

December 18, 2009

GWBAA Marks Year-End at Landmark Aviation

GWBAA Celebrates the Holidays



GWBAA's holiday event on December 4th, hosted by Landmark Aviation at its Dulles facility, was a big success. Over 30 business aviation professionals attended the reception, which also included the annual membership meeting. (GWBAA thanks Landmark for its hospitality, as well as Bombardier, FlightWorks, and FlightSafety International for providing door prizes.) GWBAA President Paige Kroner provided a summary of the past year's events, and also asked for members who might be interested in assisting with next year's projects. and/or joining the board to let her know; she can be contacted at info@gwbaa.com.

Regional News Round-Up

U.S. Customs and Border Protection became available to perform aircraft clearances at **Manassas Regional Airport** on December 1. The service is on-call seven days a week from 6am to 12 midnight. For more information, contact airport administration at (703) 261-1882.

The administrators of **Culpeper Regional Airport** expressed optimism about the airport's future in a profile published in the *Culpeper Star-Exponent*. County Administrator Frank Bossio stated that the design for a new terminal is nearly complete but that the timeline for construction of the approximately \$2.2 million project has not been set.

A new flight school, GT Aviation, has opened at **Potomac Airfield**. Its owner, Tim Poole, stated that despite the security restrictions in place at the airport, there is a "large opportunity for new pilots in the same area. Potomac is literally the closest GA airport to downtown Washington, D.C." GT Aviation offers training from private through ATP using a Diamond DA-20 and a Piper Arrow.

The Stafford Regional Airport Authority expects to complete a master plan for **Stafford Regional Airport** by June of next year. According to the *Stafford County Sun*, one subject of discussion will be whether to allow "hot fueling" – i.e., fueling a plane while it is still running. The authority's next meeting will be at the airport on January 12, 2010 at 8:30am.

If you're aware of any news of interest to business aviation occurring around the greater Washington area, please let us know at info@gwbaa.com.

GUEST VIEWPOINT: *Last Chance for Bonus Depreciation*

GWBA is pleased to present the following discussion from Troy A. Rolf of GKG Law, P.C.

If you pay any attention at all to the buzz in the market for new business aircraft, you are likely familiar with the special Bonus Depreciation incentives to encourage taxpayers to purchase new property and equipment that were enacted as part of the Economic Stimulus Act of 2008 (the "2008 Act") and extended by the American Recovery and Reinvestment Act of 2009 (the "2009 Act"). Bonus Depreciation is a special tax depreciation deduction allowance granted to taxpayers who acquire and place in service certain "Qualified Property". Generally speaking, the 2008 and 2009 Acts require that such "Qualified Property" be placed in service in 2008 or 2009. However, for a few categories of "Qualified Property", the ability to qualify for Bonus Depreciation extends to property placed in service in 2010. Two of these categories are particularly relevant to the business aviation community. One category addresses aircraft specifically. The second category addresses various types of properties having long production times, which includes some aircraft. Aircraft falling within either of these two categories may qualify for Bonus Depreciation if placed in service in 2010. There are several restrictions and traps for the unwary, however. The biggest of these is that in order for Bonus Depreciation to apply to any aircraft placed in service in 2010, the aircraft must be acquired pursuant to a written binding contract entered into *after* December 31, 2007, but *before* January 1, 2010. Consequently, if you plan to acquire a new aircraft in 2010 and want to take advantage of Bonus Depreciation, you need to act quickly to sign a contract before the end of 2009.

Bonus Depreciation Basics

What is "Qualified Property"? Generally speaking, "Qualified Property" is property that meets all of the following requirements: (1) the property must be property having a tax recovery period of 20 years or less (e.g., aircraft); (2) the "Original Use" of the property must commence with the taxpayer after December 31, 2007 ("Original Use" means the first use to which the

property is put, whether or not that use corresponds to the use of the property by the taxpayer); (3) the property either (a) must be acquired by the taxpayer after December 31, 2007, and before January 1, 2010, but only if no "Written Binding Contract" for the acquisition was in effect before January 1, 2008, or (b) *must be acquired by the taxpayer pursuant to a Written Binding Contract which was entered into after December 31, 2007, and before January 1, 2010*; and (4) the property must be placed in service by the taxpayer before January 1, 2010, or, *in the case of "Certain Aircraft" or "Property Having Long Production Periods", before January 1, 2011*. Depending on certain circumstances, a business aircraft could qualify under either the "Certain Aircraft" provision, or the provision governing "Property Having Long Production Times", or neither provision.

In addition to being Qualified Property, in order to be eligible for Bonus Depreciation, the aircraft must also qualify for depreciation under the Modified Accelerated Cost Recovery System ("MACRS"). The aircraft will not qualify for Bonus Depreciation if the aircraft is required to be depreciated under an Alternative Depreciation System ("ADS"). An aircraft could be required to be depreciated under ADS if, for example, the aircraft is not primarily used in the U.S., or if the aircraft does not meet the 50% qualified business use requirement under Section 280F(b) of the Internal Revenue Code.

What do you mean by "Certain Aircraft"?

In addition to the requirements specified above that must be met for an aircraft to be considered Qualified Property, in order to qualify an aircraft placed in service in 2010 for Bonus Depreciation under the "Certain Aircraft" provision, the following additional requirements must be met: (a) the aircraft must not be "*Transportation Property*" (defined below); (b) at the time the contract for purchase was signed, the purchaser must have made a nonrefundable deposit of the lesser of 10% of the purchase price, or \$100,000; (c) the estimated production period to

build the aircraft must exceed 4 months; and (d) the price of the aircraft must exceed \$200,000.

What is "Transportation Property"? The statute defines "Transportation Property" simply as tangible personal property used in the trade or business of transporting persons or property. This probably includes business jets that are used in on-demand charter operations. However, no definitive guidance yet exists to determine whether a specific aircraft is or is not "Transportation Property". This is of particular concern where a business aircraft is used part of the time in the owner's own business, and part of the time in on-demand commercial charter operations. Regulations governing MACRS specify that when property is used for different purposes at various times in such a manner that the property could potentially be classified into more than one asset class, the property shall be included in the asset class for the activity in which the property is *primarily* used. It seems reasonable that a similar test could be utilized to determine whether an aircraft is "Transportation Property" in situations where an aircraft is used part of the time in the owner's own business, and part of the time in on-demand commercial charter operations. However, no such primary use test is set forth in the Bonus Depreciation statute or regulations, so it is also possible that the IRS could take the position that any use of an aircraft in the trade or business of transporting persons or property would cause the aircraft to be classified as "Transportation Property". Until such time as the IRS provides further guidance on the issue, conservative planning would be to assume that any use of an aircraft in the trade or business of transporting persons or property *could* cause the aircraft to be classified as "Transportation Property", and that if the aircraft is primarily used in the trade or business of transporting persons or property, such aircraft more than likely *would* cause the aircraft to be classified as "Transportation Property".

What is "Property Having Long Production Periods"? In order to qualify an aircraft for Bonus Depreciation under the "Property Having Long Production Periods" provision, in addition to the requirements specified above that must be met for an aircraft to be considered Qualified Property, the statute requires that the aircraft must be "*Transportation*

Property". In addition, the purchase price of the aircraft must exceed \$1,000,000, and the aircraft must have an estimated production period (i.e., the time from the date production actually begins until the date the aircraft is ready to be placed in service) *exceeding 1 year*. This last requirement eliminates many corporate-class jets from qualifying for Bonus Depreciation under the "Property Having Long Production Periods" provision. Notwithstanding the fact that many makes/models of corporate jets have waiting lists that are several years long, few corporate jets actually have production periods exceeding 1 year.

What is a Written Binding Contract?

Regulations provide that a contract is binding only if it is enforceable under State law against the taxpayer or a predecessor, and does not limit damages to a specified amount (for example, by use of a liquidated damages provision). For this purpose, a contractual provision that limits damages to an amount equal to at least 5 percent of the total contract price will not be treated as limiting damages to a specified amount. In determining whether a contract limits damages, the fact that there may be little or no damages because the contract price does not significantly differ from fair market value will not be taken into account.

My aircraft qualifies for Bonus Depreciation. Exactly what are the tax benefits?

For most Qualified Property, including "Certain Aircraft", the Bonus Depreciation allowance is 50% of the adjusted basis of the Qualified Property. However, for Property Having Long Production Periods, the 50% Bonus Depreciation allowance applies only to the extent of the adjusted basis that is attributable to manufacture, construction, or production that occurred before January 1, 2010. The IRS has not provided specific guidance for calculating the portion of the adjusted basis of property that is attributable to production before January 1, 2010. According to the Technical Explanation of the Revenue Provisions of the 2008 Act prepared by the Staff of the Joint Committee on Taxation, Congress intended that rules similar to Section 46(d)(3) of the Internal Revenue Code that was in effect prior to the Tax Reform Act of 1986 should be employed to determine what portion of such costs are attributable to

production before such date. According to Section 46(d)(3), where property is produced for a taxpayer by another party, the amounts that would be attributable to production before January 1, 2010, would likely be the lesser of (i) the amounts actually paid prior to January 1, 2010, and (ii) the amount which represents that portion of the overall cost of the construction which is properly attributable to that portion of such construction which is completed prior to January 1, 2010.

Conclusion

Time is running out to take advantage of Bonus Depreciation. For many, the deadline to place Qualified Property in service is December 31, 2009. Some aircraft purchases may qualify for Bonus Depreciation if placed in service during 2010, but only if certain requirements are met, including a requirement that the aircraft be acquired pursuant to a written binding contract entered into on or before December 31, 2009. Consequently, you must act now to sign a contract to acquire a bonus-eligible aircraft in 2010.

Disclaimer: While this article is intended to provide accurate and authoritative information, it is not intended to provide legal or

professional advice. If legal advice or other professional advice is required, the services of a competent professional person should be sought. All views expressed in this article are those of the author and not necessarily those of any law firm or other person.

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Upcoming Aviation Events

- **January 11:** National Aeronautic Association luncheon featuring Dennis Muilenburg, President and CEO, Integrated Defense Systems, The Boeing Company, at the Hyatt Arlington. For information, visit <http://www.naa.aero/html/events/index.cfm?cmsid=110>.
- **January 20:** The FAA Safety Team will present a seminar on "Aircraft Icing; How It Can Ruin Your Day!" at the police station in Edgewater, MD at 7pm. For more information, please visit http://www.faasafety.gov/SPANS/event_details.aspx?eid=28619.
- **January 26:** Aero Club of Washington luncheon featuring J. Randolph "Randy" Babbitt, FAA Administrator. For information, please visit <http://www.aeroclub.org/luncheons.htm>.
- **January 27:** ABA Forum on Air and Space Law Update Conference at the Ritz-Carlton. For more information, please visit <http://www.abanet.org/forums/airspace/home.html>.
- **February 11:** National Aeronautic Association luncheon featuring Dr. Ashton Carter, Under Secretary of Defense for Acquisition, Technology and Logistics, at the Crystal Gateway Marriott. For more information, please visit <http://www.naa.aero/html/events/index.cfm?cmsid=110>.

- **March 9-10:** 35th Annual FAA Aviation Forecast Conference at the Walter E. Washington Convention Center. For more information, please visit http://www.faa.gov/news/conferences_events/aviation_forecast_2010/.
- **May 21:** 22nd annual Greater Washington Aviation Open, to benefit the Corporate Angel Network. For more information, please visit <http://www.gwao.org>.

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@rstarmail.com

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