free exchanges, federal tax and regulatory planning, state sales and use tax planning, and negotiation and preparation of all manner of transactional documents commonly used in the business aviation industry, including aircraft purchase agreements, leases, joint ownership and joint-use agreements, management and charter agreements, and fractional program documents.

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Upcoming Aviation Events

- **March 14:** The FAA Safety Team will present "Operation Takeoff!" at the Ashburn FSSS, an orientation on obtaining improved access and interaction with Lockheed Martin Flight Services, at 9am. For more information, please visit http://www.faasafety.gov/SPANS/event_details.aspx?eid=22991.

- **March 19:** GWBAA luncheon and tour at ARINC. See above for more details.

- **March 21:** The FAA Safety Team will present an inspection authorization renewal seminar at Capital Instruments and Avionics in Manassas starting at 7am. For more information, visit http://www.faasafety.gov/SPANS/event_details.aspx?eid=24129.
- **March 23:** International Aviation Club luncheon at the Washington Grand Hyatt, featuring Congressman James L. Oberstar, Chairman of the House Transportation Committee. For more information, please visit <http://www.iacwashington.org>.
- **March 25:** The FAA Safety Team will present “GPS From the Ground Up” at the Gaithersburg Hilton at 7pm. For more information, please visit http://www.faasafety.gov/SPANS/event_details.aspx?eid=23627.
- **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 26:** The National Aeronautic Association will hold its spring awards luncheon and announce the 2008 Collier Trophy winner at the Crystal Gateway Marriott. For more information, please visit <http://www.naa.aero/html/events/index.cfm?cmsid=259>.
- **March 26-27:** Aviation Week's ADS-B Management Forum in Washington, DC. For more information, please visit <http://www.aviationweek.com/forums/adsbmain.htm>.
- **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 4:** Greater Washington Aviation Open at the Lansdowne Resort. For more information, please visit <http://www.gwao.org>.
- **May 7:** Third Annual GWBAA Safety Standdown. See above for more details.
- **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 3:** Wings, Wheels and Ducks at the Stafford Regional Airport, from 10am until 4pm. For more information, please visit <http://www.staffordrotary.org>.

- **October 10:** 10th annual Culpeper Air Fest, from 10am until 4pm. For information, visit <http://web.culpepercounty.gov/CountyGovernment/Airport/tabid/108/ModuleID/800/ItemID/7/mctl/EventDetails/Default.aspx?selecteddate=10/10/2009>.
- **October 20-22:** NBAA's 62nd annual meeting and convention in Orlando, Florida.
- **November 1:** 32nd Gaithersburg Transportation Show at the Montgomery County Fairgrounds. For more information, please visit <http://www.gserr.com/shows.htm>.
- **November 2-5:** Air Traffic Control Association 53rd annual conference at the Marriott Wardman Park. For information, visit <http://www.atca.org/annualconference.aspx>.
- **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, Scutt & 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

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